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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-18-77270-1 Mar 17 2020 02:19 p.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' EMERGENCY PETITION FOR WRIT OF**  
17 **MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES**  
18 **21(a)(6) AND 27(e) AND ALTERNATIVE EMERGENCY MOTION TO STAY**  
19 **UNDER NRAP RULES 8 AND 27(e)**  
Volume 8 (Exhibit 42)

20 Michael A. Royal, Esq. (SBN 4370)  
21 Gregory A. Miles, Esq. (SBN 4336)  
22 ROYAL & MILES LLP  
23 1522 W. Warm Springs Rd.  
24 Henderson, Nevada 89014  
25 Telephone: (702) 471-6777  
26 Facsimile: (702) 531-6777  
27 Email: [mroyal@royalmilesllp.com](mailto:mroyal@royalmilesllp.com)  
28 [gmiles@royalmilesllp.com](mailto:gmiles@royalmilesllp.com)

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

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

3  
4 DATED this 13 day of March, 2020.

5 ROYAL & MILES LLP

6  
7  
8 By: 

9 Michael A. Royal, Esq. (SBN 4370)  
10 Gregory A. Miles, Esq. (SBN 4336)  
11 1522 W. Warm Springs Rd.  
12 Henderson, NV 89014  
13 (702) 471-6777  
14 Counsel for Petitioners  
15  
16  
17  
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19  
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**CERTIFICATE OF SERVICE**

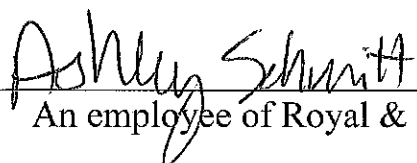
I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 17 day of March, 2020, I served true and correct copy of the foregoing APPENDIX TO PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e) AND ALTERNATIVE EMERGENCY MOTION TO STAY UNDER NRAP RULES 8 AND 27(e) Volume 8 (Exhibit 42), by electronically filed with the Clerk of the Court by using ECF service which will provide copies to all counsel of record registered to the receive CM/ECF notification and by delivering the same via U.S. Mail addressed to the following:

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

Honorable Kathleen Delaney  
Eighth Jud. District Court, Dept. 25  
200 Lewis Avenue  
Las Vegas, NV 89155  
*Respondent*

Sean K. Claggett, Esq.  
William T. Sykes, Esq.  
Geordan G. Logan, Esq.  
CLAGGETT & SYKES LAW FIRM  
4101 Meadows Lane, Suite 100  
Las Vegas, NV 89107

*Attorneys for Real Party in Interest*

  
An employee of Royal & Miles LLP

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# EXHIBIT “J”

KEITH E. GALLIHER, JR.  
GEORGE J. KUNZ\*  
JEFFREY L. GALLIHER \*  
KATHLEEN H. GALLAGHER \*

\*Of Counsel

ELECTRONICALLY SERVED  
THE GALLIHER LAW FIRM

1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
[www.gallagher-law.com](http://www.gallagher-law.com)  
Tele: 702-735-0049  
Fax: 702-735-0204

Paralegals

DEENA P. MOONEY  
STACEY RAY  
KU'U'ELAU FINLEY GOO

June 25, 2019

Michael A. Royal, Esq.  
Royal & Miles LLP  
1522 W. Warm Spring Road  
Henderson, Nevada 89014  
Fax: 702-531-6777

**SENT VIA E-SERVICE**

Re: Sekera v. Venetian

Dear Mike:

On May 14, 2019 the Honorable Kathleen Delaney ordered Venetian to produce the "unredacted incident reports" responsive to Plaintiff's Request for Production No. 7 which asks for

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

I have yet to receive the 64 pre-fall unredacted incident reports, as well as the following pre-fall undisclosed incident reports responsive to Plaintiff's Request for Production:

	DATE	TIME	REPORT #	LOCATION	COMMENTS	SECURITY / NOTES
1.	11-7-13	7:54 a.m		Grand Lux Café	Slipped and fell on the marble floor in the front of Grand Lux Café earlier that morning at approximately 6:00 a.m.	
2.	12-27-13	3:07 p.m.		WOW fountain feature	Slipped and fell on a wet area on the marble floor next to the WOW fountain feature	
3.	7-10-14	1:25 PM	1407V-2272	Grand Luxe	Water on floor	J. Larson report writer T. Mofate EMT/SO Merrick Anderson Facilities Eng.

4.	7-13-14	8:02	1407V-3057	Lobby 1	Liquid	Jacob Johnson Asst. Sec. Mngr. Brittany Peck Front desk mngr. Taylor McFate, EMT S.O. G. Rescigno Report writer
5.	7-29-14	2:47 p.m.	1407V-7161	Lobby 1	Liquid	Thomas Labert Front Desk Mngr. Christopher Moiser Asst. Sec Mngr. Sean Pemberton Eng. G. Rescigno Report writer Chris Malcom S.O.
6.	8-23-14			Hotel Lobby	Slip and fall on clear liquid	<i>Rucker v. Venetian Casino Resort, LLC</i> (A-15-729566-C). Venetian stated in its Opposition to Plaintiff's Motion to Amend this "should have been included" and that "Defendants will supplement NRCP 34 responses to provide."
7.	8-28-14	10:30 p.m.	1408V-7104	Venetian Tower	Fall reported next morning. Fall occurred near bathroom by Grand Luxe Water	Mary Ros, Front Desk Monte McAmulty Facilities J. Larson, Report Writer 1/7/15
8.	8-31-14	2:43 p.m.	1408V-7791	Lobby 1	large water spill	Jacob Johnson Asst. Sec. Mgr. Archie Balon, S.O. G. Rescigno, report writer Derek Santillan, Facilities
9.	1-17-15	11:49 p.m.	1501V-3857	Venetian Front Office	Liquid	Nicolas Coronado, asst. mgr. Jonathan Deruth, Front desk mgr. Jose Lopez, EMT Sec. Z. Hakim Report Writer Theodore Reash, Facilities
10.	1-17-15	11:49 p.m.		Venetian Front Office	Fell on liquid	
11.	1-31-15	2:53 p.m.		Lobby 1	Slip and fall on water	
12.	2-9-15	1:37 a.m.	1502V -1803	Lobby 1	Liquid	Eric Wennerberg, S.O. Rady Conception. Seior Watch E. Giselbach Report writer
13.	2-9-15	1:37		Lobby 1	Slipped and fell on unknown liquid	
14.	2-20-15	1:28 p.m.	1502V-4322	Lobby 1	Liquid. Slipped on spilled beverage	Jacob Johnson Asst. Sec. Mngr. Brittany Peck, Front Desk



						L. Dozier, Report writer
15.	2-20-15	1:28 p.m.		Lobby 1	Slipped but did not fall on liquid	
16.	3-8-15	8:45		Grand Hall	Slipped and fell on wet spot	
17.	3-23-15	3:18		Lobby 1	Slipped and fell in front of Juice Farm. Flooring had red sauce and grease	
18.	4-20-15	7:00 p.m.		Lobby 1	Slipped and fell due to a metal strip that connects the marble tile surface to the wood surface	
19.	4-24-15	3:25 p.m.	1504V-5396	Grand Hall	Broken Bottle of Alcohol	Sang Han, Front Desk Mngr. Melissa Perry Front Desk Mngr. Lynn Sivrais, EMT S.O. V-5319G. Rescigno Report writer Rodolfo Stoino
20.	4-24-15	3:25 p.m.		Grand Hall	Slipped and fell on broken bottle of alcohol	
21.	5-3-15	1:08 p.m.		Grand Hall	Slipped on marble floor in front of fountain	
22.	5-22-15	4:43 p.m.	1505V-5319	Lobby 1	Water on floor	Thomas Lambert Front Desk Tony Bersano Asst. Sec. Mngr. Crystal Clanton S.O. J. Lopez Report writer Jeffrey Duniho, S.O.
23.	5-22-15	4:43		Lobby 1	Slipped and fell on wet surface	
24.	5-29-15	7:36		Lobby 1	Slipped and fell on spilled coffee	
25.	5-30-15	4:35 p.m.	1505V-7506	Lobby 1	Slip Water	Tony Bersano, Asst. Sec. Mngr. Thomas Lambert, Front Desk Mngr. Michael Perez, S.O. D. Davila Report writer Heather Kaufmann, S.O. Zachary Hakim, EMT S.O.
26.	5-30-15	4:35		Lobby 1	Slipped and fell on water	
27.	6-12-15	12:51 p.m.	1506V-7480	Lobby 1	Liquid	Antonio Lopez David Magnuson

						A. Lopez report writer
28.	6-12-15	12:51		Lobby 1	Slipped and fell on liquid on floor	
29.	6-30-15	11:38 a.m.	1506V-7480	Lobby 1	Slip and fall "small pool of clear liquid on marble flooring nearby"	Mary Ros front desk manager Gary Rescigno Security/EMT John Wells Security Officer j. Larson Report writer
30.	6-30-15	11:38		Lobby 1	Slipped and fell on fluid	
31.	7-5-15	12:40 p.m.	1507V-1236	6 Venezia Tower 417 Lobby 4	Slip and fall on water	Jacob Johnson Asst. Security Manager K. Ecnamneste facilities G. Rescigno Report writer
32.	7-5-15	12:40		Lobby 4	Slipped and fell on water	
33.	7-19-15	1:47		Grand Hall	Slipped and fell on water	
34.	7-19-15	8:18 a.m.	1507V-5121	19 Venetian Tower 129 Lobby 1	Slip and fall. Liquid on floor at approximately 7:05	Melissa Perry Front desk manager Jacob Johnson Asst. Security manager L. Dozier report writer Jeffrey Duniho security officer Richard Heleman
35.	7-19-15	8:18		Midrise elevator near Lobby 1	Slipped and fell due to liquid	
36.	7-20-15	5:36		Main entrance	Slipped and fell	
37.	8-2-15	10:48		Lobby 1	Slip and fall coming out of the Venetian Gift Shop. Security saw puddle of water	
38.	8-8-15	1:30		Grand Hall	slipped and fell unknown liquid	
39.	8-8-15	2:00 p.m.	1508V-1869	Lobby 1	Slip and fall. Upon contacting surveillance I was advised an unknown guest had dropped a bucket	Jacob Johnson Asst. Security Manger Brittany Peck Front desk manager Allan Hill security officer G. Rescigno report writer
40.	8-8-15	2:00		Lobby 1	Slip and fall puddle of water. Several warning signs around area of fall. Unknown	

					guest dropped a bucket in area	
41.	8-14-15	1:40		Hallway by Grand Lobby	Slipped on some water	
42.	8-29-15	11:34 a.m.	1508V-7246	Lobby 1	Slip and fall clear liquid. "significant pool of water"	Tim Alvonellos Security shift manager Thomas Lambert front desk manager D. Cabada report writer Marc Fesel facilities Joseph De Jesus security/EMT
43.	8-29-15	11:34		Lobby 1	Slipped on clear liquid	
44.	9-6-15	6:39 p.m.	1509V-1497	Lobby 1	Slip and fall wet floor. Spilled drink on floor	Tim Alvonellos security shift manager Nachely Martinez front desk manager J. De Jesus report writer Catherine Carlson security officer
45.	9-6-15	6:39		Lobby 1	Slipped and fell while exiting the Venetian tower elevator. Spilled drink on floor	
46.	9-13-15	11:26		Grand Hall	Slipped and fell on red liquid substance	
47.	12-27-15	3:32		Lobby 1	Slipped on clear liquid	
48.	2-20-16	2:56 p.m.	1602V-4290	1 Guest services podium	Liquid fall occurred earlier in day at 11:45 – 12:05 "very wet floor"	Jacob Johnson asst. Security manager Devon O'Brien G. Rescigo report writer
49.	2-20-16	2:56		Lobby 1	Guest slipped earlier in day. Liquid on floor	
50.	3-6-16	1:59 p.m.	1603V-1233	Lobby 1	Liquid	Jacob Johnson Asst. security manager Kyle Kirchmeyer VIP Services D. Winn report writer Rafael Chavez facilities
51.	3-6-16	1:59		Lobby 1	Slipped on wet spot on floor	
52.	3-18-16	2:57 p.m.	1603V-3584	5 <sup>th</sup> floor of the garage elevator lobby	Cup of coffee spilled on floor. Fall occurred earlier in the day 11:45 – 12:00	Seljika Bucalo security officer David Boko facilities D. Wi report writer Devin O'Brien front desk manager Jacob Johnson security

						manager
53.	3-18-16	2:57		5 <sup>th</sup> floor of garage elevator lobby	Slipped on coffee spilled on floor	
54.	3-25-16	1:14 p.m.	1603V-5018	Lobby 1	Slip and fall. Puddle of clear liquid	Sharry Kim front desk supervisor Rafael Chavez facilities J. Larson report writer
55.	3-25-16	1:14		Lobby 1	Slipped on a puddle of liquid near trash cans by Juice Farm	
56.	4-9-16	2:44		Grand Hall	Slipped and fell in puddle of water	
57.	4-9-16	7:34 p.m.	1604V-1926	Lobby 1	Male walker between wet floor signs	Matthew Kaufman security manager C. Reanos report writer
58.	4-10-16	1:51		Grand Hall	Slipped on floor	
59.	4-12-16	3:40 p.m.	1604V-2459	Control 1	Slip and fall. Occurred on 4/10/16 SO "Felix" was attempting to stop foot traffic when he slipped and fell	Matthew Kaufman asst. manager Albert Liu D. Cabda report writer
60.	4-12-16	3:40			Slipped and fall security guard named Felix was trying to stop foot traffic at time of fall	
61.	5-5-16	9:12 p.m.	1605V-0952	Lobby 1	Slip and fall. Picture of red solo cup and liquid on floor	Tim Alvonellos security shift manager Royce Phung front desk manager J. Buscemi report writer James Johnson security officer
62.	5-5-16	9:12		Lobby	Guest slipped and fell on unknown liquid	
63.	5-12-16	12:56 a.m.	1605V-5069	Lobby 1	Liquid	Amy McCaslin front desk manager Nicolas Coronado security manager John Ballesteros facilities J. Dietrich report writer Joseph Barr-Wilson
64.	5-13-16				Foreign slippery substance	Rowan v. Venetian Casino Resort, LLC (A-17-751293-C). Venetian stated in its

						Opposition to Plaintiff's Motion to Amend that this "should have been included and that "Defendants will supplement NRCP 34 responses to provide";
65.	6-11-16		1606V-2353	1 Venetian Front Office	Puddle of water	<i>Boucher v. Venetian Casino Resort, LLC (A-18-773651-C)</i>
66.						

Additionally, I have not received any incident reports which post-date Plaintiff's fall (November 4, 2016 to present). I've enclosed is a copy of the letter sent on May 20, 2019 regarding the case law which supports the proposition that evidence of subsequent falls is discoverable. The cases referenced in this letter hold evidence of subsequent falls is admissible at trial. This is significant because the standard for admissibility at trial is considerably higher than the standard for discoverability under NRCP 26(b)(1).

Additionally, I direct your attention to the following cases which hold evidence of subsequent conduct and incidents are admissible on the issue of punitive damages to prove a defendant's culpable state of mind: *Hallman v. Cushman*, 196 S.C. 402, 13 S.E.2d 498, 501 (1941); *Bergeson v. Dilworth* 959 F.2d 245 (10th Cir. 1992); *Wolfe v. McNeil-PPC Inc*, 773 F.Supp.2d 561, 575-576 (E.D.Pa. 2011); *Coale v. Dow Chem. Co.*, 701 P.2d 885, 890 (Colo.App. 1985); *Palmer v. A.H. Robins Co.*, 684 P.2d 187, 204 (Colo. 1984); *Hoppe v. G.D. Searle & Co.*, 779 F.Supp. 1413, 1424--1425 (S.D.N.Y. 1991); *Peshlakai v. Ruiz*, 39 F. Supp. 3d 1264, 1341-43 (D.N.M. 2014).

I would like to meet and confer with you regarding the inadequate response to Plaintiff's Request for Production No. 7. I propose holding a 2.34 conference on June 27, 2019 10:00 a.m. or 2:00 p.m., June 28, 2019 at 2:00 p.m., or July 9, 2019 at 2:00 p.m. Please advise if any of these dates work for you, and if not, three dates and times you are available between now and July 12. If I do not hear from you by July 12, 2019 at 5:00 p.m. I will file a Motion to Compel.

Thank you for your cooperation.

Very truly yours,

THE GALLIHER LAW FIRM



Keith E. Galliher, Jr., Esq.

KEG/gr

KEITH E. GALLIHER, JR.  
GEORGE J. KUNZ\*  
JEFFREY L. GALLIHER \*

\*Of Counsel

THE GALLIHER LAW FIRM

1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
[www.gallagher-law.com](http://www.gallagher-law.com)  
Tele: 702-735-0049  
Fax: 702-735-0204

Paralegals

DEENA P. MOONEY  
STACEY RAY  
KU'U'ELAU FINLEY GOO

May 20, 2019

Michael A Royal, Esq.  
Royal & Miles LLP  
1522 W. Warm Spring Road  
Henderson, Nevada 89014  
Fax: 702-531-6777

Re: Sekera v. Venetian

Dear Mike:

After reviewing your most recent letter with respect to the NRCP 30 (b)(6) deposition set by my office, I discovered that contrary to the Request for Production of Documents which was served upon your office regarding injury fall incidents, your client did not supply injury incident reports involving slip and falls on marble floors up to the date of the request. Instead, redacted versions of these reports were supplied only three (3) years before the fall up to the date of the fall.

My previous correspondence establishes that case law supports the position that fall events subsequent to the fall event which is being litigated are also discoverable in litigation. Obviously, Judge Delaney can make a decision concerning what information she will allow into evidence at time of trial.

Please treat this letter as a formal request that the entirety of what was requested i.e. reports from three (3) years prior to the fall up to the date of the request be promptly disclosed to my office. Of course, based upon Judge Delaney's ruling, these reports must be unredacted.

Please confirm your agreement to supply this information within the next seven (7) business days so that further motion practice may be avoided.

Thank you for your cooperation.

Very truly yours,

THE GALLIHER LAW FIRM

  
Keith E. Galliher, Jr., Esq.

KEG/gr

# EXHIBIT “K”

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

1 THE GALLIHER LAW FIRM  
2 Keith E. Galliher, Jr., Esq.  
3 Nevada Bar No. 220  
4 Jeffrey L. Galliher, Esq.  
5 Nevada Bar No. 8078  
6 George J. Kunz, Esq.  
7 Nevada Bar No. 12245  
8 1850 East Sahara Avenue, Suite 107  
9 Las Vegas, Nevada 89104  
10 Telephone: (702) 735-0049  
11 Facsimile: (702) 735-0204  
12 [kgalliher@galliherlawfirm.com](mailto:kgalliher@galliherlawfirm.com)  
13 [jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)  
14 [jkunz@lvlawguy.com](mailto:jkunz@lvlawguy.com)  
15 Attorneys for Plaintiff

Electronically Filed  
7/2/2019 10:54 AM  
Steven D. Grierson  
CLERK OF THE COURT



DISTRICT COURT  
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,  
Plaintiff,

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

v.

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

PLAINTIFF'S MOTION TO COMPEL  
TESTIMONY AND DOCUMENTS

HEARING REQUESTED

Defendants.

Plaintiff hereby submits her Motion to Compel Testimony and Documents.

//

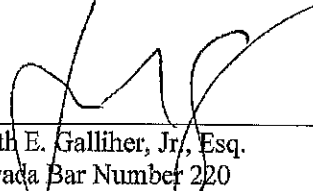
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1 This Motion to Compel Testimony and Documents is based upon and supported by the  
2 following memorandum of points and authorities, the pleadings and papers on file, the exhibits  
3 attached hereto, and any argument that the Court may allow at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

4 DATED this 1 day of July, 2019

5 THE GALLIHER LAW FIRM

6  
7  
8   
9 Keith E. Galliher, Jr., Esq.  
10 Nevada Bar Number 220  
11 1850 E. Sahara Avenue, Ste. 107  
12 Las Vegas, Nevada 89104  
13 Attorney for Plaintiff

14 **MEMORANDUM AND POINTS OF AUTHORITIES**

15 **I. INTRODUCTION**

16 On November 4, 2016 Plaintiff slipped and fell water on the marble floor in the lobby of the  
17 Venetian hotel. During discovery Plaintiff requested Venetian provide similar incident reports – slip  
18 and falls on the marble floors – from November 4, 2013 to present, a total of five years of reports. In  
19 response to this request, Venetian produced 64 redacted incident reports from November 4, 2013 to  
20 November 4, 2016 and ignored Plaintiff's request for subsequent incident reports. Venetian then  
21 moved for a protective order to prevent Plaintiff from sharing the redacted incident reports and to  
22 protect Venetian from having to disclose the unredacted reports.

23 On May 14, 2019 the Court denied Venetian's request and ordered the production of the  
24 unredacted reports. Based upon Venetian's evasive behavior, Plaintiff attempted to verify that the 64  
25 incident reports were all of the reports responsive to Plaintiff's request. Plaintiff's counsel contacted  
26 other lawyers and pulled prior court pleadings to verify that Venetian's disclosure in this case  
27 included all slip and fall reports on marble floors between November 4, 2013 and November 6,  
28 2013. These efforts revealed 65 undisclosed reports responsive to the request in this case as well as

1 the failure to produce over 30 reports responsive to requests for production in *Smith v. Venetian*,  
2 *Cohen v. Venetian* and *Boucher v. Venetian*.

3 Venetian still has not produced those 65 missing reports, the 64 unredacted reports or the  
4 subsequent incident reports. As discussed in detail below, the Court should grant Plaintiff's Motion  
5 because (1) the Court ordered Venetian to provide the unredacted incident reports; (2) the additional  
6 65 incident reports are relevant to the issue of foreseeability; and (3) the under Nevada law evidence  
7 of subsequent incidents is admissible at trial, satisfying a standard which is significantly higher than  
8 the discovery standards of NRCP 26(b)(1).

9 **II. FACTUAL BACKGROUND**

10 **A. Unredacted Incident Reports November 4, 2013 – November 4, 2016**

11 During discovery Plaintiff requested Venetian provide:

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

16 (Plaintiff's First Set of Request for Production, attached as Exhibit "1.")

17 In response to this request, Venetian produced 64 redacted incident reports between  
18 November 4, 2013 and November 4, 2016. (Excerpts of Michael Royal's Declaration in Support of  
19 Motion for Protective Order, attached as Exhibit "2" at 3:25-4:2.) Venetian ignored the portion of  
20 Plaintiff's request which asked for subsequent incident reports and subsequently misrepresented to  
21 the court that Plaintiff had only requested reports "occurring within three years preceding the subject  
22 incident." (*Id.* at 3:14-16.) Plaintiff requested Venetian provide the unredacted reports so she could  
23 identify witnesses to counter Venetian's comparative negligence claim that Plaintiff should have  
24 seen liquid on the floor before she fell. (*Id.* at 4:3-14.) Venetian refused to produce the unredacted  
25 reports and filed a Motion for Protective Order. (*Id.*)

26 After briefing and oral argument the Discovery Commissioner issued a Report and  
27 Recommendation stating the incident reports should be subject to a protective order and  
28

1 recommending Venetian not be required to provide unredacted reports. (Discovery Commissioner's  
2 Report and Recommendation, attached as Exhibit "3.") Plaintiff objected to the Report and  
3 Recommendation. The Court heard Plaintiff's Objection on May 14, 2019. (Court Minutes, attached  
4 as Exhibit "4.") The Court determined there was not "any legal basis" for the protective order and  
5 ordered Venetian to produce the unredacted incident reports. (*Id.*) To date, Venetian has not  
6 complied with that order and provided Plaintiff with the 64 unredacted incident reports.

7 **B. Additional Incident Reports November 4, 2013 – November 4, 2016**

8 Venetian represented that the 64 reports disclosed in response to plaintiff's request were the  
9 only reports from November 4, 2013 to November 4, 2016 which were responsive to Plaintiff's  
10 Request for Production No. 7. (Exhibit "2" at 3:17-22, Exhibit "B.") However, Plaintiff has  
11 subsequently discovered multiple other responsive reports which were not disclosed by Venetian and  
12 notified Venetian of the same:

- 13 • **April 16, 2019** – "Venetian willfully left out four reports in response to Plaintiff's  
14 Requests for Production which were disclosed in *Smith v. Venetian*." (Excerpts of  
15 Objection to Report and Recommendation, attached as Exhibit "5" at 4:6-8.)
- 16 • **April 22, 2019** – "the undersigned and Mr. Goldstein determined Venetian willfully left  
17 out four reports in response to Plaintiff's Requests for Production which were disclosed  
18 in *Smith v. Venetian*." (Excerpts of Motion to Amend attached as Exhibit "6" at 4:12-19,  
19 Exhibit "8") (referencing the table of missing incident reports attached as Exhibit "8.")  
20 Additionally, "Plaintiff pulled pleadings from five of the last 50 or so cases filed against  
21 Venetian in the Eighth Judicial District Court in the last five years and discovered none  
22 of the incident reports from these slip and falls were disclosed either." (*Id.* at 4:19-22.)  
23 (referencing pleadings from A-16-737866-C, A-15-728316-C, A-15-728566-C, A-17-  
24 749115-C, and A-17-751293-C attached as Exhibit "9.")
- 25 • **May 2, 2019** – Venetian admitted the reports for A-15-729566-C and A-17-751293-C  
26 "should have been included by Venetian in its response to the request for prior incident  
27 reports" and that "Defendants will supplement NRCP 34 responses to provide" these  
28

reports. (Excerpts of Michael Royal's Declaration in Support of Opposition to Motion to Amend, attached as Exhibit "7" at 12:1-15.)

- **May 8, 2019** – Venetian attached the table of incident reports Plaintiff was missing. (Excerpts of Second Addendum attached as Exhibit "8.")
- **May 15, 2019** – "Venetian violated the discovery rules by purposely leaving out four incident reports in response to Plaintiffs Requests for Production, but which Venetian disclosed in another case, Smith v. Venetian... Venetian forced Plaintiff to dig through court proceedings and download pleadings in hopes of finding the incidents Venetian refused to provide... Venetian admits the incident reports for two of the five cases Plaintiff pulled were yet again "inadvertently" left out." (Excerpts of Reply in Support of Motion to Amend, attached as Exhibit "9" at 3:1-18.)

Plaintiffs counsel continued to download court pleadings and contact other lawyers resulting in the discovery of a total of **46 UNDISCLOSED INCIDENT REPORTS FROM NOVEMBER 4, 2013 – NOVEMBER 4, 2016** as follows:

	DATE	TIME	REPORT#	LOCATION	COMMENTS	SECURITY / NOTES
1.	11-7-13	7:54 AM		Grand Lux Café	Slip and fall marble floor in front of Grand Lux Café at approx. 6:00 AM	
2.	12-27-13	3:07 PM		WOW fountain feature	Slip fall on a wet area on marble floor next to WOW fountain	
3.	7-10-14	1:25 PM	1407V-2272	Grand Luxe	Water on floor	J. Larson report writer T. Mofate EMT/SO Merrick Anderson Facilities Eng.
4.	7-13-14	8:02	1407V-3057	Lobby 1	Liquid	Jacob Johnson Asst. Sec. Mngr. Brittany Peck Front desk mngr. Taylor McFate, EMT S.O. G. Rescigno Report writer
5.	7-29-14	2:47 PM	1407V-7161	Lobby 1	Liquid	Thomas Labert Front Desk Mngr. Christopher Moiser Asst. Sec Mngr. Sean Pemberton Eng. G. Rescigno Report writer Chris Malcom S.O.
6.	8-23-14			Hotel Lobby	Slip and fall on clear liquid	<i>Rucker v. Venetian Casino Resort</i> (A-15-729566-C)
7.	8-28-14	10:30 PM	1408V-7104	Venetian	Fall reported next	Mary Ros, Front Desk

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

1					Tower	morning. Fall near bathroom by Grand Luxe	Monte McAmulty Facilities J. Larson, Report Writer 1/7/15
2	8.	8-31-14	2:43 PM	1408V-7791	Lobby 1	large water spill	Jacob Johnson Asst. Sec. Mgr. Archie Balon, S.O. G. Rescigno, report writer Derek Santillan, Facilities
3							
4	9.	1-17-15	11:49 PM	1501V-3857	Venetian Front Office	Fell on liquid	Nicolas Coronado, asst. mgr. Jonathan Deruth, Front desk mgr. Jose Lopez, EMT Sec. Z. Hakim Report Writer Theodore Reash, Facilities
5							
6							
7	10.	1-31-15	2:53 PM		Lobby 1	Slip and fall on water	
8	11.	2-9-15	1:37 a.m.	1502V - 1803	Lobby 1	Slip and fall on unknown liquid	Eric Wennerberg, S.O. Rady Conception, Seior Watch E. Gizelbach Report writer
9	12.	2-20-15	1:28 PM	1502V-4322	Lobby 1	Liquid. Slipped on spilled beverage	Jacob Johnson Asst. Sec. Mngr. Brittany Peck, Front Desk L. Dozier. Report writer
10							
11	13.	3-8-15	8:45		Grand Hall	Slip and fall on wet spot	
12	14.	3-23-15	3:18		Lobby 1	Slip and fall in front of Juice Farm. Flooring had red sauce and grease	
13							
14	15.	4-20-15	7:00 PM		Lobby 1	Slip and fall due to a metal strip that connects the marble tile surface to the wood surface	
15							
16	16.	4-24-15	3:25 PM	1504V-5396	Grand Hall	Slip and fall on broken alcohol bottle	Sang Han, Front Desk Mngr. Melissa Perry Front Desk Mngr. Lynn Sivrais, EMT S.O. V-5319G. Rescigno Report writer Rodolfo Stoino
17							
18							
19	17.	5-3-15	1:08 PM		Grand Hall	Slipped on marble floor in front of fountain	
20							
21	18.	5-22-15	4:43 PM	1505V-5319	Lobby 1	Slip and fall on wet surface	Thomas Lambert Front Desk Tony Bersano Asst. Sec. Mngr. Crystal Clanton S.O. J. Lopez Report writer Jeffrey Duniho, S.O.
22							
23	19.	5-29-15	7:36		Lobby 1	Slip and fall on spilled coffee	
24	20.	5-30-15	4:35 PM	1505V-7506	Lobby 1	Slip Water	Tony Bersano, Asst. Sec. Mngr. Thomas Lambert, Front Desk Mngr. Michael Perez, S.O. D. Davila Report writer Heather Kaufmann, S.O. Zachary Hakim, EMT S.O.
25							
26							
27	21.	6-12-15	12:51 PM	1506V-7480	Lobby 1	Liquid	Antonio Lopez

						David Magnuson A. Lopez report writer
22.	6-30-15	11:38 AM	1506V-7480	Lobby 1	Slip and fall "small pool of clear liquid on marble flooring nearby"	Mary Ros front desk manager Gary Rescigno Security/EMT John Wells Security Officer j. Larson Report writer
23.	7-5-15	12:40 PM	1507V-1236	6 Venezia Tower 417 Lobby 4	Slip and fall on water	Jacob Johnson Asst. Security Manager K Ecnarneste facilities G. Rescigno Report writer
24.	7-19-15	1:47		Grand Hall	Slip and fall on water	
25.	7-19-15	8:18 AM	1507V-5121	19 Venetian Tower 129 Lobby 1	Slip and fall. Liquid on floor at approximately 7:05	Melissa Perry Front desk manager Jacob Johnson Asst. Security manager L. Dozier report writer Jeffrey Duniho security officer Richard Heleman
26.	7-20-15	5:36		Main entrance	Slip and fall	
27.	8-2-15	10:48		Lobby 1	Slip and fall coming out of the Venetian Gift Shop. Security saw puddle of water	
28.	8-8-15	1:30		Grand Hall	slip and fall unknown liquid	
29.	8-8-15	2:00 PM	1508V-1869	Lobby 1	Slip and fall. unknown guest dropped a bucket	Jacob Johnson Asst. Security Manger Brittany Peck Front desk manager Allan Hill security officer G. Rescigno report writer
30.	8-14-15	1:40		Hallway by Grand Lobby	Slipped on some water	
31.	8-29-15	11:34 AM	1508V-7246	Lobby 1	Slip and fall clear liquid. "significant pool of water"	Tim Alvonellos Security shift manager Thomas Lambert front desk manager D. Cabada report writer Marc Fesel facilities Joseph De Jesus security/EMT
32.	9-6-15	6:39 PM	1509V-1497	Lobby 1	Slip and fall while existing the Venetian tower elevator. Spilled drink on floor	Tim Alvonellos security shift manager Nachely Martinez front desk manager J. De Jesus report writer Catherine Carlson security officer
33.	9-13-15	11:26		Grand Hall	Slip and fall on red liquid substance	
34.	12-27-15	3:32		Lobby 1	Slipped on clear liquid	
35.	2-20-16	2:56 PM	1602V-4290	1 Guest services podium	Liquid fall occurred earlier in day at 11:45 - 12:05 "very wet floor"	Jacob Johnson asst. Security manager Devon O'Brien G. Rescigno report writer

36.	3-6-16	1:59 PM	1603V-1233	Lobby 1	Slipped on wet spot on floor	Jacob Johnson Asst. security manager Kyle Kirchmeyer VIP Services D. Winn report writer Rafael Chavez facilities
37.	3-18-16	2:57 PM	1603V-3584	5 <sup>th</sup> floor of the garage elevator lobby	Cup of coffee spilled on floor. Fall occurred earlier in the day 11:45 – 12:00	Seljika Bucalo security officer David Boko facilities D. WI report writer Devin O'Brien front desk manager Jacob Johnson security manager
38.	3-25-16	1:14 PM	1603V-5018	Lobby 1	Slip on a puddle of liquid near trash cans by Juice Farm	Sharry Klin front desk supervisor Rafael Chavez facilities J. Larson report writer
39.	4-9-16	2:44		Grand Hall	Slipped and fell in puddle of water	
40.	4-9-16	7:34 PM	1604V-1926	Lobby 1	Male walker between wet floor signs	Matthew Kaufman security manager C. Reanos report writer
41.	4-10-16	1:51		Grand Hall	Slipped on floor	
42.	4-12-16	3:40 PM	1604V-2459	Control 1	Slip and fall on 4/10/16 SO "Felix" attempted to stop foot traffic when he slip and fall	Matthew Kaufman asst. manager Albert Liu D. Cabda report writer
43.	5-5-16	9:12 PM	1605V-0952	Lobby 1	Slip and fall. Picture of red solo cup and liquid on floor	Tim Alvonellos security shift manager Royce Phung front desk manager J. Buscemi report writer James Johnson security officer
44.	5-12-16	12:56 AM	1605V-5069	Lobby 1	Liquid	Amy McCaslin front desk manager Nicolas Coronado security manager John Ballesteros facilities J. Dietrich report writer Joseph Barr-Wilson
45.	5-13-16				Foreign slippery substance	Rowan v. Venetian Casino Resort, LLC (A-17-751293-C).
46.	6-11-16		1606V-2353	Venetian Front Office	Puddle of water	Boucher v. Venetian Casino Resort, LLC (A-18-773651-C)

//

//

1           **C. Rule 30(b)(6) Deposition**

2           On April 5, 2019 Plaintiff served Venetian with a Third Amended Notice of Taking  
3 Deposition for Venetian's NRCP 30(b)(6) designee. (Third Amended Notice of Deposition, attached  
4 as Exhibit "10.") In the notice Plaintiff set the following parameters for the depositions:

- 5           1. Total number of injury falls on marble floors located within The Venetian  
6 Las Vegas from November 4, 2013 to present.
- 7           2. Actions taken by The Venetian Las Vegas to change the coefficient of  
8 friction with respect to marble floors within The Venetian Las Vegas from  
9 November 4, 2013 to present.
- 10          3. Measures taken to locate and produce security/injury fall reports by The  
11 Venetian Las Vegas as requested by Plaintiff in this Litigation.
- 12          4. Slip testing performed by The Venetian Las Vegas or it's representatives  
13 with respect to the marble floors within The Venetian Las Vegas from  
14 November 4, 2013 to present.

15           (*Id.* at 2:3-13.) At the same time Plaintiff served Venetian with a Subpoena Duces Tecum  
16 for "Any and all documents regarding the topics listed on the attached Notice of Taking  
17 Depositions." (Subpoena Duces Tecum, attached as Exhibit "11" at 2:9-10.)

18           On May 13, 2019 Venetian sent Plaintiff a list of objections to Plaintiff's NRCP  
19 36(b)(6) parameters. (Royal & Miles' May 13, 2019 Letter, attached as Exhibit "12.") The  
20 letter outlined the following:

- 21           1. **Parameter 1:** "Venetian expressly objects to proving any information related  
22 to this request after the subject incident of November 4, 2013." (*Id.* at 1.)
- 23           2. **Parameter 2:** "Venetian objects... for the same reasons set forth in response  
24 to No. 1 above as it pertains to your client's request for information of  
25 incidents occurring after the November 4, 2016 incident." (*Id.* at 2.)
- 26           3. **Parameter 3:** "Responses to this topic are subject to the objections set forth  
27 in response to Topic No. 1 above. Further, Venetian objects to the extend this  
28 seeks information protected by attorney/client privilege and/or attorney work  
product privilege" (*Id.*)
4. **Parameter 4:** Responses to this topic are subject to the objections set forth in  
response to Topic No. 1 above, with Venetian limiting its responses to slip  
testing performed between November 4, 2013 and November 4, 2016.

          Venetian also stated its "witness will not be producing additional information at the  
deposition beyond that which has been identified pursuant to NRCP 16.1 or otherwise in  
response to your client's written discovery requests." (*Id.* at 1.) In response to Venetian's  
objections, on May 20, 2019 Plaintiff sent Venetian a letter outlining the case law discussed



1 in detail below which states subsequent incident reports are discoverable. (Plaintiff's May  
2 20, 2019 Letter, attached as Exhibit "13.")

3 **III. MOTION TO COMPEL**

4 **A. Standard of Review for a Motion to Compel**

5 NRCP 26(b)(1) allows parties to obtain discovery regarding any unprivileged matter that is  
6 proportional to the claims and defenses:

7 Parties may obtain discovery regarding any nonprivileged matter that is relevant to  
8 any party's claims or defenses and proportional to the needs of the case, considering  
9 the importance of the issues at stake in the action, the amount in controversy, the  
10 parties' relative access to relevant information, the parties' resources, the  
11 importance of the discovery in resolving the issues, and whether the burden or  
12 expense of the proposed discovery outweighs its likely benefit. Information within  
13 this scope of discovery need not be admissible in evidence to be discoverable.

14 NRCP 26(b)(1). NRCP 37(a)(1) provides: "on notice to other parties and all affected persons, a party  
15 may move for an order compelling disclosure or discovery." NRCP 37(a)(1).

16 The Nevada Supreme Court, citing to the United States Supreme Court, held "the deposition-  
17 discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry  
18 of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his  
19 opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to  
20 proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in  
21 his possession." *Washoe County Board of School Trustees v. Pirhala*, 84 Nev. 1, 6, 435 P.2d 756,  
22 759 (1968).

