

1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3
4 Supreme Court No. Electronically Filed
District Court Case No. A-18-77276-1C Mar 17 2020 02:20 p.m.
5 Elizabeth A. Brown
Clerk of Supreme Court

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

9 v.

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

15
16 **APPENDIX TO PETITIONERS' EMERGENCY PETITION FOR WRIT OF**
17 **MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES**
18 **21(a)(6) AND 27(e) AND ALTERNATIVE EMERGENCY MOTION TO STAY**
19 **UNDER NRAP RULES 8 AND 27(e)**
20 **Volume 9 (Exhibits 42-43)**

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

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

3
4 DATED this 13 day of March, 2020.

5 ROYAL & MILES LLP

6
7
8 By: 

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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 9 (Exhibits 42-43), 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:

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THE GALLIHER LAW FIRM
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and

Sean K. Claggett, Esq.
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Las Vegas, NV 89107

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

Attorneys for Real Party in Interest

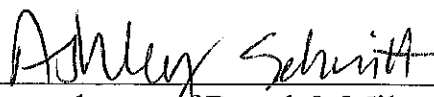
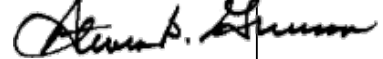

An employee of Royal & Miles LLP

EXHIBIT “CC”



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 JOYCE SEKERA,
9 Plaintiff,

CASE NO.: A-18-772761

DEPT. XXV

10 vs.

11 VENETIAN CASINO RESORT
LLC, ET AL.,

12 Defendants.

13
14 BEFORE THE HON. ERIN TRUMAN, DISCOVERY COMMISSIONER
15 WEDNESDAY, JUNE 26, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **ALL PENDING MOTIONS**

18
19 APPEARANCES:

20 For the Plaintiff:

KEITH E. GALLIHER, JR., ESQ.
KATHLEEN GALLIHER, ESQ.

21
22 For the Defendants:

MICHAEL A. ROYAL, ESQ.

23
24 RECORDED BY: FRANCESCA HAAK, COURT RECORDER
25

1 certainly may be. He was very definite about the tenor of the
2 conversation, very definite about what was said.

3 So the bottom line is there was nothing improper that was
4 done here, and I don't have an obligation to call defense counsel and
5 say, you know, I'm deposing this witness next week, and this is what
6 he's going to say. I would love to have that as a standard because
7 nobody calls me to tell me what all the people I've deposed are going to
8 say before deposition.

9 So this is a lot of hyperbole and much ado about nothing
10 because the bottom line is nothing was done improper here. We had a
11 conversation that wasn't privileged from the get-go. I elicited testimony
12 from the witness who volunteered it at deposition, and the witness
13 testified regarding his perception of events, right or wrong. And if Mr.
14 Royal, you know, basically if he doesn't believe the testimony, that's his
15 privilege. If he thinks there's Cross-Examination room, that's his
16 privilege. But it does not stand for the proposition that he gets to
17 disqualify a witness because he doesn't like what the witness had to say.

18 DISCOVERY COMMISSIONER: Why is it that you, in Mr.
19 Han's deposition, said --

20 MR. GALLIHER: Mr. -- whose?

21 DISCOVERY COMMISSIONER: Mr. Han, H-A-N, said on
22 May 6, 2019: When you say you were told by -- let's see.

23 Question: How did you prepare for today's deposition? By
24 the way, my voice is not so good because I'm getting over a virus.

25 Answer: Yeah. I was informed that I was being called upon

1 today, and so I was told what I would be doing generally.

2 Question: When you say you were told, by whom?

3 Answer: I was informed by Mr. Royal.

4 Question: All right. I don't want to know about your
5 conversation with Mr. Royal. They're privileged.

6 MR. GALLIHER: M-hmm.

7 DISCOVERY COMMISSIONER: Why did you say Mr. Han's
8 communications with Mr. Royal were privileged when now your position
9 is Mr. Shulman's are not?

10 MR. GALLIHER: Mr. Han was the head of housekeeping. He
11 was the boss man of the department --

12 DISCOVERY COMMISSIONER: Okay.

13 MR. GALLIHER: -- that investigated the fall.

14 DISCOVERY COMMISSIONER: So he's the head of
15 housekeeping?

16 MR. GALLIHER: Yeah. So I consider him entirely different.

17 DISCOVERY COMMISSIONER: Okay.

18 MR. GALLIHER: As a table supervisor, table supervisor
19 doesn't have speaking authority for the Venetian, so that's why in that
20 situation the better part of discretion is, okay, he's the head honcho of
21 the department that investigated the fall, enough, so we didn't go into the
22 conversations.

23 But Mr. Shulman was nothing more than a table supervisor in
24 a casino. Big difference.

25 DISCOVERY COMMISSIONER: Mr. Royal.

1 MR. ROYAL: None of that was fleshed out at all in Mr. Han's
2 deposition. He was not an investigator. He was just like Mr. Shulman.
3 He works in housekeeping. He doesn't work with PAD. PAD is the
4 department that would have had something to do with clean up and
5 patrolling of this particular area. Mr. Han --

6 DISCOVERY COMMISSIONER: What's PAD?

7 MR. ROYAL: I'm sorry. Public Area Department. Excuse me.

8 DISCOVERY COMMISSIONER: Okay.

9 MR. ROYAL: Mr. Han, just like Mr. Shulman, was on a break.
10 He was going to get something, you know, something on a break. He
11 just happened to come by the area and he stopped by and he was one
12 of several people who came by when the Plaintiff was sitting on the floor.

13 He didn't testify. That was never established. When he said,
14 oh, your discussion with Mr. Royal is privileged, none of what he --
15 counsel just said was ever established -- that he investigated the
16 accident? He showed up. He looked at it. I had to find out who he was
17 just because I saw him show up in a suit in the video and said, okay,
18 who's this guy? He looks like an employee. I don't have a report from
19 him. I don't have anything. I just know he showed up and he testified
20 I'm just a guy who just happened to be there, and I'm willing to tell you
21 what I saw, and that was it.

22 So he's no different than Mr. Shulman, except that Mr.
23 Shulman said, yes, I've seen spills before, and this is how we respond in
24 the casino area when we see a spill. But -- I do this, I do that, I put
25 chairs around it, we want to, you know, keep people from stepping in it,

EXHIBIT “DD”

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

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * * *

8
9 JOYCE SEKERA,)
10 Plaintiff,)
11 vs.) REPORTER'S TRANSCRIPT
12) OF
13 VENETIAN CASINO RESORT,) DEFT'S MOTION FOR
14 Defendant.) RECONSIDERATION ON OST
15 _____)
16

17 BEFORE THE HONORABLE KATHLEEN DELANEY
18 DISTRICT COURT JUDGE

19 DATED: TUESDAY, JULY 30, 2019
20
21
22
23

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

1 was surgical. They knew that Dr. Smith was likely do the
2 surgery well before the expert deadline disclosures.

3 To that extent, your Honor, if the Court is inclined
4 to grant this motion, we'd just ask that the expert
5 deadline -- rather you don't open the expert deadlines
6 again. That they remain closed.

7 THE COURT: I'll come to Mr. Galliher on that.
8 I wanted both sides to argue.

9 I did note that when you sought new deadlines
10 that you literally sought all new deadlines, even
11 including the motion to amend. I really don't understand
12 at this stage, with as much discovery that has occurred
13 and the fact that the Court already granted and added in,
14 you know, whatever was likely needed to be added in, how
15 we're resetting all the deadlines. But more specifically,
16 it does seem it would be a bit of an overreach to look at
17 resetting all these expert deadlines, pending this other
18 discovery. Maybe if this other discovery pans out to
19 something, wouldn't that be the more appropriate time to
20 try to look at that. We've already got experts covering
21 what you knew existed.

22 MR. GALLIHER: Well, not necessarily.

23 What happened is Dr. Smith and Mark said Joyce
24 Sekera was potentially a surgical candidate and his
25 recommendation was going depend on how she reacted to

1 injection therapy. That's rasodomies. She had the
2 rasodomies and by report did not react well. And after
3 she went back to see Dr. Smith -- remember this is July
4 9th. This is a couple weeks ago. She saw Dr. Smith. He
5 says, okay. The rasodomies have failed. Now you are a
6 surgical candidate. So contrary to what Mr. Royal
7 stated -- and by the way, we didn't see the March note
8 because it was sent through her worker's compensation
9 lawyer. It wasn't sent to us.

10 So we saw the July note and it was like, okay. And
11 she was redeposed. She testified, hey, if I'm going to
12 have to have this done, I'll have it done. So we know
13 she's going to have surgery.

14 Again, we're a year-and-a-half into this case. Now
15 we've got a client whose medical condition has changed.
16 So I'm addressing the experts only. I think the Court
17 understands the reason why we have to have an extension of
18 discovery because we still don't have the unredacted
19 reports so we can't do our discovery. We've had 4
20 requests for production of documents in this case. All
21 have been refused. All will be the subject of motions to
22 compel. I expect to be before the discovery commissioner
23 many times within the next several months trying to get
24 discovery to support our claims in this case, because the
25 Venetian will not voluntarily produce anything.