23 **B. Venetian Must Comply with the Court Order and Produce the Unredacted  
24 Incident Reports**

25 On May 14, 2019 the Court ordered Venetian to produce the unredacted incident reports.  
26 (Exhibit "4.") Venetian was and is obligated to comply with the Court's Order. To date, Venetian  
27 has not provided the 64 unredacted incident reports which the Court ordered it to provide nearly 2  
28 months ago. Court orders are not optional, they are mandatory. Venetian has offered no good reason  
for its failure to comply with the Court's Order; it has not indicated it began gathering these reports,

1 nor has it asked for additional time to comply. The Discovery Commissioner must force Venetian to  
2 produce the unredacted incident reports.

3 **C. Venetian Must Produce the Missing Incident Reports from November 4, 2013 to**  
4 **November 4, 2016 Because They Are Relevant to Foreseeability**

5 To establish a claim for negligence in Nevada, a plaintiff must prove: (1) the defendant owed  
6 a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the breach was the legal cause  
7 of the plaintiff's injury; and (4) the plaintiff suffered damages. *Scialabba v. Brandise Constr. Co.*,  
8 112 Nev. 965, 968, 921 P.2d 928, 1996 (1996); *Turner v. Mandalay Sports Entm't, LLC*, 124 Nev.  
9 213, 217, 180 P.3d 1172, 1175 (2008). "The law is clear that if a legal duty exists, reasonable care  
10 under the circumstances must be exercised." *Lee v. GNLV Corp.*, 117 Nev. 291, 296, 22 P.3d 209,  
11 212 (2001). "Whether a defendant's conduct was 'reasonable' under a given set of facts is generally  
12 an issue for the jury to decide." *Id.*; see also *Auckenthaler v. Grundmeyer*, 110 Nev. 682, 688, 877  
13 P.2d 1039, 1043 (1994) (whether a defendant has failed to act reasonably in the particular  
14 circumstances is a matter for the jury to decide) (citing *Joynt v. California Hotel & Casino*, 108 Nev.  
15 539, 835 P.2d 799 (1992)). In determining reasonable care, the totality of the circumstances must be  
16 considered. *Joynt*, 108 Nev. at 543-44, 835 P.2d at 802. At the same time, "liability is not without  
17 limitation." *Merluzzi v. Larson*, 96 Nev. 409, 412, 610 P.2d 739, 742 (1980). "Foreseeability of harm  
18 is ... a predicate to establishing the element of duty, and thus is of importance in every case." *Id.* at  
19 414, 610 P.2d at 742; see also *Ashwood v. Clark County*, 113 Nev. 80, 84, 930 P.2d 740, 742 (1997)  
20 (holding that foreseeability of harm is a predicate to establishing the element of duty).

21 Plaintiff requested Venetian produce all incident reports relating to "slip and fall cases  
22 occurring on marble floors within the subject VENETIAN CASINO RESORT within three years  
23 prior to the incident described in Plaintiff's Complaint [November 4, 2013], to the present."  
24 Venetian did not object to this request when it brought its protective order on the same. See  
25 generally, Motion for Protective Order, Addendum, Reply in Support and Opposition to Objection to  
26 Report and Recommendation. Plaintiff requested these incident reports because the number of falls  
27 at Venetian on the marble floors is relevant to establishing the reasonableness of Venetian's cleaning  
28 policies and procedures. The greater the number of slip and falls on marble floors the greater care

1 Venetian must use. A jury cannot determine the reasonableness of Venetian's policies and  
2 procedures without knowing the number of slip and falls on marble floors. The fewer incidents that  
3 the Venetian discloses, the less careful they *appear* to have to be and the less likely a jury will hold  
4 their policies and procedures unreasonable.

5 Venetian's counsel represented that he "completed gathering and reviewing the prior incident  
6 reports, but my client would like a Rule 26(c) stip/order" and that "documents were ready for  
7 production" (Exhibit "2" at 3:18, Exhibit "B.") Venetian misled Plaintiff to believe that it was  
8 disclosing *all incident reports* for slip and falls on the marble floors between November 3, 2013 and  
9 November 3, 2016. It soon became evident the actual disclosure to be made was woefully  
10 inadequate. Upon reviewing the Venetian's purported "good faith" disclosure, Plaintiff repeatedly  
11 notified Venetian of missing reports. (Excerpts of Michael Royal's Declaration in Support of  
12 Opposition to Plaintiff's Objection to Report and Recommendation, attached as Exhibit "14" at  
13 5:12.) Venetian confessed that additional incident reports related to two other cases "should have  
14 been included by Venetian in its response to the request for prior incident reports" and made a  
15 hollow promise to "supplement NRCP 34 responses." (Exhibit "7" at 12:1-15.) Although Venetian  
16 was able to verify the existence of these reports in 10 days it nevertheless could not acquire copies of  
17 those reports in the span of two months. (*Id.* at 11:18-19 stating Mr. Royal was "advised" about the  
18 existence of the reports.) Plaintiff also advised that reports that the Venetian disclosed reports in the  
19 *Smith v. Venetian* matter were not disclosed in this case. (Exhibit "5.") Because it was apparent that  
20 the Venetian was either unwilling or unable to compare the reports and figure out which ones were  
21 missing, Plaintiff provided a table which clearly identified which reports were missing. (Exhibit  
22 "6.") The table included the date, time, report number, location, comments and responding security  
23 officers for each missing incident report. (*Id.*) Three weeks later, despite the fact that Venetian had  
24 not yet produced these reports, it attached the same table to one of its motions. (Exhibit "8.")<sup>1</sup> It has

25  
26 <sup>1</sup> It is also worth noting Plaintiff was notifying Venetian of these missing reports during the 40 day  
27 period between the Motion for Protective Order Hearing and Objection Hearing when Venetian was  
28 obligated to comply with the Discovery Commissioner's Report and Recommendation which stated  
that Venetian was to "review the alleged discrepancy of four prior incident reports... and provide

1 now been 2 and a half months since Plaintiff notified Venetian of the missing reports from the *Smith*  
2 *v. Venetian* case and, incredibly, Venetian has not disclosed these reports either.

3 Because of the Venetian's ongoing refusal to fully and fairly disclose the incident reports  
4 plaintiff's counsel researched additional court pleadings and contacted other Plaintiff's lawyers in an  
5 effort to identify the true breadth of the problem. These efforts led to the discovery of AN  
6 ADDITIONAL 46 UNDISCLOSED INCIDENT REPORTS FROM NOVEMBER 4, 2013 –  
7 NOVEMBER 4, 2016!

8 In other words, Venetian has disclosed only 58% of the requested incident reports – a  
9 percentage based on *secondary information discovered by Plaintiff*. At the very least this conduct is  
10 gross negligence. At the worst it is deliberately hiding evidence. Whichever the case, these 46  
11 undisclosed incident reports and any other incident reports responsive to Plaintiff's Request for  
12 Production No. 7 are clearly relevant to the issue of foreseeability. Moreover, the Discovery  
13 Commissioner already determined that these incident reports are discoverable. On April 4, 2019 the  
14 Discovery Commissioner ordered Venetian to "review the alleged discrepancy of four prior incident  
15 reports... and provide them in redacted form to the extent they are responsive to Plaintiff's NRCP 34  
16 request" and to "provide all reports deemed responsive to Plaintiff's NRCP 34 request no. 7 related  
17 to prior incident reports of the Venetian." (Exhibit "3" at 3:21-25.) As such, the Court should compel  
18 Venetian to produce the additional 46 incident reports responsive to Plaintiff's request and again to  
19 "review the alleged discrepancy."

20 **D. Venetian Must Produce Subsequent Incident Reports Because They Are**  
21 **Admissible to Prove Causation, Existence of a Dangerous Condition and**  
22 **Punitive Damages**

23 The Nevada Supreme Court "has previously held that evidence of subsequent, similar  
24 accidents involving the same condition may be relevant on the issues of causation and whether there  
25 is a defective and dangerous condition." *Reingold v. Wet "N Wild Nevada, Inc.*, 113 Nev. 967, 969,

26 them in redacted form to the extent they are responsive to Plaintiff's NRCP 34 request" and to  
27 "prove all reports deemed responsive to Plaintiff's NRCP 34 request no. 7 related to prior incident  
28 reports of the Venetian." (Exhibit "3" at 3:21-25.)

1 944 P.2d 800, 802 (1997) citing *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 416, 470 P.2d 135, 140  
2 (1970); see also *Jeep Corp. v. Murray*, 101 Nev. 640, 646, 708 P.2d 297, 301 (1985).

3 In *Ginnis*, the plaintiff was injured after a door closed into her, knocking her over the rail  
4 alongside the door and pinning her to it. *Ginnis*, 86 Nev. at 410, 470 P.2d at 136. The trial court  
5 refused to allow plaintiff to introduce evidence of two subsequent incidents where other patrons  
6 were injured in the same manner. *Id.* at 411-12, 470 P.2d 137. The Nevada Supreme Court held  
7 "evidence of subsequent, similar accidents involving the same door are relevant to causation  
8 and a defective and dangerous condition." *Id.* at 415, 470 P.2d 139. In other words, the Supreme  
9 Court ruled that subsequent accidents are not only discoverable, but that they meet the even higher  
10 standard of admissibility a trial.

11 Although NRCP 37(a)(1) does not require Plaintiff to prove the evidence sought is  
12 admissible, but only that it is relevant to the claims or defenses and proportional to the needs of the  
13 case, the discovery sought here is actually admissible at trial to prove causation, existence of a  
14 dangerous condition and punitive damages. Although the Nevada Supreme Court has not expressly  
15 addressed whether subsequent incidents are admissible at trial to prove punitive damages, numerous  
16 other courts have. The California Court of Appeals, which follows the same rationale as the Nevada  
17 Supreme Court to admit evidence of subsequent incidents to prove causation, held evidence of  
18 similar incidents and subsequent conduct is also admissible to prove punitive damages. *Hilliard v. A.*  
19 *H. Robins Co.*, 148 Cal. App. 3d 374, 196 Cal. Rptr. 117 (Ct. App. 1983). In *Hilliard v. A. H. Robins*  
20 *Co.* the California Court of Appeals determined a plaintiff claiming punitive damages "may present  
21 any evidence which would tend to prove the essential factors of the conscious disregard concept of  
22 malice. This includes evidence of subsequent activities and conduct." *Id.* at 401, 196 Cal. Rptr. at  
23 135 citing *Blank v. Coffin*, 20 Cal.2d 457, 463, 126 P.2d 868, 871 (1942). The Court further  
24 explained that:

25 In proving that [the] defendant.... acted in conscious disregard of the safety of others,  
26 plaintiff...was not limited to [defendant's] conduct and activities that directly caused  
27 her injuries. The conscious disregard concept of malice does not limit an inquiry into  
28 the effect of the conduct and activities of the defendant on the plaintiff, the inquiry is  
directed at and is concerned with the defendant's conduct affecting the safety of

1 others. Any evidence that directly or indirectly shows or permits an inference that  
2 defendant acted with conscious disregard of the safety or rights of others, that  
3 defendant was aware of the probable dangerous consequences of defendant's conduct  
4 and/or that defendant willfully and deliberately failed to avoid these consequences is  
5 relevant evidence. Such evidence includes subsequent conduct unless such  
6 subsequent conduct is excluded on policy consideration.

7 *Id.* (emphasis added)

8 A host of other jurisdictions also allow evidence of subsequent conduct to support punitive  
9 damages claims. *See, e.g., Schaffer v. Edward D. Jones & Co.*, 1996 S.D. 94, ¶ 35, 552 N.W.2d 801,  
10 813 (defendant's proclivity to repeat wrongful conduct is relevant to punitive damages, as a major  
11 purpose of punitive damages is to deter similar future misconduct); *Roth v. Farner Bocken Co.*, 2003  
12 S.D. 80, ¶ 48, 667 N.W.2d 651, 666 (in determining "degree of reprehensibility," one consideration  
13 is whether "the conduct involved repeated actions or was an isolated incident"); *Boshears v. Saint-*  
14 *Gobain Calmar, Inc.*, 272 S.W.3d 215, 226 (Mo. Ct. App. 2008) ("actions subsequent to those for  
15 which damages are sought may be relevant and 'admissible under an issue of exemplary damages if  
16 so connected with the particular acts as tending to show the defendant's disposition, intention, or  
17 motive in the commission of the particular acts for which damages are claimed"); *Bergeson v.*  
18 *Dilworth* 959 F.2d 245 (10th Cir. 1992) ("subsequent conduct is admissible on the issue of punitive  
19 damages when it is probative of the defendant's state of mind at the time of the event giving rise to  
20 liability"); *Smith v. Ingersoll-Rand Co.*, 214 F.3d 1235, 1249 (10th Cir. 2000); *GM Corp. v. Mosely*,  
21 213 Ga. App. 875, 877 (Ga. Ct. App. 1994) (in a product defect case evidence of other incidents  
22 involving a product are admissible and relevant to prove notice of a defect and punitive damages);  
23 *Wolfe v. McNeil-PPC Inc.*, 773 F.Supp.2d 561, 575-576 (E.D.Pa. 2011) (post incident concealment  
24 of information from the FDA relevant to the question of defendant's state of mind relative to the  
25 imposition of punitive damages); *Coale v. Dow Chem. Co.*, 701 P.2d 885, 890 (Colo.App. 1985)  
26 (evidence of post-injury conduct is admissible to show the defendant acted wantonly in connection  
27 with a claim of punitive damages); *Palmer v. A.H. Robins Co.*, 684 P.2d 187, 204 (Colo. 1984)  
28 (observing that post-injury conduct is relevant for purposes of determining punitive damages);  
*Hoppe v. G.D. Searle & Co.*, 779 F.Supp. 1413, 1424--1425 (S.D.N.Y. 1991) (admitting evidence of

1 post-injury conduct because it was relevant to pre-injury evidence supporting an award of punitive  
2 damages); *Hill v. USA Truck, Inc.*, No. 8:06-CV-1010-GRA, 2007 WL 1574545, at \*15 (D.S.C. May  
3 30, 2007); *Hallman v. Cushman*, 196 S.C. 402, 13 S.E.2d 498, 501 (1941).

4 Subsequent conduct is admissible to prove punitive damages because it is relevant to the  
5 defendant's culpable state of mind, i.e. malice: "It is indeed manifest that subsequent conduct may  
6 tend to throw light upon the immediate occurrence under investigation, especially where mental  
7 attitudes are important, such as a conscious failure to observe due care, and the like." *Hallman*, 196  
8 S.C. at 402, 13 S.E.2d at 501; *see also Bergeson*, 959 F.2d at 245; *Wolfe*, 773 F.Supp.2d at 575-576;  
9 *Coale v. Dow Chem. Co.*, 701 P.2d 885, 890 (Colo.App. 1985); *Palmer*, 684 P.2d at 204; *Hoppe*,  
10 779 F.Supp. at 1424-1425; *Peshlakai v. Ruiz*, 39 F. Supp. 3d 1264, 1341-43 (D.N.M. 2014).

11 In this case, the Court recently granted Plaintiff's Motion to Amend her Complaint to add a  
12 claim for punitive damages. At the time of trial Plaintiff bears the burden of proving punitive  
13 damages by clear and convincing evidence. NRS 42.005(1). NRS 42.005(1) requires Plaintiff to  
14 prove that Venetian acted with malice i.e. "conduct which is intended to injure a person or  
15 despicable conduct which is engaged in with a conscious disregard of the rights or safety of others."  
16 NRS 42.001(3) (emphasis added). In other words, Plaintiff must prove Venetian's conduct is  
17 "culpable." *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 739, 192 P.3d 243, 252  
18 (2008). As held by many courts across the nation, Plaintiff can admit evidence of subsequent  
19 conduct at trial, including incident reports, to prove Venetian's culpable conduct. Because the  
20 standard of proof for admissibility at trial is higher than the standard for discoverability, it is  
21 axiomatic that the information is discoverable. *See* NRCP 26(a)(1) ("Information within this scope  
22 of discovery need not be admissible in evidence to be discoverable.") Thus, the Court should require  
23 Venetian's 30(b)(6) witness to answer questions about subsequent incidents, any subsequent  
24 measures taken to change the coefficient of friction; and subsequent slip testing. Additionally, the  
25 Court should order Venetian to produce subsequent incident reports (RFP No. 7), other complaints  
26 submitted by guests or other individuals regarding the safety of the marble floors (RFP No. 29), and  
27 to the extent the documents exist, subsequent reports, documents, memoranda and other information  
28

1 describing or referring slip testing on the marble floors (RFP No. 23), communications including  
2 correspondence, emails, internal communications or other memoranda (RFP No. 24), transcripts,  
3 minutes, notes, emails or correspondence relating to any meetings between Venetian personnel  
4 where the subject of the safety of the marbles floors was discussed (RFP No. 25), correspondence,  
5 emails, memoranda, internal office correspondence or other documents directed to Venetian from a  
6 contractor, subcontractor or flooring expert which refer to the safety of the marble floors (RFP No.  
7 26) and quotes, estimates and correspondence relating to modifying the marble floors to increase  
8 their slip resistance (RFP No. 30).

9 **E. Measures Taken to Locate and Produce Security/Incident Injury Fall Reports**  
10 **by the Venetian are Discoverable Because They Are Relevant to Ensure**  
11 **Compliance with the Discovery Rules**

12 Venetian has shown time and again in this case, in *Cohen v. Venetian*, in *Smith v. Venetian*  
13 and in *Boucher v. Venetian*, that it simply cannot be trusted to fully and fairly disclose incident  
14 reports. As previously discussed, Plaintiff has repeatedly caught Venetian selectively disclosing  
15 incident reports. Venetian initially disclosed 64 redacted reports. After consulting with counsel in  
16 the *Smith v. Venetian* matter and the *Cohen v. Venetian* matter and sorting through prior court filings  
17 Plaintiff's counsel discovered that the Venetian left out at least forty-six (46) incident reports  
18 responsive to Plaintiff's Request for Production No. 7. Venetian did the same thing in *Smith v.*  
19 *Venetian*, leaving out 35 incident reports and also in *Boucher v. Venetian*, leaving out 32 incident  
20 reports. (See, e.g. Motion for Case Ending Sanctions in *Smith v. Venetian* attached as Exhibit "15" at  
21 4:7-10, 5:5, and; Excerpts of Motion to Amend in *Boucher v. Venetian* attached as Exhibit "16" at  
22 7:19-11:19.)

23 From these filings it is evident that Venetian has engaged in a deliberate pattern of evasive  
24 discovery abuse in at least four cases in the last 6 months and therefore cannot be trusted to fully and  
25 fairly disclose documents. NRC 37(b) provides consequences for a party who fails to abide by the  
26 discovery rules and Court orders. This Rule, the other rules related to discovery and our entire body  
27 of case law regarding the same would be rendered meaningless if the parties were not permitted to  
28



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

1 discover information related to these violations to ensure compliance with the rules and support  
2 sanctions.

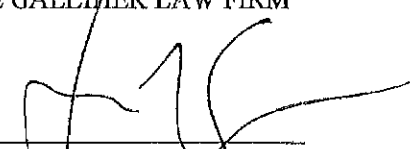
3 Because Venetian repeatedly violated the rules and court orders in numerous cases Plaintiff  
4 and the Court can no longer trust its promise that it has fully and fairly responded to discovery in  
5 "good faith" and abided by all Court orders. (Exhibit "14" at 5:12.) Venetian *chose* to engage in a  
6 game of "hide the ball". This choice makes it necessary for Plaintiff to ask about the measures  
7 Venetian took to locate and produce incident reports to discover why so many reports were not  
8 disclosed, how to find the remaining reports and how the issue can be avoided in the future. This is  
9 the only way the Court can ensure that Venetian complies with the Discovery Rules.

10 **IV. CONCLUSION**

11 Based on the foregoing, Plaintiff respectfully requests this Court grant her motion to Compel  
12 Testimony and Documents.

13 DATED this 1 day of July, 2019

THE GALLIHER LAW FIRM

  
\_\_\_\_\_  
Keith E. Galliher, Jr., Esc.  
Nevada Bar Number 220  
1850 E. Sahara Avenue, Ste. 107  
Las Vegas, Nevada 89104  
*Attorney for Plaintiff*

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **PLAINTIFF'S MOTION TO COMPEL TESTIMONY AND DOCUMENTS** was served on the 2 day of ~~June~~ July, 2019, to the following addressed parties by:

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

☐ Facsimile, pursuant to EDCR 7.26 (as amended)

☒ Electronic Mail/Electronic Transmission

☐ Hand Delivered to the addressee(s) indicated

☐ Receipt of Copy on this \_\_\_\_\_ day of June 2019,

acknowledged by, \_\_\_\_\_

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

  
An Employee of THE GALLIHER LAW FIRM

# EXHIBIT “L”

*Steven D. Grierson*

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](mailto:mroyal@royalmilesllp.com)

12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

18 Plaintiff,

19 v.

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

27 Defendants.

*Before the Discovery Commissioner*

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 

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

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

22 1522 W. Warm Springs Rd.

23 Henderson, NV 89014

24 Attorney for Defendants

25 VENETIAN CASINO RESORT, LLC and

26 LAS VEGAS SANDS, LLC  
27  
28

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

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  
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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  
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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 DCCR regarding the redacted prior incident reports was  
7 heard on May 14, 2019, in which the District Judge reversed the DCCR 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:  
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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. Elliot 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 Q. Essentially if you don't have carpet down, it's slippery when it's wet,  
11 right?

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

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

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

17 Q. But it's not marble flooring?

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

19 Q. Is it tile?

20 A. It's a ceramic tile.

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

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

26 21. Defendants filed a motion for reconsideration related to the Court's granting Plaintiff's  
27 motion for leave to add a claim of punitive damages on July 3, 2019, with a hearing set for July 16,  
28 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.<sup>1</sup>  
19  
20

21           24.     Defendant previously provided a Rule 34 request of Plaintiff to produce the entire file  
22 of all experts she identified in this matter. (See Exhibit P, *Plaintiff, Joyce Sekera's, Responses to*  
23 *Defendant Venetian Casino Resort, LLC's First Set of Request for Production of Documents* (served  
24 08.27.18), No. 18.)  
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27           <sup>1</sup>As 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  
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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           c.       **04/20/15 (Lobby 1 Trip/Fall)** (no event number provided by Plaintiff);

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

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

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

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



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.

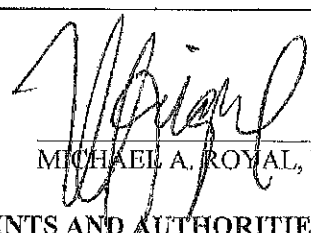
12           43.     This opposition and countermotion is not brought in bad faith, or for any improper  
13 purpose.  
14

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

<b>L</b>	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated 03.25.19
<b>M</b>	Reporter's Transcript of May 28, 2019 hearing
<b>N</b>	Transcript of David Elliott (taken February 13, 2009), in <i>Farina v. Desert Palace, Inc.</i> , case no. A542232, selected pages
<b>O</b>	Correspondence from Keith Galliher, Esq., to Michael Royal, Esq., dated 06.25.19
<b>P</b>	Plaintiff, Joyce Sekera's, Responses to Defendant Venetian Casino Resort, LLC's First Set of Request for Production of Documents, served 08.27.18
<b>Q</b>	Second Subpoena Duces Tecum for Tom Jennings, served 06.10.19
<b>R</b>	Expert Rebuttal Report, Thomas Jennings (dated 05.30.19)
<b>S</b>	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated 07.02.19
<b>T</b>	Plaintiff's Sixth Request for Production of Documents and Materials to Defendants, served 05.31.19
<b>U</b>	Complaint, filed 04.12.18
<b>V</b>	First Amended Complaint, filed 06.28.19
<b>W</b>	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  
14 Defendants contend that the issue surrounding the production of unredacted reports to those  
15 produced responsive to Plaintiff's Production Request No. 7 remains an open issue, as there is no order  
16 and Defendants are awaiting filing of the order, where competing orders were presented to the District  
17 Judge. As for the alleged other four (4), forty-seven (47), sixty-five (65) or 197 prior incident reports  
18 allegedly not produced (depending on which numbers Plaintiff chooses to assert on any given day),  
19 Defendants only very recently became aware of this alleged issue and there was no meet and confer  
20 with Plaintiff pursuant to EDCR 2.34 prior to filing of the instant motion. If Plaintiff already has the  
21 information, then it is unclear what Plaintiff expects Defendants to do. Regarding Plaintiff's demand  
22 for subsequent incident reports, this is a simple negligence case arising from an alleged temporary  
23 transitory condition on the Venetian floor. Plaintiff argues in the motion to compel that this litigation  
24 is akin to a products defect claim. It is not. That is simply not the case. In fact, Plaintiff has pled and  
25 continues to plead this as a simple negligence case. (See Exhibits T and U.) There is no reasonable  
26 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.<sup>2</sup>*

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.<sup>3</sup>*

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

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<sup>2</sup>EDCR 2.25(a).

<sup>3</sup>NRCP 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 DCRR 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.<sup>4</sup>

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16  
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 <sup>4</sup>It is noteworthy that Plaintiff did not serve the First Amended Complaint until after the order  
granting her leave to do so was executed and filed with the District Court.

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

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

13 On June 25, 2019, following a brief EDCR 2.34 Conference held earlier on the same date to  
14 address the issue of when unredacted reports would be produced, Plaintiff's counsel sent  
15 correspondence addressing the status of unredacted reports. (*See Exhibit O.*) In the same  
16 corresponded, Plaintiff presented a table of sixty-five (65) incident reports, which Defendants initially  
17 presumed related to the previously produced unredacted reports. Since Plaintiff had never previously  
18 advised that she was in possession of an additional sixty-five (65) prior incident reports, Defendants  
19 did not readily identify this as a new issue. To date, Plaintiff has not addressed this with Defendants  
20 pursuant to EDCR 2.34. Had that occurred, Plaintiff's counsel may have realized that his list of sixty-  
21 five (65) prior incident reports was by and large a restatement of information already in Plaintiff's  
22 possession. The pending motion does not contain an affidavit affirming any attempt to comply with  
23 meet and confer requirements as per local rules and as otherwise required by EDCR 2.34, NRCP 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  
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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.<sup>5</sup>

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

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

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

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

29  
30 <sup>5</sup>This 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. Farmer-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  
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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 counter motion 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 counter motion 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

1 25, 2019, or which are otherwise in Plaintiff's possession beyond those produced by Defendants  
2 pursuant to NRCP 16.1 or otherwise in response to an NRCP 34 request.

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

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

8 *Unless otherwise limited by court order, the scope of discovery is as follows: Parties*  
9 *may obtain discovery regarding any nonprivileged matter that is relevant to any party's*  
10 *claim or defense and proportional to the needs of the case, considering the importance*  
11 *of the issues at stake in the action, the amount in controversy, the parties' relative*  
12 *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.*

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

14 *Protective Orders. Upon motion by a party or by the person from whom discovery is*  
15 *sought, accompanied by a certification that the movant has in good faith conferred or*  
16 *attempted to confer with the other affected parties in an effort to resolve the dispute*  
17 *without court action, and for good cause shown, the court in which the action is*  
18 *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:*

- 19 (1) *that the discovery not be had;*  
20 (2) *that the discovery may be had only on specified terms and conditions, including a*  
*designation of the time or place;*  
21 (3) *that the discovery may be had only by a method of discovery other than that selected*  
*by the party seeking discovery;*  
22 (4) *that certain matters not be inquired into, or that the scope of the discovery be limited*  
*to certain matters;*  
23 (5) *that discovery be conducted with no one present except persons designated by the*  
*court;*  
24 (6) *that a deposition after being sealed be opened only by order of the court;*  
25 (7) *that a trade secret or other confidential research, development, or commercial*  
*information not be revealed or be revealed only in a designated way;*  
26 (8) *that the parties simultaneously file specified documents or information enclosed in*  
*sealed envelopes to be opened as directed by the court.*  
27  
28

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.<sup>6</sup>

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 <sup>6</sup>Mr. 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 17 day of July, 2019.

18 ROYAL & MILES LLP

19  
20 By 

21 Michael A. Royal, Esq. (SBN: 4370)  
22 Gregory A. Miles, Esq. (SBN 4336)  
23 1522 W. Warm Springs Rd.  
24 Henderson, NV 89014  
25 Attorney for Defendants  
26 LAS VEGAS SANDS, LLC, and  
27 VENETIAN CASINO RESORT, LLC  
28



**CERTIFICATE OF SERVICE**

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

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

\_\_\_\_\_ to be served via facsimile; and/or

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

\_\_\_\_\_ to be hand delivered;

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

Keith E. Galliher, Jr., Esq.  
THE GALLIHER LAW FIRM  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, NV 89104  
*Attorneys for Plaintiff*  
Facsimile: 702-735-0204  
E-Service: [kgalliher@galliherlawfirm.com](mailto:kgalliher@galliherlawfirm.com)

[dmooney@galliherlawfirm.com](mailto:dmooney@galliherlawfirm.com)  
[gramos@galliherlawfirm.com](mailto:gramos@galliherlawfirm.com)  
[sray@galliherlawfirm.com](mailto:sray@galliherlawfirm.com)

  
An employee of ROYAL & MILES LLP

# EXHIBIT “M”



1 THE GALLIHER LAW FIRM  
2 Keith E. Galliher, Jr., Esq.  
3 Nevada Bar No. 220  
4 Jeffrey L. Galliher, Esq.  
5 Nevada Bar No. 8078  
6 George J. Kunz, Esq.  
7 Nevada Bar No. 12245  
8 Kathleen H. Gallagher, Esq.  
9 Nevada Bar No. 15043  
10 1850 East Sahara Avenue, Suite 107  
11 Las Vegas, Nevada 89104  
12 Telephone: (702) 735-0049  
13 Facsimile: (702) 735-0204  
14 [kgalliher@galliherlawfirm.com](mailto:kgalliher@galliherlawfirm.com)  
15 [jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)  
16 [jkunz@lvlawguy.com](mailto:jkunz@lvlawguy.com)  
17 [kgallagher@galliherlawfirm.com](mailto:kgallagher@galliherlawfirm.com)  
18 Attorneys for Plaintiff

12  
13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

16 JOYCE SEKERA, an Individual,  
17  
18 Plaintiff,

19 v.

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

28 Defendants.

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

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

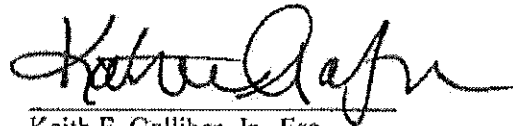
THE GALLIHER LAW FIRM  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
702-735-0049 Fax: 702-735-0204

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

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

7 DATED this 25<sup>th</sup> day of July, 2019

8 THE GALLIHER LAW FIRM

9  
10 

11 Keith E. Galliher, Jr., Esq.  
12 Nevada Bar Number 220  
13 Kathleen H. Gallagher, Esq.  
14 Nevada Bar Number 15043  
15 1850 E. Sahara Avenue, Ste. 107  
16 Las Vegas, Nevada 89104  
17 *Attorney for Plaintiff*

18 **MEMORANDUM AND POINTS OF AUTHORITIES**

19 **I. REPLY IN SUPPORT OF MOTION TO COMPEL**

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

22 The Discovery Commissioner should order Venetian to produce the unredacted incident  
23 reports because the Court ordered Venetian to produce the reports over 2 months ago. At the hearing  
24 on May 14, 2019 The Honorable Judge Delaney ruled Venetian's position was unsupported and  
25 "novel" in that no counsel for a casino, including herself while working in-house for Mirage, would  
26 or ever has moved to protect unredacted incident reports because there "is no legal basis" for such a  
27 protective order.<sup>1</sup> (Plaintiff's Mot. at Exhibit "4.") This issue is therefore not "open" or unresolved,  
28

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

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

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

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

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

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

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

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

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

**B. Venetian Provided All Known Responsive Reports at This Time**

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

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

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

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

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

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

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

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

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

20 //

21 //

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



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

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

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

1 Here, similar to the plaintiff in *Benjamin*, Venetian does not "properly oppose" Plaintiff's  
2 motion because Venetian does not address the issue of the 30(b)(6) deposition. (*See generally*,  
3 Defendant's Opp.) Plaintiff's motion emphasizes that she should be allowed to discuss the measures  
4 Venetian took to locate and produce incident reports because (1) Venetian has shown time and time  
5 again in 4 cases – *Sekera v. Venetian*, *Cohen v. Venetian*, *Smith v. Venetian* and *Boucher v. Venetian*  
6 – that cannot be trusted to fully and fairly disclose incident reports, and because (2) the rules  
7 allowing discovery sanctions would be rendered meaningless if the parties were not permitted to  
8 discover information related to violations to ensure compliance with the rules. Venetian's opposition  
9 fails to even mention "30(b)(6)" let alone address these arguments. This failure is clearly not an  
10 oversight, as Venetian references the body of Plaintiff's argument regarding Venetian's 30(b)(6)  
11 witness and questions the "relevance" of Plaintiff's exhibit referenced in that same argument. (*See*  
12 Defendant's Opp. At 13:22-23.) ("Exhibit 15 to Plaintiffs motion, identified as Plaintiff's Notice  
13 a/Motion and Motion for Terminating Sanctions, et al filed by Peter Goldstein, Esq., on February 13,  
14 2019 in the Smith matter, was denied by the District Court in a hearing held on May 7, 2019.  
15 Therefore, the relevance of that motion referenced on page 17 of the motion to compel is unclear.")  
16 Venetian's, like the plaintiff in *Benjamin*, therefore did not argue why the Plaintiff cannot question  
17 on measures taken to locate and produce incident reports. Thus, this Court should rule the same as  
18 the *Benjamin* Court and approve Plaintiff's 30(b)(6) parameters because Defendant's failure to  
19 address the argument is an admission the motion is meritorious.

20 **II. LIMITED OPPOSITION / RESPONSE TO DEFENDANTS' MOTION TO COMPEL**  
21 **DOCUMENTS PROVIDED TO TOM JENNINGS'**

22 On July 22, 2019 Defendant served its 16<sup>th</sup> supplement to its list of witnesses and production  
23 of documents for early case conference. (Defendant's 16<sup>th</sup> Supp., attached as Exhibit "2.") This  
24 supplement contained the communication from Plaintiff's counsel to Plaintiff's expert Tom Jennings  
25 ("Mr. Jennings") regarding the 196 incidents which occurred in the Venetian. The supplement also  
26 contained a copy of the table summarizing the reports that Plaintiff provided to Mr. Jennings. These  
27  
28

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

### III. OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER

#### A. Factual Background

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

##### REQUEST NO. 23:

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

##### REQUEST NO. 24:

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

##### REQUEST NO. 25:

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

##### REQUEST NO. 26:

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

##### REQUEST NO. 27:

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

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

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

##### REQUEST NO. 35:

True and correct copies of any and all claim forms, legal actions, civil complaints, statements, security reports, computer generated lists, investigative documents or other memoranda which have, as its subject matter, slip and fall cases

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

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

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

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

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

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

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

NRCP 26(c).

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

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

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

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

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

23 (Defendant's Opp. at 27:24-28:2.)

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

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

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

26 //

27 //

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

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

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

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

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

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

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

7 A: It's the same, basically.

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

10 A: Yeah.

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

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

14 A: I would have to say no.

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

17 A: No.

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

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

//

//



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

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

10           "[T]he most important indicium of the reasonableness of a punitive damages award is the  
11           degree of reprehensibility of the defendant's conduct." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559,  
12           575, 116 S. Ct. 1589, 1599, 134 L. Ed. 2d 809 (1996). "This principle reflects the accepted view that  
13           some wrongs are more blameworthy than others." *Id.* For example, repeated misconduct is more  
14           reprehensible than a single action:

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

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

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

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

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

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

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

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1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
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1 155 L. Ed. 2d 585 (2003); *see also Wyeth v. Rowatt*, 126 Nev. 446, 475, 244 P.3d 765, 785 (2010)  
2 (considering the defendant's "conduct involved repeated actions" when analyzing the  
3 reprehensibility.)


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

16 **IV. CONCLUSION**

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

20 DATED this 25<sup>th</sup> day of July, 2019

21 THE GALLIHER LAW FIRM

22  
23   
24 Keith E. Galliher, Jr., Esq.  
25 Nevada Bar Number 220  
26 Kathleen H. Gallagher, Esq.  
27 Nevada Bar Number 15043  
28 1850 E. Sahara Avenue, Ste. 107  
Las Vegas, Nevada 89104  
Attorney for Plaintiff

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing PLAINTIFF'S REPLY IN SUPPORT OF HER MOTION TO COMPEL TESTIMONY AND DOCUMENTS, OPPOSITION TO DEFENDANTS' MOTION TO COMPEL DOCUMENTS FROM JENNINGS AND OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER was served on the 25<sup>th</sup> day of July, 2019, to the following addressed parties by:

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

\_\_\_\_\_ Facsimile, pursuant to EDCR 7.26 (as amended)

\_\_\_\_\_ Electronic Mail/Electronic Transmission

\_\_\_\_\_ Hand Delivered to the addressee(s) indicated

\_\_\_\_\_ Receipt of Copy on this \_\_\_\_\_ day of July 2019,

acknowledged by, \_\_\_\_\_

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

  
An Employee of THE GALLIHER LAW FIRM

# EXHIBIT “N”

THE GALLIHER LAW FIRM  
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Las Vegas, Nevada 89104  
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1 THE GALLIHER LAW FIRM  
2 Keith E. Galliher, Jr., Esq.  
3 Nevada Bar No. 220  
4 Jeffrey L. Galliher, Esq.  
5 Nevada Bar No. 8078  
6 George J. Kunz, Esq.  
7 Nevada Bar No. 12245  
8 Kathleen H. Gallagher, Esq.  
9 Nevada Bar Number 15043  
10 1850 East Sahara Avenue, Suite 107  
11 Las Vegas, Nevada 89104  
12 Telephone: (702) 735-0049  
13 Facsimile: (702) 735-0204  
14 [kgalliher@galliherlawfirm.com](mailto:kgalliher@galliherlawfirm.com)  
15 [jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)  
16 [jkunz@lvlawguy.com](mailto:jkunz@lvlawguy.com)  
17 [kgallagher@galliherlawfirm.com](mailto:kgallagher@galliherlawfirm.com)  
18 Attorneys for Plaintiff

12  
13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA  
15

16 JOYCE SEKERA, an Individual,  
17  
18 Plaintiff,

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

19 v.