1 Any further clarification or information.

2 MR. GALLIHER: No, your Honor. I would like a
3 transcript. I don't write very fast with my aging hands.

4 THE COURT: Just get your orders in place and
5 get them done.

6 MR. ROYAL: He represented Plaintiff was re
7 deposed. She did not.

8 THE COURT: Has she been redeposed.

9 How is that your understanding -- I can't have you
10 both in here saying something happened and something
11 didn't happen.

12 Did she get deposed or not.

13 MR. ROYAL: She only got deposed once. She did
14 not get redeposed.

15 MR. GALLIHER: That's what I said. He redeposed
16 Mr. Schulman. He's redeposed several witnesses.

17 THE COURT: When we're in here next time, have
18 your facts straight, be artful and clear about what you
19 argue. I don't want to keep hearing this happened, this
20 didn't happen. He said this, maybe that. Then I find out
21 that's not the case.

22 MR. GALLIHER: I understand. Thank you.

23

24

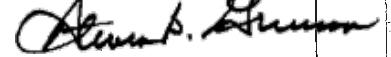
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Electronically Filed
8/30/2019 8:40 AM
Steven D. Grierson
CLERK OF THE COURT



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,

Defendants.

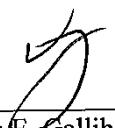
**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR A
PROTECTIVE ORDER AND
OPPOSITION TO DEFENDANTS'
MOTION TO COMPEL**

Plaintiff hereby submits her opposition to Defendants' motion for a protective order and
opposition to Defendants' motion to compel.

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

4 DATED this 20th day of August, 2019

THE GALLIHER LAW FIRM


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Kathleen H. Gallagher, Esq.
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Las Vegas, Nevada 89104
Attorney for Plaintiff

MEMORANDUM AND POINTS OF AUTHORITIES

I. INTRODUCTION

15 This is a personal injury case arising out of a slip and fall in the Venetian Casino Resort. On
16 November 4, 2016 around 12:30 p.m. Plaintiff Joyce Sekera was walking through Venetian. As
17 Joyce passed the Grand Lux Café Restrooms, she slipped and fell on water on the black marble
18 floors. On the way down Plaintiff struck her skull on the pillar and her left elbow on the ground. The
19 first Venetian employee to come to Joyce's aid, Gary Shulman, confirmed there was water on the
20 floor. (See Deposition of Gary Shulman, attached as Exhibit "1" at 8:6-10; 8:23-9:11; 10:8-17.) Mr.
21 Shulman also testified he met with Defense Counsel and told him there was water on the floor, to
22 which Defense Counsel responded "No, you didn't, wink, wink" "no, no, there was nothing wet
23 there" and "No, you are mistaken. It wasn't wet." (*Id.* at 56:16-17; 23:21-22; 61:5-6.)

24 Over the last two years Plaintiff underwent low back injections, medial branch blocks and
25 two rounds of radio frequency ablations. (July 10, 2019 Pain Institute of Nevada Record, attached as
26 Exhibit "2" at 2.) In June, after Plaintiff's most recent set of radio frequency ablations failed, Dr.
27 Smith opined "I do not see how this woman will be able to avoid surgical treatment" "Rhizotomies

1 in my opinion will give her some temporary relief, but certainty not long-term.” (July 8, 2019
2 Western Regional record, attached as Exhibit “3.”) Plaintiff will thus be undergoing L5-S1 surgery
3 in the near future. Based upon these facts the Court recently granted Plaintiff’s motion to extend
4 discovery and trial 270 days. Also relevant to this opposition is Plaintiff’s motion to amend her
5 complaint to add a claim for punitive damages. On May 28, 2019 the Court granted Plaintiff’s
6 motion to amend her complaint to add a claim for punitive damages agreeing with Plaintiff’s
7 argument that punitive damages were appropriate because Venetian knew its marble floors were
8 unreasonably slippery and posed a high risk to guests but nonetheless refused to increase their slip
9 resistance.

10 Despite punitive damages bring on the table, Defendants move for a protective order on 14
11 requests for production, 2 interrogatories and a 30(b)(6) deposition with 18 parameters all relevant to
12 that claim. Defendants additionally move to compel documents in Plaintiff’s expert’s job file.¹
13 Defendants motion is largely based upon the confused contention that this case involves a transient
14 condition (water on the floor) rather than the permanent dangerous condition of Defendants’ marble
15 floors. As discussed in detail below, Defendants’ motion for a protective order must be denied
16 because the discovery sought is admissible on the issues of notice and punitive damages and relevant
17 to ensure compliance with the discovery rules. Similarly, Defendants motion to compel must be
18 denied because Plaintiff already supplied the relevant documents and the other documents sought are
19 in the Defendants possession as they are the Defendants internal documents.

20 **II. FACTUAL BACKGROUND**

21 **A. Discovery Requests**

22 On August 16, 2018 Plaintiff sent Defendants her first set of requests for production.
23 Plaintiff’s 7th request asked Defendants provide:
24
25

26 ¹ To the extent this Opposition exceeds the usual 30-page limit, Plaintiff apologizes. Plaintiff could
27 not meaningfully respond to Defendants’ motion for a protective order on 14 requests for
28 production, 2 interrogatories and the 30(b)(6) deposition with 18 parameters as well as Defendants’
motion to compel Plaintiff’s expert job file and 196 incident reports within the 30-page limit.

1 True and correct copies of any and all claim forms, legal actions, civil complaints,
2 statements, security reports, computer generated lists, investigative documents or
3 other memoranda which have, as its subject matter, slip and fall cases occurring on
4 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.

(Defendants' Mot. at 3:16-21, Exhibit "A.")

5 In response to this request, Defendants produced 64 redacted incident reports between
6 November 4, 2013 and November 4, 2016. (Excerpts of Michael Royal's Declaration in Support of
7 Motion for Protective Order, attached as Exhibit "4" at 3:25-4:2.) Defendants produced these reports
8 before moving for a protective order. Defendants ignored the portion of Plaintiff's request which
9 asked for subsequent incident reports and subsequently misrepresented to the Court that Plaintiff had
10 only requested reports "occurring within three years preceding the subject incident." (*Id.* at 3:14-16.)

11 Plaintiff requested Defendants provide the unredacted reports so she could identify witnesses
12 to counter Defendants' comparative negligence claim that Plaintiff should have seen liquid on the
13 floor before she fell. (*Id.* at 4:3-14.) Defendants refused to produce the unredacted reports and filed a
14 motion for a protective order without moving to protect the subsequent incident reports contained in
15 the same request.² (*Id.*) Defendants now move for an additional protective order on the subsequent
16 incident reports **nearly 11 months after their response was due.**

17 After briefing and oral argument, the Discovery Commissioner issued a Report and
18 Recommendation stating the incident reports should be subject to a protective order and
19 recommending Defendants not be required to provide unredacted reports. (Discovery
20 Commissioner's Report and Recommendation, attached as Exhibit "5.") Plaintiff objected to the
21 Report and Recommendation. The Court heard Plaintiff's Objection on May 14, 2019. (Court
22 Minutes, attached as Exhibit "6.") The Court determined there was not "any legal basis" for the
23 protective order and ordered Defendants produce the unredacted incident reports. (*Id.*) It has been
24

25
26 ² The Court previously ruled Plaintiff did nothing wrong by sharing unprotected discovery with
27 other lawyers. Nonetheless Defendants continued to demonize Plaintiff's counsel by implying he did
28 something wrong by sharing the unprotected documents with other lawyers.

1 over three (3) months since the Court ordered Defendants produce the unredacted reports.
2 Defendants continue to refuse to abide by the Court's order.

3 On November 7, 2018 Plaintiff served Defendants with her second set of requests for
4 production of documents. Plaintiff's 11th request asked Defendants for:

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

7 (Defendants' Mot. at 4:19-24, Exhibit "D.") Defendants now move for a protective order on this
8 request **over 8 months after their response was due.**

9 On March 15, 2019 Plaintiff served Defendants with her third set of requests for production
10 of documents. Plaintiff requested Defendants provide the following:

11 **REQUEST NO. 12:**

12 Any and all documents, reports, emails, correspondence, test results,
13 including expert reports generated by Plaintiff's and/or The Venetian Casino
14 Resort, LLC, d/b/a The Venetian Las Vegas with respect to the coefficient of
friction, wet and dry, of the marble floors located on the ground floor and Bouchon
restaurant floor of The Venetian Casino Resort, LLC, d/b/a The Venetian Las
Vegas from three years before the fall, November 4, 2013, to the present.

15 **REQUEST NO. 13:**

16 Any and all documents invoices, work orders or communications with
17 respect to the purchase and/or application of any coating placed on the marble
18 floors located on the ground floor and Bouchon restaurant floor of the Venetian
Casino Resort, LLC, d/b/a The Venetian Las Vegas from three years before the fall,
November 4, 2013, to the present.

19 **REQUEST NO. 14:**

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

22 (Defendants' Mot. at 4:27-5:10, Exhibit "E.") Defendants now move for a protective order on these
23 requests **nearly 4 months after their response was due.**

24 On April 15, 2019 Defendants served their responses to Plaintiff's third set of requests for
25 production. (Defendants' Rspn. to Plt.'s Third RFPs, attached as Exhibit "7.") In response to
26 Plaintiff's 12th request, Defendants stated "As to any such reports obtained from November 3, 2013
27 to November 4, 2016 on the main casino floor level where the subject incident occurred, Defendants
28

1 have no documents responsive to this request beyond those which it has disclosed pursuant to NRCPL
2 16.1 and all supplements thereto.” (*Id.* at 2:21-24.) Plaintiff later learned this statement was untrue.
3 (*See* Sec. II.C. “C. Defendants’ History of Playing Hide the Ball in Discovery.”) Defendants’ did not
4 respond to the portion of Plaintiff’s 12th request which asked for documents, emails, correspondence,
5 test results. (*Id.*)

6 On May 31, 2019 Plaintiff served Defendants with her sixth set of requests for production of
7 documents. Plaintiff requested Defendants provide the following:

8 REQUEST NO. 23:

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

13 REQUEST NO. 24:

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

17 REQUEST NO. 25:

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

22 REQUEST NO. 26:

23 Any and all correspondence, emails, memoranda, internal office
24 correspondence, or other documents directed to the Venetian from a Contractor,
25 Subcontractor, Flooring Expert, or similar entity which discusses or refers to the
26 safety of marble floors located within the Venetian Hotel and Casino from January
27 1, 2000 to date.

28 ...

REQUEST NO. 29:

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

REQUEST NO. 30:

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

1 (Defendants' Mot. at 5:18:6-7, Exhibit "F.") Defendants now move for a protective order on these
2 requests **over a month after their response was due.**

3 On June 24, 2019 Defendants served their responses to Plaintiff's sixth set of requests for
4 production. (Defendants' Rspn. to Plt.'s Sixth RFPs, attached as Exhibit "8.") In response to
5 Plaintiff's 24th, 25th and 26th requests asking for correspondence, emails, internal communications,
6 transcripts, minutes and notes Defendants stated they "have no documents responsive to this request
7 beyond those which it has disclosed pursuant to NRCP 16.1, NRCP 34, and all supplements thereto."
8 (*Id.* at 3:22-24, 4:18-21, 5:12-15.). Defendants' did not previously produce any correspondence,
9 emails, internal communications, transcripts, minutes or notes in any of their disclosures. Thus,
10 Defendants told Plaintiff they have no correspondence, emails, internal communications, transcripts,
11 minutes and notes related to their marble floors from January 1, 2000 to present.

12 On June 20, 2019 Plaintiff served Defendants with her first set of interrogatories. Plaintiff's
13 first interrogatory asked Defendants:

14 Please identify by Plaintiff's name, case number and date of filing all complaints
15 filed against the Venetian Casino Resort, LLC d/b/a The Venetian Las Vegas and/or
16 Las Vegas Sands, LLC d/b/a The Venetian Las Vegas in the Clark County District
17 Court for any and all slip and fall and/or trip and fall incidents occurring on marble
18 flooring anywhere within The Venetian Casino Resort, LCC d/b/a The Venetian
19 Las Vegas and/or Las Vegas Sands, LLC d/b/a The Venetian Las Vegas from
20 January 1, 2000 to the present.

21 (Defendants' Mot. at 6:10-17, Exhibit "G.") Defendants now move for a protective order on this
22 interrogatory **over a month after their response was due.**

23 On July 17, 2019 Plaintiff served Defendants with her ninth set of requests for production of
24 documents. Plaintiff's 35th request asked Defendants for:

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

(Defendants' Mot. at 6:19-23, Exhibit "H.")

On July 19, 2019 Plaintiff served Defendants with her tenth set of requests for production of documents. Plaintiff's 36th request asked Defendants for:

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

(Defendants' Mot. at 6:27-7:4, Exhibit "I.")

On July 22, 2019 Plaintiff served Defendants with her second set of interrogatories. Plaintiff's second interrogatory asked Defendants:

Please identify names, addresses and phone numbers of any and all individuals designated as safety engineers³ who perform(ed) accident checks at the Venetian from the year 2000 to the present.

(Defendants' Mot. at 6:10-17, Exhibit "J.")

On July 30, 2019 Plaintiff served Defendants with her eleventh set of requests for production of documents. Plaintiff's 37th request asked Defendants for:

Any and all quotes, estimates, correspondence, emails, memorandums, minutes, file notes and/or other documentation related to Venetian's decision to remove and replace the carpet with marble flooring and Venetian's removal and replacement of carpet with marble flooring as referenced by Christina Tonemah⁴ in her deposition. (25: 9-26; 26; 1-6)

³ On May 16, 2019 Security Officer Christopher Johnson testified:

Q: And how about any physical observation at the scene; would you have made notes of that?

A: I don't believe so. That's not my duty to actually make on the scene. **We have engineers that come out and they do accident checks and stuff like that.**

(Excerpts of Deposition of Christopher Johnson, attached as Exhibit "9" at 15:1-6.) (emphasis added).

⁴ On July 12, 2019 Christiana Tonemah, a former Venetian executive testified that Venetian initially did not have marble flooring: "when we first opened, the first five years, everything was carpeted... everything but the grand hallway." (Deposition of Christiana Tonemah, attached as Exhibit "10" at 25:9-15.) Mr. Galliher confirmed that Ms. Tonemah was "talking specifically about the casino... the marble walkway" to which Ms. Tonemah responded "Correct." (*Id.* at 25:16-18.) Ms. Tonemah further testified the marble walkways in the casino were installed "During their refurbishing probably after we had been open – probably the year after or the year of the Palazzo opening..." (*Id.* at 25:21-23.) The Palazzo opened in January 2008. *See Howard Stutz, Officials Open Palazzo Casino, LAS VEGAS REVIEW JOURNAL* (Jan. 1, 2008), <https://www.reviewjournal.com/business/officials-open-palazzo-casino/>.

(Defendants' Mot. at 7:11-7:18, Exhibit "K.")

B. The 30(b)(6) Deposition

On July 30, 2019 Plaintiff served her second amended deposition notice for Defendants' Rule 30(b)(6) witness. (Defendants' Mot. at 7:18-7:25.) Plaintiff's notice included the following parameters:

1. Total number of injury falls on marble floors located within The Venetian Las Vegas from November 4, 2013 to present.
2. Actions taken by The Venetian Las Vegas to change the coefficient of friction with respect to the marble floors within The Venetian Las Vegas from November 4, 2013 to present.
3. Measures taken to locate and produce security/incident injury fall reports by The Venetian Las Vegas as requested by Plaintiff in this Litigation.
4. Slip testing performed by The Venetian Las Vegas or it's representatives with respect to the marble floors within The Venetian Las Vegas from November 4, 2013 to present.
5. Any invoices or work orders with respect to the removal of carpet in pedestrian walkways and replaced with marble and/or granite flooring from November 4, 2006 to present.
6. The identity of all employees who were responsible for managing and maintaining Venetian's technology infrastructure;
7. The name, address and phone number of the specific employee(s) tasked with retrieving incident reports from Venetian's system for this litigation, the litigation in Smith v. Venetian (A-17-753362-C), Cohen v. Venetian (A-17-761036-C) and Boucher v. Venetian (A-18-773651-C) and the name address and phone number of the individual who assigned them this task.
8. The identity of all non-employee consultants, consulting firms, contractors or similar entities that were responsible for managing and maintaining Venetian's technology infrastructure;
9. Software used, including dates they were in use and any software modifications;
10. Identity of, description of and policies and procedures for the use of all internal systems for data management, complaint and report making, note keeping, minute/transcript taking and employee e-mail, messaging and other communication systems and description of all employee accounts for said systems;
11. Description of all cell phones, PDAs, digital convergence devices or other portable electronic devices and who they were/are issued to;
12. Physical location of electronic information and hard files and description of what information is kept in electronic form and what is kept in hard files;
13. Description of policies and procedures for performing back-ups;
14. Inventory of back-ups and when they were created;
15. User permissions for accessing, modifying, and deleting data;
16. Utilization of data deletion programs;

17. A listing of current and former personnel who have or had access to network resources, technology assets, back-up, and other systems operations;
18. Electronic records management policies and procedures;

(Defendants' Mot. at Exhibit "L.")

C. Defendants' History of Playing Hide the Ball in Discovery

On April 15, 2019 Defendants served their responses to Plaintiff's third set of requests for production which stated "As to any such [incidents] reports obtained from November 3, 2013 to November 4, 2016 on the main casino floor level where the subject incident occurred, Defendants have no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1 and all supplements thereto." (Exhibit "7" at 2:21-24.) Shortly after receiving Plaintiff's counsel went digging through a few prior cases to identify responsive incident report not produced. Plaintiff's counsel quickly found 2 prior responsive incident reports that resulted in litigation (case nos. A-15-729566-C and A-17-751293-C) which Defendants "missed" when compiling their responses. Defendants later admitted these reports "should have been included by Venetian in its response to the request for prior incident reports" and that "Defendants will supplement NRCP 34 responses to provide" these reports. (Excerpts of Michael Royal's Declaration in Support of Opposition to Motion to Amend, attached as Exhibit "11" at 12:1-15.)

In July 2019 Plaintiff filed her first motion to compel in which listed additional responsive reports Defendants again conveniently missed. (Defendants' Opp. to Plt.'s Mot. to Compel filed July 12, 2019, attached as Exhibit "12.") Defendants, in their opposition admitted they did not provide an "11/7/13 (Grand Lux Cafe; Marble slip and fall)" and a 06/11/16 "Venetian front office" slip and fall on "a puddle of water." (*Id.* at 10:25-11:4, 12:1-12:8.) Defendants then provided both of these reports.