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

**FIRST AMENDED COMPLAINT**

28 Defendants.

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

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**GENERAL ALLEGATIONS**

**I**

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

**II**

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

**III**

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

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

Whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury shall be liable to the person injured for damages; and where

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

3  
4 IV

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

10  
11 V

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

16  
17 VI

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

23  
24 VII

25 The Defendant knew that its marble floors caused unreasonable amount of injury slip and  
26 falls and thus were dangerous to pedestrians, and in the existence of ordinary care, would have had  
27 opportunity to remedy the situation prior to Plaintiff's fall.  
28

**VIII**

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

**FIRST CLAIM FOR RELIEF**

**(Negligence)**

**I**

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

**II**

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

**III**

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



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IV

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

V

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

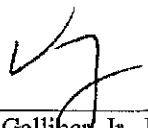
**WHEREFORE**, Plaintiff prays for judgment in her favor and against Defendant as follows:

**FIRST CLAIM FOR RELIEF**

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

DATED this 27th day of June, 2019

THE GALLIHER LAW FIRM

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

# EXHIBIT “O”

## Jennings Forensic Services, LLC

355 W. Mesquite Blvd, #D30  
PMB 1-111  
Mesquite, NV 89027  
calacvsafety@hotmail.com  
702.613.5076 (O) 702.203.4192 (C)

May 30, 2019

Keith E. Gallher, Esq.  
The Gallher law Firm  
1850 West Sahara Avenue, Suite 107  
Las Vegas, NV 89104

Re: Sekera v. Venetian

Dear Mr. Gallher,

Your firm has retained my services as an expert in the above referenced matter. Please accept this document as my rebuttal report. To prepare for this report, I have reviewed the defense expert report of Wilson C. Hayes, Ph.D. dated 5/17/2019.

On Pages 7 and 8 of the Hayes report, Mr. Hayes references the ANSI A326.3 Standard, in particular, the portion that addresses, "that there are many factors that affect the possibility of a slip occurring on a hard surface", and "the COF shall not be the only factor determining the appropriateness of a hard surface flooring material for a particular application".

While both of those references are accurate, in this particular incident, there was a spilled liquid on the marble floor surface and objective slip resistance testing clearly indicated an unsafe and slippery walking surface when contaminated with a liquid substance. That single factor alone was the primary causal factor contributing to plaintiff's slip and fall.

On Page 13 of the report, Mr. Hayes states; "In addition, she was wearing very worn shoes that were well beyond their safe life"

Apparently, Mr. Hayes would like us to consider that as an 'unsafe shoe expert' it is clear that had plaintiff been wearing 'safe' shoes, the potential for the slip and fall would have been considerably less likely.

Following this line of reasoning, we can draw two specific conclusions; one, that 'unsafe shoes' presents a serious risk for slip and fall events as a sole causal factor. And secondly, if that is indeed the case, then the Venetian Hotel-Casino is allowing guests to bring an 'unsafe condition' onto their property!

Continuing with that line of reasoning, it is certainly likely that many guests entering the property are entering with 'unsafe shoes' and should be restricted from entering the property.

That of course, is a ridiculous expectation as it is virtually impossible to enforce such a prohibition. Keeping all walking surfaces in a safe and slip resistant condition is a far more rational approach and property owners have a responsibility to do so.

Keith E. Galliher, Esq.  
Sekerá Rebuttal report  
May 30, 2019  
Page Two

On Page 16 of the report, Mr. Hayes makes reference to the Burnfield and Powers study relating to the probability of slips and falls in relation to an established COF.

The Burnfield and Powers study was performed in a laboratory setting with individuals wearing full body harnesses and tethered to an overhead structure to prevent them from falling when they 'slip'. The participants were aware that they would be subjected to various COF levels and that at some point, would indeed slip. The published results of that study clearly indicates that if you are walking in a laboratory on a pre-selected walking surface, with specific footwear, you will slip at a determined COF level.

The overwhelming majority of slips and falls do not occur in laboratories under such controlled conditions -- they occur in the real-world arena of a multitude of walking surfaces in varying conditions with a wide-ranging assortment of footwear.

Within the same page, Mr. Hayes states; "With respect to the role of slip resistance in the initiation of Ms. Sekerá's fall, as noted above, the BOT-3000E (BOT) is supported by both national and international standards and widely-used worldwide. While the English XL Variable Incidence Tribometer (XL) is no longer supported by such standards, it continues to be used in the United States".

Mr. Hayes fails to reference exactly which 'national and international standards' he is referencing in relation to the BOT-3000E. It should also be noted that the BOT measures dynamic coefficient of friction and not static coefficient of friction.

Mr. Hayes is wrong with his statement regarding the English XL Tribometer not being supported by national and international standards.

The English XL Tribometer was validated by the publication of the American Society for Testing and Materials Standard; 'ASTM F2508-11'. Additionally, the English XL Tribometer is the instrument of choice for the United States Army, Navy and Air Force in addition to the National Aeronautics and Space Administration (NASA) along with a multitude of national and international corporations.

On Page 17 of the report, Mr. Hayes states in reference to the 0.50 slip resistance standard; "There are, of course, no "accepted national standards" or requirements for safe and slip resistant walking surfaces".

The 0.50 slip resistance level for a safe and slip resistant walking surface is referenced within the ANSI A1264.2-2001 national Standard as well as the Underwriters Laboratory (UL) national Standard, and by the National Safety Council (NSC). All are 'national standards' and all have established the 0.50 threshold for a slip resistant walking surface.

Mr. Hayes conveniently fails to address the seminal study to determine the appropriate level of COF for a safe and slip resistant walking surface. That study is the 1983 'University of Michigan Work Surface

Keith E. Gallher, Esq.  
Sekera Rebuttal report  
May 30, 2019  
Page Three

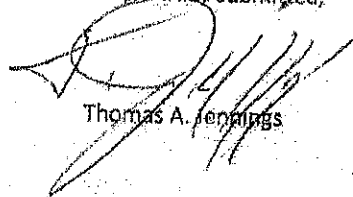
Friction: Definitions, Laboratory and Field measurements and a Comprehensive Bibliography' by James M. Miller, Don B. Chaffin and Robert O. Andres. Within the conclusions of that extensive study is the following:

"The most common recommended COF by standards organizations and by individual authors is 0.5. This value seems reasonable since it allows a small margin of safety over and above the 0.4 COF which was often cited as needed for walking."

From all materials reviewed, it is abundantly clear that the primary causal factor for Ms. Sekera's slip and fall event was the spilled liquid onto the marble walking surface which reduced the slip resistance level of the walking surface to a slippery and unsafe walking surface.

It should also be noted that the Venetian Hotel-Casino has experienced 196 slip and fall events between January 1, 2012 to August 5, 2016 with the majority of those events occurring on the marble flooring within the same approximate area as plaintiff's slip and fall. This level of activity would certainly indicate a 'frequency' issue that should have been addressed by the Venetian Hotel-Casino at some point.

Respectfully submitted,



Thomas A. Jennings

TAJ/gw

# EXHIBIT “P”

**Deposition of:**

Thomas A. Jennings

**Case:**

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

**Date:**

07/02/2019



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1 occur when coefficient of friction was above .50?

2 A. Well, I believe I've talked with counsel about  
3 that following the result of the testing, that there are  
4 multiple reasons why people lose their balance and  
5 suddenly fall.

6 The layperson usually attributes it to a slip  
7 when, in fact, it is everything from a misstep to a  
8 scuff slip to a change of directional slip. All produce  
9 something similar to a slip. But it wasn't due to the  
10 fact that the walking surface fell below the standard  
11 for a slip-resistant walking surface.

12 Q. Okay. In those cases?

13 A. In those cases.

14 Q. Let me ask you about some of the other cases  
15 you've had.

16 Peter Goldstein -- or is it Goldberg?

17 A. Goldstein.

18 Q. Peter Goldstein, you're presently a retained  
19 expert in a case he's handling against the Venetian?

20 A. Yes, sir.

21 Q. The plaintiff's name is Carol Smith?

22 A. Yes, sir.

23 Q. You've been deposed in that case?

24 A. Yes.

25 Q. You have done an inspection in that case?



1 A. Yes.

2 Q. And you've prepared reports in that case?

3 A. Yes, sir.

4 Q. Okay. How many times have you been retained by  
5 Peter Goldstein in any cases against the Venetian?

6 A. Would be the first, I believe.

7 Q. Okay. How many cases with Peter Goldstein  
8 total where he's retained you as an expert?

9 A. Two or three over a 15-year period.

10 Q. Okay. And do they all relate to slip-and-falls  
11 or do they have various fact scenarios?

12 A. Good question, and I can't honestly recall.

13 Q. What other attorneys have you worked with on  
14 the plaintiff side in any cases you've handled against  
15 the Venetian? Let's just keep it related to marble  
16 floors.

17 A. Well, that would simply be Mr. Goldstein, as I  
18 recall, and Mr. Galliher. I've only done the two on  
19 that.

20 Q. Okay. So you've done two -- so you've been  
21 retained as an expert for the plaintiff in two cases  
22 against the Venetian related to slip-and-falls on marble  
23 floors?

24 A. Best of my recollection, that's correct.

25 Q. Okay. And you don't recall being retained by

1 A. Correct.

2 Q. Now, you did test it at .40 at least one  
3 direction; correct?

4 A. Correct.

5 Q. And according to the study that we just  
6 reviewed, in the 1983 study, .40 would have been -- at  
7 least they determined to be adequate; correct?

8 A. Under controlled conditions.

9 Q. Got it. Okay.

10 Now, let me ask you about the Smith case.

11 Where did the slip-and-fall occur in Smith,  
12 because I'm not actually familiar with that?

13 The Carol Smith case versus Venetian.

14 A. Oh, I believe it was over by the escalator to  
15 the right -- you know the escalator where you come down  
16 from the upper level?

17 Q. Yes.

18 Well, is this from the parking garage?

19 A. Yes.

20 Q. Okay. So I'm going to ask you a few landmarks.

21 Do you know where the JuiceFarm is, the Bouchon  
22 Bakery?

23 A. You're testing my memory. I don't pay  
24 attention to the occupancy by name.

25 Q. The reason I ask is because you make reference

1 to -- on page 3 of your report, you say, "Food courts,  
2 cafés, coffee bars, and other operations" --

3 A. Right.

4 Q. -- "that dispense beverages."

5 I'm wondering, did you observe that or were you  
6 told that information?

7 A. No, no, no. I've observed that. I've been to  
8 that property multiple times. I can't tell you the  
9 names of all those.

10 Q. Okay. All right. I got it.

11 You just say this happened -- the Carol Smith  
12 slip-and-fall you say happened somewhere around the base  
13 of the escalator that comes down from the parking garage  
14 escalator in the Venetian?

15 A. If you went down to the base of the escalator  
16 and turned right and then you walked a little bit  
17 towards the -- they have, like, a coffee bar that sits  
18 sort of behind the escalator, then there's, like, a  
19 little general store at the back, it would be right in  
20 that general vicinity as I recall the location.

21 Q. There's a shoe shine place there.

22 Do you remember that?

23 A. I do.

24 Q. Is that -- was it near the shoe shine place?

25 A. Near, but near to me is...

1 Q. Okay. Is it between the shoe shine place and  
2 the entry to the gift shop?

3 A. Approximately. That's close.

4 Q. Okay. So this would be maybe -- would it be,  
5 like, 100 feet or so away from the slip-and-fall that  
6 occurred in the Sekera case?

7 A. It's reasonable. Close.

8 Q. So the Smith case did not happen in the Grand  
9 Lux rotunda?

10 A. The same area where we're here today?

11 Q. Right.

12 A. No.

13 Q. Now, my understanding is when you did the dry  
14 test of the Smith case, it was .90 coefficient of  
15 friction?

16 A. Correct.

17 Q. When you did the wet test, it was .40  
18 coefficient of friction?

19 A. Correct.

20 Q. Okay. And any explanation as to why it would  
21 be different -- your testing would be different in the  
22 Smith case versus the Sekera case?

23 A. Well --

24 MR. KUNZ: Speculation.

25 Go ahead.

1           THE WITNESS: From an engineering standpoint,  
2   sure, there's possibilities that can explain that.  
3   Mostly it would be: Is this area more transited by  
4   pedestrian traffic than the Sekera incident? Was the  
5   floor application put on by Venetian at the same level  
6   in that case as in this case?

7           So, yeah, there's multiple possibilities as to  
8   why you would have a discrepancy between 0.4 and 0.33.  
9   Frankly, it's not that far off.

10   BY MR. ROYAL:

11       Q.   Okay. Now, you talk about floor applications,  
12   and you make mention of that on page 2 of your initial  
13   report?

14       A.   Yes.

15       Q.   You don't identify the floor applications  
16   specifically.

17           What floor applications are you talking about?

18       A.   There are a number of commercial products by  
19   the dozen that can be applied to any walking surface  
20   that will increase the slip resistance level to 0.5 or  
21   higher. And depending on the product, it will retain  
22   that level even with a heavy volume of pedestrian  
23   traffic. It depends on the volume of traffic, it  
24   depends on the surface to which it's being applied, but  
25   there are those products out there. There's numbers of

1           A.    It tells us that the English XL Tribometer, or  
2   the XL Tribometer as it's called, is a recognized valid  
3   instrument for slip resistance testing.

4           Q.    I looked at that and maybe I missed it. I  
5   didn't see that particular equipment identified  
6   specifically there.

7                   Is it or is it just about calibration?

8           A.    No, no, no. F2508-11 is about the validation  
9   of variable instrument tribometers as an objective  
10  testing instrument for slip resistance. There's a  
11  history behind all of that, which I think you're  
12  probably aware of that.

13          Q.    I wanted to ask you about -- can you just tell  
14  me, what's the DCOF versus the SCOF?

15          A.    DCOF is the dynamic coefficient of friction and  
16  SCOF is the static coefficient of friction. The  
17  difference between the two is static coefficient of  
18  friction is the amount of force necessary to incipate  
19  [sic] motion across the surface.

20                   A dynamic coefficient of friction is the amount  
21  of force necessary to continue motion across the  
22  surface. Quite different.

23          Q.    Okay. Which one applies here?

24          A.    Static coefficient of friction.

25          Q.    And explain why that is.

1           A.     Because most heels slip first, simply cases of  
2     a walking surface not having the appropriate level of  
3     slip resistance to prevent a sudden slip.

4                     And dynamic friction slip-and-falls would mean  
5     that you're on a sheet of ice and you're sort of skating  
6     across and you ultimately lose your balance and fall.

7                     All studies that I have reviewed and all  
8     lectures I've attended through every engineering course  
9     at every school, static coefficient of friction is the  
10    primary -- in fact, 90-some percent cause of slips and  
11    falls, not dynamic friction.

12           Q.     I'm just looking at an article from 2008 that  
13    makes reference to the dynamic coefficient of friction  
14    with a -- they have a wet value of .42 or greater  
15    coefficient of friction.

16                     What would that relate to?

17           A.     To me, that is a dynamic friction level. How  
18    they got it, what they used, how many tests did they  
19    provide, what was the surface, you really can't compare  
20    dynamic coefficient of friction and static coefficient  
21    of friction mathematically or in terms of reliability in  
22    predicting slip-and-fall events. They are two  
23    completely different physical efforts.

24           Q.     Are you aware of the .42 coefficient of  
25    friction recommended level for flooring related to the

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

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

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

10 A. Yes, sir.

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

17 Did I read that correctly?

18 A. You did.

19 Q. What information are you drawing from?

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

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



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

4 Q. Did you bring that with you today?

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

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

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

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

13 A. Yes.

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

16 A. Yes.

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

18 A. Yes.

19 Q. This information of 196 slip-and-fall events  
20 was not provided in Dr. Hayes' initial report; correct?

21 That's not where you got the information?

22 A. Correct. That is true.

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

25 A. Yes, sir.

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

3 A. Correct.

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

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

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

9 A. Okay.

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

11 A. Sure.

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

14 A. Yes, sir.

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

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

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

22 Tell me what the spreadsheet looks like.

23 A. Well, a spreadsheet is a typical spreadsheet.

24 It starts at a certain date and month, year. It  
25 specifies a location. It shows a slip-and-fall and it

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

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

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

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

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

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

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

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

17 A. Yes, sir.

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

22 A. Yes, sir.

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

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

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

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

6 A. To the property, yes, sir.

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

9 A. Yes, sir.

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

13 A. There is, sir.

14 Q. Right?

15 A. Yep.

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

19 Would that be right?

20 A. I believe that's accurate.

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

24 A. I believe --

25 Q. -- number?

1 A. I believe that's accurate, yes, sir.

2 Q. And if somebody slipped and fell at the Palazzo  
3 on a marble floor, that's not part of the 196?

4 A. That would be correct.

5 Q. And if somebody slipped and fell at a  
6 convention area on a marble floor, that would not be  
7 part of the 196?

8 A. As I recall. I'm going back on memory reading  
9 line after line. I believe that would be correct.

10 Q. Okay. Did you ask Mr. Galliher where he got  
11 this information?

12 A. No, sir. He said it was just provided to him  
13 under discovery and that was it.

14 Q. Okay. Are they numbered 1 through 96?

15 A. No. They're by date. I think I testified to  
16 that to start with. You have to start out with the date  
17 and then work your way out.

18 Q. Did you count them?

19 A. Yes, I did.

20 Q. Okay. So this is something you counted?

21 A. Yes, sir.

22 Q. All right. And did you see -- did you notice  
23 that all of these 196 slip-and-fall events, did they  
24 occur due to foreign substances on the floor?

25 A. Mostly that was the case, yes, sir. As I

1 recall, they were all due to liquid contaminants.

2 Q. Okay. No trip-and-falls, nobody fainting, no  
3 drunks, you know, swaying and falling to the floor that  
4 you can recall?

5 A. No, sir.

6 Q. And that's something that if you still have it,  
7 you will produce?

8 A. Yes, sir.

9 Q. When is the last time that you looked at that?

10 A. It would have been about a month ago prior to  
11 preparing the rebuttal report.

12 Q. All right. So you would have received it,  
13 what, about five to six weeks ago?

14 A. That's fair.

15 Q. Okay. Why would you think it would be erased?

16 A. Well, I have an auto-erase on my computer that  
17 after a certain period of time, the e-mails are  
18 discarded.

19 Q. What's it set for?

20 A. Usually 30 days.

21 Q. Okay. Is there any other information that  
22 Mr. Galliher's provided you with that you think may have  
23 been erased by your auto-erase?

24 A. No, sir.

25 Q. Is there any other information that you've been

# EXHIBIT “Q”

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

1 THE GALLIHER LAW FIRM  
2 Keith E. Galliher, Jr., Esq.  
3 Nevada Bar No. 220  
4 Jeffrey L. Galliher, Esq.  
5 Nevada Bar No. 8078  
6 George J. Kunz, Esq.  
7 Nevada Bar No. 12245  
8 1850 East Sahara Avenue, Suite 107  
9 Las Vegas, Nevada 89104  
10 Telephone: (702) 735-0049  
11 Facsimile: (702) 735-0204  
12 [kgalliher@galliherlawfirm.com](mailto:kgalliher@galliherlawfirm.com)  
13 [jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)  
14 [jkunz@lvlawguy.com](mailto:jkunz@lvlawguy.com)  
15 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

12 JOYCE SEKERA, an Individual,  
13  
14 Plaintiff,

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

15 v.

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

**PLAINTIFF'S SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS AND**

**MATERIALS TO DEFENDANT**

26 TO: VENETIAN CASINO RESORT, LLC. d/b/a THE VENETIAN LAS VEGAS,  
27 Defendant; and  
28



1 TO: MICHAEL A. ROYAL, ESQ. with ROYAL & MILES LLP., attorneys for Defendant  
2 Plaintiff, JOYCE SEKERA, by and through her attorneys, THE GALLIHER LAW FIRM,  
3 hereby makes the following Sixth Request for Production of Documents upon Defendant:

4 REQUEST NO. 23:

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

8 REQUEST NO. 24:

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

12 REQUEST NO. 25:

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

17 REQUEST NO. 26:

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

22 REQUEST NO. 27:

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

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

2 REQUEST NO. 28:

3 Any and all current and dated policies, procedures and training manuals and amendments  
4 referencing standards for flooring and procedures for slip and falls including, but not limited to a  
5 copy of "Preventing Slips, Trips and Falls."  
6

7 REQUEST NO. 29:

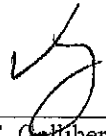
8 Any and all complaints submitted by guests or other individuals regarding the safety of the  
9 marble floors.

10 REQUEST NO. 30:

11 Any and all quotes and estimates and correspondence regarding quotes and estimates relating  
12 to the modification of the marble floors to increase their slip resistance.

13 DATED this 31<sup>st</sup> day of May, 2019.

14 THE GALLIHER LAW FIRM

15  
16   
17 \_\_\_\_\_  
18 Keith E. Galliher, Jr., Esq.  
19 Nevada Bar No. 220  
20 1850 E. Sahara Avenue, Suite 107  
21 Las Vegas, Nevada 89104  
22 Attorney for Plaintiff  
23  
24  
25  
26  
27  
28

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT** was serve on the 31<sup>st</sup> day of May, 2019, to the following addressed parties by:

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

☐ Facsimile, pursuant to EDCR 7.26 (as amended)

☒ Electronic Mail/Electronic Transmission

☐ Hand Delivered to the addressee(s) indicated

☐ Receipt of Copy on this \_\_\_\_\_ day of May, 2019,

acknowledged by, \_\_\_\_\_

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

  
An Employee of THE GALLIHER LAW FIRM

# EXHIBIT “R”

*Steven D. Grierson*

1 **DCRR**  
2 FARHAN R. NAQVI  
3 Nevada Bar No. 8589  
4 SARAH M. BANDA  
5 Nevada Bar No. 11909  
6 NAQVI INJURY LAW  
7 9500 West Flamingo Road, Suite 104  
8 Las Vegas, Nevada 89147  
9 Telephone: (702) 553-1000  
10 Facsimile: (702) 553-1002  
11 naqvi@naqvilaw.com  
12 sarah@naqvilaw.com  
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 ANGELICA BOUCHER, individually,  
12  
13 Plaintiff,

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

14 vs.

**DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATION**

15 VENETIAN CASINO RESORT, LLC d/b/a  
16 VENETIAN RESORT HOTEL CASINO  
17 d/b/a THE VENETIAN d/b/a THE  
18 VENETIAN/THE PALAZZO; LAS VEGAS  
19 SANDS, LLC d/b/a VENETIAN RESORT  
20 HOTEL CASINO / PALAZZO RESORT  
21 HOTEL CASINO d/b/a THE VENETIAN  
22 CASINO d/b/a VENETIAN CASINO  
23 RESORT; LAS VEGAS SANDS CORP.;  
24 DOES 1 through 100 and ROE  
25 CORPORATIONS 1 through 100, inclusive,

26 Defendants.

23 HEARING DATE: June 14, 2019

24 HEARING TIME: 9:30 a.m.

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

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



I.

**FINDINGS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 20 II.

### 21 RECOMMENDATIONS

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

25 IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce the  
26 *subject to a privilege log, and* entire pre-litigation claims file, with reference to bates number. This includes, but is not limited  
27 to, every note, email, and correspondence regarding the incident at issue. If there is no specific  
28



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

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

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

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

21 IT IS HEREBY FURTHER RECOMMENDED that Defendant shall produce documents  
22 related to repairs, replacements, improvements, and/or changes to the walking surface<sup>In the subject lobby (EN)</sup> including,  
23 but not limited to, tile replacement, from five years prior to the subject Incident to the present. If  
24 no such documentation exists, the Defendant must state that no such documentation exists  
25 (Request No. 15).

1  
2  
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IT IS HEREBY FURTHER RECOMMENDED that sub rosa documents<sup>surveillance,</sup> and information shall be produced within 30 days after the Plaintiff's deposition or it cannot be utilized at trial by the Defendant for any purpose. If sub rosa is conducted after the Plaintiff's deposition, said document and information must be produced within 30 days of receipt by counsel. If no such<sup>a</sup> documentation exists, the Defendant must state that no such documentation exists (Request No. 16).

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

IT IS HEREBY FURTHER RECOMMENDED that Defendant must produce any and all documents regarding action taken following the subject Incident to render the Walking Surface<sup>Q1</sup> in a safer condition and/or any changes made to the Walking surface since the Incident, including subsequent remedial measures. If no such documentation exists, the Defendant must state that no such documentation exists. (Requests No. 19 and 20).

IT IS HEREBY FURTHER RECOMMENDED that the individual employee files are<sup>who had the</sup> PROTECTED WITHOUT PREJUDICE until he/she is identified as an employee with<sup>responsibility to maintain or inspect</sup> knowledge of or involvement in the incident or inspection<sup>Q1</sup> of the area on the day of the incident at issue. (Request No. 22).

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



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

4 IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce  
5 citations, warnings, reprimands, and/or code violations Defendant received concerning the  
6 subject lobby flooring in the Premises in the five years preceding the subject Incident through  
7 the present. If no such documentation exists, the Defendant must state that no such  
8 documentation exists (Request No. 25).  
9

10 IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce  
11 documents and items evidencing any inspection, maintenance and/or cleaning performed on the  
12 Walking Surface in the subject lobby during the 24-hour period prior to the Incident through the  
13 24-hour period after the subject Incident including but not limited to, any maintenance logs  
14 (Request No. 29).  
15

16 IT IS HEREBY FURTHER RECOMMENDED that Plaintiff's Request for Sanctions is  
17 DENIED.  
18

19 IT IS HEREBY FURTHER RECOMMENDED that *Defendant's Countermotion for*  
20 *Protective Order* is GRANTED WITHOUT PREJUDICE as to the personnel files as outlined  
21 above and DENIED on the issues of construction/repairs and incident reports. On the issue of  
22 incident reports stemming from unrelated incidents, Defendant must hold an EDCR 2.34  
23 meeting and file a separate Motion as incident reports were not addressed in Plaintiff's  
24 underlying Motion to Compel.  
25

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

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

6 DATED this 5<sup>th</sup> day of July, 2019.

7   
8

9 DISCOVERY COMMISSIONER

10 Respectfully Submitted by:

11 NAQVI INJURY LAW

12   
13

14 FARHAN R. NAQVI, ESQ.  
15 Nevada Bar No. 8589  
16 SARAH M. BANDA, ESQ.  
17 Nevada Bar No. 11909  
18 9500 West Flamingo Road, Suite 104  
19 Las Vegas, Nevada 89147  
20 *Attorneys for Plaintiff*

Approved as to Form and Content by:

MESSNER REEVES LLP

21 refused to sign  
22

23 MICHAEL M. EDWARDS, ESQ.  
24 Nevada Bar No. 6281  
25 DAVID P. PRITCHETT, ESQ.  
26 Nevada Bar No. 10959  
27 8945 W. Russell Road Suite 300  
28 Las Vegas, Nevada 89148  
*Attorney for Defendant*

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4  
5 **NOTICE**

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

11 **Objection time will expire on July 23 2019.**

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

13 \_\_\_\_\_ Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_\_ day of  
14 \_\_\_\_\_ 2019;

15 ☒ Electronically filed and served counsel on July 9, 2019, Pursuant to  
16 N.E.F.C.R. Rule 9.  
17  
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21

22 By:   
23 COMMISSIONER DESIGNEE  
24  
25  
26  
27  
28

# EXHIBIT “S”



1 **ORDR**

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](mailto:mroyal@royalmilesllp.com)

12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: 25

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,

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER GRANTING  
DEFENDANTS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT ON MODE OF  
OPERATION THEORY OF LIABILITY**

27 Defendants.

28  
29 Defendants VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC  
30 (collectively *Venetian*), filed Defendants Motion for Partial Summary Judgment on Mode of Operation  
31 Theory of Liability on May 21, 2019. Plaintiff filed an opposition on May 28, 2019. Defendants filed  
32 a reply on June 18, 2019. A hearing was held on June 25, 2019, Keith E. Galliher, Jr., Esq., and  
33 Kathleen H. Gallagher, Esq., of The Galliher Law Firm, representing Plaintiff JOYCE SEKERA, and  
34 Michael A. Royal, Esq., of Royal & Miles LLP, representing Venetian. Upon review of the motion,

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

1 all responses thereto, the papers and pleadings on file, and argument presented at the hearing, the  
2 Court hereby issues the following findings, conclusions of law and order.

3 **FINDINGS OF FACT**

4 1. The Venetian Resort Hotel Casino (*Venetian property*) is a Las Vegas business which  
5 provides hotel accommodations, gaming, entertainment, bars and restaurants to guests.

6 2. The Venetian property does not restrict guests from moving through its premises with  
7 food and/or drinks.

8 3. On November 4, 2016, Plaintiff slipped and fell in the Grand Lux rotunda area of the  
9 Venetian property.

10 4. There are multiple restaurants, shops, bars and other places to purchase food and  
11 beverages in the area surrounding the Grand Lux rotunda and throughout the Venetian Property.

12 5. There is no evidence that as a business owner, Venetian chose a mode of operation that  
13 requires its customers/guests to perform self-service tasks traditionally performed by Venetian  
14 employees.

15 6. There is no evidence that the hazard of which Plaintiff claims to have caused or  
16 contributed to the Subject Incident (*Alleged Condition*) was created by a Venetian customer or guest  
17 performing a self-service task traditionally conducted by employees.

18 7. There is no evidence in this action that the Alleged Condition was the result of a  
19 Venetian customer or guest performing a self-service task traditionally performed by employees.

20 8. There are no genuine issues of material fact which preclude the Court from considering  
21 the pending motion for partial summary judgment on the mode of operation theory of liability.

22 ///

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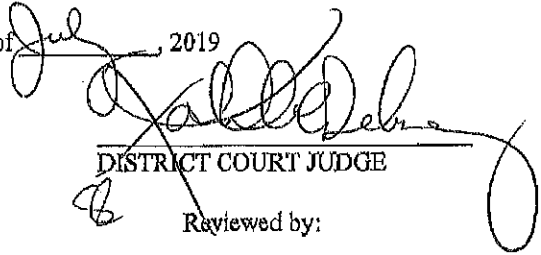
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1 IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff is  
2 precluded from having the jury instructed on the mode of operation theory of liability at trial.

3 DATED this 19<sup>th</sup> day of July, 2019

4  
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6   
DISTRICT COURT JUDGE

7 Submitted by:

8   
ROYAL & MILES LLP

9  
10 Michael A. Royal, Esq.  
11 Nevada Bar No. 4370  
12 Gregory A. Miles, Esq.  
13 Nevada Bar No. 4336  
14 1522 W. Warm Springs Road  
Henderson, NV 89014  
Attorneys for Defendants  
VENETIAN CASINO RESORT, LLC and  
LAS VEGAS SANDS, LLC

Reviewed by:

THE GALLIHER LAW FIRM  


Keith E. Galliher, Jr., Esq.  
Nevada Bar No. 220  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, NV 89014  
Attorneys for Plaintiff  
JOYCE SEKERA

# EXHIBIT “T”

## The Venetian Las Vegas The

Venetian Las Vegas



### Privacy Policy

*Last Updated: May 2018*

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. In order to provide multiple access points to the services and products we offer, the Company operates many websites, including, but not limited to, [www.venetian.com](http://www.venetian.com); [www.palazzo.com](http://www.palazzo.com); [www.pasands.com](http://www.pasands.com); and [www.sands.com](http://www.sands.com). Any one of these websites may ask for and collect your personal data in order to provide you with our products and/or services, enhance your experience, and provide you with other relevant information about our offerings. 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

[CHECK RATES](#)

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.

#### **Note to EU and non-EU Residents**

The Company respects all individuals' privacy rights under all the laws that apply to it, all over the world. We work to comply with privacy laws, including, but not limited to, any right you may have if you live in or visit the United States, Macao, or Singapore where our properties are located.

The Company voluntarily tries to accommodate privacy requests made by individuals. Each request is evaluated to determine whether it can be accommodated without violating legal obligations and without creating a risk to the security or integrity of the other information we hold.

For residents of the European Union ("EU"), European Economic Area ("EEA") and Switzerland, the Company recognizes the legal privacy protections afforded to individuals located in the EEA, the EU, and Switzerland, with regard to personal data. For more information about this, please read the Notice to Residents of the EU, EEA, and Switzerland provided below.

#### **Personal Data We Collect and Use**

##### **General Information**

When you use the Internet, your computer may transmit certain information to the servers that host the websites you visit. The information may include the type of Internet browser you are using, the type of computer operating system you are using, your Internet Protocol (IP) address, the pages you visited on our websites, and how you arrived at our websites. When you visit our websites, we collect this information, and we use this information to create a better user experience, to identify areas for improvement on our websites, to enhance the security of our systems, and to provide information on our special offers and promotions.

##### **Cookies**

*What Are Cookies?:* A "cookie" is a small text file that a website can place on your computer to store your preferences. Cookies are not personally identifiable by themselves, but they can be linked to personal data you provide to us.

*How We Use Cookies:* We may use cookies, including Google Analytics, so that we can improve your online experience, including to detect your browser's capabilities, to track ads we display to you, to store login and purchase information of your choice, and to generate statistics on website usage.

*Your Control of Cookies:* Most web browsers allow some control of cookies through your browser settings. You can opt out of cookies and advertising related to the same by visiting the Network Advertising Initiative opt-out page: <http://www.networkadvertising.org/choices>.

According to its own policy, Google does not collect any personal data using Google Analytics. Nevertheless, if you do not want to use the remarketing feature from Google, you can disable it by changing the appropriate settings at <http://www.google.com/settings/ads>.

You have many choices to manage cookies on your computer. Most browsers allow you to block or delete cookies from your system, and you can set most browsers to prevent cookies from being placed on your devices. If you do this, however, you may have to manually adjust preferences every time you visit our websites and it may not be possible to use the full functionality of the websites. To learn more about your ability to manage cookies, please consult the privacy features in your browser.

#### **Personal Data**

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.

*When you enroll in our loyalty program,* we also may collect your name, title, date of birth, and email address.

*When you complete a credit application,* we also may collect your credit information including your name, mailing address, email address, phone number, date of birth, credit score, Social Security number, employment information, financial information, including bank account and bank rating information, supporting your eligibility to receive credit, other lines of casino credit in your name, and other information you provide to us to assist us in making a determination concerning extending credit to you.

*When you complete an employment application,* we also may collect your name or aliases, current and previous, mailing address information, current and previous, email address, phone number, date of birth, Social Security number, employment history, credit history, education, training, and skills, including licenses and certificates, convictions for felonies or misdemeanors,

proof of eligibility to work in the United States, military service, and any other information provided in your employment application form.

#### **Information Collected During Your Stay**

*Check-In Information:* When you provide your personal data to make your reservation, whether it be through our websites, by phone, or in person at one of our properties, we may use that data to complete your reservation request. We also may need to collect information to comply with local laws, including your passport number, type of entry visa, date and place of birth, and driver's license number. If you choose to provide it, we also may collect additional information from you, including your frequent flyer or travel partner program information.

*Preferences and Marketing:* When you check in, you may be asked whether you wish to receive promotional and other marketing materials, including your interest in participating in contests, promotional offers, or using certain services we can provide to you, such as membership in our loyalty program. We also may send surveys to you to learn more about your stay and preferences. You may withdraw your consent to receive marketing and promotional materials at any time.

*Itemized Spending:* During your stay, we record your itemized spending related to your reservation. This includes your room rate, other expenses billed to your room, food and beverage preferences, and other special requests. We collect and record this information to keep a record of your expenses and preferences during your stay and provide it to you upon check-out.

*Video Surveillance:* We use closed circuit television and other security systems to monitor all gaming areas as required by the applicable local regulatory gaming authorities, as well as other public or sensitive areas of our properties for safety and security. Video surveillance cameras are used to protect us, our guests, and our employees. We monitor our surveillance cameras, and may share surveillance footage with law enforcement and/or regulatory authorities.

#### **Other Sources of Data**

When you interact with one of our properties, others may provide your information to us so that we can provide products and services.

*Vendors, Suppliers, and Others Doing Business with Us:* We have strict rules in place to comply with the laws that apply to us. Before we do business with a third party, we take reasonable steps to make sure that they will prudently protect the information we share with each other, including your personal data they may collect or receive.

*Casino Credit:* For guests who request casino credit at our properties, we may collect/check, or hire a third party to collect/check, public records available about you. We must collect this

information to comply with the law, and to protect against financial risk.

*Meetings, Incentives, Conferences and Exhibitions (MICE):* We may collect your data through events you attend with our exhibitor clients at any of our MICE event spaces. When you attend an event and provide personal data during the registration process to exhibitors, we may have access to your personal data because we collect certain information from the exhibitors.

*Third Parties Authorized By You:* When someone else arranges for you to interact with our properties, they may provide us information so that we can provide you with products and/or services during your visit. For example, when your employer or a travel agent arranges for you to stay at one of our properties, they may provide us with the information listed above so that we can provide you with products and services.

### Legal Gaming Age Policy

Persons under the age of twenty-one (21) are not permitted to gamble at our properties or loiter in casino areas. Our websites are not intended for persons under the age of 21. In accordance with the Children's Online Privacy Protection Act, persons younger than 21 years of age are not allowed to use our websites, accept offers, or win contests, and we do not knowingly collect information from such persons. The Company does not knowingly collect personal information from children under the age of 16. Children are not permitted to use our websites or services, and the Company requests that children under the age of 16 not submit any personal information to it, using its websites or any other method. Since information regarding children under the age of 16 is not collected, the Company does not knowingly distribute personal information regarding children under the age of 16.

### How We May Use Your Information

Your privacy is important to us. We collect and use information we believe is necessary to our business, and to provide you with the products, services, and experiences you expect when you interact with us. When we collect and use your information, we take your privacy and security very seriously.

We collect personal data to deliver superior quality of service. We will use the information you provide to us for the purpose you provided it to us (e.g., to make a reservation and book a suite at one of our properties), which is stated when information is collected. We may also use your information in other ways for our business purposes and to provide you with the products, services, and experiences you request and expect from us, including but not limited to the following purposes:

- fully respond to your questions, requests, or communications
- to provide you with products and services, including but not limited to loyalty membership and benefits and display of content
- to check if you qualify for certain offers or services (e.g., casino credit, special events,



promotional offers, etc.) and for payment and billing for products and services.

- to develop new products and services
- to improve and personalize the guest experience for you and others
- to audit, research and conduct analysis in order to maintain and improve our services and protect our guests and patrons
- for guest reservations and/or requests for information or services
- for marketing and promotions planning and execution, market research and analysis, customer satisfaction and quality assurance surveys
- to ensure third parties protect your information
- to consider your job application
- to comply with applicable laws and regulations
- for safety and security, including working with third parties to help protect your information
- to ensure the technical functioning and security of our network
- to protect the rights or property of the Company, its employees, and its guests and patrons

### **How We Share Information**

We may share information about you to the third parties as indicated below:

*Promotions:* From time to time we may run promotions or marketing efforts, such as contests, sweepstakes, and/or giveaways with third parties. If you choose to participate in any such promotions, then any personal data you provide in order to participate may be shared with those third parties and be subject to their privacy policies.

*Affiliates:* We may share your personal data with our other properties, subsidiaries, and third parties if we need to. If we share your information, we will share only the information that is necessary and we will take reasonable steps to make sure that third parties take prudent steps to protect your information.

*Agents:* We use others to help us provide some of our products and services (e.g., maintenance, IT support, analysis, audit, payments, marketing, development, credit, reservations, and security). Unless we tell you differently or as described elsewhere in this Privacy Policy, our agents are expected not to have the right to use your information beyond what is needed to assist us.

*Legal Requests:* We may be required to respond to legal requests for your information, including from law enforcement authorities, regulatory agencies, third party subpoenas, or other government officials.

*Compliance with Legal Obligations:* We may have to disclose certain information to auditors, government authorities, or other authorized individuals in order to comply with laws that apply to us or other legal obligations such as contractual requirements.

*Changes in Business Structure/Ownership:* We may disclose or transfer your personal data to a

third party in the event of any reorganization, merger, sale, joint venture, assignment, transfer, or other disposition of all or any portion of the Company's business, assets, or stock (including any bankruptcy or similar proceedings).

### **Your Choices Regarding Your Information**

For all personal data that we have about you, you have the following rights and/or choices that we will accommodate where your requests meet legal and regulatory requirements and do not risk making other data less secure or changing other data:

*Opt Out, Object, Withdraw Consent:* You can always choose not to disclose certain information to us. Where we rely on your consent to process your personal data, you have the right to withdraw or decline consent at any time. If you have provided us with your email address and you would like to stop receiving marketing emails from us, click on the unsubscribe link at the bottom of any of our email communications. If you do not wish to receive marketing communications from us via direct mail, or if you want to request that we do not share your contact information with our marketing partners, please contact us using the methods in the Contact Us section and include your name, address, and any other specific contact information that you wish to restrict.

*Automated Decision-making:* We may use automated decision-making to determine whether job applicants meet the required qualifications. You have the right to have a human involved in this process, to express your point of view, and to contest the decision. You may do so by using the methods in the Contact Us section below.

*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.

*Data Portability:* If you would like to request that we provide a copy of your information to you, please contact us using the methods in the Contact Us section below.

*Responding to Requests:* Each request to access, correct, restrict processing, erase, or provide a copy of data will be evaluated to determine whether the requested change meets legal regulatory requirements and does not risk making our other data less secure or changing our other data.

*Complaints to Supervisory Authority:* If you find yourself in the European Economic Area, European Union, or Switzerland, you have the right to lodge a complaint with a supervisory authority of the European Union or European Economic Area according to that authority's rules and procedures.

### **How We Protect Your Personal Data**

We strive to take appropriate security measures to help safeguard your personal data from unauthorized access and disclosure. For example, only authorized employees are allowed to access personal data, and they may only access it for permitted business functions. We also use technology to protect your information, including encrypting sensitive personal data that is transferred to or from our systems and using firewalls to help prevent unauthorized persons from accessing information. If you have an online account with us, your account is also protected by a password for your privacy and security, and you must prevent unauthorized access to your account and personal data by selecting and protecting your password appropriately, limiting access to your devices, and by signing off after you have finished accessing your account.

While we cannot guarantee that loss, misuse, or alteration of information will never occur, we use reasonable efforts to prevent it. Please keep in mind that no method of storage or transmission over the Internet is completely secure, so your use of our products and services and provision of information to us is at your own risk.

Please be aware that our websites may contain links to other sites on the Internet that are owned and operated by third parties. The information practices of those websites linked to our websites are not covered by this Privacy Policy. We are not responsible for the privacy policies of websites to which our website links. If you provide any information to such third parties, different rules regarding the collection and use of your personal data may apply. We strongly suggest you review such third party's privacy policies before providing any data to them.

#### **Notice to Residents of the EU, EEA, and Switzerland**

If you reside or otherwise find yourself in the European Economic Area, European Union, or Switzerland, the Company is committed to respecting your rights as a data subject under the applicable laws of these countries. If you have a privacy concern or questions about how your personal data is used, please contact us using the methods in the Contact Us section below.

Consistent with our values, we observe the following privacy principles when collecting or processing your personal data:

- Data will be processed fairly and in accordance with applicable law.
- Data will be collected for specified and legitimate purposes, and will not be processed in ways that are incompatible with those purposes.
- Data collection and use will be limited to what is relevant for the specified purposes and will not be excessive. We will limit the amount and type of information gathered to what is necessary for the uses and purposes defined in this Privacy Policy.
- We will only collect and process personal data about you where we have a lawful basis. Lawful bases include consent (where you have given consent), contract (where we must process your personal data based on a contract we have with you, for example, to deliver requested products or services), and legitimate interests (where processing is necessary for the purposes of

compelling legitimate interests of the Company that are not overridden by your rights).

- Data subjects in the European Union, European Economic Area, and Switzerland will be asked to provide their clear and unambiguous consent for collection, processing, and transfer of their personal data.
- We will keep your personal data as accurate, complete, and up-to-date as necessary, and we will take reasonable steps to correct or delete personal data that is inaccurate or incomplete. If you think that your information is inaccurate or incomplete, please contact us using the methods in the *Contact Us* section below.
- Data will only be kept where it is necessary for the purposes for which it was collected and processed. Those purposes are defined in this Privacy Policy.
- We are required by law to comply with many regulations that require us to keep information, including your personal data, for varying time periods. We must evaluate any request to change or delete information, including your information, prior to fulfilling such request to make sure that the requested change or deletion meets legal regulatory requirements and does not change our other data or make it less secure.
- Your data will be deleted or amended if we receive a relevant request from you, if we are permitted by law to do so, and if making the change does not risk making other data less secure or risk changing other data. Please contact us using the methods in the *Contact Us* section below to submit a request.
- We have taken appropriate measures to prevent unauthorized access, loss, use, or damage to your personal data.

*International Transfers of Personal Data:* If you are located outside the United States and you interact with our website or provide your personal data, then your personal data may be transferred to the United States, Macao, or Singapore. If you are located in the European Economic Area, European Union, or Switzerland, please note that the United States, Macao, and Singapore currently are not on the list of countries that the European Commission considers adequate regarding the protection of personal data.

### **Changes to this Privacy Policy**

We reserve the right to modify or change this Privacy Policy at any time. When we make a material change to this Privacy Policy, we will inform you by posting a prominent notice on the home page of our website or changing the date on this page noting when the Privacy Policy was last updated.

### **Contact Us**

For questions regarding this Privacy Policy or to submit any of the requests mentioned above relating to your personal data, contact us using any of the following options:

#### *Mail*

Privacy Office, Legal Department  
Las Vegas Sands Corp.

3355 Las Vegas Boulevard South  
Las Vegas, Nevada 89109

*Email*

Privacy@Sands.com

PRIVACY POLICY

FAQ

CONTACT US

*Reservations*

CAREER

PRESS

EMAIL SIGN-UP

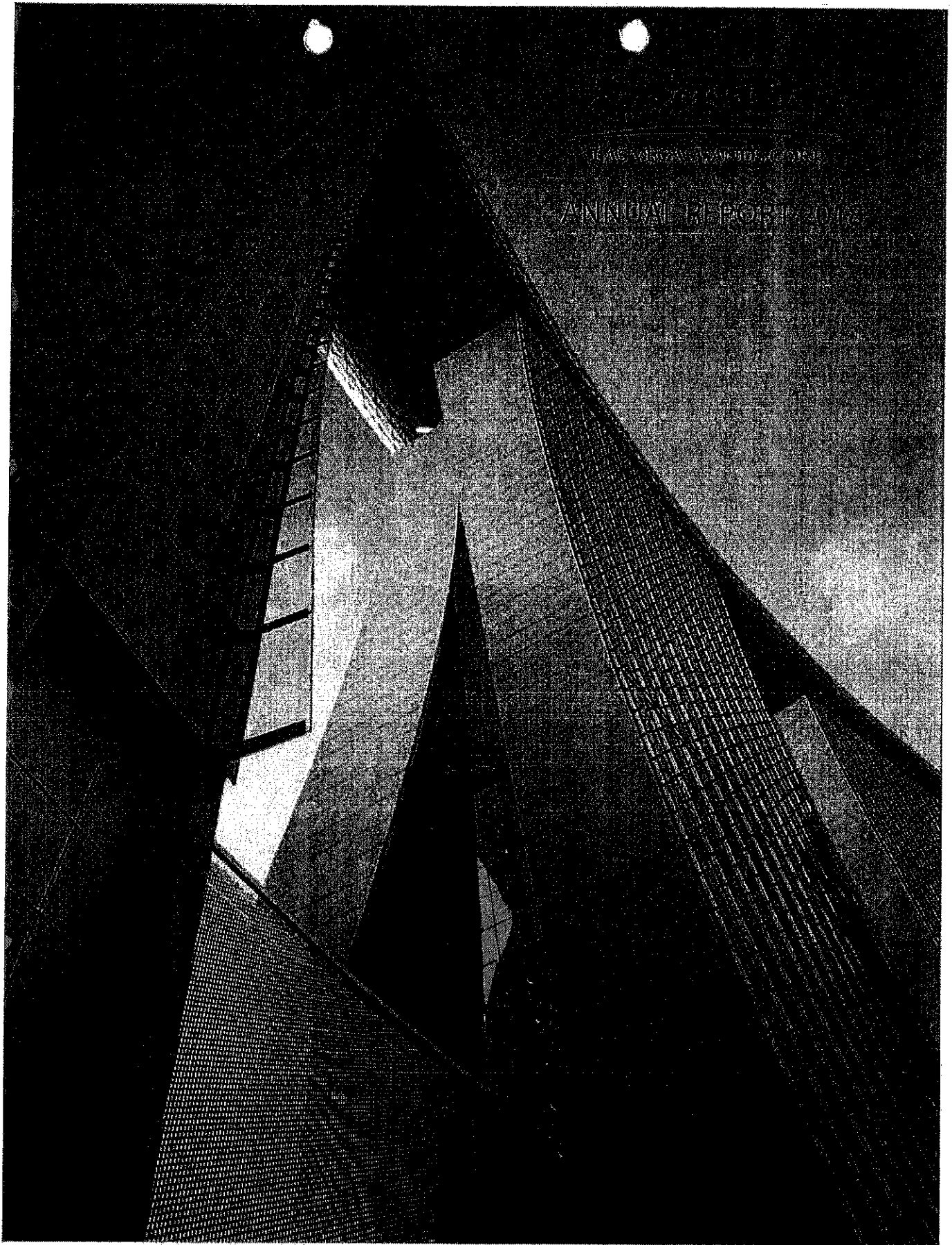
866.659.9643

*Concierge*

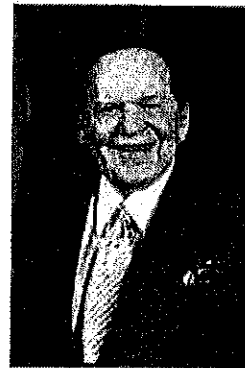
866.725.2990

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# EXHIBIT “U”



*F*ellow Shareholders,



I am pleased to present to you our 2018 Annual Report.

Las Vegas Sands had another good year in 2018. The company delivered strong financial and operating results, generating industry-leading adjusted property EBITDA, cash flows and profit. We also contributed meaningfully to leisure and business tourism appeal, employment, and support for local businesses in each of our markets.

The strength of our business model and cash flow allowed us to invest in future growth initiatives in each of our markets while also increasing the return of capital to shareholders during the year. We returned over \$3.2 billion of capital to shareholders in 2018. We increased our recurring dividend, as we have in each year since we established our recurring dividend in 2012, to \$3.08 per share for the 2019 year. We continue to fortify our industry-leading balance sheet, which remains an important competitive advantage as we pursue new development opportunities in new markets, including in Japan.

Macao's development and evolution as Asia's leading tourism destination accelerated during 2018. Market-wide visitation from China reached a record 25.2 million visits, an increase of 14% compared to last year. Growth in MICE (meetings, incentive, convention, and exhibition), retail, and entertainment were all on display in Macao this year, as we continue to contribute to Macao's diversification.

The company has invested more than \$13.0 billion to deliver on our promise to help Macao in its diversification and its continued evolution into the world's leading leisure and business tourism destination. Over the next three years, we will increase our total investment to over \$15 billion as we make additional investments of \$2.2 billion to expand the market-leading scale of our hotel room, retail and entertainment offerings on Cotai.

In Singapore, Marina Bay Sands again delivered impressive financial and operating performance while continuing to contribute to Singapore's leisure and business tourism appeal. Marina Bay Sands stands as the pre-eminent reference site for new jurisdictions considering the opportunity to harness the economic power and direct contributions to tourism, employment and GDP growth of our unique convention-based Integrated Resort business model.

Our Las Vegas properties enjoyed strong financial performance in 2018, bolstered by robust convention and group meeting business.

Importantly, the benefits of our convention-based Integrated Resort business model extend far beyond our own financial success. The company's properties and service offerings increase the appeal of our host cities and countries as leisure and business tourism destinations, while helping to diversify their economies, attract outside investment and increase employment. I am proud to highlight the positive impact the company and our more than 50,000 team members bring to the local communities in which we operate.

Thank you for the confidence you have shown in our company. We look forward to sharing with you the ongoing success of the company in the years ahead.

A handwritten signature in dark ink, appearing to read 'Sheldon G. Adelson'.

Sheldon G. Adelson  
Chairman of the Board and Chief Executive Officer  
April 2019



# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## Form 10-K

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2018

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number 001-32373

### LAS VEGAS SANDS CORP.

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of  
incorporation or organization)

3355 Las Vegas Boulevard South  
Las Vegas, Nevada

(Address of principal executive offices)

27-0099920

(IRS Employer  
Identification No.)

89109

(Zip Code)

Registrant's telephone number, including area code:

(702) 414-1000

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class  
Common Stock (\$0.001 par value)

Name of Each Exchange on Which Registered  
New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports); and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

☒

Accelerated filer

☐

Emerging growth company

☐

Non-Accelerated filer

☐

Smaller reporting company

☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

As of June 29, 2018, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was \$27,125,139,905 based on the closing sale price on that date as reported on the New York Stock Exchange.

The Company had 775,051,979 shares of common stock outstanding as of February 19, 2019.

#### DOCUMENTS INCORPORATED BY REFERENCE

##### Description of document

Portions of the definitive Proxy Statement to be used in connection with the registrant's 2019 Annual Meeting of Stockholders

##### Part of the Form 10-K

Part III (Item 10 through Item 14)

**Las Vegas Sands Corp.**

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## PART I

### ITEM 1. — BUSINESS

#### Our Company

Las Vegas Sands Corp. ("LVSC," or together with its subsidiaries "we" or the "Company") is a Fortune 500 company and the leading global developer of destination properties ("Integrated Resorts") that feature premium accommodations, world-class gaming, entertainment and retail, convention and exhibition facilities, celebrity chef restaurants and other amenities.

We currently own and operate Integrated Resorts in Asia and the United States. We believe our geographic diversity, best-in-class properties and convention-based business model provide us with the best platform in the hospitality and gaming industry to continue generating substantial growth and cash flow while simultaneously pursuing new development opportunities. Our unique convention-based marketing strategy allows us to attract business travelers during the slower mid-week periods while leisure travelers occupy our properties during the weekends. Our convention, trade show and meeting facilities, combined with the on-site amenities offered at our Macao, Singapore and Las Vegas Integrated Resorts, provide flexible and expansive space for conventions, trade shows and other meetings.

We focus on the mass market, which comprises our most profitable gaming segment. We believe the mass market segment will continue to have long-term growth as a result of the introduction of more high-quality gaming facilities and non-gaming amenities into our various markets.

Our properties also cater to VIP and premium players by providing them with luxury amenities and high service levels. The Paiza Club located at our properties is an important part of our VIP gaming marketing strategy. Our Paiza Clubs are exclusive invitation-only clubs available to our premium players that feature high-end services and amenities, including luxury accommodations, restaurants, lounges and private gaming salons. We also offer players club loyalty programs at our properties, which provide access to rewards, privileges and members-only events. Additionally, we believe being in the retail mall business and, specifically, owning some of the largest retail properties in Asia will provide meaningful value for us, particularly as the retail market in Asia continues to grow.

Through our 70.0% ownership of Sands China Ltd. ("SCL"), we own and operate a collection of Integrated Resorts in the Macao Special Administrative Region ("Macao") of the People's Republic of China ("China"). These properties include The Venetian Macao Resort Hotel ("The Venetian Macao"); Sands Cotai Central; The Parisian Macao; The Plaza Macao and Four Seasons Hotel Macao, Cotai Strip (the "Four Seasons Hotel Macao"); and the Sands Macao.

In Singapore, we own and operate the iconic Marina Bay Sands, which has become one of Singapore's major tourist, business and retail destinations since its opening in 2010.

Our properties in the United States include The Venetian Resort Las Vegas, a luxury resort on the Las Vegas Strip, and the Sands Expo and Convention Center (the "Sands Expo Center," and together with The Venetian Resort Las Vegas, the "Las Vegas Operating Properties") in Las Vegas, Nevada and the Sands Casino Resort Bethlehem (the "Sands Bethlehem") in Bethlehem, Pennsylvania.

We are dedicated to being a good corporate citizen, anchored by the core values of serving people, planet and communities. We strive to deliver a positive working environment for our team members worldwide and pledge to promote the advancement of aspiring team members through a range of educational partnerships, grants and leadership training. We also drive social impact through the Sands Cares charitable giving and community engagement program, and environmental performance through the award-winning Sands ECO360 global sustainability program. Through our Sands ECO360 global sustainability program, we develop and implement environmental practices to protect natural resources, offer our team members a safe and healthy work environment, and enhance the resort experiences of our guests. We are committed to creating and investing in industry-leading policies and procedures to safeguard our patrons, partners, employees and neighbors. Our industry-leading Integrated Resorts provide substantial contributions to our host communities including growth in leisure and business tourism, sustained job creation and ongoing financial opportunities for local small and medium-sized businesses.

LVSC was incorporated in Nevada in August 2004. Our common stock is traded on the New York Stock Exchange (the "NYSE") under the symbol "LVS." Our principal executive office is located at 3355 Las Vegas Boulevard South,

Las Vegas, Nevada 89109 and our telephone number at that address is (702) 414-1000. Our website address is [www.sands.com](http://www.sands.com). The information on our website is not part of this Annual Report on Form 10-K.

Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, proxy statements and other Securities and Exchange Commission ("SEC") filings, and any amendments to those reports and any other filings we file with or furnish to the SEC under the Securities Exchange Act of 1934 are made available free of charge on our website as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC and are also available at the SEC's web site address at [www.sec.gov](http://www.sec.gov).

Investors and others should note we announce material financial information using our investor relations website (<https://investor.sands.com>), our company website, SEC filings, investor events, news and earnings releases, public conference calls and webcasts. We use these channels to communicate with our investors and the public about our company, our products and services, and other issues.

In addition, we post certain information regarding SCL, a subsidiary of Las Vegas Sands Corp. with ordinary shares listed on The Stock Exchange of Hong Kong Limited, from time to time on our company website and our investor relations website. It is possible the information we post regarding SCL could be deemed to be material information.

The contents of these websites are not intended to be incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file or furnish with the SEC, and any reference to these websites are intended to be inactive textual references only.

This Annual Report on Form 10-K contains certain forward-looking statements. See "Item 7 — Management's Discussion and Analysis of Financial Condition and Results of Operations — Special Note Regarding Forward-Looking Statements."

Our principal operating and developmental activities occur in three geographic areas: Macao, Singapore and the United States. Management reviews the results of operations for each of its operating segments, which generally are our Integrated Resorts. In Macao, our operating segments are: The Venetian Macao; Sands Cotai Central; The Parisian Macao; The Plaza Macao and Four Seasons Hotel Macao; and Sands Macao. In Singapore, our operating segment is Marina Bay Sands. In the United States, our operating segments are the Las Vegas Operating Properties and Sands Bethlehem. We also have ferry operations and various other operations that are ancillary to our Macao properties (collectively, "Ferry Operations and Other") that we present to reconcile to our consolidated statements of operations and financial condition. In addition to our reportable segments noted above, management also reviews construction and development activities for each of our primary projects currently under development, which include the expansion and rebranding of Sands Cotai Central to The Londoner Macao, the Four Seasons Tower Suites Macao, the St. Regis Tower Suites Macao and our Las Vegas condominium project (for which construction currently is suspended) in the United States.

### **Strengths and Strategies**

We believe we have a number of strengths that differentiate our business from our competitors, including:

**Diversified, high quality Integrated Resort offerings with substantial non-gaming amenities.** Our Integrated Resorts feature non-gaming attractions and amenities including world-class entertainment, expansive retail offerings and market-leading meetings, incentives, conventions and exhibitions ("MICE") facilities. These attractions and amenities enhance the appeal of our Integrated Resorts, contributing to visitation, length of stay and customer expenditure at our resorts. The broad appeal of our market-leading Integrated Resort offerings in our various markets enables us to serve the widest array of customer segments in each market.

**Substantial and diversified cash flow from existing operations.** We generated \$4.70 billion of cash from operations during the year ended December 31, 2018, primarily from gaming and non-gaming sources, including retail, hotel, food and beverage, entertainment and MICE business.

**Market leadership in the growing high-margin mass market gaming segment.** We focus on the high-margin mass gaming segment. During the year ended December 31, 2018, we had the highest percentage of gaming win from mass tables and slots of the Macao operators, with approximately 30% market share. Management estimates our mass market table revenues typically generate a gross margin that is approximately four times higher than the gross margin

on our typical VIP table revenues in Macao. During the year ended December 31, 2018, non-rolling gross gaming revenue contributed to over two-thirds of total gross gaming revenue at Marina Bay Sands.

**Established brands with broad regional and international market awareness and appeal.** Our brands enjoy broad regional and international market awareness and appeal. The Venetian Macao is the most visited Integrated Resort in Macao, and enjoys broad brand awareness both regionally and globally. We estimate that since 2016 The Parisian Macao digital marketing and social media program has reached over 4 billion online impressions, including from platforms within China such as Sina Weibo. Additionally, Marina Bay Sands has become an iconic part of the Singapore skyline and is often featured in movies and other media.

**Experienced management team with a proven track record.** Mr. Sheldon G. Adelson is our founder, chairman and chief executive officer. Mr. Adelson's business career spans more than seven decades and has included creating and developing to maturity numerous companies. Mr. Adelson created the MICE-based Integrated Resort and pioneered its development in the Las Vegas and Singapore markets, as well as in Macao, where he planned and developed the Cotai Strip. Mr. Robert G. Goldstein, our President and Chief Operating Officer, has been an integral part of the Company's executive team from the very outset - even before The Venetian Resort Las Vegas was a concept. Mr. Goldstein is one of the most respected and knowledgeable hospitality and gaming executives in the industry today, and provides strategic direction to our properties. Mr. Patrick Dumont, our Executive Vice President and Chief Financial Officer, has been with the Company for more than eight years and has prior experience in corporate finance and management. He and the management team are focused on increasing our balance sheet strength, preserving the Company's financial flexibility to pursue development opportunities and continuing to execute our return of excess capital to shareholders.

**Unique MICE and entertainment facilities.** Our market-leading MICE and entertainment facilities contribute to our markets' diversification and appeal to business and leisure travelers while diversifying our cash flows and increasing revenues and profit. Our 5.2 million square feet of global MICE space is specifically designed to meet the needs of meeting planners and corporate events and trade show organizers from around the world. Our experience and expertise in this industry continues to drive leisure and business tourism to our markets. The live entertainment program at our properties, specifically in Asia, is a key traffic driver and has established us as the leader in the field of tourism and leisure activities.

Building on our key strengths, we seek to enhance our position as the leading developer and operator of Integrated Resorts and casinos by continuing to implement the following business strategies:

**Developing and diversifying our Integrated Resort offerings to include a full complement of products and services to cater to different market segments.** Our Integrated Resorts include MICE space, additional retail, dining and entertainment facilities and a range of hotel offerings to cater to different segments of our markets, including branded suites and hotel rooms. We are able to leverage the recognition and the sales, marketing and reservation capabilities of premier hotel brands to attract a wide range of customers in different market segments to our properties. We believe our partnerships with renowned hotel management partners, our diverse Integrated Resort offerings and the convenience and accessibility of our properties will continue to increase the appeal of our properties to both the business and leisure customer segments.

**Leveraging our scale of operations to create and maintain an absolute cost advantage.** Management expects to benefit from lower unit costs due to the economies of scale inherent in our operations. Opportunities for lower unit costs include, but are not limited to, lower utility costs; more efficient staffing of hotel and gaming operations; and centralized laundry, transportation, marketing and sales, and procurement. In addition, our scale allows us to consolidate certain administrative functions and leverage purchasing on a global scale.

**Focusing on the high-margin mass market gaming segment, while continuing to provide luxury amenities and high service levels to our VIP and premium players.** Our properties cater not only to VIP and premium players, but also to mass market customers, which comprise our most profitable gaming segment. We believe the mass market segment will continue to be a long-term growing segment as a result of the introduction of more high-quality gaming facilities and non-gaming amenities into our markets.

**Identifying targeted investment opportunities to drive growth across our portfolio.** We plan to continue to invest in the expansion of our facilities and the enhancement of the leisure and business tourism appeal of our property portfolio.

## Asia Operations

### *Macao*

The Venetian Macao is the anchor property of our Cotai Strip development and is conveniently located approximately two miles from the Taipa Ferry Terminal on Macao's Taipa Island and six miles from the bridge linking Hong Kong, Macao and Zhuhai. The Venetian Macao includes approximately 374,000 square feet of gaming space with approximately 710 table games and 1,540 slot machines. The Venetian Macao features a 39-floor luxury hotel tower with over 2,900 elegantly appointed luxury suites and the Shoppes at Venetian, approximately 943,000 square feet of unique retail shopping with more than 350 stores featuring many international brands and home to more than 50 restaurants and food outlets featuring an international assortment of cuisines. In addition, The Venetian Macao has approximately 1.2 million square feet of convention facilities and meeting room space, an 1,800-seat theater, the 15,000-seat CotaiArena that hosts world-class entertainment and sporting events and a Paiza Club.

Sands Cotai Central, which features four hotel towers, is located across the street from The Venetian Macao, The Parisian Macao and The Plaza Macao and Four Seasons Hotel Macao, and is our largest Integrated Resort on the Cotai Strip. Sands Cotai Central opened in phases, beginning in April 2012. The property features four hotel towers: the first hotel tower, which opened in April 2012, consisting of approximately 650 five-star rooms and suites under the Conrad brand and approximately 1,200 four-star rooms and suites under the Holiday Inn brand; the second hotel tower, which opened in September 2012, consisting of approximately 1,800 rooms and suites under the Sheraton brand; the third hotel tower, which opened in January 2013, consisting of approximately 2,100 rooms and suites under the Sheraton brand; and the fourth hotel tower, which opened in December 2015, consisting of approximately 400 rooms and suites under the St. Regis brand. The Integrated Resort includes approximately 367,000 square feet of gaming space with approximately 430 table games and 1,410 slot machines, approximately 369,000 square feet of meeting space, a 1,701-seat theater, approximately 520,000 square feet of retail space with more than 150 stores and home to more than 50 restaurants and food outlets. We previously announced the renovation, expansion and rebranding of Sands Cotai Central into a new destination Integrated Resort, The Londoner Macao, by adding extensive thematic elements both externally and internally. The Londoner Macao will feature new attractions and features from London, including some of London's most recognizable landmarks, and expanded retail and food and beverage venues. We will add approximately 370 luxury suites in the St. Regis Tower Suites Macao. Design work is nearing completion and construction is being initiated and will be phased to minimize disruption during the property's peak periods. We expect the additional St. Regis Tower Suites Macao to be completed in 2020 and The Londoner Macao project to be completed in phases throughout 2020 and 2021.

On September 13, 2016, we opened The Parisian Macao, our newest Integrated Resort on the Cotai Strip, which is connected to The Venetian Macao and The Plaza Macao and Four Seasons Hotel Macao, and includes approximately 253,000 square feet of gaming space with approximately 340 table games and 1,100 slot machines. The Parisian Macao also features approximately 2,500 rooms and suites and the Shoppes at Parisian, approximately 296,000 square feet of unique retail shopping with more than 150 stores featuring many international brands and home to 23 restaurants and food outlets featuring an international assortment of cuisines. Other non-gaming amenities at The Parisian Macao include a meeting room complex of approximately 63,000 square feet and a 1,200-seat theater. Directly in front of The Parisian Macao, and connected via a covered walkway to the main building, is a half-scale authentic re-creation of the Eiffel Tower containing a viewing platform and restaurant.

The Plaza Macao and Four Seasons Hotel Macao, which is located adjacent to The Venetian Macao, has approximately 105,000 square feet of gaming space with approximately 120 table games and 160 slot machines at its Plaza Casino. The Plaza Macao and Four Seasons Hotel Macao also has 360 elegantly appointed rooms and suites managed by Four Seasons Hotels, Inc., several food and beverage offerings, and conference and banquet facilities. The Shoppes at Four Seasons includes approximately 242,000 square feet of retail space and is connected to the Shoppes at Venetian. The Plaza Macao and Four Seasons Hotel Macao also features 19 ultra-exclusive Paiza Mansions, which are individually designed and made available by invitation only. We previously announced the Four Seasons Tower Suites Macao, which will feature approximately 290 additional premium quality suites. We have completed the structural work of the tower and have commenced preliminary build out of the suites. We expect the project to be completed in the first quarter of 2020.

The Sands Macao, the first U.S. operated Las Vegas-style casino in Macao, is situated near the Macao-Hong Kong Ferry Terminal on a waterfront parcel centrally located between Macao's Gongbei border gate with China and Macao's

central business district. The Sands Macao includes approximately 213,000 square feet of gaming space with approximately 220 table games and 870 slot machines. The Sands Macao also includes a 289-suite hotel tower, spa facilities, several restaurants and entertainment areas, and a Paiza Club.

We operate the gaming areas within our Macao properties pursuant to a 20-year gaming subconcession that expires in June 2022. See "Regulation and Licensing — *Macao Concession and Our Subconcession*."

#### *Singapore*

Marina Bay Sands features approximately 2,600 rooms and suites located in three 55-story hotel towers. Atop the three towers is the Sands SkyPark, an extensive outdoor recreation area with a 150-meter infinity swimming pool and leading restaurant and nightlife brands. The Integrated Resort offers approximately 160,000 square feet of gaming space with approximately 625 table games and 2,360 slot machines; The Shoppes at Marina Bay Sands, an enclosed retail, dining and entertainment complex with signature restaurants from world-renowned chefs; an event plaza and promenade; and an art/science museum. Marina Bay Sands also includes approximately 1.2 million square feet of meeting and convention space and a state-of-the-art theater for top Broadway shows, concerts and gala events.

We operate the gaming area within our Singapore property pursuant to a 30-year casino concession provided under a development agreement entered into in August 2006. See "Regulation and Licensing — *Development Agreement with Singapore Tourism Board*."

#### *Asia Markets*

##### *Macao*

Macao is the largest gaming market in the world and the only market in China to offer legalized casino gaming. According to Macao government statistics issued publicly on a monthly basis by the Gaming Inspection and Coordination Bureau (commonly referred to as the "DICJ"), annual gaming revenues were \$37.7 billion in 2018, a 13.4% increase compared to 2017.

We expect Macao will continue to experience meaningful long-term growth and the approximately 36 million visitors Macao welcomed in 2018 will continue to increase over time. We believe this growth will be driven by a variety of factors, including the movement of Chinese citizens to urban centers in China, continued growth of the Chinese outbound tourism market, the increased utilization of existing transportation infrastructure, the introduction of new transportation infrastructure and the continued increase in hotel room inventory in Macao and neighboring Hengqin Island. There has been significant investment announced and recently completed by concessionaires and subconcessionaires in new resort development projects on Cotai. These new resorts should help increase the critical mass on Cotai and further drive Macao's transformation into a leading business and leisure tourism hub in Asia.

Table games are the dominant form of gaming in Asia, with Baccarat being the most popular game. We continue to experience Macao market-leading visitation and are focused on driving high-margin mass market gaming, while providing luxury amenities and high service levels to our VIP and premium players. We intend to continue to introduce more modern and popular products that appeal to the Asian marketplace and believe our high-quality gaming product has enabled us to capture a meaningful share of the overall Macao gaming market across all types of players.

##### *Proximity to Major Asian Cities*

Visitors from Hong Kong, southeast China, Taiwan and other locations in Asia can reach Macao in a relatively short time, using a variety of transportation methods, and visitors from more distant locations in Asia can take advantage of short travel times by air to Zhuhai, Shenzhen, Guangzhou or Hong Kong (followed by a road, ferry or helicopter trip to Macao). In addition, numerous air carriers fly directly into Macao International Airport from many major cities in Asia.

Macao draws a significant number of customers who are visitors or residents of Hong Kong. One of the major methods of transportation to Macao from Hong Kong is the jetfoil ferry service, including our ferry service, CotaJet. Macao is also accessible from Hong Kong by helicopter. In addition, the bridge linking Hong Kong, Macao and Zhuhai, which opened in 2018, has reduced the travel time between Hong Kong and Macao and the travel time from the Hong Kong International Airport to Macao.

### *Competition in Macao*

Gaming in Macao is administered by the government through concessions awarded to three different concessionaires and three subconcessionaires, of which we are one. No additional concessions have been granted by the Macao government since 2002; however, if the Macao government were to allow additional gaming operators in Macao through the grant of additional concessions or subconcessions, we would face additional competition.

Sociedade de Jogos de Macau S.A. ("SJM") holds one of the three concessions and currently operates 20 facilities throughout Macao. Historically, SJM was the only gaming operator in Macao. Many of its gaming facilities are relatively small locations that are offered as amenities in hotels; however, some are large operations, including the Hotel Lisboa and The Grand Lisboa. In February 2014, SJM announced the development of Grand Lisboa Palace, a 2,000-room resort on Cotai that is scheduled to open in the second half of 2019.

MGM Grand Paradise Limited, a joint venture between MGM Resorts International and Pansy Ho Chiu-King, obtained a subconcession from SJM in April 2005 (which subconcession expires in March 2020), allowing the joint venture to conduct gaming operations in Macao. The MGM Grand Macau opened in December 2007 and is located on the Macao Peninsula adjacent to the Wynn Macau. In February 2018, MGM Grand Paradise Limited opened MGM Cotai, which includes approximately 1,400 hotel rooms and other non-gaming amenities, and is located behind Sands Cotai Central.

Wynn Resorts (Macao), S.A. ("Wynn Resorts Macau"), a subsidiary of Wynn Resorts Limited, holds a concession and owns and operates the Wynn Macau and Encore at Wynn Macau. In August 2016, Wynn Resorts Macau opened a 1,700-room integrated resort, Wynn Palace, which is located behind the City of Dreams and MGM Cotai.

In 2006, an affiliate of Publishing and Broadcasting Limited ("PBL") purchased the subconcession right under Wynn Resorts Macau's gaming concession, which permitted the PBL affiliate to receive a gaming subconcession from the Macao government. The PBL affiliate, Melco Crown Entertainment Limited ("Melco Crown"), owns and operates Altira and the City of Dreams, an integrated casino resort located adjacent to our Sands Cotai Central, which includes Nuwa, The Countdown Hotel and Grand Hyatt hotels. In October 2015, Melco Crown and its joint venture partners opened Studio City, a 1,600-room casino resort on Cotai. Melco Crown opened its fifth tower at City of Dreams, the 772-room Morpheus Tower, in June 2018.

Galaxy Casino Company Limited ("Galaxy") holds the third concession and has the ability to operate casino properties independent of our subconcession agreement with Galaxy and the Macao government. Galaxy currently operates six casinos in Macao, including StarWorld Hotel and Galaxy Macau, which is located near The Venetian Macao. In May 2015, Galaxy opened the second phase of its Galaxy Macau, which includes approximately 1,250 hotel rooms, as well as additional retail and convention and exhibition facilities.

Our Macao operations also face competition from other gaming and resort destinations, both in Asia and globally.

### *Singapore*

Singapore is regarded as having the most developed financial and transportation infrastructure in the Southeast Asia region. Singapore has established itself as a destination for both business and leisure visitors, offering convention and exhibition facilities as well as world-class shopping malls and hotel accommodations. In 2006, after a competitive bid process, the Singapore government awarded two concessions to develop and operate two integrated resorts. We were awarded the concession for the Marina Bay site, which is adjacent to Singapore's central business district, and Genting International was awarded the second site, located on Singapore's Sentosa Island.

Based on figures released by the Singapore Tourism Board (the "STB"), Singapore welcomed over 18 million international visitors in 2018, a 6.2% increase compared to 2017. Tourism receipts are estimated to have reached 26.8 billion Singapore dollars ("SGD," approximately \$19.6 billion at exchange rates in effect on December 31, 2018) in 2017 (the latest information publicly available at the time of filing), a 4.3% increase compared to 2016. The Casino Regulatory Authority (the "CRA"), the gaming regulator in Singapore, does not disclose gaming revenue for the market and thus no official figure exists.

We believe Marina Bay Sands is ideally positioned within Singapore to cater to both business and leisure visitors. The Integrated Resort is centrally located within a 20-minute drive from Singapore's Changi International Airport and near the Marina Bay Cruise Center, a deep-water cruise ship terminal, and Bayfront station, a mass rapid transit station.



Marina Bay Sands is also located near several entertainment attractions, including the Gardens by the Bay botanical gardens and the Singapore Sports Hub, a sports complex featuring the 55,000-seat National Stadium.

Baccarat is the preferred table game in both VIP and mass gaming. Additionally, contributions from slot machines and from mass gaming, including electronic table games offerings, have enhanced the early growth of the market. As Marina Bay Sands and the Singapore market as a whole continue to mature, we expect to broaden our visitor base to continue to capture visitors from around the world.

#### *Proximity to Major Asian Cities*

About 100 airlines operate in Singapore, connecting it to some 400 cities in about 100 countries. In 2018, 66 million passengers passed through Singapore's Changi Airport, a 5.5% decrease as compared to 2017. Based on figures released by the STB, the largest source markets for visitors to Singapore for 2018 were China and Indonesia. The STB's methodology for reporting visitor arrivals does not recognize Malaysian citizens entering Singapore by land, although this method of visitation is generally thought to be substantial.

#### *Competition in Singapore*

Gaming in Singapore is administered by the government through the award of licenses to two operators, of which we are one. Pursuant to the request for proposals to develop an integrated resort at Marina Bay, Singapore (the "Request for Proposal"), the CRA was required to ensure there would not be more than two casino licenses during an initial ten-year exclusive period (the "Exclusivity Period"), which expired on February 28, 2017.

Resorts World Sentosa, which is 100% owned by Genting Singapore and located on Sentosa Island, is primarily a family tourist destination connected to Singapore via a 500-meter long vehicular and pedestrian bridge. Apart from the casino, the resort includes six hotels, a Universal Studios theme park, the Marine Life Park, the Maritime Experiential Museum, aquarium, conventions and exhibitions facilities, restaurants, as well as a Malaysian food street, and retail shops.

Our Singapore operations also face competition from other gaming and resort destinations, both in Asia and globally.

### **U.S. Operations**

#### *Las Vegas*

Our Las Vegas Operating Properties is an Integrated Resort that includes The Venetian Resort Las Vegas and the Sands Expo Center.

The Venetian Resort Las Vegas features three hotel towers. The Venetian Tower is a 35-story three-winged luxury hotel tower with 3,015 suites rising above the casino. The second tower is an adjoining 1,013-suite, 12-story Venezia Tower. The Palazzo Tower has 3,064 suites situated in a 50-story luxury hotel tower, which features modern European ambience and design, and is directly connected to The Venetian Tower and Sands Expo Center. The Venetian Resort Las Vegas has approximately 225,000 square feet of gaming space and includes approximately 240 table games and 1,870 slot machines. The Venetian Resort Las Vegas features a variety of amenities for its guests, including Palzzo Club, several theaters and Canyon Ranch SpaClub.