Defendants also did not fully and fairly disclose incident reports in three other cases: *Smith v. Venetian*, *Cohen v. Venetian* and *Boucher v. Venetian*. In *Smith v. Venetian*, Defendants left out 35 incident reports responsive to the Smith's request for production. (Motion for Case Ending Sanctions in *Smith v. Venetian* attached as Exhibit "13" at 4:7-10, 5:5.) In *Boucher v. Venetian*, Defendants left

1 out 32 incident reports responsive to the Boucher's request for production. (Excerpts of Motion to
2 Amend in *Boucher v. Venetian* attached as Exhibit "14" at 7:19-11:19.)

3 **D. Other Strange Events During Discovery**

4 The first Venetian employee to come to Joyce's aid, Gary Shulman, confirmed there was
5 water on the floor. Mr. Shulman testified that Mr. Royal met with him and asked him to lie. (Exhibit
6 "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
7 21:13-25.) **"At that time he [Mr. Royal] said "No, it wasn't wet. You didn't see anything wet.
8 You are mistaken." "** (*Id.* at 23:16-17.) Mr. Shulman insisted "I'm pretty sure it was. I mean, that's
9 why I called PAD to clean it up. In 13 years I've never called PAD to clean up a dry spot." (*Id.* at
10 23:18-20.) **"And he [Mr. Royal] says, "But, no, no, there was nothing wet there." "** (*Id.* at 23:21-
11 22.) **"[Y]ou [Mr. Royal] just kept refuting me, basically, "No, you are mistaken. It wasn't wet."
12 "** (*Id.* at 61:5-6.) Mr. Shulman believed Mr. Royal was "intimidating" him, that Mr. Royal "didn't
13 want me to be truthful" and that Mr. Royal wanted him to lie under oath. (Exhibit "1" at 56:13-
14 57:1.)

15 Recently Venetian current employees started testifying **marble is not more slippery than**
16 **carpet:**

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

19 A: It's the same, basically.

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

22 A: Yeah.

(Deposition of Kecia Powell, attached as Exhibit "15" at 19:21-20:10.)

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

25 A: I would have to say no.

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

28 A: No.

(Deposition of Pete Krueger, attached as Exhibit "16" at 10:25-11:9.)

E. Thomas Jennings Job File

Defendants took the deposition of Plaintiff's expert Thomas Jennings, P.E. ("Mr. Jennings") on July 2, 2019. (Defendants' Mot. at 10:21.) During the deposition Mr. Jennings testified Plaintiff's counsel gave him a "spreadsheet" of 196 prior slip and falls at Venetian. (*Id.* at 11:18-12:18, Exhibit "S" at 84:25.) Defense counsel even doubled check this was correct:

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

A. Correct.

(*Id.* at Exhibit "S" 86:1-3.) On July 22, 2019 Plaintiff sent Defendants a copy of the email to Mr. Jennings and the attached spreadsheet of the 196 prior incidents at Venetian which were provided to Mr. Jennings (*Id.* at 12:19-21.)

III. OPPOSITION TO MOTION FOR A PROTECTIVE ORDER

A. Legal Standard for a Motion for a Protective Order

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

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

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

NRCP 26(c).

The party seeking the protective order has the burden of persuasion under Rule 26. *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986) (discussing the burdens under the analogous FRCP 26(c)). To meet the burden of persuasion, "the party seeking the protective order must show good cause by demonstrating a particular need for the protection sought." *Beckman Indus., Inc., v. Int'l. Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Rule 26(c) requires more than

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

14 **B. Defendants’ Motion Rests on the Faulty Premise that Punitive Damages Are Not**
15 **in Play**

16 Defendants’ motion rests on the faulty premise that this is a “simple negligence case” or that
17 punitive damages are not in play because Defendants have an outstanding 12(b)(6) motion to dismiss
18 or alternatively motion for summary judgment. (Defendants’ Mot. at 8:5, 8:25, 17:24-5, 23:4-5,
19 23:23-24, 24:3.) The Court has consistently held this is not a “simple negligence” case. First, the
20 Court granted Plaintiff’s motion to amend her complaint to add a claim for punitive damages
21 because Venetian knew its marble floors were unreasonably slippery and posed a high risk to guests.
22 Then the Court denied Defendants’ motion for reconsideration on the order granting Plaintiff’s
23 motion to amend her complaint. Defendants nonetheless still argue this is a “simple negligence” case
24 because they have an outstanding 12(b)(5) motion to dismiss or alternatively motion for summary
25 judgment. (Defendants’ Mot. at 24:3.) This argument lacks any merit. As explained in Plaintiff’s
26 opposition to Defendants’ motion to dismiss or alternatively motion for summary judgment: A
27 proposed amendment is “futile if the plaintiff seeks to amend the complaint in order to plead
28

1 an impermissible claim, such as one which would not survive a motion to dismiss under NRCP
2 12(b)(5).” *Lennox Indus., Inc. v. Aspen Mfg., Inc.*, 416 P.3d 205 (Nev. 2018) (quoting *Nutton v.*
3 *Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 973 (Nev. App. 2015)); see also *Select*
4 *Portfolio Servicing, Inc. v. SFR Investments Pool 1, LLC*, 385 P.3d 59 (Nev. 2016.) (“A proposed
5 amendment is futile only if it could not withstand a [Federal] Rule 12(b)(6) motion to dismiss.”);
6 *7963 Laurena Ave. Tr. v. Bank of New York Mellon*, 385 P.3d 581 (Nev. 2016); *Peck v. Wilson*, No.
7 69181, 2016 WL 2870299, at *2 (Nev. App. May 6, 2016). (Plaintiff’s Opp. to Defendants’ Mot. to
8 Dismiss at 9:13-23.) Thus, “[w]hen the Court granted Plaintiff’s motion to amend her complaint to
9 add a claim for punitive damages it, by implication, it determined Plaintiff’s claim for punitive
10 damages could survive a 12(b)(5) motion to dismiss.” (*Id.* at 9:26-10:2.) In regard to Defendants’
11 alternative motion for summary judgment, the Court clearly stated it will “revisit it [the issue of
12 punitive damages] on dispositive motion, once discovery has taken place.” (Excerpts Court
13 Transcript from Hearing on Defendants’ Motion for Reconsideration, attached as Exhibit “17” at
14 19:21-23.) As such, Defendants’ argument this is a simple negligence case is meritless: punitive
15 damages are now clearly on the table and the subsequent information discussed above is therefore
16 admissible at trial.

17 **C. Plaintiff’s Counsel Never Stated He is ““mining” information from Venetian to**
18 **use not only in this case but in other future cases”**

19 Defendants repeatedly allege Plaintiff’s counsel stated he was “in the process of “mining”
20 information from Venetian to use not only in this case but in other future cases” or that he was
21 mining information for lawyers in other cases. (Defendants’ Mot. at 9:1-16.) The undersigned
22 NEVER made such a statement or otherwise implied, eluded to or suggested he was engaged in
23 such conduct. This allegation is completely untrue and was designed specifically and intentionally
24 by Defendants to get the Court to rule in their favor.

25 Defendants then allege, based upon this statement that “this [Plaintiff’s discovery] is a thinly
26 veiled attempt by Plaintiff’s counsel to “mine information” that will potentially allow him to identify
27 potential clients involved in incidents within the preceding two years.” (Defendants’ Mot. at 23:27-
28

24:2.) This second statement strongly implies Plaintiff's counsel is sending discovery requests to aid in his violation of NRPC 7.3(a) ("a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.") Defendants offer no evidence to back up this statement. Rather, Defendants are merely hurling allegations aimed at attacking the undersigned's professional reputation. The undersigned has been nothing less than an outstanding member of the bar for the last 45 years. The fact that Defense counsel, without a scintilla of evidence, would imply otherwise is gravely concerning.

D. The Discovery Commissioner Should Deny Defendants' Motion Protective Order on the Prior Incident Reports Because They Are Admissible to Prove Notice of a Dangerous Condition

Defendants once again mislead the Court in their "under Nevada law, prior similar incidents involving a transient condition cannot be used to prove constructive notice" section. (Defendants' Mot. at 20:23-4.) The title of Defendants section makes clear it deals with "prior incidents," the body and the conclusion both also argues about "prior incidents." (*Id.* at 20:23-4, 21:12-13, 21:17.) However, two lines under the title about "prior incidents" Defendants state "The Discovery Commissioner has already ruled that reports of incidents occurring subsequent to the subject accident need not be produced, in light of the fact that Plaintiff alleges negligence due to the presence of liquid spilled on the walkway at the Venetian and "liquid on a walkway is a transient condition." (*Id.* at 20:26-21:4.) Not only is statement irrelevant to this section but it also misleads the reader into believing Defendants are referencing the discoverability prior incidents. Defendants also fail to inform the Discovery Commissioner that the plaintiff in the case objected to the report and recommendation and that objection has yet to be heard. (Objection to Report and Recommendation in *Boucher v. Venetian*, attached as Exhibit "18.") More importantly, however, Defendants fail to inform the Court that Discovery Commissioner Bulla ruled Defendants' floors are not a "transitory condition":

DISCOVERY COMMISSIONER: But I think what you are not understanding is that this case is not as simple as it looks at first glance. There is a difference between a permanent condition and a transitory condition.