The Venetian Resort Las Vegas features an enclosed retail, dining and entertainment complex, referred to as the Grand Canal Shoppes. The portion of the complex located within The Venetian Tower (previously known as "The Grand Canal Shoppes") and the portion located within The Palazzo Tower (previously known as "The Shoppes at The Palazzo") were sold to GGP Limited Partnership ("GGP") in 2004 and 2008, respectively.

Sands Expo Center is one of the largest overall trade show and convention facilities in the United States (as measured by net leasable square footage), with approximately 1.2 million gross square feet of exhibit and meeting space. We also own an approximately 1.1 million-gross-square-foot meeting and conference facility that links Sands Expo Center to The Venetian Resort Las Vegas. Together, we offer approximately 2.3 million gross square feet of state-of-the-art exhibition and meeting facilities that can be configured to provide small, mid-size or large meeting rooms and/or accommodate large-scale multi-media events or trade shows.

In May 2016, we announced plans to work with Madison Square Garden Company to bring a 400,000-square-foot venue built specifically for music and entertainment to Las Vegas. In February 2018, Madison Square Garden

unveiled its plans for MSG Sphere at The Venetian, an 18,000-seat venue, which, subject to regulatory approvals and entitlements, will be located near, and connected directly to, our Las Vegas Operating Properties and is currently expected to open in 2021.

#### *Pennsylvania*

We own and operate the Sands Bethlehem, a gaming, hotel, retail and dining complex located on the site of the historic Bethlehem Steel Works in Bethlehem, Pennsylvania. The Sands Bethlehem features approximately 146,000 square feet of gaming space that includes approximately 190 table games and 3,260 slot machines; a hotel tower with 282 rooms; a 150,000-square-foot retail facility ("The Outlets at Sands Bethlehem"); an arts and cultural center; and a 50,000-square-foot multipurpose event center.

We own 86% of the economic interest in the gaming, hotel and entertainment portion of Sands Bethlehem through our ownership interest in Sands Bethworks Gaming LLC ("Sands Bethworks Gaming") and approximately 35% of the economic interest in the retail portion of Sands Bethlehem through our ownership interest in Sands Bethworks Retail LLC ("Sands Bethworks Retail").

On March 8, 2018, the Company entered into a purchase and sale agreement under which PCI Gaming Authority, an unincorporated, chartered instrumentality of the Poarch Band of Creek Indians, will acquire Sands Bethlehem for a total enterprise value of \$1.30 billion. The closing of the transaction is subject to regulatory review and other closing conditions.

#### *Las Vegas Market*

The Las Vegas hotel/casino industry is highly competitive. Hotels on the Las Vegas Strip compete with other hotels on and off the Las Vegas Strip, including hotels in downtown Las Vegas. In addition, there are large projects in Las Vegas in the development stage or currently suspended and, if opened, may target the same customers as we do. Based on figures released by the Las Vegas Convention and Visitors Authority (the "LVCVA"), Las Vegas welcomed 42 million visitors during 2018, relatively flat compared to 2017.

We also compete with legalized gaming from casinos located on Native American tribal lands, including those located in California. While the competitive impact on our operations in Las Vegas from the continued growth of Native American gaming establishments in California remains uncertain, the proliferation of gaming in California and other areas located in the same region as our Las Vegas Operating Properties could have an adverse effect on our financial condition, results of operations and cash flows. Our Las Vegas Operating Properties also compete, to some extent, with other hotel/casino facilities in Nevada, with hotel/casino and other resort facilities elsewhere in the country and the world, and with Internet gaming and state lotteries.

In addition, certain states have legalized, and others may legalize, casino gaming in specific areas. The continued proliferation of gaming venues could have a significant and adverse effect on our business. In particular, the legalization of casino gaming in or near major metropolitan areas from which we traditionally attract customers could have a material adverse effect on our business. The current global trend toward liberalization of gaming restrictions and the resulting proliferation of gaming venues could result in a decrease in the number of visitors to our Las Vegas Operating Properties, which could have an adverse effect on our financial condition, results of operations and cash flows. Also, on December 23, 2011, the U.S. Department of Justice (the "DOJ") released an opinion that concluded the Wire Act only related to interstate transmission of wire communications regarding wagers on sporting events or information assisting in the placing of wagers on sporting events (the "2011 Opinion"). In concluding as such, the DOJ reversed earlier opinions that the Wire Act was not limited to only sporting events or contests. On January 14, 2019, the DOJ released a Slip Opinion dated November 2, 2018 that reversed the 2011 Opinion.

Las Vegas generally competes with trade show and convention facilities located in and around major U.S. cities. Within Las Vegas, the Sands Expo Center competes with the Las Vegas Convention Center (the "LVCC"), which currently has approximately 3.2 million gross square feet of convention and exhibit facilities. In addition to the LVCC, some of our Las Vegas competitors have convention and conference facilities that compete with our Las Vegas Operating Properties. Based on figures released by the LVCVA, nearly 7 million convention delegates visited Las Vegas during 2018, a 2.2% decrease compared to 2017.

Competitors of our Las Vegas Operating Properties that can offer a hotel/casino experience that is integrated with substantial trade show and convention, conference and meeting facilities, could have an adverse effect on our competitive

advantage in attracting trade show and convention, conference and meeting attendees. Major competitors in Las Vegas continue to implement and evaluate opportunities to expand casino, hotel and convention offerings.

#### Retail Mall Operations

We own and operate retail malls at our Integrated Resorts at The Venetian Macao, Sands Cotai Central, The Parisian Macao, The Plaza Macao and Four Seasons Hotel Macao, Sands Macao, Marina Bay Sands and Sands Bethlehem. Upon completion of all phases of Sands Cotai Central's renovation, rebranding and expansion to The Londoner Macao, we will own approximately 3.0 million square feet of gross retail space. As further described in "Agreements Relating to the Malls in Las Vegas" below, the Grand Canal Shoppes were sold to GGP and are not owned or operated by us. Management believes being in the retail mall business and, specifically, owning some of the largest retail properties in Asia will provide meaningful value for us, particularly as the retail market in Asia continues to grow.

Our malls are designed to complement our other unique amenities and service offerings provided by our Integrated Resorts. Our strategy is to seek out desirable tenants that appeal to our customers and provide a wide variety of shopping options. We generate our mall revenue primarily from leases with tenants through base minimum rents, coverage rents and reimbursements for common area maintenance ("CAM") and other expenditures. For further information related to the financial performance of our malls, see "Part II — Item 7 — Management's Discussion and Analysis of Financial Condition and Results of Operations."

The tables below set forth certain information regarding our mall operations on the Cotai Strip and at Marina Bay Sands as of December 31, 2018. These tables do not reflect subsequent activity in 2019.

Mall Name	Total GLA <sup>(1)</sup>	Selected Significant Tenants
Shoppes at Venetian.....	813,376 <sup>(2)</sup>	Zara, Victoria's Secret, Uniqlo, Piaget, Rolex, H&M, Michael Kors, Bvlgari, Chanel Beauté, Lululemon
Shoppes at Cotai Central .....	519,681 <sup>(3)</sup>	Marks & Spencer, Kid's Cavern, Zara, Under Armour, Omega, Nike, Chow Tai Fook, Lady M, Apple
Shoppes at Parisian .....	295,915	Alexander McQueen, Isabel Marant, Lanvin, Maje, Sandro, Zadig & Voltaire, Paul Smith
Shoppes at Four Seasons .....	241,548	Cartier, Chanel, Louis Vuitton, Hermès, Gucci, Dior, Versace, Zegna, Berluti, Loro Piana, Saint Laurent Paris
The Shoppes at Marina Bay Sands .....	606,362 <sup>(4)</sup>	Louis Vuitton, Chanel, Prada, Gucci, Zara, Burberry, Dior, Cartier, Moncler, Hermès, Armani, Dolce & Gabbana

(1) Represents Gross Leasable Area in square feet.

(2) Excludes approximately 130,000 square feet of space on the fifth floor currently not on the market for lease.

(3) The Shoppes at Cotai Central will feature up to an estimated 600,000 square feet of gross leasable area upon completion of all phases of Sands Cotai Central's renovation, rebranding and expansion to The Londoner Macao.

(4) Excludes approximately 153,000 square feet of space operated by the Company.

The following table reflects our tenant representation by category for our mall operations as of December 31, 2018:

Category	Square Feet	% of Square Feet	Representative Tenants
Fashion (luxury, women's, men's, mixed) .	863,721	38%	Louis Vuitton, Dior, Gucci, Versace, Chanel, Fendi, Hermès
Restaurants and lounges .....	422,546	18%	Bambu, Lei Garden, Ce La Vi, North, Café Deco
Multi-Brands.....	251,247	11%	Duty Free Americas, The Atrium
Fashion accessories and footwear .....	164,017	7%	Coach, Salvatore Ferragamo, Tumi, Rimowa, Michael Kors, Stuart Weitzman
Lifestyle, sports and entertainment.....	192,957	8%	Manchester United, Adidas, Ferrari, Lululemon, Under Armour
Jewelry.....	167,050	7%	Bvlgari, Omega, Cartier, Rolex, Tiffany & Co.
Health and beauty .....	84,281	4%	Sephora, The Body Shop, Sa Sa
Banks and services .....	46,278	2%	Bank of China, ICBC
Home furnishing and electronics.....	46,016	2%	Apple, Samsung, Zara Home
Specialty foods .....	39,336	2%	Godiva, Cold Storage Specialty, Haagen Dazs, Venchi
Arts and gifts .....	15,832	1%	Emporio di Gondola
Total.....	<u>2,293,281</u>	<u>100%</u>	

#### Advertising and Marketing

We advertise in many types of media, including television, Internet (including search engines, e-mail, online advertising and social media), radio, newspapers, magazines and other out-of-home advertising (including billboards), to promote general market awareness of our properties as unique leisure, business and convention destinations due to our first-class hotels, casinos, retail stores, restaurants and other amenities. We actively engage in direct marketing as allowed in various geographic regions.

We maintain websites to allow our customers to make room and/or restaurant reservations, purchase show tickets and provide feedback. We also continue to enhance and expand our use of digital marketing and social media to promote our Integrated Resorts, events and special offers, cultivate customer relationships and provide information and updates regarding our corporate citizenship efforts, including our sustainability and corporate giving programs.

#### Development Projects

We are constantly evaluating opportunities to improve our product offerings, such as refreshing our meeting and convention facilities, suites and rooms, retail malls, restaurant and nightlife mix and our gaming areas, as well as other revenue generating additions to our Integrated Resorts.

##### *Macao*

We previously announced the renovation, expansion and rebranding of the Sands Cotai Central into a new destination Integrated Resort, The Londoner Macao, by adding extensive thematic elements both externally and internally. The Londoner Macao will feature new attractions and features from London, including some of London's most recognizable landmarks, and expanded retail and food and beverage venues. We will add approximately 370 luxury suites in the St. Regis Tower Suites Macao. Design work is nearing completion and construction is being initiated and will be phased to minimize disruption during the property's peak periods. We expect the additional St. Regis Tower Suites Macao to be completed in 2020 and The Londoner Macao project to be completed in phases throughout 2020 and 2021.

We also previously announced the Four Seasons Tower Suites Macao, which will feature approximately 290 additional premium quality suites. We have completed the structural work of the tower and have commenced preliminary build out of the suites. We expect the project to be completed in the first quarter of 2020.

We anticipate the total costs associated with these development projects to be approximately \$2.2 billion. The ultimate costs and completion dates for these projects are subject to change as we finalize our planning and design work and complete the projects. See "Item 1A—Risk Factors—Risk Factors—*There are significant risks associated with our construction projects, which could have a material adverse effect on our financial condition, results of operations and cash flows.*"

#### *United States*

We began constructing a high-rise residential condominium tower (the "Las Vegas Condo Tower"), located on the Las Vegas Strip within The Venetian Resort Las Vegas. In 2008, we suspended construction activities for the project due to reduced demand for Las Vegas Strip condominiums and the overall decline in general economic conditions. We continue to evaluate the highest return opportunity for the project. The impact of the suspension on the estimated overall cost of the project is currently not determinable with certainty. Should management decide to abandon the project, we could record a charge for some portion of the \$129 million in capitalized construction costs (net of depreciation) as of December 31, 2018.

#### *Other*

We continue to evaluate additional development projects in each of our markets and pursue new development opportunities globally.

#### **Regulation and Licensing**

##### *Macao Concession and Our Subconcession*

In June 2002, the Macao government granted one of three concessions to operate casinos in Macao to Galaxy. During December 2002, we entered into a subconcession agreement with Galaxy, which was approved by the Macao government. The subconcession agreement allows us to develop and operate certain casino projects in Macao, including Sands Macao, The Venetian Macao, The Plaza Macao and Four Seasons Hotel Macao, Sands Cotai Central and The Parisian Macao, separately from Galaxy. Under the subconcession agreement, we are obligated to operate casino games of chance or games of other forms in Macao. We were also obligated to develop and open The Venetian Macao and a convention center by December 2007, and we were required to invest, or cause to be invested, at least 4.4 billion patacas (approximately \$548 million at exchange rates in effect at the time of the transaction) in various development projects in Macao by June 2009, which obligations we have fulfilled.

If the Galaxy concession is terminated for any reason, our subconcession will remain in effect. The subconcession may be terminated by agreement between Galaxy and us. Galaxy is not entitled to terminate the subconcession unilaterally; however, the Macao government, after consultation with Galaxy, may terminate the subconcession under certain circumstances. Galaxy has developed, and may continue to develop, hotel and casino projects separately from us.

According to the Macao gaming regulatory framework, 10.0% of each subconcessionaire's issued share capital must be held by its managing director, who must be appointed by the applicable subconcessionaire and must be a permanent Macao resident. Mr. Antonio Ferreira is the appointed managing director of Venetian Macau Limited ("VML") and a permanent Macao resident. Mr. Ferreira holds 10.0% of VML's issued share capital subject to a usufruct agreement entered into with Venetian Venture Development Intermediate Limited ("VVDIL"), the immediate parent company of VML and a wholly owned subsidiary of SCL. The usufruct provides that VVDIL has the sole and exclusive benefit of the 10.0% of VML's issued share capital held by Mr. Ferreira. Mr. Ferreira has no economic interest in VML and receives no distributions.

We are subject to licensing and control under applicable Macao law and are required to be licensed by the Macao gaming authorities to operate a casino. We must pay periodic and regular fees and taxes, and our gaming license is not transferable. We must periodically submit detailed financial and operating reports to the Macao gaming authorities and furnish any other information the Macao gaming authorities may require. No person may acquire any rights over the shares or assets of VML, SCL's wholly owned subsidiary, without first obtaining the approval of the Macao gaming

authorities. Similarly, no person may enter into possession of its premises or operate them through a management agreement or any other contract or through step in rights without first obtaining the approval of, and receiving a license from, the Macao gaming authorities. The transfer or creation of encumbrances over ownership of shares representing the share capital of VML or other rights relating to such shares, and any act involving the granting of voting rights or other stockholders' rights to persons other than the original owners, would require the approval of the Macao government and the subsequent report of such acts and transactions to the Macao gaming authorities.

Our subconcession agreement requires, among other things: (i) approval of the Macao government for transfers of shares in VML, or of any rights over or inherent to such shares, including the grant of voting rights or other stockholder's rights to persons other than the original owners, as well as for the creation of any charge, lien or encumbrance on such shares; (ii) approval of the Macao government for transfers of shares, or of any rights over such shares, in any of our direct or indirect stockholders, provided that such shares or rights are directly or indirectly equivalent to an amount that is equal to or higher than 5% of VML's share capital; and (iii) that the Macao government be given notice of the creation of any encumbrance or the grant of voting rights or other stockholder's rights to persons other than the original owners on shares in any of the direct or indirect stockholders in VML, provided that such shares or rights are equivalent to an amount that is equal to or higher than 5% of VML's share capital. The requirements in provisions (ii) and (iii) above will not apply, however, to securities listed as tradable on a stock exchange.

The Macao gaming authorities may investigate any individual who has a material relationship to, or material involvement with, us to determine whether our suitability and/or financial capacity is affected by this individual. LVSC and SCL shareholders with 5% or more of the share capital, directors and some of our key employees must apply for and undergo a finding of suitability process and maintain due qualification during the subconcession term, and accept the persistent and long-term inspection and supervision exercised by the Macao government. VML is required to notify the Macao government immediately should VML become aware of any fact that may be material to the appropriate qualification of any shareholder who owns 5% of the share capital, or any officer, director or key employee. Changes in licensed positions must be reported to the Macao gaming authorities, and in addition to their authority to deny an application for a finding of suitability or licensure, the Macao gaming authorities have jurisdiction to disapprove a change in corporate position. If the Macao gaming authorities were to find one of our officers, directors or key employees unsuitable for licensing, we would have to sever all relationships with that person. In addition, the Macao gaming authorities may require us to terminate the employment of any person who refuses to file appropriate applications.

Any person who fails or refuses to apply for a finding of suitability after being ordered to do so by the Macao gaming authorities may be found unsuitable. Any stockholder found unsuitable who holds, directly or indirectly, any beneficial ownership of the common stock of a company incorporated in Macao and registered with the Macao Companies and Moveable Assets Registrar (a "Macao registered corporation") beyond the period of time prescribed by the Macao gaming authorities may lose their rights to the shares. We will be subject to disciplinary action if, after we receive notice that a person is unsuitable to be a stockholder or to have any other relationship with us, we:

- pay that person any dividend or interest upon its shares;
- allow that person to exercise, directly or indirectly, any voting right conferred through shares held by that person;
- pay remuneration in any form to that person for services rendered or otherwise; or
- fail to pursue all lawful efforts to require that unsuitable person to relinquish its shares.

The Macao gaming authorities also have the authority to approve all persons owning or controlling the stock of any corporation holding a gaming license.

In addition, the Macao gaming authorities require prior approval for the creation of liens and encumbrances over VML's assets and restrictions on stock in connection with any financing.

The Macao gaming authorities must give their prior approval to changes in control of VML through a merger, consolidation, stock or asset acquisition, management or consulting agreement or any act or conduct by any person whereby he or she obtains control. Entities seeking to acquire control of a Macao registered corporation must satisfy the Macao gaming authorities concerning a variety of stringent standards prior to assuming control. The Macao gaming authorities may also require controlling stockholders, officers, directors and other persons having a material relationship

or involvement with the entity proposing to acquire control, to be investigated and licensed as part of the approval process of the transaction.

The Macao gaming authorities may consider some management opposition to corporate acquisitions, repurchases of voting securities and corporate defense tactics affecting Macao gaming licensees, and the Macao registered corporations affiliated with such operations, to be injurious to stable and productive corporate gaming.

The Macao gaming authorities also have the power to supervise gaming licensees in order to:

- assure the financial stability of corporate gaming operators and their affiliates;
- preserve the beneficial aspects of conducting business in the corporate form; and
- promote a neutral environment for the orderly governance of corporate affairs.

The subconcession agreement requires the Macao gaming authorities' prior approval of any recapitalization plan proposed by VML's Board of Directors. The Chief Executive of Macao could also require VML to increase its share capital if he deemed it necessary.

The Macao government also has the right, after consultation with Galaxy, to unilaterally terminate the subconcession agreement at any time upon the occurrence of specified events of default, including:

- the operation of gaming without permission or operation of business that does not fall within the business scope of the subconcession;
- the suspension of operations of our gaming business in Macao without reasonable grounds for more than seven consecutive days or more than fourteen non-consecutive days within one calendar year;
- the unauthorized transfer of all or part of our gaming operations in Macao;
- the failure to pay taxes, premiums, levies or other amounts payable to the Macao government;
- the failure to resume operations following the temporary assumption of operations by the Macao government;
- the repeated opposition to supervision and inspection or the repeated failure to comply with decisions of the Macao government, namely of the Macao gaming authorities;
- the failure to provide or supplement the guarantee deposit or the guarantees specified in the subconcession within the prescribed period;
- the bankruptcy or insolvency of VML;
- fraudulent activity by VML;
- serious and repeated violation by VML of the applicable rules for carrying out casino games of chance or games of other forms or the operation of casino games of chance or games of other forms;
- the grant to any other person of any managing power over VML; or
- the failure by a controlling shareholder in VML to dispose of its interest in VML following notice from the gaming authorities of another jurisdiction in which such controlling shareholder is licensed to operate casino games of chance to the effect that such controlling shareholder can no longer own shares in VML.

In addition, we must comply with various covenants and other provisions under the subconcession, including obligations to:

- ensure the proper operation and conduct of casino games;
- employ people with appropriate qualifications;
- operate and conduct casino games of chance in a fair and honest manner without the influence of criminal activities;
- safeguard and ensure Macao's interests in tax revenue from the operation of casinos and other gaming areas; and

- maintain a specified level of insurance.

The subconcession agreement also allows the Macao government to request various changes in the plans and specifications of our Macao properties and to make various other decisions and determinations that may be binding on us. For example, the Macao government has the right to require that we contribute additional capital to our Macao subsidiaries or that we provide certain deposits or other guarantees of performance in any amount determined by the Macao government to be necessary. VML is limited in its ability to raise additional capital by the need to first obtain the approval of the Macao gaming and governmental authorities before raising certain debt or equity.

If our subconcession is terminated in the event of a default, the casinos and gaming-related equipment would be automatically transferred to the Macao government without compensation to us and we would cease to generate any revenues from these operations. In many of these instances, the subconcession agreement does not provide a specific cure period within which any such events may be cured and, instead, we would rely on consultations and negotiations with the Macao government to give us an opportunity to remedy any such default.

The Sands Macao, The Venetian Macao, The Plaza Macao and Four Seasons Hotel Macao, Sands Cotai Central and The Parisian Macao are being operated under our subconcession agreement. This subconcession excludes the following gaming activities: mutual bets, lotteries, raffles, interactive gaming and games of chance or other gaming, betting or gambling activities on ships or planes. Our subconcession is exclusively governed by Macao law. We are subject to the exclusive jurisdiction of the courts of Macao in case of any dispute or conflict relating to our subconcession.

Our subconcession agreement expires on June 26, 2022. Unless our subconcession is extended, on that date, the casinos and gaming-related equipment will automatically be transferred to the Macao government without compensation to us and we will cease to generate any revenues from these operations. Beginning on December 26, 2017, the Macao government may redeem our subconcession by giving us at least one-year prior notice and by paying us fair compensation or indemnify.

Under our subconcession, we are obligated to pay to the Macao government an annual premium with a fixed portion and a variable portion based on the number and type of gaming tables employed and gaming machines operated by us. The fixed portion of the premium is equal to 30 million patacas (approximately \$4 million at exchange rates in effect on December 31, 2018). The variable portion is equal to 300,000 patacas per gaming table reserved exclusively for certain kinds of games or players, 150,000 patacas per gaming table not so reserved and 1,000 patacas per electrical or mechanical gaming machine, including slot machines (approximately \$37,195, \$18,598 and \$124, respectively, at exchange rates in effect on December 31, 2018), subject to a minimum of 45 million patacas (approximately \$6 million at exchange rates in effect on December 31, 2018). We also have to pay a special gaming tax of 35% of gross gaming revenues and applicable withholding taxes. We must also contribute 4% of our gross gaming revenue to utilities designated by the Macao government, a portion of which must be used for promotion of tourism in Macao. This percentage may be subject to change in the future.

Currently, the gaming tax in Macao is calculated as a percentage of gross gaming revenue; however, unlike Nevada, gross gaming revenue does not include deductions for credit losses. As a result, if we extend credit to our customers in Macao and are unable to collect on the related receivables from them, we have to pay taxes on our winnings from these customers even though we were unable to collect on the related receivables. If the laws are not changed, our business in Macao may not be able to realize the full benefits of extending credit to our customers.

In August 2018, we received an additional exemption from Macao's corporate income tax on profits generated by the operation of casino games of chance for the period of January 1, 2019 through June 26, 2022, the date our subconcession agreement expires. We entered into an agreement with the Macao government effective through the end of 2018 that provided for an annual payment of 42 million patacas (approximately \$5 million at exchange rates in effect on December 31, 2018) as a substitution for a 12% tax otherwise due from VML shareholders on dividend distributions. In September 2018, we requested an additional agreement with the Macao government through June 26, 2022, to correspond to the expiration of the income tax exemption for gaming operations; however, there is no assurance we will receive the additional agreement.

#### *Development Agreement with Singapore Tourism Board*

On August 23, 2006, our wholly owned subsidiary, Marina Bay Sands Pte. Ltd. ("MBS"), entered into a development agreement, as amended by a supplementary agreement on December 11, 2009 (the "Development



Agreement<sup>11</sup>), with the STB to design, develop, construct and operate the Marina Bay Sands. The Development Agreement includes a concession for MBS to own and operate a casino within the Integrated Resort. In addition to the casino, the Integrated Resort includes, among other amenities, a hotel, a retail complex, a convention center and meeting room complex, theaters, restaurants and an art/science museum. MBS is one of two companies awarded a concession to operate a casino in Singapore. Under the Request for Proposal, the Exclusivity Period provides that only two licensees will be granted the right to operate a casino in Singapore during an initial ten-year period, which expired on February 28, 2017. In connection with entering into the Development Agreement, MBS entered into a 60-year lease with the STB for the parcels underlying the project site and entered into an agreement with the Land Transport Authority of Singapore for the provision of necessary infrastructure for rapid transit systems and road works within and/or outside the project site. During the Exclusivity Period, the Company, which is currently the 100% indirect shareholder of MBS, must continue to be the single largest entity with direct or indirect controlling interest of at least 20% in MBS, unless otherwise approved by the CRA.

The term of the casino concession provided under the Development Agreement is for 30 years commencing from the date the Development Agreement was entered into, or August 23, 2006. In order to renew the casino concession, MBS must give notice to the STB and other relevant authorities in Singapore at least five years before its expiration in August 2036. The Singapore government may terminate the casino concession prior to its expiration in order to serve the best interests of the public, in which event fair compensation will be paid to MBS.

On April 26, 2010, MBS was issued a casino license for a three-year period, which required payment of a license fee of SGD 38 million (approximately \$27 million at exchange rates in effect at the time of the transaction). On April 19, 2013 and April 19, 2016, MBS was granted a license for a further three-year period expiring on April 25, 2016 and April 25, 2019, respectively, which required payment of SGD 57 million and SGD 66 million, respectively (approximately \$46 million and \$47 million, respectively, at exchange rates in effect at the time of the transaction) as part of the renewal process. The license is renewable upon submitting a renewal application, paying the applicable fee and meeting the renewal requirements as determined by the CRA. We have filed a renewal application and believe we meet the renewal requirements as determined by the CRA; however, no assurance can be given the license renewal will be granted or for what period of time it will be granted.

The Development Agreement contains, among other things, restrictions limiting the use of the leased land to the development and operation of the project, requirements that MBS obtain prior approval from the STB in order to subdivide the hotel and retail components of the project, and prohibitions on any such subdivision during the Exclusivity Period. The Development Agreement also contains provisions relating to the construction of the project and associated deadlines for substantial completion and opening; the location of the casino within the project site and casino licensing issues; insurance requirements; and limitations on MBS' ability to assign the lease or sub-lease any portion of the land during the Exclusivity Period. In addition, the Development Agreement contains events of default, including, among other things, the failure of MBS to perform its obligations under the Development Agreement and events of bankruptcy or dissolution.

The Development Agreement required MBS to invest at least SGD 3.85 billion (approximately \$2.42 billion at exchange rates in effect at the time of the transaction) in the Integrated Resort, which was to be allocated in specified amounts among the casino, hotel, food and beverage outlets, retail areas, meeting, convention and exhibition facilities, key attractions, entertainment venues and public areas. This minimum investment requirement has been fulfilled.

Employees whose job duties relate to the operations of the casino are required to be licensed by the relevant authorities in Singapore. MBS also must comply with comprehensive internal control standards or regulations concerning advertising; branch office operations; the location, floor plans and layout of the casino; casino operations including casino-related financial transactions and patron disputes; issuance of credit and collection of debt; relationships with and permitted payments to gaming promoters; security and surveillance; casino access by Singaporeans and non-Singaporeans; compliance functions and the prevention of money laundering; periodic standard and other reports to the CRA; and those relating to social controls including the exclusion of certain persons from the casino.

There is a goods and services tax of 7% imposed on gross gaming revenue and a casino tax of 15% imposed on the gross gaming revenue from the casino after reduction for the amount of goods and services tax, except in the case of gaming by premium players, in which case a casino tax of 5% is imposed on the gross gaming revenue generated from such players after reduction for the amount of the goods and services tax. The casino tax rates will not be changed for a period of 15 years from March 1, 2007. The casino tax is deductible against the Singapore corporate taxable

income of MBS. The provision for bad debts arising from the extension of credit granted to gaming patrons is not deductible against gross gaming revenue when calculating the casino tax, but is deductible for the purposes of calculating corporate income tax and the goods and services tax (subject to the prevailing law). MBS is permitted to extend casino credit to persons who are not Singapore citizens or permanent residents, but is not permitted to extend casino credit to Singapore citizens or permanent residents except to premium players.

The key constraint imposed on the casino under the Development Agreement is the total size of the gaming area, which must not be more than 15,000 square meters (approximately 161,000 square feet). The following are not counted towards the gaming area: back of house facilities, reception, restrooms, food and beverage areas, retail shops, stairs, escalators and lift lobbies leading to the gaming area, aesthetic and decorative displays, performance areas and major aisles. The casino located within Marina Bay Sands may not have more than 2,500 gaming machines, but there is no limit on the number of tables for casino games permitted in the casino.

On January 31, 2013, certain amendments to the Casino Control Act (the "Singapore Act") became effective. Among the changes introduced by these amendments is a revision of the maximum financial penalty that may be imposed on a casino operator by way of disciplinary action on a number of grounds, including contravention of a provision of the Singapore Act or a condition of the casino license. Under the amended provisions, a casino operator may be subject to a financial penalty, for each ground of disciplinary action, of a sum not exceeding 10% of the annual gross gaming revenue (as defined in the Singapore Act) of the casino operator for the financial year immediately preceding the date the financial penalty is imposed.

The amendments to the Singapore Act also included an introduction of an additional factor to be considered by the CRA in determining future applications and/or renewals for a casino license. Applicants are required to be a suitable person to develop, maintain and promote the Integrated Resort as a compelling tourist destination that meets prevailing market demand and industry standards and contributes to the tourism industry in Singapore. The Singapore government has established an evaluation panel that will assess applicants and report to the CRA on this aspect of the casino licensing requirements. We believe MBS' iconic tourist destination in Singapore and the Far East is well-established at this time.

#### *State of Nevada*

The ownership and operation of casino gaming facilities in the State of Nevada are subject to the Nevada Gaming Control Act and the regulations promulgated thereunder (collectively, the "Nevada Act") and various local regulations. Our gaming operations are also subject to the licensing and regulatory control of the Nevada Gaming Commission (the "Nevada Commission"), the Nevada Gaming Control Board (the "Nevada Board") and the Clark County Liquor and Gaming Licensing Board (the "CCLGLB" and together with the Nevada Commission and the Nevada Board, the "Nevada Gaming Authorities").

The laws, regulations and supervisory procedures of the Nevada Gaming Authorities are based upon declarations of public policy that are concerned with, among other things:

- the prevention of unsavory or unsuitable persons from having a direct or indirect involvement with gaming at any time or in any capacity;
- the establishment and maintenance of responsible accounting practices and procedures;
- the maintenance of effective controls over the financial practices of licensees, including establishing minimum procedures for internal fiscal affairs and the safeguarding of assets and revenues, providing reliable record-keeping and requiring the filing of periodic reports with the Nevada Gaming Authorities;
- the prevention of cheating and fraudulent practices; and
- the establishment of a source of state and local revenues through taxation and licensing fees.

Any change in such laws, regulations and procedures could have an adverse effect on our Las Vegas operations.

Las Vegas Sands, LLC ("LVSLLC") is licensed by the Nevada Gaming Authorities to operate the resort hotel as set forth in the Nevada Act. The gaming license requires the periodic payment of fees and taxes and is not transferable. LVSLLC is also registered as an intermediary company of Venetian Casino Resort, LLC ("VCR"). VCR is licensed as a manufacturer and distributor of gaming devices and as a key employee of LVSLLC. LVSLLC and VCR are collectively referred to as the "licensed subsidiaries." LVSC is registered with the Nevada Commission as a publicly traded

corporation (the "registered corporation"). As such, we must periodically submit detailed financial and operating reports to the Nevada Gaming Authorities and furnish any other information the Nevada Gaming Authorities may require. No person may become a stockholder of, or receive any percentage of the profits from, the licensed subsidiaries without first obtaining licenses and approvals from the Nevada Gaming Authorities. Additionally, the CCLGLB has taken the position it has the authority to approve all persons owning or controlling the stock of any corporation controlling a gaming licensee. We, and the licensed subsidiaries, possess all state and local government registrations, approvals, permits and licenses required in order for us to engage in gaming activities at The Venetian Resort Las Vegas.

The Nevada Gaming Authorities may investigate any individual who has a material relationship to or material involvement with us or the licensed subsidiaries to determine whether such individual is suitable or should be licensed as a business associate of a gaming licensee. Officers, directors and certain key employees of the licensed subsidiaries must file applications with the Nevada Gaming Authorities and may be required to be licensed by the Nevada Gaming Authorities. Our officers, directors and key employees who are actively and directly involved in the gaming activities of the licensed subsidiaries may be required to be licensed or found suitable by the Nevada Gaming Authorities.

The Nevada Gaming Authorities may deny an application for licensing or a finding of suitability for any cause they deem reasonable. A finding of suitability is comparable to licensing; both require submission of detailed personal and financial information followed by a thorough investigation. The applicant for licensing or a finding of suitability, or the gaming licensee by whom the applicant is employed or for whom the applicant serves, must pay all the costs of the investigation. Changes in licensed positions must be reported to the Nevada Gaming Authorities, and in addition to their authority to deny an application for a finding of suitability or licensure, the Nevada Gaming Authorities have jurisdiction to disapprove a change in a corporate position.

If the Nevada Gaming Authorities were to find an officer, director or key employee unsuitable for licensing or to have an inappropriate relationship with us or the licensed subsidiaries, we would have to sever all relationships with such person. In addition, the Nevada Commission may require us or the licensed subsidiaries to terminate the employment of any person who refuses to file appropriate applications. Determinations of suitability or questions pertaining to licensing are not subject to judicial review in Nevada.

We, and the licensed subsidiaries, are required to submit periodic detailed financial and operating reports to the Nevada Commission. Substantially all of our and our licensed subsidiaries' material loans, leases, sales of securities and similar financing transactions must be reported to or approved by the Nevada Commission.

If it were determined we or a licensed subsidiary violated the Nevada Act, the registration and gaming licenses we then hold could be limited, conditioned, suspended or revoked, subject to compliance with certain statutory and regulatory procedures. In addition, we and the persons involved could be subject to substantial fines for each separate violation of the Nevada Act at the discretion of the Nevada Commission. Further, a supervisor could be appointed by the Nevada Commission to operate the casinos, and, under certain circumstances, earnings generated during the supervisor's appointment (except for the reasonable rental value of the casinos) could be forfeited to the State of Nevada. Limitation, conditioning or suspension of any gaming registration or license or the appointment of a supervisor could (and revocation of any gaming license would) have a material adverse effect on our gaming operations.

Any beneficial holder of our voting securities, regardless of the number of shares owned, may be required to file an application, be investigated, and have its suitability as a beneficial holder of our voting securities determined if the Nevada Commission has reason to believe such ownership would otherwise be inconsistent with the declared policies of the State of Nevada. The applicant must pay all costs of investigation incurred by the Nevada Gaming Authorities in conducting any such investigation.

The Nevada Act requires any person who acquires more than 5% of our voting securities to report the acquisition to the Chairman of the Nevada Board. The Nevada Act requires beneficial owners of more than 10% of our voting securities apply to the Nevada Commission for a finding of suitability within thirty days after the Chairman of the Nevada Board mails the written notice requiring such filing. Under certain circumstances, an "institutional investor" as defined in the Nevada Act, which acquires more than 10%, but not more than 25%, of our voting securities (subject to certain additional holdings as a result of certain debt restructurings), may apply to the Nevada Commission for a waiver of such finding of suitability if such institutional investor holds the voting securities only for investment purposes. Additionally, an institutional investor that has been granted such a waiver may acquire more than 25% but not more than 29% of our voting securities if such additional ownership results from a stock re-purchase program and such

institutional investor does not purchase or otherwise acquire any additional voting securities that would result in an increase in its ownership percentage.

An institutional investor will be deemed to hold voting securities only for investment purposes if it acquires and holds the voting securities in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the members of our Board of Directors, any change in our corporate charter, by-laws, management, policies or our operations or any of our gaming affiliates, or any other action the Nevada Commission finds to be inconsistent with holding our voting securities only for investment purposes. Activities deemed consistent with holding voting securities only for investment purposes include:

- voting on all matters voted on by stockholders;
- making financial and other inquiries of management of the type normally made by securities analysts for informational purposes and not to cause a change in management, policies or operations; and
- such other activities as the Nevada Commission may determine to be consistent with such investment intent.

If the beneficial holder of voting securities who must be found suitable is a corporation, partnership or trust, it must submit detailed business and financial information including a list of beneficial owners. The applicant is required to pay all costs of investigation.

Any person who fails or refuses to apply for a finding of suitability or a license within thirty days after being ordered to do so by the Nevada Commission or the Chairman of the Nevada Board may be found unsuitable. The same restrictions apply to a record owner if the record owner, after request, fails to identify the beneficial owner. Any stockholder found unsuitable who holds, directly or indirectly, any beneficial ownership of the common stock of a registered corporation beyond such period of time as may be prescribed by the Nevada Commission may be guilty of a criminal offense. We are subject to disciplinary action if, after we receive notice that a person is unsuitable to be a stockholder or to have any other relationship with us or a licensed subsidiary, we, or any of the licensed subsidiaries:

- pay that person any dividend or interest upon any voting securities;
- allow that person to exercise, directly or indirectly, any voting right conferred through securities held by that person;
- pay remuneration in any form to that person for services rendered or otherwise; or
- fail to pursue all lawful efforts to require such unsuitable person to relinquish his or her voting securities including, if necessary, the purchase for cash at fair market value.

Our charter documents include provisions intended to help us comply with these requirements.

The Nevada Commission may, in its discretion, require the holder of any debt security of a registered corporation to file an application, be investigated and be found suitable to own the debt security of such registered corporation. If the Nevada Commission determines a person is unsuitable to own such security, then pursuant to the Nevada Act, the registered corporation can be sanctioned, including the loss of its approvals, if without the prior approval of the Nevada Commission, it:

- pays to the unsuitable person any dividend, interest, or any distribution whatsoever;
- recognizes any voting right by such unsuitable person in connection with such securities; or
- pays the unsuitable person remuneration in any form.

We are required to maintain a current stock ledger in Nevada that may be examined by the Nevada Gaming Authorities at any time. If any securities are held in trust by an agent or by a nominee, the record holder may be required to disclose the identity of the beneficial owner to the Nevada Gaming Authorities and we are also required to disclose the identity of the beneficial owner to the Nevada Gaming Authorities. A failure to make such disclosure may be grounds for finding the record holder unsuitable. We are also required to render maximum assistance in determining the identity of the beneficial owner.

We cannot make a public offering of any securities without the prior approval of the Nevada Commission if the securities or the proceeds from the offering are intended to be used to construct, acquire or finance gaming facilities

in Nevada, or to retire or extend obligations incurred for such purposes. On November 15, 2018, the Nevada Commission granted us prior approval to make public offerings for a period of three years, subject to certain conditions (the "shelf approval"). The shelf approval, however, may be rescinded for good cause without prior notice upon the issuance of an interlocutory stop order by the Chairman of the Nevada Board. The shelf approval does not constitute a finding, recommendation, or approval by the Nevada Commission or the Nevada Board as to the investment merits of any securities offered under the shelf approval. Any representation to the contrary is unlawful.

Changes in our control through a merger, consolidation, stock or asset acquisition, management or consulting agreement, or any act or conduct by any person whereby he or she obtains control, shall not occur without the prior approval of the Nevada Commission. Entities seeking to acquire control of a registered corporation must satisfy the Nevada Board and the Nevada Commission concerning a variety of stringent standards prior to assuming control of such registered corporation. The Nevada Commission may also require controlling stockholders, officers, directors and other persons having a material relationship or involvement with the entity proposing to acquire control, to be investigated and licensed as part of the approval process of the transaction.

The Nevada legislature has declared that some corporate acquisitions opposed by management, repurchases of voting securities and corporate defense tactics affecting Nevada gaming licensees, and registered corporations that are affiliated with those operations, may be injurious to stable and productive corporate gaming. The Nevada Commission has established a regulatory scheme to ameliorate the potentially adverse effects of these business practices upon Nevada's gaming industry and to further Nevada's policy to:

- assure the financial stability of corporate gaming operators and their affiliates;
- preserve the beneficial aspects of conducting business in the corporate form; and
- promote a neutral environment for the orderly governance of corporate affairs.

Approvals are, in certain circumstances, required from the Nevada Commission before we can make exceptional repurchases of voting securities above the current market price thereof and before a corporate acquisition opposed by management can be consummated.

The Nevada Act also requires prior approval of a plan of recapitalization proposed by the Board of Directors in response to a tender offer made directly to our stockholders for the purposes of acquiring control of the registered corporation.

License fees and taxes, computed in various ways depending upon the type of gaming or activity involved, are payable to the State of Nevada and to Clark County, Nevada. Depending upon the particular fee or tax involved, these fees and taxes are payable monthly, quarterly or annually and are based upon:

- a percentage of the gross revenues received;
- the number of gaming devices operated; or
- the number of table games operated.

The tax on gross revenues received is generally 6.75% for the State of Nevada and 0.55% for Clark County. In addition, an excise tax is paid by us on charges for admission to any facility where certain forms of live entertainment are provided. VCR is also required to pay certain fees and taxes to the State of Nevada as a licensed manufacturer and distributor.

Any person who is licensed, required to be licensed, registered, required to be registered, or under common control with such persons (collectively, "licensees"), and who proposes to become involved in a gaming operation outside of Nevada, is required to deposit with the Nevada Board, and thereafter maintain, a revolving fund in the amount of \$10,000 to pay the expenses of any investigation by the Nevada Board into their participation in such foreign gaming operation. The revolving fund is subject to increase or decrease at the discretion of the Nevada Commission. Thereafter, licensees are also required to comply with certain reporting requirements imposed by the Nevada Act. Licensees are also subject to disciplinary action by the Nevada Commission if they knowingly violate any laws of any foreign jurisdiction pertaining to such foreign gaming operation, fail to conduct such foreign gaming operation in accordance with the standards of honesty and integrity required of Nevada gaming operations, engage in activities harmful to the State of Nevada or its ability to collect gaming taxes and fees, or employ a person in such foreign operation who has

been denied a license or a finding of suitability in Nevada on the ground of personal unsuitability or who has been found guilty of cheating at gambling.

The sale of alcoholic beverages by the licensed subsidiaries on the casino premises and at the Sands Expo Center is subject to licensing, control and regulation by the applicable local authorities. Our licensed subsidiaries have obtained the necessary liquor licenses to sell alcoholic beverages. All licenses are revocable and are not transferable. The agencies involved have full power to limit, condition, suspend or revoke any such licenses, and any such disciplinary action could (and revocation of such licenses would) have a material adverse effect on our operations.

#### *Commonwealth of Pennsylvania*

Sands Bethworks Gaming is subject to the rules and regulations promulgated by the Pennsylvania Gaming Control Board ("PaGCB") and the Pennsylvania Department of Revenue, the on-site direction of the Pennsylvania State Police and the requirements of other agencies.

On December 20, 2006, we were awarded one of two Category 2 "at large" gaming licenses available in Pennsylvania, which authorizes a licensee to open with up to 3,000 slot machines and to increase to up to 5,000 slot machines upon approval of the PaGCB, which may not take effect earlier than six months after opening.

In July 2007, we paid a \$50 million licensing fee to the Commonwealth of Pennsylvania and, in August 2007, were issued our gaming license by the PaGCB. Just prior to the opening of the casino at Sands Bethlehem, we were required to make a deposit of \$5 million, which was reduced to \$2 million in January 2010 when the law was amended, to cover weekly withdrawals of our share of the cost of regulation and the amount withdrawn must be replenished weekly.

In February 2010, we submitted a petition to the PaGCB to obtain a table games operation certificate to operate table games at Sands Bethlehem, based on a revision to the law in 2010 that authorized table games. The petition was approved in April 2010, we paid a \$17 million table game licensing fee in May 2010 and were issued a table games certificate in June 2010. Table games operations commenced on July 18, 2010.

We must notify the PaGCB if we become aware of any proposed or contemplated change of control including more than 5% of the ownership interests of Sands Bethworks Gaming or of more than 5% of the ownership interests of any entity that owns, directly or indirectly, at least 20% of Sands Bethworks Gaming, including LVSC. The acquisition by a person or a group of persons acting in concert of more than 20% of the ownership interests of Sands Bethworks Gaming or of any entity that owns, directly or indirectly, at least 20% of Sands Bethworks Gaming, with the exception of the ownership interest of a person at the time of the original licensure when the license fee was paid, would be defined as a change of control under applicable Pennsylvania gaming law and regulations. Upon a change of control, the acquirer of the ownership interests would be required to qualify for licensure and to pay a new license fee of \$50 million or a lesser "change of control" fee as determined by the PaGCB. In December 2007, the PaGCB adopted a \$3 million fee to be assessed on an acquirer in connection with a change in control unless special circumstances dictate otherwise. The PaGCB retains the discretion to eliminate the need for qualification and may reduce the license fee upon a change of control. The PaGCB may provide up to 120 days for any person who is required to apply for a license and who is found not qualified to completely divest the person's ownership interest.

Any person who acquires beneficial ownership of 5% or more of our voting securities will be required to apply to the PaGCB for licensure, obtain licensure and remain licensed. Licensure requires, among other things, that the applicant establish by clear and convincing evidence the applicant's good character, honesty and integrity. Additionally, any trust that holds 5% or more of our voting securities is required to be licensed by the PaGCB and each individual who is a grantor, trustee or beneficiary of the trust is also required to be licensed by the PaGCB. Under certain circumstances and under the regulations of the PaGCB, an "Institutional Investor" as defined under the regulations of the PaGCB, which acquires beneficial ownership of 5% or more, but less than 10%, of our voting securities, may not be required to be licensed by the PaGCB provided the institutional investor files an Institutional Notice of Ownership Form with the PaGCB Bureau of Licensing and has filed, and remains eligible to file, a statement of beneficial ownership on Schedule 13G with the SEC as a result of this ownership interest. In addition, any beneficial owner of our voting securities, regardless of the number of shares beneficially owned, may be required at the discretion of the PaGCB to file an application for licensure.

In the event a security holder is required to be found qualified and is not found qualified, the security holder may be required by the PaGCB to divest of the interest at a price not exceeding the cost of the interest.

#### **Employees**

We directly employ approximately 51,500 employees worldwide and hire additional temporary employees on an as-needed basis. Our employees are not covered by collective bargaining agreements, except as discussed below with respect to certain Sands Expo Center and Sands Bethlehem employees. We believe we have good relations with our employees and any relevant union.

Certain unions have engaged in confrontational and obstructive tactics at some of our properties, including contacting potential customers, tenants and investors, objecting to various administrative approvals and picketing, and may continue these tactics in the future. Although we believe we will be able to operate despite such tactics, no assurance can be given we will be able to do so or the failure to do so would not have a material adverse effect on our financial condition, results of operations and cash flows. Although no assurances can be given, if employees decide to be represented by labor unions, management does not believe such representation would have a material effect on our financial condition, results of operations and cash flows.

Certain culinary personnel are hired from time to time to provide services for trade shows and conventions at Sands Expo Center and are covered under a collective bargaining agreement between Sands Expo Center and the Local Joint Executive Board of Las Vegas, for and on behalf of Culinary Workers Union, Local 226 and Bartenders Union, Local No. 165. This collective bargaining agreement expired in December 2000, but automatically renews on an annual basis. As a result, Sands Expo Center is operating under the terms of the expired bargaining agreement with respect to these employees.

Security officers at Sands Bethlehem voted to be represented by a labor union, the International Union, Security, Police, and Fire Professionals of America. On March 1, 2017, an initial collective bargaining agreement took effect, which includes a no-strike, no-lockout provision. The collective bargaining agreement expires on March 1, 2020.

#### **Intellectual Property**

Our intellectual property ("IP") portfolio currently consists of trademarks, copyrights, patents, domain names, trade secrets and other confidential and proprietary information. We believe the name recognition, brand identification and image we have developed through our intellectual properties attract customers to our facilities, drive customer loyalty and contribute to our success. We register and protect our IP in the jurisdictions in which we operate or significantly advertise, as well as in countries in which we may operate in the future or wish to ensure protection of our rights.

#### **Agreements Relating to the Malls in Las Vegas**

##### ***The Grand Canal Shoppes***

In May 2004, we completed the sale of The Grand Canal Shoppes and leased to GGP 19 retail and restaurant spaces on the casino level of The Venetian Las Vegas for 89 years with annual rent of one dollar, and GGP assumed our interest as landlord under the various leases associated with these 19 spaces. In addition, we agreed with GGP to:

- continue to be obligated to fulfill certain lease termination and asset purchase agreements;
- lease the portion of the theater space located within The Grand Canal Shoppes from GGP for a period of 25 years, subject to an additional 50 years of extension options, with initial fixed minimum rent of \$3 million per year;
- lease the gondola retail store and the canal space located within The Grand Canal Shoppes from GGP (and by amendment the extension of the canal space extended into The Shoppes at The Palazzo) for a period of 25 years, subject to an additional 50 years of extension options, with initial fixed minimum rent of \$4 million per year; and
- lease certain office space from GGP for a period of 10 years, subject to an additional 65 years of extension options, with initial annual rent of approximately \$1 million.

The lease payments relating to the theater, the canal space within The Grand Canal Shoppes and the office space from GGP are subject to automatic increases of 5% in the sixth lease year and each subsequent fifth lease year.

#### *The Shoppes at The Palazzo*

We contracted to sell The Shoppes at The Palazzo to GGP pursuant to a purchase and sale agreement dated as of April 12, 2004, as amended (the "Amended Agreement"). Under the Amended Agreement, we also leased to GGP certain restaurant and retail space on the casino level of The Palazzo Tower for 89 years with annual rent of one dollar and GGP assumed our interest as landlord under the various space leases associated with these spaces. On June 24, 2011, we reached a settlement with GGP regarding the final purchase price. Under the terms of the settlement, we retained the \$295 million of proceeds previously received and participate in certain potential future revenues earned by GGP.

#### *Cooperation Agreement*

Our business plan calls for each of The Venetian Resort Las Vegas, Sands Expo Center and the Grand Canal Shoppes, though separately owned, to be integrally related components of one facility (the "LV Integrated Resort"). In establishing the terms for the integrated operation of these components, the Fourth Amended and Restated Reciprocal Easement, Use and Operating Agreement, dated as of February 29, 2008, by and among Interface Group-Nevada, Inc., Grand Canal Shops II, LLC, Phase II Mall Subsidiary, LLC, VCR, and Palazzo Condo Tower, LLC (the "Cooperation Agreement") sets forth agreements regarding, among other things, encroachments, easements, operating standards, maintenance requirements, insurance requirements, casualty and condemnation, joint marketing, and the sharing of some facilities and related costs. Subject to applicable law, the Cooperation Agreement binds all current and future owners of all portions of the LV Integrated Resort and has priority over the liens securing LVSLLC's senior secured credit facility and in some or all respects any liens that may secure any indebtedness of the owners of any portion of the LV Integrated Resort. Accordingly, subject to applicable law, the obligations in the Cooperation Agreement will "run with the land" if any of the components change hands.

*Operating Covenants.* The Cooperation Agreement regulates certain aspects of the operation of the LV Integrated Resort. For example, under the Cooperation Agreement, we are obligated to operate The Venetian Resort Las Vegas continuously and to use it exclusively in accordance with standards of first-class Las Vegas Boulevard-style hotels and casinos. We are also obligated to operate and use the Sands Expo Center exclusively in accordance with standards of first-class convention, trade show and exposition centers. The owners of the Grand Canal Shoppes are obligated to operate their property exclusively in accordance with standards of first-class restaurant and retail complexes. For so long as a portion of The Venetian Resort Las Vegas is operated in accordance with a "Venetian" theme, the owner of the Grand Canal Shoppes must operate the section formerly referred to as The Grand Canal Shoppes in accordance with the overall Venetian theme.

*Maintenance and Repair.* We must maintain The Venetian Resort Las Vegas as well as some common areas and common facilities shared with the Grand Canal Shoppes. The cost of maintenance of all shared common areas and common facilities is to be shared between us and the owners of the Grand Canal Shoppes. We must also maintain, repair and restore Sands Expo Center and certain common areas and common facilities located in Sands Expo Center. The owners of the Grand Canal Shoppes must maintain, repair and restore the Grand Canal Shoppes and certain common areas and common facilities located within.

*Insurance.* We and the owners of the Grand Canal Shoppes must maintain minimum types and levels of insurance, including property damage, general liability and business interruption insurance. The Cooperation Agreement establishes an insurance trustee to assist in the implementation of the insurance requirements.

*Parking.* The Cooperation Agreement also addresses issues relating to the use of the LV Integrated Resort's parking facilities and easements for access. The Venetian Resort Las Vegas, Sands Expo Center and the Grand Canal Shoppes may use the parking spaces in the LV Integrated Resort's parking facilities on a "first come, first served" basis. The LV Integrated Resort's parking facilities are owned, maintained and operated by us, with the operating costs proportionately allocated among and/or billed to the owners of the components of the LV Integrated Resort. Each party to the Cooperation Agreement has granted to the others non-exclusive easements and rights to use the roadways and walkways on each other's properties for vehicular and pedestrian access to the parking garages.



*Utility Easement.* All property owners have also granted each other all appropriate and necessary easement rights to utility lines servicing the LV Integrated Resort.

*Consents, Approvals and Disputes.* If any current or future party to the Cooperation Agreement has a consent or approval right or has discretion to act or refrain from acting, the consent or approval of such party will only be granted and action will be taken or not taken only if a commercially reasonable owner would do so and such consent, approval, action or inaction would not have a material adverse effect on the property owned by such property owner. The Cooperation Agreement provides for the appointment of an independent expert to resolve some disputes between the parties, as well as for expedited arbitration for other disputes.

*Sale of the Grand Canal Shoppes by GGP.* We have a right of first offer in connection with any proposed sale of the Grand Canal Shoppes by GGP. We also have the right to receive notice of any default by GGP sent by any lender holding a mortgage on the Grand Canal Shoppes, if any, and the right to cure such default subject to our meeting certain net worth tests.

#### ITEM 1A. — RISK FACTORS

You should carefully consider the risk factors set forth below as well as the other information contained in this Annual Report on Form 10-K in connection with evaluating the Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also have a material adverse effect on our business, financial condition, results of operations and cash flows. Certain statements in "Risk Factors" are forward-looking statements. See "Item 7 — Management's Discussion and Analysis of Financial Condition and Results of Operations — Special Note Regarding Forward-Looking Statements."

##### Risks Related to Our Business

*Our business is particularly sensitive to reductions in discretionary consumer and corporate spending as a result of downturns in the economy.*

Consumer demand for hotel/casino resorts, trade shows and conventions and for the type of luxury amenities we offer is particularly sensitive to downturns in the economy and the corresponding impact on discretionary spending. Changes in discretionary consumer spending or corporate spending on conventions and business travel could be driven by many factors, such as: perceived or actual general economic conditions; any weaknesses in the job or housing market; additional credit market disruptions; high energy, fuel and food costs; the increased cost of travel; the potential for bank failures; perceived or actual disposable consumer income and wealth; fears of recession and changes in consumer confidence in the economy; or fears of war and future acts of terrorism. These factors could reduce consumer and corporate demand for the luxury amenities and leisure and business activities we offer, thus imposing additional limits on pricing and harming our operations.

*Our business is sensitive to the willingness of our customers to travel. Acts of terrorism, regional political events and developments in the conflicts in certain countries could cause severe disruptions in air travel that reduce the number of visitors to our facilities, resulting in a material adverse effect on our business, financial condition, results of operations and cash flows.*

We are dependent on the willingness of our customers to travel. Only a small amount of our business is and will be generated by local residents. Most of our customers travel to reach our Macao, Singapore, Las Vegas and Pennsylvania properties. Acts of terrorism may severely disrupt domestic and international travel, which would result in a decrease in customer visits to Macao, Singapore, Las Vegas and Pennsylvania, including our properties. Regional political events, including those resulting in travelers perceiving areas as unstable or an unwillingness of governments to grant visas, regional conflicts or an outbreak of hostilities or war could have a similar effect on domestic and international travel. Management cannot predict the extent to which disruptions in air or other forms of travel as a result of any further terrorist acts, regional political events, regional conflicts or outbreak of hostilities or war would have a material adverse effect on our business, financial condition, results of operations and cash flows.

*We are subject to extensive regulation and the cost of compliance or failure to comply with such regulations that govern our operations in any jurisdiction where we operate may have a material adverse effect on our business, financial condition, results of operations and cash flows.*

We are required to obtain and maintain licenses from various jurisdictions in order to operate certain aspects of our business, and we are subject to extensive background investigations and suitability standards in our gaming business. We also will become subject to regulation in any other jurisdiction where we choose to operate in the future. There can be no assurance we will be able to obtain new licenses or renew any of our existing licenses, or if such licenses are obtained, such licenses will not be conditioned, suspended or revoked; and the loss, denial or non-renewal of any of our licenses could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Our gaming operations and the ownership of our securities are subject to extensive regulation by the Nevada Commission, the Nevada Board and the CCLGLB. The Nevada Gaming Authorities have broad authority with respect to licensing and registration of our business entities and individuals investing in or otherwise involved with us.

Although we currently are registered with, and LVSLLC and VCR currently hold gaming licenses issued by, the Nevada Gaming Authorities, these authorities may, among other things, revoke the gaming license of any corporate entity or the registration of a registered corporation or any entity registered as a holding company of a corporate licensee for violations of gaming regulations.

In addition, the Nevada Gaming Authorities may, under certain circumstances, revoke the license or finding of suitability of any officer, director, controlling person, stockholder, noteholder or key employee of a licensed or registered entity. If our gaming licenses were revoked for any reason, the Nevada Gaming Authorities could require the closing of our casinos, which would have a material adverse effect on our business, financial condition, results of operations and cash flows. In addition, compliance costs associated with gaming laws, regulations or licenses are significant. Any change in the laws, regulations or licenses applicable to our business or gaming licenses could require us to make substantial expenditures or could otherwise have a material adverse effect on our business, financial condition, results of operations and cash flows.

A similar dynamic exists in all jurisdictions where we operate and a regulatory action against one of our operating entities in any gaming jurisdiction could impact our operations in other gaming jurisdictions where we do business.

We are subject to regulations imposed by the Foreign Corrupt Practices Act (the "FCPA"), which generally prohibits U.S. companies and their intermediaries from making improper payments to foreign officials for the purpose of obtaining or retaining business. We entered into a comprehensive civil administrative settlement with the SEC on April 7, 2016, and a non-prosecution agreement with the Department of Justice (the "DOJ") on January 19, 2017, which resolve all inquiries related to these government investigations and include ongoing reporting obligations to the DOJ through January 2020. Any violation of the FCPA could have a material adverse effect on our business, financial condition, results of operations and cash flows.

We also deal with significant amounts of cash in our operations and are subject to various reporting and anti-money laundering regulations. Recently, U.S. governmental authorities have evidenced an increased focus on the gaming industry and compliance with anti-money laundering laws and regulations. For instance, we are subject to regulation under the Currency and Foreign Transactions Reporting Act of 1970, commonly known as the "Bank Secrecy Act" ("BSA"), which, among other things, requires us to report to the Financial Crimes Enforcement Network ("FinCEN") certain currency transactions in excess of applicable thresholds and certain suspicious activities where we know, suspect or have reason to suspect such transactions involve funds from illegal activity or are intended to violate federal law or regulations or are designed to evade reporting requirements or have no business or lawful purpose. In addition, under the BSA, we are subject to various other rules and regulations involving reporting, recordkeeping and retention. Our compliance with the BSA is subject to periodic audits by the U.S. Treasury Department, and we may be subject to substantial civil and criminal penalties, including fines, if we fail to comply with applicable regulations. We are also subject to similar regulations in Singapore and Macao, as well as regulations set forth by the gaming authorities in the areas in which we operate. Any such laws and regulations could change or could be interpreted differently in the future, or new laws and regulations could be enacted. Any violation of anti-money laundering laws or regulations, or any accusations of money laundering or regulatory investigations into possible money laundering activities, by any of

our properties, employees or customers could have a material adverse effect on our business, financial condition, results of operations and cash flows.

*Because we are currently dependent primarily upon our properties in three markets for all of our cash flow, we are subject to greater risks than competitors with more operating properties or that operate in more markets.*

We currently do not have material operations other than our Macao, Singapore and Las Vegas properties. As a result, we are primarily dependent upon these properties for all of our cash.

Given our operations are currently conducted primarily at properties in Macao, Singapore and Las Vegas and a large portion of our planned development is in Macao, we will be subject to greater degrees of risk than competitors with more operating properties or that operate in more markets. The risks to which we will have a greater degree of exposure include the following:

- local economic and competitive conditions;
- inaccessibility due to inclement weather, road construction or closure of primary access routes;
- decline in air passenger traffic due to higher ticket costs or fears concerning air travel;
- changes in local and state governmental laws and regulations, including gaming laws and regulations;
- natural or man-made disasters, outbreaks of infectious diseases, terrorist activity or war;
- changes in the availability of water; and
- a decline in the number of visitors to Macao, Singapore or Las Vegas.

*We depend on the continued services of key managers and employees. If we do not retain our key personnel or attract and retain other highly skilled employees, our business will suffer.*

Our ability to maintain our competitive position is dependent to a large degree on the services of our senior management team, including Sheldon G. Adelson, Robert G. Goldstein and Patrick Dunont. The loss of their services or the services of our other senior managers, or the inability to attract and retain additional senior management personnel could have a material adverse effect on our business.

*The interests of our principal stockholder in our business may be different from yours.*

Mr. Adelson, his family members and trusts and other entities established for the benefit of Mr. Adelson and/or his family members (Mr. Adelson, individually our "Principal Stockholder," and the group, collectively our "Principal Stockholder and his family") beneficially own approximately 56% of our outstanding common stock as of December 31, 2018. Accordingly, Mr. Adelson exercises significant influence over our business policies and affairs, including the composition of our Board of Directors and any action requiring the approval of our stockholders, including the adoption of amendments to our articles of incorporation and the approval of a merger or sale of substantially all of our assets. The concentration of ownership may also delay, defer or even prevent a change in control of our company and may make some transactions more difficult or impossible without the support of Mr. Adelson. The interests of Mr. Adelson may differ from your interests.

*We are a parent company and our primary source of cash is and will be distributions from our subsidiaries.*

We are a parent company with limited business operations of our own. Our main asset is the capital stock of our subsidiaries. We conduct most of our business operations through our direct and indirect subsidiaries. Accordingly, our primary sources of cash are dividends and distributions with respect to our ownership interests in our subsidiaries derived from the earnings and cash flow generated by our operating properties. Our subsidiaries might not generate sufficient earnings and cash flow to pay dividends or distributions in the future. Our subsidiaries' payments to us will be contingent upon their earnings and upon other business considerations. In addition, our Singapore and U.S. subsidiaries' debt instruments and other agreements limit or prohibit certain payments of dividends or other distributions to us. We expect future debt instruments for the financing of future developments may contain similar restrictions.

*Our debt instruments, current debt service obligations and substantial indebtedness may restrict our current and future operations, particularly our ability to timely refinance existing indebtedness, finance additional growth, respond to changes or take some actions that may otherwise be in our best interests.*

Our current debt service obligations contain, or any future debt service obligations and instruments may contain, a number of restrictive covenants that impose significant operating and financial restrictions on us, including restrictions on our ability to:

- incur additional debt, including providing guarantees or credit support;
- incur liens securing indebtedness or other obligations;
- dispose of certain assets;
- make certain acquisitions;
- pay dividends or make distributions and make other restricted payments, such as purchasing equity interests, repurchasing junior indebtedness or making investments in third parties;
- enter into sale and leaseback transactions;
- engage in any new businesses;
- issue preferred stock; and
- enter into transactions with our stockholders and our affiliates.

In addition, our Macao, Singapore and U.S. credit agreements contain various financial covenants. See "Item 8 — Financial Statements and Supplementary Data — Notes to Consolidated Financial Statements — Note 9 — Long-Term Debt" for further description of these covenants.

As of December 31, 2018, we had \$11.99 billion of long-term debt outstanding, net of original issue discount, deferred offering costs (excluding those costs related to our revolving facilities) and cumulative fair value adjustments. This indebtedness could have important consequences to us. For example, it could:

- make it more difficult for us to satisfy our debt service obligations;
- increase our vulnerability to general adverse economic and industry conditions;
- impair our ability to obtain additional financing in the future for working capital needs, capital expenditures, development projects, acquisitions or general corporate purposes;
- require us to dedicate a significant portion of our cash flow from operations to the payment of principal and interest on our debt, which would reduce the funds available for our operations and development projects;
- limit our flexibility in planning for, or reacting to, changes in the business and the industry in which we operate;
- place us at a competitive disadvantage compared to our competitors that have less debt; and
- subject us to higher interest expense in the event of increases in interest rates.

Subject to applicable laws, including gaming laws, and certain agreed upon exceptions, our U.S. and Singapore debt is secured by liens on substantially all of our assets located in those countries, except for our equity interests in our subsidiaries.

Our ability to timely refinance and replace our indebtedness in the future will depend upon general economic and credit market conditions, approval required by local government regulators, adequate liquidity in the global credit markets, the particular circumstances of the gaming industry and prevalent regulations and our cash flow and operations, in each case as evaluated at the time of such potential refinancing or replacement. For example, we have a principal amount of \$98 million in long-term debt maturing during each of the three years ended December 31, 2021 and \$520 million and \$3.68 billion in long-term debt maturing during the years ending December 31, 2022 and 2023, respectively. If we are unable to refinance or generate sufficient cash flow from operations to repay our indebtedness on a timely basis, we might be forced to seek alternate forms of financing, dispose of certain assets or minimize capital expenditures and other investments, or reduce dividend payments. There is no assurance any of these alternatives would be available

to us, if at all, on satisfactory terms, on terms that would not be disadvantageous to us, or on terms that would not require us to breach the terms and conditions of our existing or future debt agreements.

We may attempt to arrange additional financing to fund the remainder of our planned, and any future, development projects. If such additional financing is necessary, we cannot assure you we will be able to obtain all the financing required for the construction and opening of these projects on suitable terms, if at all.

*The LIBOR calculation method may change and LIBOR is expected to be phased out after 2021.*

Some of our credit facilities calculate interest on the outstanding principal balance using LIBOR. On July 27, 2017, the United Kingdom Financial Conduct Authority (the "FCA") announced it would phase out LIBOR as a benchmark by the end of 2021. In the meantime, actions by the FCA, other regulators or law enforcement agencies may result in changes to the method by which LIBOR is calculated. At this time, it is not possible to predict the effect on our financial condition, results of operations and cash flows of any such changes or any other reforms to LIBOR that may be enacted in the United Kingdom or elsewhere.

*Fluctuations in foreign currency exchange rates could have an adverse effect on our financial condition, results of operations and cash flows.*

We record transactions in the functional currencies of our reporting entities. Because our consolidated financial statements are presented in U.S. dollars, we translate revenues and expenses, as well as assets and liabilities, into U.S. dollars at exchange rates in effect during or at the end of each reporting period, which subjects us to foreign currency translation risks. The strengthening of the U.S. dollar against the functional currencies of our foreign operations could have an adverse effect on our U.S. dollar financial results.

In certain instances, our entities whose functional currency is the U.S. dollar may enter, and will continue to enter, into transactions that are denominated in a currency other than U.S. dollars. At the date that such transaction is recognized, each asset and liability arising from the transaction is measured and recorded in U.S. dollars using the exchange rate in effect at that date. At each balance sheet date, recorded monetary balances denominated in a currency other than U.S. dollars are adjusted to U.S. dollars using the exchange rate at the balance sheet date, with gains or losses recorded in other income (expense), which subjects us to foreign currency transaction risks.

We are a parent company whose primary source of cash is distributions from our subsidiaries (see "*We are a parent company and our primary source of cash is and will be distributions from our subsidiaries.*"). Fluctuations in the U.S. dollar/SGD exchange rate, the U.S. dollar/Macao pataca exchange rate and/or the U.S. dollar/HKD exchange rate could have a material adverse effect on the amount of dividends and distributions from our Singapore and Macao operations.

On July 21, 2005, the People's Bank of China announced the renminbi will no longer be pegged to the U.S. dollar, but will be allowed to float in a band (and, to a limited extent, increase in value) against a basket of foreign currencies. We cannot assure you the Hong Kong dollar will continue to be pegged to the U.S. dollar and the Macao pataca will continue to be pegged to the Hong Kong dollar or the current peg rate for these currencies will remain at the same level. The floating of the renminbi and possible changes to the pegs of the Macao pataca and/or the Hong Kong dollar may result in severe fluctuations in the exchange rate for these currencies. Any change in such exchange rates could have a material adverse effect on our operations and on our ability to make payments on certain of our debt instruments. We do not currently hedge foreign currency risk related to the Hong Kong dollar, renminbi or pataca; however, we maintain a significant amount of our operating funds in the same currencies in which we have obligations, thereby reducing our exposure to currency fluctuations.

*We extend credit to a large portion of our customers and we may not be able to collect gaming receivables from our credit players.*

We conduct our gaming activities on a credit and cash basis. Any such credit we extend is unsecured. Table games players typically are extended more credit than slot players, and high-stakes players typically are extended more credit than players who tend to wager lesser amounts. High-end gaming is more volatile than other forms of gaming, and variances in win-loss results attributable to high-end gaming may have a significant positive or negative impact on cash flow and earnings in a particular quarter.

During the year ended December 31, 2018, approximately 15.3%, 16.0% and 65.8% of our table games drop at our Macao properties, Marina Bay Sands and our Las Vegas properties, respectively, was from credit-based wagering, while table games play at our Pennsylvania property was primarily conducted on a cash basis. We extend credit to those customers whose level of play and financial resources warrant, in the opinion of management, an extension of credit. These large receivables could have a significant impact on our results of operations if deemed uncollectible.

While gaming debts evidenced by a credit instrument, including what is commonly referred to as a "marker," and judgments on gaming debts are enforceable under the current laws of Nevada, and Nevada judgments on gaming debts are enforceable in all states under the Full Faith and Credit Clause of the U.S. Constitution, other jurisdictions around the world, including jurisdictions our gaming customers may come from, may determine, or have determined, enforcement of gaming debts is against public policy. Although courts of some foreign nations will enforce gaming debts directly and the assets in the U.S. of foreign debtors may be reached to satisfy a judgment, judgments on gaming debts from courts in the U.S. and elsewhere are not binding in the courts of many foreign nations.

In particular, we expect our Macao operations will be able to enforce gaming debts only in a limited number of jurisdictions, including Macao. To the extent our Macao gaming customers and gaming promoters are from other jurisdictions, our Macao operations may not have access to a forum in which it will be possible to collect all gaming receivables because, among other reasons, courts of many jurisdictions do not enforce gaming debts and our Macao operations may encounter forums that will refuse to enforce such debts. Moreover, under applicable law, our Macao operations remain obligated to pay taxes on uncollectible winnings from customers.

It is also possible our Singapore operations may not be able to collect gaming debts because, among other reasons, courts of certain jurisdictions do not enforce gaming debts. To the extent our Singapore gaming customers' assets are situated in such jurisdictions, our Singapore operations may not be able to take enforcement action against such assets to facilitate collection of gaming receivables.

Even where gaming debts are enforceable, they may not be collectible. Our inability to collect gaming debts could have a significant adverse effect on our results of operations and cash flows.

*Win rates for our gaming operations depend on a variety of factors, some beyond our control, and the winnings of our gaming customers could exceed our casino winnings.*

The gaming industry is characterized by an element of chance. In addition to the element of chance, win rates are also affected by other factors, including players' skill and experience, the mix of games played, the financial resources of players, the spread of table limits, the volume of bets played and the amount of time played. Our gaming profits are mainly derived from the difference between our casino winnings and the casino winnings of our gaming customers. Since there is an inherent element of chance in the gaming industry, we do not have full control over our winnings or the winnings of our gaming customers. If the winnings of our gaming customers exceed our winnings, we may record a loss from our gaming operations, which could have a material adverse effect on our financial condition, results of operations and cash flows.

*We face the risk of fraud and cheating.*

Our gaming customers may attempt or commit fraud or cheat in order to increase winnings. Acts of fraud or cheating could involve the use of counterfeit chips or other tactics, possibly in collusion with our employees. Internal acts of cheating could also be conducted by employees through collusion with dealers, surveillance staff, floor managers or other casino or gaming area staff. Failure to discover such acts or schemes in a timely manner could result in losses in our gaming operations. In addition, negative publicity related to such schemes could have an adverse effect on our reputation, potentially causing a material adverse effect on our business, financial condition, results of operations and cash flows.

*A failure to establish and protect our IP rights could have a material adverse effect on our business, financial condition and results of operations.*

We endeavor to establish, protect and enforce our IP, including our trademarks, copyrights, patents, domain names, trade secrets and other confidential and proprietary information. There can be no assurance, however, the steps we take to protect our IP will be sufficient. If a third party successfully challenges our trademarks, we could have difficulty maintaining exclusive rights. If a third party claims we have infringed, currently infringe, or could in the future infringe upon its IP rights, we may need to cease use of such IP, defend our rights or take other steps. In addition, if third parties

violate their obligations to us to maintain the confidentiality of our proprietary information or there is a security breach or lapse, or if third parties misappropriate or infringe upon our IP, our business may be affected. Our inability to adequately obtain, maintain or defend our IP rights for any reason could have a material adverse effect on our business, financial condition and results of operations.

*Our insurance coverage may not be adequate to cover all possible losses that our properties could suffer. In addition, our insurance costs may increase and we may not be able to obtain the same insurance coverage, or the scope of insurance coverage we deem necessary, in the future.*

We have comprehensive property and liability insurance policies for our properties in operation, as well as those in the course of construction, with coverage features and insured limits we believe are customary in their breadth and scope. Market forces beyond our control may nonetheless limit the scope of the insurance coverage we can obtain or our ability to obtain coverage at reasonable rates. Certain types of losses, generally of a catastrophic nature, such as earthquakes, hurricanes and floods, or terrorist acts, or certain liabilities may be uninsurable or too expensive to justify obtaining insurance. As a result, we may not be successful in obtaining insurance without increases in cost or decreases in coverage levels. In addition, in the event of a substantial loss, the insurance coverage we carry may not be sufficient to pay the full market value or replacement cost of our lost investment or in some cases could result in certain losses being totally uninsured. As a result, we could lose some or all of the capital we have invested in a property, as well as the anticipated future revenue from the property, and we could remain obligated for debt or other financial obligations related to the property.

Our debt instruments and other material agreements require us to maintain a certain minimum level of insurance. Failure to satisfy these requirements could result in an event of default under these debt instruments or material agreements.

*Conflicts of interest may arise because certain of our directors and officers are also directors of SCL.*

In November 2009, our subsidiary, SCL, listed its ordinary shares on The Main Board of The Stock Exchange of Hong Kong Limited (the "SCL Offering"). We currently own 70.0% of the issued and outstanding ordinary shares of SCL. As a result of SCL having stockholders who are not affiliated with us, we and certain of our officers and directors who also serve as officers and/or directors of SCL may have conflicting fiduciary obligations to our stockholders and to the minority stockholders of SCL. Decisions that could have different implications for us and SCL, including contractual arrangements we have entered into or may in the future enter into with SCL, may give rise to the appearance of a potential conflict of interest.

*Changes in tax laws and regulations could impact our financial condition, results of operations and cash flows.*

We are subject to taxation and regulation by various government agencies, primarily in Macao, Singapore and the U.S. (federal, state and local levels). From time to time, U.S. federal, state, local and foreign governments make substantive changes to income tax, indirect tax and gaming tax rules and the application of these rules, which could result in higher taxes than would be incurred under existing tax law or interpretation. In particular, government agencies may make changes that could reduce the profits we can effectively realize from our non-U.S. operations. Like most U.S. companies, our effective income tax rate reflects the fact that income earned and reinvested outside the U.S. is taxed at local rates, which are often lower than U.S. tax rates.

In December 2017, the U.S. enacted the Tax Cuts and Jobs Act (the "Act") also referred to as "U.S. tax reform." The Act made significant changes to U.S. income tax laws including lowering the U.S. corporate tax rate to 21% effective beginning in 2018 and transitioning from a worldwide tax system to a territorial tax system resulting in dividends from our foreign subsidiaries not being subject to U.S. income tax and creating a one-time tax on previously unremitted earnings of foreign subsidiaries. These changes are complex and will continue to require the Internal Revenue Service to issue interpretations and implement regulations that may significantly impact how we will apply the Act and impact our results of operations in the period issued.

If changes in tax laws and regulations were to significantly increase the tax rates on gaming revenues or income, or if there are additional significant interpretations and implementing regulations issued related to the Act, these changes could increase our tax expense and liability, and therefore, could have a material adverse effect on our financial condition, results of operations and cash flows.

*Natural or man-made disasters, an outbreak of highly infectious disease, terrorist activity or war could adversely affect the number of visitors to our facilities and disrupt our operations, resulting in a material adverse effect on our business, financial condition, results of operations and cash flows.*

So called "Acts of God," such as typhoons and rainstorms, particularly in Macao, and other natural disasters, man-made disasters, outbreaks of highly infectious diseases, terrorist activity or war may result in decreases in travel to and from, and economic activity in, areas in which we operate, and may adversely affect the number of visitors to our properties. Any of these events also may disrupt our ability to staff our business adequately, could generally disrupt our operations and could have a material adverse effect on our business, financial condition, results of operations and cash flows. Although we have insurance coverage with respect to some of these events, we cannot assure you any such coverage will be sufficient to indemnify us fully against all direct and indirect costs, including any loss of business that could result from substantial damage to, or partial or complete destruction of, any of our properties.