...
Here's the small, little, tiny problem that the Venetian has -- you have a floor that, in and of itself, isn't apparently a problem, but every time water goes on that floor, which is foreseeable -- the people will bring in water bottles, or the drinks will be shared on the casino floor and end up on the tile -- then your floor turns into something different. It turns into a fall hazard. And if you didn't have that big, thick notebook sitting in front of you to show all the slip and falls you've had on this flooring, we might be able to argue something differently.

(October 31, 2018 Discovery Hearing Transcript from *Smith v. Venetian* at 4:17-5:11, attached as Exhibit "19.") Defendants (also Venetian) in the *Smith* case objected to this report and recommendation **with the same argument Defendants (Venetian) make here** -- under *Eldorado Club v. Graff*, 78 Nev. 507, 377 P.2d 174 (1962) "prior slip and falls...are not relevant to the slip and fall here nor admissible to show liability or notice." (Venetian's Objection to the DCRR in *Smith v. Venetian* at 16:19-17:20, attached as Exhibit "20"; cf. Defendants Mot. at 21:16-19 ("the *Eldorado Club, Inc.* court expressly held that it is reversible error to receive "notice evidence" of prior similar incidents involving transient conditions to prove constructive notice.)) **The District Court found this argument meritless, overruled Defendants' objection and affirmed the report and recommendation.** (Order on Objection to DCRR in *Smith v. Venetian*, attached as Exhibit "21.") In other words, Defendants previously brought this argument, lost, knew it was a meritless argument, and nonetheless made the same argument to waste time and resources in a nearly identical case.

Defendants are well aware the *Eldorado* argument is meritless -- this is likely why they referenced, but did not extensively discuss it the *Eldorado* case in their initial motion for protective order and response to Plaintiff's Objection to the DCRR dated April 2, 2019. (Exhibit "4" at 8:1; Excerpts of Defendants' Rspn. To Plt's Obj., attached as Exhibit "22" at 17:16.) In other words, Defendants previously argued, and are now again arguing, the Court should grant their protective order on incident reports based upon the *Eldorado* case. This behavior is tantamount to relitigating issues which Defendants know full well⁵ they are not allowed to do. See *Mosley v. Figliuzzi*, 113

⁵ In their opposition to Plaintiff's initial motion for protective order, Defendants attempted to relitigate the issue of whether incident reports outside the Grand Lux Café area were discoverable. Plaintiff's reply in support, citing the same case law, informed Defendants they could not relitigate issues. (Excerpts of Plt's RIS of Her Mot. to Compel, attached as Exhibit "23" at 12:6-12.)

1 Nev. 51, 58, 930 P.2d 1110, 1114 (1997), *overruled on other grounds by Castle v. Simmons*, 120
2 Nev. 98, 86 P.3d 1042 (2004) (Parties cannot “file immediate, repetitive, serial motions until the
3 right circumstances or the right judge allows them to achieve a different result, based on essentially
4 the same facts.”); *see also Nance v. Ferraro*, 418 P.3d 679, 684 (Nev. App. 2018) (“Parties may not
5 file repetitive, serial motions seeking to relitigate the same issues based on the same underlying
6 facts.”)

7 More important, is why *Eldorado* does not apply to this case. In *Eldorado* the plaintiff sued
8 the defendant for negligence for leaving a lettuce leaf on a ramp. *Eldorado*, 78 Nev. at 510, 377 P.2d
9 at 176. The Court, in holding prior falls were inadmissible emphasized that “no contention is made
10 that the ramp was dangerous per se; that there was a structural, permanent or continuing defect.” *Id.*
11 at 510, 377 P.2d 176. The *Eldorado* Court continued: “the admissibility of evidence of prior
12 accidents in this kind of a case, to show notice or knowledge of the danger causing the accident, is
13 generally confined to situations where there are conditions of permanency.” *Id.* at 511, 377 P.2d
14 176. (emphasis added) “Evidence of the type here in question is usually excluded where it relates to
15 a temporary condition which might or might not exist from one day to the other unless, of course,
16 there is proper showing that the conditions surrounding the prior occurrences have continued and
17 persisted.” *Id.* (emphasis added). Thus, the *Eldorado* case only deals with transitory conditions.
18 Because this case is not about a transitory condition, but about the permanent dangerous condition of
19 Venetian’s unreasonably slippery marble floors the *Eldorado* case does not apply.

20 Defendants again attempt to mislead the Discovery Commissioner by stating “Plaintiff does
21 not allege that the permanent condition of the Venetian interior tile flooring itself was the cause of
22 her fall...” (Defendants’ Mot. at 21:5-7.) Defendants know full well this is untrue; Plaintiff argued
23 this numerous times to the Court, who agreed with Plaintiff⁶ that punitive damages were appropriate
24 because Venetian knew its marble floors were unreasonably slippery and posed a high risk to
25

26 ⁶ The Court agreed with Plaintiff by granting her motion to amend on May 28, 2019 to add a claim
27 for punitive damages. The Court also agreed with Plaintiff by denying Defendants’ motion to
28 dismiss or alternatively for summary judgment on punitive damages on August 27, 2019.

1 guests. The whole basis for Plaintiff's claim of punitive damages is the non-transitory condition of
2 Venetian's marble floors. If Defendants somehow forgot this after all the briefing on the motion to
3 amend, all the briefing on the motion for reconsideration, all the briefing on their motion to dismiss,
4 and all the briefing on their motion for summary judgment, Plaintiff reminded Defendants in writing
5 at least another 6 times.⁷ Plaintiff's theory of liability – backed by the Court's stamp of approval on
6 Plaintiff's claim for punitive damages – is that this is not transitory condition, *Eldorado* does not
7 apply and therefore *Eldorado* cannot be the basis for ordering a protective order on prior incident
8 reports.

9 **E. The Discovery Commissioner Should Deny Defendants' Motion Protective**
10 **Order the 30(b)(6) Parameters Related to Measures Taken to Produce/Locate**
11 **Security Incident Injury Falls and Computer Data Because They Are Relevant**
12 **to Ensure Compliance with and Enforce the Discovery Rules**

13 Venetian has shown time and again in this case, in *Cohen v. Venetian*, in *Smith v. Venetian*
14 and in *Boucher v. Venetian*, that it simply cannot be trusted to fully and fairly disclose incident
15 reports. As previously discussed, Plaintiff has repeatedly caught Venetian selectively disclosing
16 incident reports. Venetian initially disclosed 64 redacted reports. After consulting with counsel in
17 the *Smith v. Venetian* matter and the *Cohen v. Venetian* matter and sorting through prior court filings
18 Plaintiff's counsel discovered that the Venetian left out numerous reports responsive to Plaintiff's
19 Request for Production No. 7. Venetian did the same thing in *Smith v. Venetian*, leaving out 35
20 incident reports and also in *Boucher v. Venetian*, leaving out 32 incident reports. (See, e.g. Exhibit
21 "13" and Exhibit "14.")

22 From these filings it is evident that Venetian has engaged in a deliberate pattern of evasive
23 discovery abuse in at least four cases in the last 6 months and therefore cannot be trusted to fully and
24 fairly disclose documents. Based upon this evasive behavior, Plaintiff re-noticed the 30(b)(6)

25 ⁷ See, e.g.

- 26 1. 6/12/2019 Opp. to Defendants' Mot. to Quash at 2:17-21;
- 27 2. 7/19/2019 Mot. to Extend Discovery and Trial at 4:25-5:3;
- 28 3. 7/24/2019 Mot. for Jury Trial 2:22-25;
4. 7/25/2019 RIS Mot. to Compel at 4:25-27;
5. 8/2/2019 Opp. to MTD or Alternatively MSJ at 13:1, 14:1-2;
6. 8/13/2019 RIS Mot. for Jury Trial and Opp. to Mot. for Sanctions at 4:8-11.

1 deposition to include questions related to the measures taken to locate the incident reports and
2 Defendants internal computer, data and communication systems.

3 Defendants' motion claims Parameter 7⁸ proves Mr. Galliher "in the process if "mining"
4 information from Venetian to use not only in this case but in other future cases" and that this is "an
5 ongoing collaboration effort." (Defendants' Mot. at 9:1-8.) If this conspiracy was actually true
6 Plaintiff's counsel would have listed all 31 open cases⁹ against Defendant Venetian. Rather, Plaintiff

7
8 ⁸ "The name, address and phone number of the specific employee(s) tasked with retrieving incident
9 reports from Venetian's system for this litigation, the litigation in Smith v. Venetian (A-17-753362-
C), Cohen v. Venetian (A-17-761036-C) and Boucher v. Venetian (A-18-773651-C) and the name
address and phone number of the individual who assigned them this task."