*Our failure to maintain the integrity of our information and information systems, which contain legally protected information about us and others, could happen in a variety of ways, including as a result of unauthorized access, breach of our cybersecurity systems and measures, or other disruption or corruption of our information systems, software or data, or access to information stored outside of our information systems, and could impair our ability to conduct our business operations, delay our ability to recognize revenue, compromise the integrity of our business and services, result in significant data losses and the theft of our IP, damage our reputation, expose us to liability to third parties, regulatory fines and penalties, and require us to incur significant costs to maintain the privacy and security of our information, network and data.*

We face global cybersecurity and information security threats, which may range from uncoordinated individual attempts to sophisticated and targeted measures directed at us. Cyber-attacks and information security breaches may include, but are not limited to, attempts to access information, including legally protected information about people including customers and company information, computer malware such as viruses, denial of service, ransomware attacks that encrypt, exfiltrate, or otherwise render data unusable or unavailable in an effort to extort money or other consideration as a condition to purportedly returning the data to a usable form, operator errors or misuse, or inadvertent releases of data or documents, and other forms of electronic and non-electronic information security breaches.

Our business requires the collection and retention of large volumes of data and non-electronic information, including credit card numbers and other legally protected information about people in various information systems we maintain and in those maintained by third parties with whom we contract and may share data. We also maintain important internal company information such as legally protected information about our employees and information relating to our operations. The integrity and protection of that legally protected information about people and company information are important to us. Our collection of such legally protected information about people and company information is subject to extensive regulation by private groups such as the payment card industry as well as domestic and foreign governmental authorities, including gaming authorities. If a cybersecurity or privacy event occurs, we may be unable to satisfy applicable laws and regulations or the expectation of regulators, employees, customers or other impacted individuals.

Privacy and cybersecurity laws and regulations are developing and changing frequently, and vary significantly by jurisdiction. Many applicable laws and regulations protecting privacy and addressing cybersecurity have not yet been interpreted by regulators or courts, which causes uncertainty. We may incur significant costs in our efforts to comply with the various applicable privacy and cybersecurity laws and regulations as they emerge and change. Also, privacy and cybersecurity laws and regulations may limit our ability to protect individuals, including customers and employees. For example, these laws and regulations may restrict information sharing in ways that make it more difficult to obtain or share information concerning at-risk individuals. Compliance with applicable privacy laws and regulations also may adversely impact our ability to market our products, properties, and services to our guests and patrons. In addition, non-compliance by us, or potentially by third parties with which we share information, with any applicable privacy and cybersecurity law or regulation, including accidental loss, inadvertent disclosure, unauthorized access or dissemination, or breach of security may result in damage to our reputation and could subject us to fines, penalties, required corrective actions, lawsuits, payment of damages, or restrictions on our use or transfer of data. We are subject to different regulator(s) and others' interpretations of our compliance with these new and changing laws and regulations.

In addition, we have experienced a sophisticated criminal cybersecurity attack in the past, including a breach of our information technology systems in which customer and company information was compromised and certain



company data may have been destroyed, and we may experience additional cybersecurity attacks in the future, potentially with more frequency or sophistication. We rely on proprietary and commercially available systems, software, tools, and monitoring to provide security for processing, transmission, and storage of customer and employee information, such as payment card and other confidential or proprietary information. We also rely extensively on computer systems to process transactions, maintain information, and manage our businesses. Disruptions in the availability of our computer systems, through cyber-attacks or otherwise, could impact our ability to service our customers and adversely affect our sales and the results of operations. For instance, there has been an increase in criminal cybersecurity attacks against companies where customer and company information has been compromised and company data has been destroyed. Our information systems and records, including those we maintain with third-party service providers, as well as the systems of other third parties that share data with us under contractual agreements, may be subject to cyber-attacks and information security breaches. Our third-party information system service providers and other third parties that share data with us pursuant to contractual agreements face risks relating to cybersecurity and privacy similar to ours, and we do not directly control any of such parties' information security or privacy operations. For example, the systems currently used for the transmission and approval of payment card transactions, and the technology utilized in payment cards themselves, all of which can put payment card data at risk, are determined and controlled by the payment card industry, not us.

A significant theft, destruction, loss or fraudulent use of legally protected information about people or company information maintained by us or by a third-party service provider or other third party that shares data with us pursuant to contractual agreement could have an adverse effect on our reputation, cause a material disruption to our operations and management team and result in remediation expenses (including liability for stolen assets or information, repairing system damage and offering incentives to customers or business partners to maintain their relationships after an attack) and regulatory fines, penalties and corrective actions, or lawsuits by regulators, third-party service providers, third parties that share data with us pursuant to contractual agreements and/or people whose data is or may be impacted. Such theft, destruction, loss or fraudulent use could also result in litigation by shareholders alleging our privacy protections and protections against cyber-attacks were insufficient, our response to an attack was faulty or insufficient care was taken in ensuring we were able to comply with cybersecurity, privacy or data protection regulations, protect information, identify risks and attacks, or respond to and recover from a cyber-attack, or by customers and other parties whose information was subject to such attacks. Advances in computer software capabilities and encryption technology, new tools, and other developments, including continuously evolving attack methods that may exploit vulnerabilities based on these advances, may increase the risk of a security breach or other intrusion. In addition, we may incur increased cybersecurity and privacy protection costs that may include organizational changes, deploying additional personnel and protection technologies, training employees and engaging third-party experts and consultants. There can be no assurance the insurance the Company has in place relating to cybersecurity and privacy risks will be sufficient in the event of a major cybersecurity or privacy event. Any of these events could have a material adverse effect on our business, financial condition, results of operations and cash flows.

*Our gaming operations rely heavily on technology services provided by third parties. In the event there is an interruption of these services to us, it may have an adverse effect on our operations and financial condition.*

We engage a number of third parties to provide gaming operating systems for the facilities we operate. As a result, we rely on such third parties to provide uninterrupted services to us in order to run our business efficiently and effectively. In the event one of these third parties experiences a disruption in its ability to provide such services to us (whether due to technological difficulties or power problems), this may result in a material disruption at the gaming facilities in which we operate and have a material adverse effect on our business, financial condition, results of operations and cash flows.

Any unscheduled interruption in our technology services is likely to result in an immediate, and possibly substantial, loss of revenues due to a shutdown of our gaming operations, cloud computing and gaming systems. Such interruptions may occur as a result of, for example, catastrophic events or rolling blackouts. Our systems are also vulnerable to damage or interruption from earthquakes, floods, fires, telecommunication failures, terrorist attacks, computer viruses, computer denial-of-service attacks and similar events.

*There are significant risks associated with our construction projects, which could have a material adverse effect on our financial condition, results of operations and cash flows.*

We previously announced the renovation, expansion and rebranding of Sands Cotai Central, the addition of approximately 370 luxury suites in the St. Regis Tower Suites Macao and the development of approximately 290

# EXHIBIT “V”

Policy Number  
GLO 0171169-02

**ENDORSEMENT**

**ZURICH AMERICAN INSURANCE COMPANY**

Named Insured: LAS VEGAS SANDS CORP.  
Effective Date: 06/01/2016

12:01 A.M., Standard Time

Agent Name: BEECHER CARLSON INSURANCE SERVICES

Agent No. 18176-000

IT IS HEREBY AGREED AND UNDERSTOOD THAT THE FOLLOWING CHANGES HAVE BEEN MADE TO THE POLICY;

EFFECTIVE 06/01/2016 FORM# U-GL-1114-A CW (10/02) BROAD FORM NAMED INSURED IS BEING ADDED TO THE POLICY PER THE ATTACHED.

EFFECTIVE 06/01/2016 THE INSURED MAILING ADDRESS IS BEING REVISED TO SHOW THE FOLLOWING;

3555 LAS VEGAS BOULEVARD SOUTH  
LAS VEGAS, NV 89109

EFFECTIVE 06/01/2016 FORM# U-GL-1114-A CW (10/02) POLLUTION EXCLUSION LIMITED EXCEPTIONS FOR HOSPITALITY INDUSTRY IS BEING ADDED TO THE POLICY PER THE ATTACHED.

EFFECTIVE 06/01/2016 FORM# CG 22 64 (04/13) PESTICIDE OR HERBICIDE APPLICATOR - LIMITED POLLUTION COVERAGE IS BEING ADDED TO THE POLICY PER THE ATTACHED.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

U-GL-1114-A CW (10/02)

VEN 1440  
VEN 1414

Policy Number  
GLO 0171169-02

**ENDORSEMENT**

**ZURICH AMERICAN INSURANCE COMPANY**

**Named Insured:** LAS VEGAS SANDS CORP

**Effective Date:** 06/01/2016  
12:01 A.M., Standard Time

**Agent Name:** BEECHER CARLSON INSURANCE

**Agent No.** 18176-000

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Commercial General Liability Coverage Part**

It is hereby agreed that **SECTION II – WHO IS AN INSURED 1.** is amended to include:

Any individual or entity (your client) who requires you to provide primary general liability insurance under written contract for "managed premises". Coverage is provided to your client only while a written contract is in effect with your client that requires your management, control of or providing of services to or for the "managed premises".

This insurance does not apply to any claims by a Named Insured against your client.

Under **SECTION V – Definitions** it is agreed that the following is added:

"Managed premises" means:

- (1) The location(s) or premises described in the written contract that is owned by your client and for whom you are performing premises management services, and
- (2) All operations on those locations or premises described in paragraph (1) above or elsewhere which are necessary or incidental to the ownership, maintenance or use of those premises or locations, and
- (3) You have signed and accepted a contract to exercise management control over your client's location(s) or premises and you have assumed the duties required by the contract.

All other terms and conditions of this policy remain unchanged.

U-GL-1114-A CW (10/02)

VEN 1441  
VEN 1415

Policy Number

GLO 0171169-02

ENDORSEMENT

ZURICH AMERICAN INSURANCE COMPANY

Named Insured LAS VEGAS SANDS CORP.

Effective Date: 06/01/2016

12:01 A.M., Standard Time

Agent Name BEECHER CARLSON INSURANCE

Agent No. 18176-000

JOINT VENTURE, PARTNERSHIP AND LLC

PART 3. OF SECTION II - WHO IS AN INSURED IS DELETED AND REPLACED BY THE FOLLOWING:

3. ANY ORGANIZATION YOU NEWLY ACQUIRE OR FORM, AND OVER WHICH YOU MAINTAIN OWNERSHIP OR MAJORITY INTEREST, WILL QUALIFY AS A NAMED INSURED IF THERE IS NO OTHER SIMILAR INSURANCE AVAILABLE TO THAT ORGANIZATION. HOWEVER:

A. COVERAGE UNDER THIS PROVISION IS AFFORDED ONLY UNTIL THE 180TH DAY AFTER YOU ACQUIRE OR FORM THE ORGANIZATION OR THE END OF THE POLICY PERIOD, WHICHEVER IS EARLIER;

B. COVERAGE A DOES NOT APPLY TO "BODILY INJURY" OR "PROPERTY DAMAGE" THAT OCCURRED BEFORE YOU ACQUIRED OR FORMED THE ORGANIZATION; AND

C. COVERAGE B DOES NOT APPLY TO "PERSONAL AND ADVERTISING INJURY" ARISING OUT OF AN OFFENSE COMMITTED BEFORE YOU ACQUIRED OR FORMED THE ORGANIZATION;

D. IF THE ORGANIZATION IS A JOINT VENTURE, PARTNERSHIP OR LIMITED LIABILITY COMPANY, COVERAGE IS AFFORDED ONLY TO THE EXTENT OF THE PERCENTAGE OF OWNERSHIP INTEREST OF ANY INSURED IN THE ORGANIZATION.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

U-GL-1114A CW (10/02)

VEN 1442  
VEN 1416

**Innkeepers Legal Liability  
Coverage Endorsement**



POLICY NUMBER	EFF. DATE OF POL.	EXP. DATE OF POL.	EFF. DATE OF END.	PRODUCER	ADD'L. PREM.	RETURN PREM.
GLO 0171169-02	06/01/2016	06/01/2017	06/01/2016	18178-000		

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:  
**Commercial General Liability Coverage Part**

**SCHEDULE**

**LIMITS OF LIABILITY & SELF-INSURED RETENTION**

Per Occurrence Limit: \$ 1,000,000  
Per Guest Limit: \$ 1,000,000  
Aggregate: \$ 1,000,000  
Self-Insured Retention Per  
Occurrence Limit: \$ 100,000

It is agreed that SECTION I. COVERAGES is amended to include the following additional coverage:

**A. Coverage I. - Innkeepers Legal Liability Coverage**

**1. Insuring Agreement:**

We will pay those sums that you become legally obligated to pay as damages because of loss or destruction of, or damage to "covered property" due to an "occurrence" which takes place during the policy period. We have the right and duty to defend any suit brought against you seeking damages that are payable under this Insurance. We may investigate and settle any claim or suit as we deem expedient. We will not defend any suit after we have paid judgments or settlements equal to the applicable Limit of Insurance shown in the Schedule of this endorsement.

**2. Exclusions**

This Insurance does not apply to:

**a. Acts Committed By The Insured**

Loss or destruction of, or damage to property resulting from any dishonest or criminal act committed by the insured, whether acting alone or in collusion with others;

**b. Assumed Liability**

Liability you assume under any written agreement entered into with a "guest" before the "occurrence" of any loss, destruction or damage.

- c. **Fire**  
Destruction of, or damage to property resulting from fire.
- d. **Food or Liquid**  
Destruction of, or damage to property resulting from the spilling, upsetting or leaking of any food or liquid.
- e. **Governmental Action**  
Loss or destruction of, or damage to property resulting from seizure or destruction of the property by order of governmental authority.
- f. **Inherent Vice**  
Destruction of or damage to property resulting from insects, animals, wear and tear, gradual deterioration or inherent vice.
- g. **Laundering or Cleaning**  
Destruction of or damage to property while in your care and custody for laundering or cleaning.
- h. **Nuclear**  
Loss or destruction of, or damage to property resulting from nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.
- i. **Release of Others from Liability**  
Your release of any other person or organization from legal liability.
- j. **War and Similar Actions**  
Loss or destruction of, or damage to property resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident.

**B. LIMITS OF INSURANCE**

1. The most we will pay in the aggregate for all damages because of loss or destruction of or damage to "covered property" in any one "occurrence" is the Per Occurrence Limit of Insurance shown in the SCHEDULE of this endorsement. All loss, destruction or damage involving a single act or event or series of related acts or events whether caused by one or more persons is considered one "occurrence".
2. Subject to the applicable limits stated in 1. above, the most we will pay for all damages because of loss or destruction of or damage to property of any one "guest" is the Per Guest Limit of Insurance shown in the SCHEDULE of this endorsement.
3. The Aggregate Limit shown in the Schedule is the most we will pay for all damages because of loss or destruction of, or damage to Covered Property during the policy period.

**C. SELF INSURED RETENTION**

1. Our obligation to pay damages on your behalf applies only to the amount of damages in excess of the self-insured retention amount shown in the SCHEDULE of this endorsement.
2. The self-insured retention amount applies hereunder to all damages combined arising out of any one "occurrence".
3. We may at our sole option either:
  - a. pay any part or all of the self-insured retention amount to settle any claim or "suit" and upon our notifying you of this action you shall reimburse us for the applicable self-insured retention amount; or
  - b. simultaneously upon receipt of notice of any claim or "suit" or at any time thereafter call upon you to pay any part or all of the self-insured retention amount, to be held or applied by us as appropriate.

**D. CONDITIONS**

1. **Condition 2. - Duties in the Event of Loss, Claim or Suit:**

The following is added:

If you have reason to believe that any loss or destruction of, or damage to "covered property" involves a violation of law, you must notify the appropriate law enforcement authorities.

2. Condition 4. - Other Insurance

For purposes of this insurance only, the following Other Insurance provisions apply:

This insurance does not apply to damages recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the damages, this insurance will apply to that part of the damages not recoverable or recovered under the other insurance.

3. Non-Cumulation of Limit of Insurance

Limits of Insurance stated in the SCHEDULE of this endorsement do not accumulate from year to year or period to period.

E. DEFINITIONS

1. "Covered property" means any property belonging to your "guests" while the property is in your possession or on your "premises". "Covered property" does not include:
  - a. Samples, Articles for Sale: Samples or articles carried or held for sale or for delivery after sale;
  - b. Vehicles: Any vehicle including its equipment and accessories or any property contained in or on the vehicle.
2. "Guest" means any person or group of persons temporarily residing in or renting premises from you for a short term period(s) of 30 days or less. Guest does not include any residential or commercial tenant of yours that is leasing or renting property from you on a long term lease or rental basis."
3. "Occurrence" for purposes of this insurance only, means an act or event or series of related acts or events caused by one or more persons, which results in loss or destruction of or damage to "covered property".
4. "Premises" means the interior of any building that you own, rent or occupy that is used in the conduct of your business operations.



Policy Number  
GLO 0171169-02

**ENDORSEMENT**

**ZURICH AMERICAN INSURANCE COMPANY**

Named Insured: Las Vegas Sands Corp

Effective Date: 06/01/2016  
12:01 A.M., Standard Time

Agent Name: BEECHER CARLSON INSURANCE SERV

Agent No. 18176-000

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under any of the following:

**COMMERCIAL GENERAL LIABILITY PART**

It is agreed that U-GL-1502 -- Personal and Advertising Injury Definition Amendment -- Limited, is deleted from the policy, effective 06/01/2016;

It is also agreed that the following form is amended as follows, effective 06/01/2016:

- U-GL-1114 -- Innkeepers Legal Liability Coverage Endorsement -- Revised;
- U-GL-1345 -- General Liability Supplemental Coverage Endorsement, is amended to remove Sections A. and B.;
- U-GL-872 -- Premium And Reports Agreement -- Composite Rated Policies -- Revised;
- CG 25 04 -- Designed Location(s) General Aggregate Limit, Schedule, to "All owned and leased locations";
- U-GU-1016 -- Knowledge by Position or Department, is revised to include Employee Benefits Liability -- Claims-Made Coverage Form under "This endorsement modifies insurance provided under the:" section

U-GL-1114-A CW (10/02)

VEN 1446  
VEN 1420

## Innkeepers Legal Liability Coverage Endorsement



POLICY NUMBER	EFF. DATE OF POL.	EXP. DATE OF POL.	EFF. DATE OF END.	PRODUCER	ADD'L. PREM	RETURN PREM
GLO 0171169-02	06/01/2016	06/01/2017	06/01/2016	18176-000		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:  
Commercial General Liability Coverage Part

### SCHEDULE

#### LIMITS OF LIABILITY & SELF-INSURED RETENTION

Per Occurrence Limit: \$ 1,000,000  
Per Guest Limit: \$ 1,000,000  
Aggregate: \$ 1,000,000  
Self-Insured Retention Per  
Occurrence Limit: \$ 100,000

It is agreed that SECTION I. COVERAGES is amended to include the following additional coverage:

#### A. Coverage I. - Innkeepers Legal Liability Coverage

##### 1. Insuring Agreement:

We will pay those sums that you become legally obligated to pay as damages because of loss or destruction of, or damage to "covered property" due to an "occurrence" which takes place during the policy period. We have the right and duty to defend any suit brought against you seeking damages that are payable under this insurance. We may investigate and settle any claim or suit as we deem expedient. We will not defend any suit after we have paid judgments or settlements equal to the applicable Limit of Insurance shown in the Schedule of this endorsement.

##### 2. Exclusions

This Insurance does not apply to:

##### a. Acts Committed By The Insured

Loss or destruction of, or damage to property resulting from any dishonest or criminal act committed by the insured, whether acting alone or in collusion with others;

##### b. Assumed Liability

Liability you assume under any written agreement entered into with a "guest" before the "occurrence" of any loss, destruction or damage.

- c. **Fire**  
Destruction of, or damage to property resulting from fire.
- d. **Food or Liquid**  
Destruction of, or damage to property resulting from the spilling, upsetting or leaking of any food or liquid.
- e. **Governmental Action**  
Loss or destruction of, or damage to property resulting from seizure or destruction of the property by order of governmental authority.
- f. **Inherent Vice**  
Destruction of or damage to property resulting from insects, animals, wear and tear, gradual deterioration or inherent vice.
- g. **Laundrying or Cleaning**  
Destruction of or damage to property while in your care and custody for laundrying or cleaning.
- h. **Nuclear**  
Loss or destruction of, or damage to property resulting from nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.
- i. **Release of Others from Liability**  
Your release of any other person or organization from legal liability.
- j. **War and Similar Actions**  
Loss or destruction of, or damage to property resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident.

**B. LIMITS OF INSURANCE**

- 1. The most we will pay in the aggregate for all damages because of loss or destruction of or damage to "covered property" in any one "occurrence" is the Per Occurrence Limit of Insurance shown in the SCHEDULE of this endorsement. All loss, destruction or damage involving a single act or event or series of related acts or events whether caused by one or more persons is considered one "occurrence".
- 2. Subject to the applicable limits stated in 1. above, the most we will pay for all damages because of loss or destruction of or damage to property of any one "guest" is the Per Guest Limit of Insurance shown in the SCHEDULE of this endorsement.
- 3. The Aggregate Limit shown in the Schedule is the most we will pay for all damages because of loss or destruction of, or damage to Covered Property during the policy period.

**C. SELF INSURED RETENTION**

- 1. Our obligation to pay damages on your behalf applies only to the amount of damages in excess of the self-insured retention amount shown in the SCHEDULE of this endorsement.
- 2. The self-insured retention amount applies hereunder to all damages combined arising out of any one "occurrence".
- 3. We may at our sole option either:
  - a. pay any part or all of the self-insured retention amount to settle any claim or "suit" and upon our notifying you of this action you shall reimburse us for the applicable self-insured retention amount; or
  - b. simultaneously upon receipt of notice of any claim or "suit" or at any time thereafter call upon you to pay any part or all of the self-insured retention amount, to be held or applied by us as appropriate.

**D. CONDITIONS**

- 1. **Condition 2. - Duties in the Event of Loss, Claim or Suit:**

The following is added:

If you have reason to believe that any loss or destruction of, or damage to "covered property" involves a violation of law, you must notify the appropriate law enforcement authorities.

2. **Condition 4. -- Other Insurance**

For purposes of this insurance only, the following **Other Insurance** provisions apply:

This insurance does not apply to damages recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the damages, this insurance will apply to that part of the damages not recoverable or recovered under the other insurance.

3. **Non-Cumulation of Limit of Insurance**

Limits of Insurance stated in the **SCHEDULE** of this endorsement do not accumulate from year to year or period to period.

**E. DEFINITIONS**

1. "Covered property" means any property belonging to your "guests" while the property is in your possession or on your "premises". "Covered property" does not include:
  - a. **Samples, Articles for Sale:** Samples or articles carried or held for sale or for delivery after sale;
  - b. **Vehicles:** Any vehicle including its equipment and accessories or any property contained in or on the vehicle.
2. "Guest" means any person or group of persons temporarily residing in or renting premises from you for a short term period(s) of 30 days or less. Guest does not include any residential or commercial tenant of yours that is leasing or renting property from you on a long term lease or rental basis."
3. "Occurrence" for purposes of this insurance only, means an act or event or series of related acts or events caused by one or more persons, which results in loss or destruction of or damage to "covered property".
4. "Premises" means the interior of any building that you own, rent or occupy that is used in the conduct of your business operations.

**COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS**

Policy Number: GLO 0171169-02

**ZURICH AMERICAN INSURANCE COMPANY**

Named Insured LAS VEGAS SANDS CORP.

Policy Period: Coverage begins 06-01-2016 at 12:01 A.M.; Coverage ends 06-01-2017 at 12:01 A.M.

Producer Name: BEECHER CARLSON INSURANCE SERV

Producer No. 18176-000

**Item 1. Business Description:**

**Item 2. Limits of Insurance**

GENERAL AGGREGATE LIMIT	\$ 2,000,000	
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$ 2,000,000	
EACH OCCURRENCE LIMIT	\$ 1,000,000	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	\$ 1,000,000	Any one premises
MEDICAL EXPENSE LIMIT	N/A	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	\$ 1,000,000	Any one person or organization

**Item 3. Retroactive Date (CG 00 02 ONLY)**

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" offense which occurs before the Retroactive Date, if any, shown here:

NONE

(Enter Date or "None" if no Retroactive Date applies)

**Item 4. Form of Business and Location Premises**

Form of Business: CORPORATION

Location of All Premises You Own, Rent or Occupy: See Schedule of Locations

**Item 5. Schedule of Forms and Endorsements**

Form(s) and Endorsement(s) made a part of this Policy at time of issue:  
See Schedule of Forms and Endorsements

**Item 6. Premiums**

Coverage Part Premium:

Other Premium:

Total Premium:

U-GLD-1115-B CW (9/04)

VEN 1450  
VEN 1424

## Innkeepers Legal Liability Coverage Endorsement



POLICY NUMBER	EFF. DATE OF POLICY	EXP. DATE OF POLICY	EFF. DATE OF END	PRODUCER NO.	ADD'L PREMIUM	RETURN PREMIUM

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

**Commercial General Liability Coverage Part**

### SCHEDULE

#### LIMITS OF LIABILITY & DEDUCTIBLE

Per Occurrence Limit:	<u>\$ 1,000,000</u>
Per Guest Limit:	<u>\$ 1,000,000</u>
Aggregate:	<u>\$ 1,000,000</u>

It is agreed that SECTION I, COVERAGES is amended to include the following additional coverage:

#### A. Coverage I. - Innkeepers Legal Liability Coverage

##### 1. Insuring Agreement:

We will pay those sums that you become legally obligated to pay as damages because of loss or destruction of, or damage to "covered property" due to an "occurrence" which takes place during the policy period. We have the right and duty to defend any suit brought against you seeking damages that are payable under this insurance. We may investigate and settle any claim or suit as we deem expedient. We will not defend any suit after we have paid judgments or settlements equal to the applicable Limit of Insurance shown in the Schedule of this endorsement.

##### 2. Exclusions

This insurance does not apply to:

##### a. Acts Committed By The Insured

Loss or destruction of, or damage to property resulting from any dishonest or criminal act committed by the insured, whether acting alone or in collusion with others;

##### b. Assumed Liability

Liability you assume under any written agreement entered into with a "guest" before the "occurrence" of any loss, destruction or damage.

##### c. Fire

Destruction of, or damage to property resulting from fire.

##### d. Food or Liquid

Destruction of, or damage to property resulting from the spilling, upsetting or leaking of any food or liquid.

##### e. Governmental Action

Loss or destruction of, or damage to property resulting from seizure or destruction of the property by order of governmental authority.

##### f. Inherent Vice

Destruction of or damage to property resulting from insects, animals, wear and tear, gradual deterioration or inherent vice.

##### g. Laundering or Cleaning

Destruction of or damage to property while in your care and custody for laundering or cleaning.

##### h. Nuclear

Loss or destruction of, or damage to property resulting from nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.

**I. Release of Others from Liability**

Your release of any other person or organization from legal liability.

**J. War and Similar Actions**

Loss or destruction of, or damage to property resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident.

**B. LIMITS OF INSURANCE**

1. The most we will pay in the aggregate for all damages because of loss or destruction of or damage to "covered property" in any one "occurrence" is the Per Occurrence Limit of Insurance shown in the SCHEDULE of this endorsement. All loss, destruction or damage involving a single act or event or series of related acts or events whether caused by one or more persons is considered one "occurrence".
2. Subject to the applicable limits stated in 1. above, the most we will pay for all damages because of loss or destruction of or damage to property of any one "guest" is the Per Guest Limit of Insurance shown in the SCHEDULE of this endorsement.
3. The Aggregate Limit shown in the Schedule is the most we will pay for all damages because of loss or destruction of, or damage to Covered Property during the policy period.

**C. DEDUCTIBLE**

1. Our obligation to pay damages on your behalf applies only to the amount of damages in excess of the deductible amount shown in the SCHEDULE of this endorsement.
2. The deductible amount applies hereunder to all damages combined arising out of any one "occurrence".
3. We may at our sole option either:
  - a. pay any part or all of the deductible amount to settle any claim or "suit" and upon our notifying you of this action you shall reimburse us for the applicable deductible amount; or
  - b. simultaneously upon receipt of notice of any claim or "suit" or at any time thereafter call upon you to pay any part or all of the deductible amount, to be held or applied by us as appropriate.

**D. CONDITIONS**

1. Condition 2. - Duties in the Event of Loss, Claim or Suit:

The following is added:

If you have reason to believe that any loss or destruction of, or damage to "covered property" involves a violation of law, you must notify the appropriate law enforcement authorities.

2. Condition 4. - Other Insurance

For purposes of this insurance only, the following Other Insurance provisions apply:

This insurance does not apply to damages recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the damages, this insurance will apply to that part of the damages not recoverable or recovered under the other insurance.

3. Non-Cumulation of Limit of Insurance

Limits of Insurance stated in the SCHEDULE of this endorsement do not accumulate from year to year or period to period.

**E. DEFINITIONS**

1. "Covered property" means any property belonging to your "guests" while the property is in your possession or on your "premises". "Covered property" does not include:
  - a. Samples, Articles for Sale: Samples or articles carried or held for sale or for delivery after sale;
  - b. Vehicles: Any vehicle including its equipment and accessories or any property contained in or on the vehicle.
2. "Occurrence" for purposes of this insurance only, means an act or event or series of related acts or events caused by one or more persons, which results in loss or destruction of or damage to "covered property".
3. "Premises" means the interior of any building that you own, rent or occupy that is used in the conduct of your business operations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – ACCESS OR DISCLOSURE OF  
CONFIDENTIAL OR PERSONAL INFORMATION  
(COVERAGE B ONLY)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following is added to Paragraph 2. Exclusions of  
Section 1 – Coverage B – Personal And  
Advertising Injury Liability:

**2. Exclusions**

This insurance does not apply to:

**Access Or Disclosure Of Confidential Or  
Personal Information**

"Personal and advertising injury" arising out of any  
access to or disclosure of any person's or  
organization's confidential or personal information,  
including patents, trade secrets, processing  
methods, customer lists, financial information,  
credit card information, health information or any  
other type of nonpublic information.

This exclusion applies even if damages are  
claimed for notification costs, credit monitoring  
expenses, forensic expenses, public relations  
expenses or any other loss, cost or expense  
incurred by you or others arising out of any access  
to or disclosure of any person's or organization's  
confidential or personal information.



# EXHIBIT “W”

# REGISTER OF ACTIONS

CASE NO. A-18-772761-C

Joyce Sekera, Plaintiff(s) vs. Venetian Casino Resort LLC,  
Defendant(s)

§  
§  
§  
§  
§  
§

Case Type: **Negligence - Premises Liability**  
Date Filed: **04/12/2018**  
Location: **Department 25**  
Cross-Reference Case Number: **A772761**

## PARTY INFORMATION

Defendant **Las Vegas Sands LLC *Doing Business As* Venetian Las Vegas**

**Lead Attorneys**  
**Michael A Royal**  
*Retained*  
7024716777(W)

Defendant **Venetian Casino Resort LLC *Doing Business As* Venetian Las Vegas**

**Michael A Royal**  
*Retained*  
7024716777(W)

Plaintiff **Sekera, Joyce**

**Keith E. Galliher, Jr.**  
*Retained*  
7027350049(W)

## EVENTS & ORDERS OF THE COURT

06/26/2019 **All Pending Motions (9:00 AM)** (Judicial Officer Truman, Erin)

### Minutes

06/26/2019 9:00 AM

- Defendants' Motion to Quash Plaintiff's NRCP 45 Subpoena Duces Tecum Served Upon David Elliot, PE and for Protective Order on an OST Venetian Casino Resort, LLC and Las Vegas Sands, LLC's Motion to Strike Witness Gary Shulman and for Appropriate Sanctions Mr. Royal stated Gary Shulman was a 14 year employee of Venetian as a Table Games Supervisor, and he was near the scene of the slip and fall. Mr. Royal spoke with Mr. Shulman during the course and scope of Mr. Shulman's employment. Mr. Royal was not aware that Mr. Shulman was terminated January 2019, but Plaintiff advised Mr. Royal of the possible change in employment. Mr. Royal addressed Mr. Shulman's conversations with Mr. Royal and then with Mr. Galliher. Because of the circumstances with Mr. Galliher, Mr. Royal must waive the attorney client privilege to cross examine Mr. Shulman. Mr. Royal requested Mr. Galliher be dismissed as legal counsel in this case, or Dismiss the case. Commissioner stated Mr. Galliher's representation is not before the Commissioner today. Upon Commissioner's inquiry, Mr. Galliher argued Mr. Royal stated Gary Shulman was no longer employed by the Venetian, so Mr. Galliher Subpoenaed Mr. Shulman. The conversation between Mr. Royal and Mr. Shulman was not privileged, and Mr. Shulman is a percipient witness. In Commissioner's opinion, in order to proceed under Rule 48.015 regarding an allegation that counsel was supporting perjury, an Evidentiary Hearing before the Judge is needed to determine whether or not that occurred. Colloquy regarding Mr. Han's deposition testimony. Mr. Galliher stated Mr. Han's communication was privileged because he is the Head of Housekeeping, and Mr. Shulman was a Table Games Supervisor in a casino. Argument by Mr. Royal. In this case, Commissioner made it clear to allow someone to testify under Rule 49, there must be an Evidentiary Hearing before the Trial Judge. Commissioner stated Mr. Shulman was testifying as a percipient witness to what he observed being close to the incident. COMMISSIONER RECOMMENDED, Venetian Casino Resort, LLC and Las Vegas Sands, LLC's Motion to

Strike Witness Gary Shulman and for Appropriate Sanctions is DENIED; alternative relief provided, and for the purpose of discovery, Mr. Shulman's deposition testimony is allowed, and Commissioner leaves it to the District Court Judge whether there will be a Motion in Limine on the conversations between counsel. Based on the case law before Commissioner, Commissioner's position was the conversations were not privileged. Mr. Royal requested leave to take Mr. Shulman's second deposition. Argument by Mr. Galliher. COMMISSIONER RECOMMENDED, Mr. Shulman's second deposition can be re-noticed with a certain amount of latitude as discussed. Mr. Royal stated Mr. Elliot is not an expert in this case. Arguments by counsel. COMMISSIONER RECOMMENDED, Defendants' Motion to Quash Plaintiff's NRCP 46 Subpoena Duces Tecum Served Upon David Elliot, PE and for Protective Order is GRANTED IN PART; Mr. Elliot can be Subpoenaed and Deposed to the extent he has ever been disclosed as a testifying expert in any case on behalf of the Venetian, and Mr. Elliot's reports and deposition testimony as an expert for Venetian must be DISCLOSED to Plaintiff's counsel; everything else is PROTECTED; expert disclosures are CLOSED, and Mr. Elliot will not be disclosed. Any knowledge beyond what he's previously done, and disclosed as having done by Venetian goes to the claims and defenses in this case; the Recommendation includes Mr. Elliot's testimony and reports on behalf of Plaintiff. Argument by Mr. Galliher; the information is relevant to the punitive damages claim. COMMISSIONER RECOMMENDED, the Recommendation STANDS. Upon Mr. Royals' inquiry, the Recommendation is LIMITED to marble floors. Mr. Royal to prepare the Report and Recommendations, and Mr. Galliher to approve as to form and content. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.

Parties Present

Return to Register of Actions

# EXHIBIT “X”

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

1 THE GALLIHER LAW FIRM  
2 Keith E. Galliher, Jr., Esq.  
3 Nevada Bar No. 220  
4 Jeffrey L. Galliher, Esq.  
5 Nevada Bar No. 8078  
6 George J. Kunz, Esq.  
7 Nevada Bar No. 12245  
8 1850 East Sahara Avenue, Suite 107  
9 Las Vegas, Nevada 89104  
10 Telephone: (702) 735-0049  
11 Facsimile: (702) 735-0204  
12 [kgalliher@galliherlawfirm.com](mailto:kgalliher@galliherlawfirm.com)  
13 [jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)  
14 [jkunz@lvlawguy.com](mailto:jkunz@lvlawguy.com)  
15 Attorneys for Plaintiff

Electronically Filed  
4/22/2019 10:47 AM  
Steven D. Grierson  
CLERK OF THE COURT



DISTRICT COURT  
CLARK COUNTY, NEVADA

16 JOYCE SEKERA, an Individual,  
17 Plaintiff,  
18 v.

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

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

27 Defendants.

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

**HEARING REQUESTED**

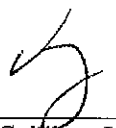
28 Plaintiff, Joyce Sekera, submits her Motion for Leave to Amend Her Complaint (the  
"Motion") to add a claim for punitive damages. Punitive damages are warranted in this case because

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

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

5 DATED this 22<sup>nd</sup> day of April, 2019

7 THE GALLIHER LAW FIRM

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

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

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

27  
28 <sup>1</sup> A copy of the proposed Amended Complaint is attached hereto as Exhibit "1."

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

## 3 **II. FACTUAL BACKGROUND**

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

12 During discovery Plaintiff requested Venetian produce:

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

19 (Plaintiff's Requests for Production, attached as Exhibit "4.")

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

1 Based upon these numbers, Plaintiff estimated she would receive somewhere around 466-  
2 700<sup>2</sup> slip and fall incident reports in response to her request for production. Thus, three months later  
3 when Venetian disclosed a mere 64 redacted incident reports, Plaintiff instantly suspected the vast  
4 majority were missing. (See e.g. Declaration of Defense Counsel Michael Royal, Esq. in Support of  
5 Venetian's Motion for Protective Order, attached as Exhibit "6" at ¶ 17.) To verify Venetian's  
6 compliance with the discovery request, the undersigned contacted Mr. Peter Goldstein, Esq., ("Mr.  
7 Goldstein") Plaintiff's counsel in another pending premise liability action against Venetian. (See  
8 *Carol Smith v. Venetian Casino Resort, LLC*, Case No. A-17-753362-C.) From their discussion, the  
9 undersigned and Mr. Goldstein realized Venetian provided them each with reports Venetian did not  
10 give the other. (See Plaintiff's Motion for Terminating Sanctions in *Smith v. Venetian*, attached as  
11 Exhibit "7.") To determine which reports Venetian failed to provide each Plaintiff, the parties put  
12 together a table of all the incident reports disclosed in the two cases. (See Summary of Falls in  
13 *Sekera v. Venetian* and *Smith v. Venetian*, attached as Exhibit "8.")<sup>3</sup> After comparing the discovery  
14 provided, the undersigned and Mr. Goldstein determined Venetian willfully left out four reports in  
15 response to Plaintiff's Requests for Production which were disclosed in *Smith v. Venetian*, and  
16 willfully left out 35 reports in response to plaintiff's requests for production in *Smith v. Venetian*.  
17 (*Id.*) Additionally, Plaintiff pulled pleadings from five of the 50 or so cases filed against Venetian in  
18 the Eighth Judicial District Court in the last five years and discovered none of the incident reports  
19 from these slip and falls were disclosed either. (See Complaint and incident report from A-16-  
20  
21  
22  
23

24 <sup>2</sup>  $100 \times 2 \times 4.2 \times 5/9 = 466$ ;  
25  $100 \times 3 \times 4.2 \times 5/9 = 700$

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

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



1 737866-C; Commissioner's Decision on Request for Exemption from A-15-728316-C;  
2 Commissioner's Decision on Request for Exemption from A-15-729566-C; Complaint from A-17-  
3 749115-C; and Complaint from A-17-751293-C, attached collectively as Exhibit "9.")

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

### 10 III. LEGAL ARGUMENT

#### 11 A. Standard for a Motion for Leave to Amend

12 NRCP 15(a) requires leave to amend "be freely given when justice so requires." NRCP  
13 15(a); *see also Kantor v. Kantor*, 116 Nev. 886, 891, P.3d 825, 828 (2000) ("After a responsive  
14 pleading is filed, a party may amend his or her pleading only by leave of court or by written consent  
15 of the adverse party, and leave shall be freely given when justice so requires"); *Adamson v. Bowker*,  
16 85 Nev. 115, 121, 450 P.2d 796, 800 (1969) ("Rule 15(a) declares that leave to amend shall be freely  
17 given when justice so requires; this mandate is to be heeded"). It is reversible error to deny a motion  
18 for leave without a reasonable justification. *Id.* at 120, 450 P.2d at 800.

19 A party generally must seek leave to amend before the deadline in the scheduling order,  
20 unless the movant shows good cause for the untimely filing. *See Nutton v. Sunset Station, Inc.* 131  
21 Nev. Adv. Rep. 34 (Nev. Ct. App. June 11, 2015). Finally, a court should only deny a Motion for  
22 Leave to Amend if the opposing party can prove "undue delay, bad faith or dilatory motive on the  
23 part of the movant." *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973);  
24 *see also Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 970 (Nev. App. 2015);  
25 *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962) ("If the underlying  
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1 facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be  
2 afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared  
3 reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure  
4 to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by  
5 virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the  
6 rules require, be ‘freely given.’ ”).

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

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

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

23  
24 A plaintiff may recover punitive damages when evidence demonstrates the defendant acted  
25 with “malice, express or implied.” *Wyeth v. Rowatt*, 126 Nev. Adv. Rep. 44, 244 P.3d 765, 783  
26 (2010) *quoting* NRS 42.005(1). “ ‘Malice, express or implied,’ means conduct which is intended to  
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1 injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or  
2 safety of others.” *Id. quoting* NRS 42.001(3) (emphasis added). “A defendant has a ‘conscious  
3 disregard’ of a person’s rights and safety when he or she knows of ‘the probable harmful  
4 consequence of a wrongful act and a willful and deliberate failure to act to avoid those  
5 consequences.’ ” *Id. quoting* NRS 42.001(1). “In other words, under NRS 42.001(1), to justify  
6 punitive damages, the defendant’s conduct must have exceeded ‘mere recklessness or gross  
7 negligence.’ ” *Id. quoting Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 742-43, 192  
8 P.3d 243, 254-55 (2008).

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

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

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

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

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

6  
7 Moreover, Plaintiff's fall was not the first time a patron notified Venetian's management of  
8 the unsafe marble floors. Venetian was notified of the problem over and over and over again; their  
9 EMT/security officers made a *minimum* 73 incident reports of injury slip and falls on the marble  
10 floors in the three years prior to Plaintiff's fall. The Court should note 73 represents a fraction of  
11 the times customers notified Venetian of the issue. The EMT/security officer, Mr. Larson testified  
12 he investigated 100 injury falls on marble floors in Venetian during the 9 years he worked there. If  
13 we do the math and assume Mr. Larson was an average EMT/security officer, there should be  
14 somewhere around 840-1260<sup>4</sup> injury falls on marble floors at Venetian in the last 9 years. Narrowing  
15 that down to the scope of Plaintiff's Request for Production (5 years), there should be 466-700<sup>5</sup> slip  
16 and fall incident reports. In other words, one injury fall occurs on Venetian's marble floors  
17 every 2.6 – 3.9 days. However, Because Venetian decided they are the only litigant in the State of  
18 Nevada which the discovery rules and court orders do not apply to, Plaintiff could not determine the  
19 exact amount of injury falls. Based on Venetian's refusal to disclose all of the incident reports,  
20 Plaintiff believes the number of injuries falls on marble floors is closer to 700. In any event, this  
21 number is infinitely larger than the two prior slip and falls sufficient to uphold the punitive damages  
22 award in *Nolin*.  
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27 <sup>4</sup> See *supra*, FN 2.

28 <sup>5</sup> See *supra*, FN 2.

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

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

24 //

25 //


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

1 IV. CONCLUSION

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

4 DATED this 22<sup>nd</sup> day of April, 2019  
5

6 THE GALLIHER LAW FIRM

7  
8   
9 Keith E. Galliher, Jr., Esq.  
10 Nevada Bar Number 220  
11 1850 E. Sahara Avenue, Ste. 107  
12 Las Vegas, Nevada 89104  
13 Attorney for Plaintiff  
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THE GALLIHER LAW FIRM  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
702-735-0049 Fax: 702-735-0204

**CERTIFICATE OF SERVICE**

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

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

☐ Facsimile, pursuant to EDCR 7.26 (as amended)

☒ Electronic Mail/Electronic Transmission

☐ Hand Delivered to the addressee(s) indicated

☐ Receipt of Copy on this \_\_\_\_\_ day of April 2019,

acknowledged by, \_\_\_\_\_

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

  
\_\_\_\_\_  
An Employee of THE GALLIHER LAW FIRM



# EXHIBIT “Y”

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

JOYCE SEKERA,	)	
	)	
Plaintiff,	)	
	)	REPORTER'S TRANSCRIPT
	)	OF
vs.	)	PLTF'S MOTION TO AMEND
	)	DEFT'S MOTION TO STRIKE
	)	
VENETIAN CASINO RESORT,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE KATHLEEN DELANEY  
DISTRICT COURT JUDGE

DATED: TUESDAY, MAY 28, 2019

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

## 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 “Z”

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DISTRICT COURT  
CLARK COUNTY, NEVADA

**CERTIFIED  
COPY**

JOYCE SEKERA, an Individual,  
Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF GARY SHULMAN

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

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

Reported By: PAULINE C. MAY  
CCR 286, RPR

Canyon Court Reporting, Inc.  
6655 West Sahara Avenue, Suite B200  
Las Vegas, NV 89146 (702) 419-9676



1 A I did.

2 Q Tell me how that happened.

3 A Well, when you first fill out online that  
4 you are terminated, there is a -- I guess a little bit  
5 of an investigation that the Department of Employment  
6 does. And they came to the conclusion that the  
7 comment I made was nothing more than an isolated  
8 comment that was taken out of context and did not  
9 constitute any misconduct in the workplace.

10 Q Did you have any problems, like warning  
11 notes and so forth, at the Venetian before this  
12 comment when you were terminated?

13 A I had a number of problems for about six  
14 months before this incident.

15 Q When did they start?

16 A They started around March of 2018.

17 Q And as you look back on those events, what  
18 is your feeling about the problems that surfaced at  
19 the Venetian regarding you?

20 A Well, I'm, you know, very disappointed and  
21 very upset at the Venetian. I received what I believe  
22 was some retaliation, intimidation, harassment. I  
23 received three written warnings in a two-week period  
24 for things that nobody ever got any discipline for,  
25 three writeups with potentially only one mistake on my

1 part.

2 One of the warnings was because I didn't  
3 catch someone else's mistake. Another one was, I  
4 chose to sit down -- I was standing for an hour  
5 waiting in a closed pit with no chips on the table.  
6 We were filling up the tables with chips.

7 It's a well-known fact over there I have  
8 really bad arthritis in my hip, so I sat down. And  
9 they brought me in and gave me a written warning for  
10 that.

11 And all three of these written warnings they  
12 chose not to use any progressive discipline, just skip  
13 a couple of steps. And that was very upsetting to me  
14 because I've seen these things happen for 13 years  
15 with nothing more than a slap on the hand usually.

16 Q So did you have any -- was there any event  
17 which predated what you have described was harassment  
18 and so forth on the part of the Venetian?

19 A Well, there was a young lady, her name was  
20 Rhonda Salinas, and I received what I believe was  
21 harassment, belittling you in front of other people,  
22 making false allegations that -- that you did things  
23 that you never did.

24 And it got to the point where, about three  
25 days before I was suspended pending investigation, I

1 went to human resources to file a complaint about her.  
2 And then a couple days later, I made this comment to a  
3 gentleman named Barry Goldberg, who at the time I felt  
4 was a friend of mine, from New Jersey and we were both  
5 Philadelphia fans, and we talked.

6 And, you know, I said -- I really didn't  
7 volunteer much information. I just said -- he said,  
8 "How are you?"

9 I said, "Oh, kind of stressful, you know. I  
10 don't like doing things like I did. I had to go  
11 complain about someone."

12 And he said, joking around, "I hope it  
13 wasn't me."

14 And I said, "No," I said, "but someone's in  
15 a world of shit."

16 And I didn't know at the time I was talking  
17 about me.

18 Q So you are talking about the event that  
19 predated your termination at the Venetian?

20 A Yeah.

21 Q Well, I'm going back to -- you talked about  
22 a pattern of harassment and intimidation on the part  
23 of the Venetian for roughly a six-month time frame  
24 before you were terminated.

25 A Uh-huh.

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

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

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

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

25 And I voiced my opinion on the way to break

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

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

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

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

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

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

1 to get me?"

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

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

9 A Yeah.

10 No.

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

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

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

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

17 Q At the casino?

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

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

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

24 Q And when was this?

25 A November 28, 2018, I believe.

1 you; right?

2 A Say that again.

3 Q I have never said anything to you that would  
4 give you the impression that your job could be in  
5 jeopardy?

6 A No.

7 Q Would it surprise you to learn that you  
8 actually met with me in June of 2018?

9 A I may have had the date wrong.

10 Q Well, you would have had it a lot wrong.

11 A Yeah.

12 Q That's a lot earlier than November 2018;  
13 isn't it?

14 A Yeah, it's true. Yeah, it would be.

15 Q If you met with me in June 2018 and all this  
16 stuff started within six months or so -- I don't  
17 know -- 60 days is what I understood from your earlier  
18 testimony.

19 A Uh-huh.

20 Q Does that at all influence your thinking  
21 about this connection you think might occur between  
22 your meeting with me and ultimately being terminated?

23 A I don't know.

24 Q Well, did things start going south in July  
25 of 2018?

1 A They started going south in May.

2 Q Okay. Before you met with me --

3 A Uh-huh.

4 Q -- right?

5 A Yes.

6 Q Okay. So what was started going south in  
7 May of 2018?

8 A Well, that's when I received the three  
9 written warnings in a two-week period.

10 Q I see, okay. So because -- with the timing  
11 that you testified about on direct, I was confused  
12 because I thought you said you got these three  
13 warnings between November of 2018 and January when you  
14 were let go in January of 2019.

15 Did I understand that incorrectly?

16 A Say that again.

17 Q Okay. I understood that your testimony on  
18 direct with Mr. Galliher was that you met with me and  
19 then, within a very short period of time after that,  
20 you got these three written warnings and then a couple  
21 other things were put in your file and then you were  
22 terminated.

23 A That sounds about right.

24 Q That's what you testified to?

25 A Yes.



1 Q You just now testified that everything  
2 started to go south in May of 2018 before you even  
3 knew who I was.

4 A Uh-huh.

5 Q Correct?

6 A Yes.

7 Q So if I met with you in June of 2018, you  
8 would have already received three warnings by that  
9 time --

10 A That's correct.

11 Q -- in 2018?

12 A Yeah.

13 Q Okay. And so I'm just -- I'm trying to  
14 figure out this connection that you have made that I  
15 somehow played a role in getting warnings -- you  
16 getting warnings prior to you ever knowing who I was  
17 or ever meeting with me.

18 A Well, we're still investigating as to the  
19 real reason I was terminated.

20 I am convinced that the reason they gave me  
21 has nothing to do with me being terminated. Whether  
22 it pertained to me not supporting the Venetian with  
23 the slip-and-fall or whether it was their anger at me  
24 using my FMLA privileges, we're still investigating  
25 that.

# EXHIBIT “AA”

# THE VENETIAN® | THE PALAZZO®

## Team Member Discipline History

Date	Type of Event	Infraction
11/20/18	SPI	FTCDP – FAILED TO FOLLOW COMPANY DEPARTMENT PROCEDURES.
05/02/18	FWW	PJP - TM FAILED TO VERIFY A \$5,000 CHIP, WHICH ALLOWED AN UNKNOWN PATRON TO PLAY WITH UNVERIFIED CHIPS.
05/02/18	WW	INPRP - WHILE AWAITING FOR FILLS IN PIT 6, GARY SAT DOWN ON A DEAD GAME AND USED HIS CELL PHONE, SUCH DEVICES ARE PROHIBITED ON THE GAMING FLOOR WHEN ON DUTY.
04/13/18	WW	PJP - TM DID NOT CHECK THE TABLE COUNTS IN TABLE MANAGER, TO ENSURE THAT THE HIGH VALUE CHIPS MATCH WHAT IS ACTUALLY IN THE RACK.
09/14/17	COACH	PJP - TM WAS REMINDED HE NEEDS TO CHECK WITH AN AREA SUPERVISOR OR ACM BEFORE GOING HOME.
07/28/17	PIP	PJP - TM ALLOWED A FILL TO BE PUT ON THE WRONG TABLE.
12/15/16	PIP	PJP - TM FAILED TO FOLLOW UP ON A GUEST COMPLAINT.
08/13/15	CDD	PJP - FAILURE TO PROVIDE UNMATCHED GUEST SERVICE STANDARDS.
05/27/15	CDD	PJP - TM APPROVED A COLOR UP THAT WAS INCORRECT WITHOUT VISUALLY VERIFYING THE AMOUNT. IN ADDITION FAILED TO INVESTIGATE AND WHEN GUEST QUESTIONED THE AMOUNT OF THE COLOR UP. GUEST WAS SHORTED \$1,500.
09/13/14	COACH	PJP - CAME OUT TO THE MAIN FLOOR AT THE BEGINNING OF THE SHIFT, AND INSTEAD OF HELPING OPEN GAMES, SENT THE 10:45AM FLOOR SUPERVISOR ON BREAK AT 11:50AM.
04/26/14	COACH	PJP - GARY DID NOT CHECK IF THE COLOR UP WAS CORRECT.
01/08/10	CDD	ATTDN – 10PTS – NCNS DURING PEAK PERIOD.

Team Member:	Gary Shulman	TMR:	17184	DOH:	05/03/06
Department:	Table Games	Position:	Supervisor		
TMR Specialist:	Marnie Pipp				

# EXHIBIT “BB”



1 THE GALLIHER LAW FIRM  
2 Keith E. Galliher, Jr., Esq.  
3 Nevada Bar No. 220  
4 Jeffrey L. Galliher, Esq.  
5 Nevada Bar No. 8078  
6 George J. Kunz, Esq.  
7 Nevada Bar No. 12245  
8 1850 East Sahara Avenue, Suite 107  
9 Las Vegas, Nevada 89104  
10 Telephone: (702) 735-0049  
11 Facsimile: (702) 735-0204  
12 [kgalliher@galliherlawfirm.com](mailto:kgalliher@galliherlawfirm.com)  
13 [jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)  
14 [jkunz@lvlawguy.com](mailto:jkunz@lvlawguy.com)  
15 Attorneys for Plaintiff

11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

15 JOYCE SEKERA, an Individual,  
16 Plaintiff,

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

17 v.

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

**PLAINTIFF'S REPLY IN SUPPORT OF**  
**HER MOTION FOR LEAVE TO**  
**AMEND THE COMPLAINT**


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

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

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

5 DATED this 15<sup>th</sup> day of May, 2019

7 THE GALLIHER LAW FIRM

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

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. LEGAL ARGUMENT**

16 **A. Venetian Actions Show the Court It Cannot Trust Its Claim There is Only "64"**  
17 **Prior Incidents**

18 Venetian alleges Plaintiff's Motion should be denied because the arguments are "conjur[ed]  
19 up out of thin air," that Plaintiff's presumptions are "fabricated" and that this is "an absurd smoke  
20 and mirrors tactic" and a "mythical sinister plot." (Defendant's Opp. at 14:4-5; 14:10; 14:14; 14:15-  
21 16.) Venetian is referring to Plaintiff's calculation – based on Mr. Larson's testimony – that there  
22 were 466-700 injury slip and falls on marble floors in the past five years, of which Venetian only  
23 disclosed 64. (Venetian's Mot. for Protective Order at 3:26-7.) Venetian's actions prove Plaintiff's  
24 projected number (466-700) more reliable than its unsubstantiated "smoke and mirrors" allegation.  
25 Venetian repeatedly showed the Court it has no regard for the laws of this state, the orders of this  
26 Court, or the rules of civil procedure:  
27  
28

- Venetian violated the discovery rules by purposely leaving out four incident reports in response to Plaintiff's Requests for Production, but which Venetian disclosed in another case, *Smith v. Venetian*. (Plaintiff's Objection to Discovery Commissioner's Report and Recommendation.)
- Venetian violated a court order in *Smith v. Venetian* by purposely leaving out 35 reports in its response to plaintiff's requests for production. (Plaintiff's Objection to Discovery Commissioner's Report and Recommendation; Defendant's Addendum to Reply to its Motion for Protective Order at Exhibit "B.")
- Venetian did not review the discrepancy and provide "all reports deemed responsive" as ordered by the Discovery Commissioner. (Discovery Commissioner's Report and Recommendation at 3:21-25.) Instead, Venetian forced Plaintiff to dig through court proceedings and download pleadings in hopes of finding the incidents Venetian refused to provide. (Plaintiff's Mot. at Exhibit "7.") Venetian admits the incident reports for two of the five cases Plaintiff pulled were yet again "inadvertently" left out. (Defendant's Opp. at 12:1-11.)
- Mr. Royal repeatedly declared under penalty of perjury he "had personal knowledge of" and was "competent to testify" to things he was not, i.e. the undersigned's personal thoughts, motives and intentions. (Defendant's Response to Plaintiff's Objection to Discovery Commissioner's Report and Recommendation at 9:1-2; 9:2-3; 9:9-11; 6:9-10.)
- Venetian repeatedly lied to the Court that Plaintiff violated a protective order, in not one, but four pleadings. (Defendant's Response to Plaintiff's Objection to Discovery Commissioner's Report and Recommendation at 13:1, 24:20, 25:8, 26:17) These four pleadings, filed into the public record wrongfully and frivolously accused the undersigned of a "blatant violation" of the Protective Order because the undersigned did not follow a non-existent, non-discussed,

1 non-briefed "provision" that only existed in Venetian's mind. (Defendant's Opp. at 15:17-18;  
2 Defendant's Response to Plaintiff's Objection to Discovery Commissioner's Report and  
3 Recommendation at 24:26-25:1.)

- 4 • Venetian frivolously filed a Motion for Sanctions arguing the Court required the undersigned  
5 to request the return of the documents covered by the protective order, disclosed before the  
6 Court issued the Protective Order. (Defendant's Response to Plaintiff's Objection to  
7 Discovery Commissioner's Report and Recommendation at 12:14-16; Defendant's Reply to  
8 Plaintiff's Countermotion to Strike 8:15-16; Second Addendum to Reply to Plaintiff's  
9 Countermotion to Strike at 4:15-15; Defendant's Opp. to Motion to Amend Complaint at  
10 15:5-6, 15:17 15:21, ) The parties did not brief this issue, Mr. Royal, the undersigned and the  
11 Court did not discuss this matter in the hearing, and Mr. Royal did not include this issue in  
12 the Report and Recommendation he drafted. (*Id.* at Exhibit "A", Exhibit "B.") There is no  
13 law, rule, statute or case which supports this argument. (*See generally*, Plaintiff's Objection  
14 to Discovery Commissioner's Report and Recommendation.) It is common sense one cannot  
15 violate an instruction that is not given. Even after Plaintiff informed Venetian of the gaping  
16 hole in its argument, Venetian continued to wrongfully accuse the undersigned of violating  
17 the Protective Order. (Plaintiff's Motion to Strike; Defendant's Reply to Plaintiff's  
18 Countermotion to Strike; Second Addendum to Reply to Plaintiff's Countermotion to Strike;  
19 Defendant's Opp. to Motion to Amend Complaint.)  
20  
21 • Venetian unjustly accused the undersigned and Mr. Goldstein of criminal conspiracy and  
22 implied Professional Responsibility violations for "working in concert to defy a Court Order  
23 in order to promote their respective causes." (Defendant's Response to Plaintiff's Objection  
24 to Discovery Commissioner's Report and Recommendation at 10:6-7.) Venetian pinpointed  
25 the supposed time of the conspiracy before the Court issued the protective order, thus  
26  
27  
28



undersigned and Mr. Goldstein could not "conspire" to violate an un-issued protective order.  
(Plaintiff's Motion to Strike.)

- Mr. Shulman testified that Mr. Royal met with him and asked him to lie. (Deposition of Gary Shulman, attached as Exhibit "1" at 21:13-25; 56:13-57:1; 61:5-6.) Mr. Shulman told Mr. Royal he saw water on the floor. (*Id.* at 21:13-25.) "At that time he [Mr. Royal] said 'No, it wasn't wet. You didn't see anything wet. You are mistaken.' " (*Id.* at 23:16-17.) Mr. Shulman insisted "I'm pretty sure it was. I mean, that's why I called PAD to clean it up. In 13 years I've never called PAD to clean up a dry spot." (*Id.* at 23:18-20.) "And he [Mr. Royal] says, 'But, no, no, there was nothing wet there.' " (*Id.* at 23:21-22.) "[Y]ou [Mr. Royal] just kept refuting me, basically, 'No, you are mistaken. It wasn't wet.' " (*Id.* at 61:5-6.) Mr. Shulman believed Mr. Royal was "intimidating" him, that Mr. Royal "didn't want me to be truthful" and that Mr. Royal wanted him to lie under oath. (Exhibit "1" at 56:13-57:1.)
- Venetian harassed and eventually fired Mr. Shulman, an employee who'd never received a written warning in his 13 years of employment, within 60 days of his dispute with Mr. Royal. (*Id.* at 26:8-9; 25:22-26:16.)

Venetian is an awful corporate citizen with a history of despicable conduct in multiple cases, showing it has no respect for the laws of this state, orders of this Court, or the rules of civil procedure. Venetian's actions speak louder than its words and the Court cannot take its statement regarding the number of injuries falls at face value. Depending on the time of day and the case, there could be 34<sup>1</sup>, 64<sup>2</sup>, 68<sup>3</sup> or 70<sup>4</sup> injuries on marble floors in the last five years. Despite the fact that

<sup>1</sup> Number of falls disclosed in *Smith v. Venetian*.

<sup>2</sup> Number of falls initially disclosed to Plaintiff.

<sup>3</sup> Number of falls disclosed to Plaintiff after the Discovery Commissioner ordered Venetian to provide the additional missing reports provided in *Smith v. Venetian*.

<sup>4</sup> Number of falls disclosed to Plaintiff after Plaintiff provided Venetian with 5 pleadings referencing additional undisclosed falls.

1 Venetian admitted it “inadvertently” missed four reports provided in *Smith v. Venetian*, and then yet  
2 again “inadvertently” failed to disclose another three reports of cases filed in District Court,  
3 Venetian still maintains there are only 64 incidents and it has no idea how Plaintiff “invented a new  
4 mythical number” of reports ( $64+4+3 = 70^5$ ) (Defendant’s Opp. at 14:19; *see also* 13:24; 20:6.) As  
5 Venetian has proved we cannot trust its words, Plaintiff’s projected number – 466-700 or one slip  
6 and fall every 2.6 – 3.9 days – based on Mr. Laron’s testimony and simple calculations, is more  
7 reliable.  
8

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

11 Venetian implies that Plaintiff must prove her case for punitive damages to win this Motion  
12 to Amend: “Chapter 42.005(1), Nevada Revised Statutes, requires a plaintiff to prove by clear and  
13 convincing evidence that a defendant has been guilty of oppression, fraud, or malice in order to  
14 obtain an award of punitive damages.” That is not the case. “The liberality embodied in NRCP 15(a)  
15 requires courts to err on the side of caution and permit amendments that appear arguable or  
16 even borderline, because denial of a proposed pleading amendment amounts to denial of the  
17 opportunity to explore any potential merit it might have had.” *Nutton v. Sunset Station, Inc.*, 131  
18 Nev. Adv. Op. 34, 357 P.3d 966, 975 (Nev. App. 2015) (emphasis added).  
19

20 A plaintiff may recover punitive damages when the evidence demonstrates that the defendant  
21 acted with “malice, express or implied.” *Wyeth v. Rowatt*, 126 Nev. Adv. Rep. 44, 244 P.3d 765, 783  
22 (2010) *quoting* NRS 42.005(1). “‘Malice, express or implied,’ means conduct which is intended to  
23 injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or  
24 safety of others.” *Id. quoting* NRS 42.001(3) (emphasis added). “A defendant has a ‘conscious  
25

26  
27 <sup>5</sup> Plaintiff originally cited the number “73” because she believed all 5 pleadings she pulled belonged  
28 to relevant undisclosed incident reports ( $64+4+5=73$ ). However, Venetian alleges 3 of these reports  
would not be responsive to Plaintiff’s request so the number is now 70.

1 disregard' of a person's rights and safety when he or she knows of 'the probable harmful  
2 consequence of a wrongful act and a willful and deliberate failure to act to avoid those  
3 consequences.' " *Id. quoting* NRS 42.001(1).

4 The evidence in this case shows Venetian consciously disregarded the hazard of its marble  
5 floors and thus the evidence supports a claim for punitive damages. Venetian's marble floors test at  
6 a 0.33 wet slip resistance, nearly a third below the industry standard of 0.50. In other words,  
7 Venetian's wet marble floors are nearly 33% more slippery than industry standards. Venetian can  
8 easily remedy this unsafe condition by applying a slip resistant treatment to its marble floors at a  
9 cost of \$21 to \$35 per square foot, but Venetian choose not to. (Motion to Amend at Exhibit "10.")

10 Venetian knows its wet marble floors are unreasonably dangerous but does nothing to  
11 remedy it; patrons notified Venetian of the unsafe condition by filing injury incident reports every  
12 2.6 - 3.9 days for the last five years. Moreover, Venetian's management is aware of the issue.  
13 (Deposition of Maria Consuelo Cruz, attached as Exhibit "2" at 15:26-16:3; 15:5-15:3.) A Venetian  
14 maid who witnessed Plaintiff's fall testified that management knew about the issue and even  
15 informed her the marble was "slippery and dangerous when wet":

16 Q: Did your supervisors ever tell you that the floors at the Venetian, the marble  
17 floors, were slippery and dangerous when wet?

18 A: Of course.

19 (Id. at 15:26-16:) She understood this to mean the floors were dangerous to customers "even with  
20 just a tiny spill of coffee" or "a little bit of soda." (Id. at 14:16-19; 21:4-5.) Another Venetian porter  
21 who responded to Plaintiff's fall testified the marble floors are "very dangerous" when wet with  
22 "even one drop." (Deposition of Milan Graovac, attached as Exhibit "3" at 9:23-25; 19:6-10.)

23 Not only did management know the marble floors were slippery when wet, but they have  
24 engineers on staff who regularly check the floors. (Deposition of Christopher Johnson, attached as  
25 Exhibit "4" at 15:1-6.) Security Officer Johnson testified:

1 Q: And how about any physical observation at the scene; would you have made  
2 notes of that?

3 A: I don't believe so. That's not my duty to actually make on the scene. We have  
4 engineers that come out and they do accident checks and stuff like that.

5 (*Id.*) (emphasis added). Moreover, Plaintiff evidence indicates Venetian knew about the issue as  
6 early as 2009 and failed to do anything about it for 10 years. (Motion for New Trial in *Livia Farina*  
7 *v. Desert Palace, Inc. dba Caesars Palace and Casino*, attached as Exhibit "5" at 7:12-17; 38:25-  
8 28.) This motion states plaintiff's expert, David Elliott, testified on February 13, 2009 "he consulted  
9 with the Venetian Hotel to achieve an aesthetically pleasing design of the floor surface using  
10 ceramic tile that met a .5 wet coefficient of friction..." (*Id.* at 7:12-17; 38:25-28; *see also* Motion in  
11 Limine No. 6 to Exclude Reference to Plaintiff's Expert David Elliott's Surveys of Other Casino  
12 Properties in *Livia Farina v. Desert Palace, Inc. dba Caesars Palace and Casino*, attached as  
13 Exhibit "6" at 10.) Thus, Venetian knew its floors did not meet industry standards and were  
14 unreasonably dangerous to customers in 2009. Venetian was so concerned about this it searched for  
15 and paid a consultant to help them increase safety and keep the aesthetically pleasing design.  
16 Apparently, Venetian ignored its own consultant's suggestions because its marble floors still test at  
17 .33, nearly a third below the industry standard of 0.50. (Plaintiff's Mot. at Exhibit "10.")

18  
19 Plaintiff is tracking down Mr. Elliott's deposition and report ordered by Venetian, however,  
20 may be forced to send subpoenas to the prior litigants, the deposition company, and Mr. Elliot, or  
21 send a request for production to Venetian. Without a claim for punitive damages these subpoenas  
22 and discovery request may fall outside the scope of discovery. Thus, Plaintiff would never learn the  
23 extent of Mr. Elliott's consultation with Venetian, whether and to what extent he warned  
24 management of the dangerous conditions, what options he gave Venetian to remedy the situation,  
25 and how Venetian responded to his suggestions. The contents of this report alone could provide clear  
26 and convincing evidence of punitive damages. This report may reveal that Mr. Elliot informed  
27  
28

1 Venetian's upper management the marble floors were below industry standards, extremely  
2 hazardous, caused hundreds of injuries a year, and there was a low-cost, quick and easy way to fix  
3 them. If this were the case, it would have been reckless for management to ignore the issue because  
4 they didn't care or didn't want to spend the money.

5  
6 This evidence is not "invented", neither is it "fabricated", nor is it based "upon a house of  
7 cards" as Venetian claims. (Defendant's Opp. at 15:23; 14:10; 15:22.) This evidence is real: one real  
8 person notified Venetian of the hazard every 2.6 – 3.9 days, Venetian hired a real expert, Ms. Cruz's  
9 testimony is real and Mr. Graovac's testimony is real. What happened to Plaintiff is not the result of  
10 ordinary negligence, but the result of Venetian's conscious disregard for the safety its customers and  
11 as such Plaintiff must be allowed to amend her Complaint to add punitive damages. Plaintiff and  
12 Defendant can then conduct discovery on the issue,<sup>6</sup> and if it turns out there is insufficient evidence  
13 to prove punitive damages, Defendant is free to make a motion for summary judgment.

14  
15 **B. Venetian Has Not Shown Undue Delay, Bad Faith or Dilatory Motive Required**  
16 **to Defeat Plaintiff's Motion to Amend**

17 NRCP 15(a) requires leave to amend "be freely given when justice so requires." NRCP  
18 15(a); *see also Kantor v. Kantor*, 116 Nev. 886, 891, P.3d 825, 828 (2000). "This mandate is to be  
19 heeded." *Adamson v. Bowker*, 85 Nev. 115, 121, 450 P.2d 796, 800 (1969). It is reversible error to  
20 deny a motion for leave without a reasonable justification. *Id.* at 120, 450 P.2d at 800. If a motion to  
21 amend is not futile a court should only deny a motion for leave to amend if the opposing party  
22 can prove "undue delay, bad faith or dilatory motive on the part of the movant." *Stephens v. S.*  
23 *Nev. Music Co.*, 89 Nev. 104, 105–06, 507 P.2d 138, 139 (1973); *see also Foman v. Davis*, 371 U.S.  
24 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962). The Nevada Supreme Court held at least 10  
25 times that the standard is "undue delay, bad faith or dilatory motive." *Id.*; *see also Delay*

26  
27 <sup>6</sup> Discovery in this case does not close until August 15, 2019. (Stipulation and Order to Extend  
28 Discovery, attached as Exhibit "7" at 2:1-2.)

1 *Burnett v. C.B.A. Sec. Serv., Inc.*, 107 Nev. 787, 789, 820 P.2d 750, 752 (1991) (“delay, bad faith, or  
2 a dilatory motive are all sufficient reasons to deny a motion to amend a pleading.”) *Kantor*, 116 Nev.  
3 at 891, 825 P.3d at 828 (“Sufficient reasons to deny a motion to amend a pleading include undue  
4 delay, bad faith or dilatory motives on the part of the movant.”) *Garmong v. Rogney & Sons Const.*,  
5 127 Nev. 1136, 373 P.3d 916 (2011) (“a denial [of a motion to amend] may be warranted if undue  
6 delay, bad faith, or dilatory motives on the part of the movant are involved.”); *Wolverton v. On*  
7 *Demand Sedan Servs., Inc.*, 127 Nev. 1186, 373 P.3d 974 (2011) (“undue delay, bad faith or dilatory  
8 motive on the part of the movant” provides sufficient grounds for denying a motion to amend.”);  
9 *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. Adv. Op. 31, 416 P.3d 249, 254–55  
10 (2018) (“[s]ufficient reasons to deny a motion to amend a pleading include undue delay, bad faith or  
11 dilatory motives on the part of the movant.”); *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34,  
12 357 P.3d 966, 970 (Nev. App. 2015); *Fernandez v. Blanck*, No. 61066, 2014 WL 605901, at \*1  
13 (Nev. Feb. 13, 2014); *Fernandez v. Fernandez*, No. 61686, 2014 WL 6449647, at \*1 (Nev. Nov. 14,  
14 2014) (“delay, bad faith, and dilatory motive are valid reasons” to deny a motion to amend); *O’Neal*  
15 *v. Juvenile Master Lu*, No. 67128, 2015 WL 7523925, at \*4 (Nev. App. Nov. 19, 2015).

16  
17  
18 Despite the fact that Nevada Supreme Court clearly held a motion for leave to amend should  
19 be freely granted absent proof of “delay, bad faith or dilatory motive,” Venetian chooses to cite a  
20 different standard from the Ninth Circuit and United States Supreme Court:  
21

22 When considering a motion to amend such as this one, the court, “[t]he issue is not  
23 whether a plaintiff will ultimately prevail, **but whether he claimant is entitled to**  
24 **offer evidence in support of the claims.** Indeed it may appear on the face of the  
25 pleadings that a recovery is very remote and unlikely but that is not the test.”  
26 (*Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).) Leave to amend should not be  
27 granted if “it is clear that the complaint could not be saved by an amendment.”  
28 (*Livid Holdings Ltd. v. Salomon Smith Barney*, 11 Inc., 416 F.3d 940,946 (9th Cir.  
2005).)

(Defendant's Opp. at 18:4-11.) (emphasis added). Not only is this an incorrect, more stringent standard but Venetian's Opposition never mentions "delay," "bad faith" or "dilatory motive." (See generally, Defendant's Opp.) As Venetian failed to meet its burden of proof to show delay, bad faith, or dilatory motive, this Court must grant Plaintiff's Motion.

**C. NRS 42.007 Does Not Apply Because Plaintiff is Not Pursuing Punitive Damages on a Theory of Vicarious Liability**

Venetian argues the Court should deny Plaintiff's Motion to Amend because NRS 42.007 requires Plaintiff to "plead specific conduct on the part of the manager, directors, or officers of the corporation. (Defendant's Opp. at 21:16-22:22.) NRS 42.007 deals with "limitations on liability by employer for wrongful act of employee." See NRS 42.007. In support of this argument Venetian cites *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (2008). *Countrywide* does not support this argument: "NRS 42.007 was intended to limit employers' pure vicarious liability for the wrongful acts of employees committed within the scope of employment." *Id.* at 746, 192 P.3d at 257 citing Senate Daily Journal, 68th Leg. 18 (Nev., June 2, 1995) (comments of Senator Mark A. James); Hearing on S.B. 474 Before Senate Comm. on Judiciary, 68th Leg. (Nev., May 18, 1995) (noting the testimony of the Nevada Resort Association's representative, indicating that the thrust of the bill is to "eliminate vicarious liability for punitive damages" by requiring "deliberate, i.e., knowing conduct [on behalf of employers]"). In *Countrywide*, a Countrywide employee authorized the wrong unit to be "trashed-out" out in preparation to be re-sold after a foreclosure. *Id.* at 731, 192 P.3d at 247. The plaintiff, the owner of the trashed-out unit, "argued that Countrywide was subject to punitive damages on the theory that it was vicariously liable for [the employee's] conduct." *Id.* at 746, 192 P.3d at 257. Based upon this argument, Venetian concludes Plaintiff must comply with NRS 42.007. However, *Countrywide* merely holds "NRS 42.007 controls

1 the question of vicarious employer liability for punitive damages in Nevada.” *Id.* at 745, 192 P.3d  
2 at 257.

3 NRS 42.007 does not apply to the case at hand because Plaintiff is not pursuing a claim for  
4 punitive damages on a theory of vicarious liability. Plaintiff does not argue Venetian is subject to  
5 punitive damages based on the conduct of an individual employee. Rather, Plaintiff argues Venetian,  
6 the corporation, is subject to punitive damages because it consciously disregarded its customers’  
7 safety when it refused to fix a known hazard – its significantly below industry standards,  
8 unreasonably slippery marble floors – after receiving notice via 466-700 injury slip and falls reports  
9 in the last five years. Thus, because Plaintiff is not pursuing punitive damages based on vicarious  
10 liability, NRS 42.007 is irrelevant.

11  
12 If, for sake of argument, Plaintiff claimed punitive damages stemming from vicarious  
13 liability, Plaintiff could easily show Venetian’s officers, directors or managers consciously  
14 disregarded guests’ safety because they knew their marble floors were dangerous and significantly  
15 below industry standards. Venetian’s maid testified her manager told her the floors were “slippery  
16 and dangerous when wet.” (Exhibit “2” at 15:26-16:3.) Guests notified Venetian’s management  
17 when they filed 466-700 injury slip and falls incident reports in the last five years. Finally,  
18 Venetian’s management knew about the issue because they have engineers on staff and specifically  
19 hired a consultant to tell them how to fix it. (Exhibit “4” at 15:1-6; Exhibit “5” at 7:12-17; 38:25-  
20 28.) Thus, if NRS 42.007 applied to Plaintiff, Plaintiff could show Venetian’s “officers, directors, or  
21 managing agents acted with the intent to harm”. (Defendant’s Opp. at 22: 18-19.)  
22  
23

24 //

25 //




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

1    **II.    CONCLUSION**

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

4    DATED this 15<sup>th</sup> day of May, 2019

6            THE GALLIHER LAW FIRM

7              
8            \_\_\_\_\_  
9            Keith E. Gallher, Jr., Esq.  
10           Nevada Bar Number 220  
11           1850 E. Sahara Avenue, Ste. 107  
12           Las Vegas, Nevada 89104  
13           *Attorney for Plaintiff*