- 10 ⁹
- 11 1. John Anderson v. Venetian (A-12-668979-C)
 - 12 2. Megan Elizabeth Crofton (A-16-736014-C)
 - 13 3. Christopher Scott Sykes v. Venetian (A-16-737181-C)
 - 14 4. Stacy White v. Venetian (A-16-747572-C)
 - 15 5. Carol Smith v. Venetian (A-17-753362-C)
 - 16 6. Gary McMillan v. Venetian (A-17-756825-C)
 - 17 7. Jeannete LaBoy v. Venetian (A-17-756537-C)
 - 18 8. John Kierce v. Venetian (A-17-757314-C)
 - 19 9. Nichole and Anson Banks v. Venetian (A-17-757336-C)
 - 20 10. Johna Leavitt v. Venetian (A-17-766988-C)
 - 21 11. Elvia Echeverri v. Venetian (A-18-771675-C)
 - 22 12. Angelica Boucher v. Venetian (A-18-773651-C)
 - 23 13. Veronica M Vargas (A-18-776292-C)
 - 24 14. Maria Amparo v. Venetian (A-18-777242-C)
 - 25 15. Tracey Johnson/Flood v. Venetian (A-18-779409-C)
 - 26 16. Suthinand Tannil v. Venetian (A-18-781369-C)
 - 27 17. Todd Russo v. Venetian (A-18-786638-C)
 - 28 18. Gerardo Mendoza v. Venetian (A-19-786973-C)
 19. Maria De Jesus Herrera v. Venetian (A-19-787496-C)
 20. Darren Price v. Venetian (A-19-787927-C)
 21. Juan C Ferrari v. Venetian (A-19-788567-C)
 22. Raymond J. Malpica, Jr. v. Venetian (A-19-792110-C)
 23. Anthony M., Sr. Alford v. Venetian (A-19-792468-C)
 24. Raymond Wood v. Venetian (A-19-794875-C)
 25. Dora Coogler v. Venetian (A-19-795039-C)
 26. Susan Simone v. Venetian (A-19-795225-C)
 27. Brittney Cox v. Venetian (A-19-796014-C)
 28. Sheryl Miller v. Venetian (A-19-796490-C)
 29. Tommy Arbia v. Venetian (A-19-797587-C)
 30. Tiffany Randolph v. Venetian (A-19-798269-C)
 31. Gloria D. Jelks v. Venetian (A-19-800332-C)

1 narrowly tailored Parameter 7 to include only the three other cases where Plaintiff confirmed
2 Defendants failed to fully and fairly disclose incident reports. Plaintiff asked for “the name, address
3 and phone number of the specific employee(s) tasked with retrieving incident reports” for all four
4 known cases where Venetian was caught hiding incident reports so Plaintiff could determine
5 whether Defendants’ conduct was intentional (because all incident reports were retrieved by the
6 same person) or less culpable (because different employees retrieved different incident reports
7 leaving potential room for error). The names of all Defendants employees retrieving incident reports
8 for these four cases are discoverable because they are relevant to future motions for sanctions.
9 NRCP 37(b)(3) specifically states sanctions may be awarded “unless the failure [to obey a discovery
10 order] was substantially justified or other circumstances make an award of expenses unjust.” If one
11 individual was retrieving incident reports for all cases, there is no substantial justification for his/her
12 selective disclosure in each case. More importantly, the Plaintiff and the Court need this information
13 to analyze a motion for case dispositive sanctions. Specifically, a motion for case dispositive
14 sanctions and corresponding order must analyze “the feasibility and fairness of less severe
15 sanctions” and the “need for deterring similar abusive conduct.” *Blanco v. Blanco*, 129 Nev. 723,
16 730, 311 P.3d 1170, 1174 (2013). Plaintiff cannot properly argue these factors without knowing
17 whether Defendants failure to fully and fairly disclose incident reports was intentional. The only
18 way to determine whether defendants are intentionally hiding incident reports is to determine which
19 individual or individuals were tasked with retrieving the incident reports in these four cases.

20 Defendants’ responses to Plaintiff’s 12th, 24th, 25th and 26th requests for production also
21 prompted additional 30(b)(6) topics because Defendants claimed that they had “no documents
22 responsive” i.e. no correspondence, emails, internal communications, transcripts, minutes and notes
23 from January 1, 2000 to present. Plaintiff found it suspicious that Defendants have no responsive
24 documents spanning a 20-year period. To ensure defendants were once again refusing to comply
25 with the discovery rules, Plaintiff amended the 30(b)(6) deposition to include additional parameters
26
27
28

1 related to internal communication systems. *See e.g.* Parameters 10¹⁰ and 11.¹¹ The physical location
2 of the electronic records (including communications) (Parameter 12), the description of backups of
3 that data (Parameter 13), inventory of backups and when they were created (Parameter 14), user
4 permissions for modifying and deleting data (Parameter 15), the use of data deletion programs
5 (Parameter 16), list of people with access to that data (Parameter 17) and electronic data policies and
6 procedures (Parameter 18) naturally follow from Plaintiff's previous requests for information related
7 to electronic communication because if Defendants' 30(b)(6) witness testifies the data is gone or
8 deleted, Plaintiff needs to follow up with questions covered by Parameter 12-18 to ensure the data
9 was properly deleted without malicious intent and there is no way to retrieve it.

10 NRCP 37(b) provides consequences for a party who fails to abide by the discovery rules and
11 Court orders. This Rule, the other rules related to discovery and our entire body of case law
12 regarding the same would be rendered meaningless if the parties were not permitted to discover
13 information related to these violations to ensure compliance with the rules and support sanctions.
14 Because Defendants repeatedly violated the rules and court orders in numerous cases Plaintiff and
15 the Court can no longer trust its promise that it has fully and fairly responded to discovery in good
16 faith and abided by all Court orders. Venetian chose to engage in a game of "hide the ball." This
17 choice made it necessary for Plaintiff to ask about Defendants computer systems, data management,
18 communication systems and measures taken to locate and produce incident reports to discover why
19 no documents evidencing communications exist over a 20-year period, why so many reports were
20 not disclosed, how to find the remaining reports and how the issues can be avoided in the future.
21 This is the only way Plaintiff and the Court can ensure that Venetian complies with the Discovery
22 Rules.

24 ¹⁰ "Identity of, description of and policies and procedures for the use of all internal systems for data
25 management, complaint and report making, note keeping, minute/transcript taking and employee e-
26 mail, messaging and other communication systems and description of all employee accounts for said
systems"

27 ¹¹ "Description of all cell phones, PDAs, digital convergence devices or other portable electronic
28 devices and who they were/are issued to."

F. The Discovery Commissioner Should Deny Defendants' Motion Protective Order on the Subsequent Incident Reports Because They Are Admissible to Prove Causation, Admissible to Prove Existence of a Dangerous Condition and Admissible to Prove Punitive Damages

A number of Plaintiff's discovery requests touch on the issue of subsequent incidents and other conduct.¹² The Discovery Commissioner should deny Defendants motion for a protective order on the Plaintiff's requests related to subsequent information because this information is admissible to prove: (1) the malice element of punitive damages, (2) causation and (3) the existence of defective or dangerous condition.

The Nevada Supreme Court "has previously held that evidence of subsequent, similar accidents involving the same condition may be relevant on the issues of causation and whether there is a defective and dangerous condition." *Reingold v. Wet "N Wild Nevada, Inc.*, 113 Nev. 967, 969, 944 P.2d 800, 802 (1997) citing *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 416, 470 P.2d 135, 140 (1970); see also *Jeep Corp. v. Murray*, 101 Nev. 640, 646, 708 P.2d 297, 301 (1985). In other

¹² See RFP No. 7 (asking for documents related to prior and subsequent slip and falls), RFP Nos. 12 and 23 (asking for documents related to prior and subsequent slip testing), RFP No. 13 (asking for prior and subsequent documents related to coating placed on the marble floors), RFP No. 14 (asking for prior and subsequent security reports related to injury falls on marble floor), RFP No. 24 (asking for prior and subsequent communications related to the safety of the marble floors), RFP No. 25 (asking for prior and subsequent documents related to company meetings where the safety of the marble floors was discussed), RFP No. 26 (asking for prior and subsequent documents from contractors, subcontractors and flooring experts that discuss the safety of the marble floors), RFP No. 29 (asking for prior and subsequent guest complaints related to the safety of the marble floors), RFP No. 30 (asking for prior and subsequent quotes and estimates related to modifying the marble floors to increase their slip resistance), RFP No. 35 (asking for prior and subsequent claims forms, legal actions, complaints, security reports, computer lists, investigative documents and other memoranda related to slip and falls on marble floors), RFP No. 36 (asking for prior and subsequent entries in Venetian's Alliance System related to slip and falls on marble floors), RFP No. 37 (asking for documents related to Venetian's decision to remove and the removal and replacement of carpet with marble flooring), Interrogatory No. 1 (list of prior and subsequent lawsuits for slip and falls on marble floors), Interrogatory No. 2 (asking for the names of safety engineers employed by Venetian to perform accident checks prior to and subsequent to Plaintiff's fall) and Plaintiff's 30(b)(6) parameters (questions related to (1) the total number of prior and subsequent injury falls, (2) prior and subsequent actions taken to decrease the coefficient of friction on the marble floors, (3) prior and subsequent slip testing, and (4) prior and subsequent information relating to the removal/replacement of carpet with marble).

1 words, the Supreme Court ruled that subsequent accidents are not only discoverable, but that they
2 meet the even higher standard of admissibility a trial.

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 NRCP 37(a)(1) does not require Plaintiff to prove the evidence sought is admissible, but only
12 that it is relevant to the claims or defenses and proportional to the needs of the case. However, the
13 discovery sought here is actually admissible at trial (a higher standard than discoverability) to prove
14 causation, existence of a dangerous condition and punitive damages. Although the Nevada Supreme
15 Court has not expressly addressed whether subsequent incidents are admissible at trial to prove
16 punitive damages, numerous other courts have. The California Court of Appeals, which follows the
17 same rationale as the Nevada Supreme Court to admit evidence of subsequent incidents to prove
18 causation, held evidence of similar incidents and subsequent conduct is also admissible to prove
19 punitive damages. *Hilliard v. A. H. Robins Co.*, 148 Cal. App. 3d 374, 196 Cal. Rptr. 117 (Ct. App.
20 1983). In *Hilliard v. A. H. Robins Co.* the California Court of Appeals determined a plaintiff
21 claiming punitive damages “may present any evidence which would tend to prove the essential
22 factors of the conscious disregard concept of malice. This includes evidence of subsequent activities
23 and conduct.” *Id.* at 401, 196 Cal. Rptr. at 135 citing *Blank v. Coffin*, 20 Cal.2d 457, 463, 126 P.2d
24 868, 871 (1942). The Court further 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 The vast majority jurisdictions allow evidence of subsequent conduct to support a claim for
9 punitive damages. *See Hilliard v. A. H. Robins Co.*, 148 Cal. App. 3d 374, 401, 196 Cal. Rptr. 117,
10 135 (Ct. App. 1983) *citing Blank v. Coffin*, 20 Cal.2d 457, 463, 126 P.2d 868, 871 (1942); *see also*
11 *Schaffer v. Edward D. Jones & Co.*, 1996 S.D. 94, ¶ 35, 552 N.W.2d 801, 813 (defendant's
12 proclivity to repeat wrongful conduct is relevant to punitive damages, as a major purpose of punitive
13 damages is to deter similar future misconduct); *Roth v. Farner Bocken Co.*, 2003 S.D. 80, ¶ 48, 667
14 N.W.2d 651, 666 (in determining "degree of reprehensibility," one consideration is whether "the
15 conduct involved repeated actions or was an isolated incident"); *Boshears v. Saint-Gobain Calmar,*
16 *Inc.*, 272 S.W.3d 215, 226 (Mo. Ct. App. 2008) ("actions subsequent to those for which damages are
17 sought may be relevant and 'admissible under an issue of exemplary damages if so connected with
18 the particular acts as tending to show the defendant's disposition, intention, or motive in the
19 commission of the particular acts for which damages are claimed"); *Bergeson v. Dilworth* 959 F.2d
20 245 (10th Cir. 1992) ("subsequent conduct is admissible on the issue of punitive damages when it is
21 probative of the defendant's state of mind at the time of the event giving rise to liability"); *Smith v.*
22 *Ingersoll-Rand Co.*, 214 F.3d 1235, 1249 (10th Cir. 2000); *GM Corp. v. Mosely*, 213 Ga. App. 875,
23 877 (Ga. Ct. App. 1994) (in a product defect case evidence of other incidents involving a product are
24 admissible and relevant to prove notice of a defect and punitive damages); *Wolfe v. McNeil-PPC*
25 *Inc.*, 773 F.Supp.2d 561, 575-576 (E.D.Pa. 2011) (post incident concealment of information from the
26 FDA relevant to the question of defendant's state of mind relative to the imposition of punitive
27 damages); *Coale v. Dow Chem. Co.*, 701 P.2d 885, 890 (Colo.App. 1985) (evidence of post-injury
28 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

1 conduct is relevant for purposes of determining punitive damages); *Hoppe v. G.D. Searle & Co.*, 779
2 F.Supp. 1413, 1424-1425 (S.D.N.Y. 1991) (admitting evidence of post-injury conduct because it
3 was relevant to pre-injury evidence supporting an award of punitive damages); *Hill v. USA Truck,*
4 *Inc.*, No. 8:06-CV-1010-GRA, 2007 WL 1574545, at *15 (D.S.C. May 30, 2007); *Hallman v.*
5 *Cushman*, 196 S.C. 402, 13 S.E.2d 498, 501 (1941); *Eaves v. Penn*, 587 F.2d 453, 464 (10th
6 Cir.1978) (evidence of defendant's subsequent conduct admissible under Rule 404(b) to show
7 defendant's intent at time of alleged breach of fiduciary duty); *Lakin v. Senco Prods., Inc.*, 925 P.2d
8 107, 116 (Or. Ct. App. 1996) (affirming introduction of evidence relating to the defendant's post-
9 accident conduct); *Chart v. General Motors Corp.*, 258 N.W.2d 680, 683-84 (1977); *Hodges v. S.C.*
10 *Toof & Co.*, 833 S.W.2d 896, 902 (Tenn. 1992) (in assessing punitive damages, jurors must consider
11 "whether, once the misconduct became known to defendant, defendant took remedial action or
12 attempted to make amends by offering a prompt and fair settlement for actual harm caused"); *Ettus*
13 *v. Orkin Exterminating Co.*, 233 Kan. 555, 568, 665 P.2d 730, 741 (1983) (citing *Byers v. Santiam*
14 *Ford, Inc.*, 281 Or. 411, 416, 574 P.2d 1122, 1125 (1978)) ("Evidence of the parties' conduct
15 subsequent to the event, which produces plaintiff's claim for punitive damages, whether aggravating
16 or mitigating, must be probative of the defendant's state of mind at the time of the transaction.");
17 *Jimenez v. Chrysler Corp.*, 74 F. Supp. 2d 548, 562 (D.S.C. 1999), *rev'd in part, vacated in part sub*
18 *nom. Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439 (4th Cir. 2001) (holding "subsequent
19 knowledge of problems" is admissible to prove conscious disregard and sufficient grounds to
20 support the a jury's verdict of punitive damages); *Webster v. Boyett*, 496 S.E.2d 459 (Ga. 1998),
21 (holding evidence of prior and subsequent conduct should be admissible for the purpose of proving
22 punitive damages in a drunk driving accident.)

23 Subsequent conduct is admissible to prove punitive damages because it is relevant to the
24 defendant's culpable state of mind, i.e. malice: "It is indeed manifest that subsequent conduct may
25 tend to throw light upon the immediate occurrence under investigation, especially where mental
26 attitudes are important, such as a conscious failure to observe due care, and the like." *Hallman*, 196
27 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;

1 *Coale v. Dow Chem. Co.*, 701 P.2d 885, 890 (Colo.App. 1985); *Palmer*, 684 P.2d at 204; *Hoppe*,
2 779 F.Supp. at 1424-1425; *Peshlakai v. Ruiz*, 39 F. Supp. 3d 1264, 1341-43 (D.N.M. 2014).

3 At the time of trial Plaintiff bears the burden of proving punitive damages by clear and
4 convincing evidence. NRS 42.005(1). NRS 42.005(1) requires Plaintiff to prove that Venetian acted
5 with malice i.e. "conduct which is intended to injure a person or despicable conduct which is
6 engaged in with a conscious disregard of the rights or safety of others." NRS 42.001(3) (emphasis
7 added). In other words, Plaintiff must prove Venetian's conduct is "culpable." *Countrywide Home*
8 *Loans, Inc. v. Thitchener*, 124 Nev. 725, 739, 192 P.3d 243, 252 (2008). As held by many courts
9 across the nation, Plaintiff can admit evidence of subsequent conduct at trial, including incident
10 reports, to prove Venetian's culpable conduct. Because the standard of proof for admissibility at trial
11 is higher than the standard for discoverability, it is axiomatic that the information is discoverable.
12 See NRCP 26(a)(1) ("Information within this scope of discovery need not be admissible in evidence
13 to be discoverable.") As such, a protective order on subsequent incident reports, evidence of other
14 subsequent conduct, and testimony from Defendants' 30(b)(6) witness about incidents and conduct
15 is improper.

16 **G. The Discovery Commissioner Should Deny Venetian's Motion for a Protective**
17 **Order Because the Prior and Subsequent Incidents and Documentation Are**
18 **Relevant to the Jury's Determination of the Amount of Punitive Damages**

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

25 "[T]he most important indicium of the reasonableness of a punitive damages award is the
26 degree of reprehensibility of the defendant's conduct." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559,
27 575, 116 S. Ct. 1589, 1599, 134 L. Ed. 2d 809 (1996). "This principle reflects the accepted view that
28

1 some wrongs are more blameworthy than others.” *Id.* For example, repeated misconduct is more
2 reprehensible than a single action:

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

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

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

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

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

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

19 (NEV. J.I. 10.20 BAJI 14.71) To determine the reprehensibility of the defendant's conduct, we
20 consider, among other factors, whether **“the conduct involved repeated actions or was an isolated
21 incident.”** *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 409, 123 S. Ct. 1513, 1516,
22 155 L. Ed. 2d 585 (2003); *see also Wyeth v. Rowatt*, 126 Nev. 446, 475, 244 P.3d 765, 785 (2010)
23 (considering the defendant's “conduct involved repeated actions” when analyzing the
24 reprehensibility.)

25 The discovery requests Defendants seek a protective order on – incident reports and other
26 documents related to the slip resistance of the marble floors dating back to 2000 – directly relate to
27 the “reprehensibility” of Venetian's conduct. This is because the more times individuals notified
28 Venetian of the hazardous condition of their marble floors, the more reprehensible Venetian's
conduct and the more punitive damages Nevada instructs the jury to award. Similarly, the more
times Venetian acknowledged hazardous condition of their marble floors and failed to remedy it, the
more reprehensible Venetian's conduct and the more punitive damages Nevada instructs the jury to
award. As each prior incident shows another time Venetian was notified of the issue, all prior

1 incidents are relevant to the jury's determination of the amount of punitive damages. Similarly, each
2 unfavorable slip test report, correspondence or other document acknowledging are relevant to the
3 jury's determination of the amount of punitive damages. Thus, because the incident reports and other
4 documents from 2000 to present go directly to the reprehensibility of Venetian's conduct they
5 cannot be the subject of a protective order.

6 **H. The Discovery Commissioner Should Deny Defendants Motion for a Protective**
7 **Order on Evidence Related to the 2008 Venetian Remodel Because It Is Relevant**
8 **to Punitive Damages.**

9 Former Venetian executive Ms. Tonomah testified the Venetian ripped up the carpet casino
10 walkways and replaced them with marble around 2007 or 2008. In other words, Venetian not only
11 consciously disregarded the dangerous condition of their marble floors, but they actually added to
12 the hazard by significantly increasing the square footage of marble in their casino. The choice
13 surrounding this increased hazard including correspondence, work orders and other documentation
14 related to the 2008 remodel is thus relevant to punitive damages. The fact that the remodel occurred
15 eight years ago is irrelevant because conscious disregard has no time limit. Any document that
16 indicates Venetian knew its marble floors were hazardous and consciously disregarded that hazard –
17 whether dated January 1, 2000 or January 1, 2016 – is admissible and relevant to prove Plaintiff's
18 case for punitive damages.

19 The fact that the remodel allegedly occurred in a different location then Plaintiff's fall is also
20 irrelevant.¹³ The issue is not where the remodel occurred it's whether Venetian knew its marble

21 ¹³ It is also worth nothing Venetian already litigated this issue and the Court previously decided it in
22 during the hearing on Plaintiff's objection to Venetian's initial motion protective order. Venetian's
23 initial motion for a protective order argued "Reports of prior slip and fall incidents, which occurred
24 on different circumstances, and on different dates, in different areas of the property have no
25 relevancy to the issue of whether Venetian had notice." (Exhibit "4" at 7:25-8:1.) In response to
26 Plaintiff's objection to the Discovery Commissioner's report and recommendations Venetian then:
27 "Reports of prior slip and fall incidents, which occurred on different circumstances, and on different
28 dates, in different areas of the property have no relevancy to the issue of whether Venetian had
notice." (Exhibit "22" at 17:13-15.) At the hearing on the objection, the Court did not limit the scope
of Plaintiff's request for production in relation to factually similar circumstances (wet vs. dry floor
slips and falls as Venetian requested) or only to the immediate area of Plaintiff's fall (in the Grand
Lux Café rotunda). As Venetian previously raised this argument before the Discovery Commissioner

1 floors were unreasonably slippery and posed a high risk to guests but nonetheless consciously
2 disregarded the danger. As such, all internal documents, memorandum or reports indicating concern
3 regarding the increased number of incidents and/or the safety of the marble floors, regardless of the
4 location of those floors, are discoverable because they are relevant to conscious disregard.

5 **I. Plaintiff is Not Seeking Information Protected by Work Product**

6 As Plaintiff explained the last time Defendants moved for a protective order on work product
7 without first talking to Plaintiff: "The only documents Plaintiff seeks related to litigation are ones
8 discoverable under the rules." (Excerpts of Plaintiff's Opp. to Defendants' Mot. for a Protective
9 Order Regarding David Elliott's Deposition, attached as Exhibit "24" at 5:25.) "Plaintiff is not
10 seeking non-testifying expert materials in violation of NRCP 26(b)(4)(D). (Defendants' Mot. at
11 9:10-12.) Plaintiff is not seeking draft reports in violation NRCP 26(b)(4)(B). (Defendants' Mot. at
12 9:12-17.)" (*Id.* at 5:26-6:1.) "The undersigned is not in the habit of making frivolous discovery
13 requests as Venetian suggests. Of course, Venetian would know this if it conducted the mandatory
14 meet and confer under NRCP 26(c)(1) and EDCR 2.34(d)." (*Id.* at 6:3-5.) The same statements are
15 true here: Plaintiff is not seeking any information protected by NRCP 26(b)(4), the undersigned in
16 not in the habit of making such frivolous discovery requests and Defendants would have known this
17 had they properly conducted the mandatory meet and confer.

18 **IV. OPPOSITION TO MOTION TO COMPEL**

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

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

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

and the Court, the proper place for it is a motion for reconsideration, not a new motion for a
protective order.

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

3 The Nevada Supreme Court, citing to the United States Supreme Court, held "the deposition-
4 discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry
5 of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his
6 opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to
7 proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in
8 his possession." *Washoe County Board of School Trustees v. Pirhala*, 84 Nev. 1, 6, 435 P.2d 756,
9 759 (1968).

10 **B. Plaintiff Already Provided Defendants All the Information Plaintiff Provided to**
11 **Thomas Jennings**

12 During his Deposition, Mr. Jennings testified he reviewed a "spreadsheet" of slip and fall
13 events which occurred within the Venetian. (Defendants' Mot. at Exhibit "S" at 84:25.) Defense
14 Counsel confirmed "You didn't look at the actual reports, you just saw a spreadsheet?" to which Mr.
15 Jennings replied "Correct." (*Id.* at Exhibit "S" 86:1-3.) Plaintiff provided Defendants with a copy of
16 the email to Mr. Jennings with this attached spreadsheet. (Defendant' Mot. at 12:19-21.) Defendants
17 now bring a second motion to compel nonexistent documents despite the fact they know Plaintiff
18 already provided all requested documents.

19 Defendants previously made this same motion to compel on July 17, 2019. (*See* Excerpts
20 Defendants' July 12, 2019 Mot. to Compel at 28:5-29:6, attached as Exhibit "25" *cf.* Defendants'
21 Mot. at 26:17-24.) On July 25, 2019 Plaintiff filed her opposition to Defendants' motion to compel
22 documents from Thomas Jennings, P.E. (Exhibit "23.") Plaintiff's opposition stated:

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

1 (Id. at 8:20-9:2.) Plaintiff's counsel was crystal clear: counsel already provided Defendants with all
2 the documents given to Mr. Jennings. Defendants know this is the truth because, by singing the
3 opposition, Plaintiff's counsel certified under NRPC 11 that the factual contentions, including this
4 one, have evidentiary support. See NRCP 11(b)(3). Again, if Plaintiff was not abundantly clear
5 before: she already provided Defendants all the documents provided to Mr. Jennings. Absent an
6 absurd request to gain free access to all of counsel's confidential emails, phone records and case files
7 – which is not going to happen - Plaintiff has no idea what Defendants seek to accomplish with this
8 motion.

9 **C. The Discovery Commissioner Should Deny Defendants Motion to Compel**
10 **Plaintiff to Produce Defendants' Incident Reports Because Defendants Already**
11 **Have Their Incident Reports in Their Possession**

12 Defendants also request the Discovery Commissioner compel Plaintiff to produce the copies
13 of Defendants internal documents (incident reports) which Plaintiff has in her possession. This
14 request is beyond absurd. First, Defendants already have every single one of the internal documents;
15 Defendants' don't need Plaintiff to provide them. The purpose of discovery is to "discover"
16 information. Defendants cannot "discover" documents which they possess because they discovered
17 them when they created them. NRCP 26(b)(2)(C) states the Court should limit discovery if it
18 determines "the discovery sought... can be obtained from some other source that is more
19 convenient, less burdensome or less expensive." The current circumstance is exactly what the
20 drafters had in mind when they wrote this rule. Defendants request Plaintiff prepare and produce
21 information already in their possession. It is infinitely more convenient and infinitely less expensive
22 for Defendants to look in their own file, organized according to their own preferences, rather than
23 wait 30 days for Plaintiff to produce hundreds of pages of unorganized incident report.

24 More significantly, Venetian does not want Plaintiff to produce all of Defendants' incident
25 reports, but only the ones "which have not been identified by Venetian in this action pursuant to
26 NRCP 16.1 and NRCP 34." (Defendants' Mot. at 27:15-18.) In other words, after playing hide-the-
27 ball and selectively disclosing incident reports in at least four open cases, Venetian wants Plaintiff to
28 tell Venetian what incident reports she knows about before Venetian discloses any addition reports

1 so Venetian knows exactly which incident reports it can continue safely hiding. The Discovery
2 Commissioner should not permit such a blatant attempt to circumvent the discovery rules.

3 **D. The Discovery Commissioner Should Deny Defendants Motion for Plaintiff to**
4 **Pay Defendants' Costs to Retake Mr. Jennings Deposition Because Defendants**
5 **Cannot Satisfy the Standard for Such Sanctions Under NRCP 30(d)(2)**

6 Plaintiff does not oppose allowing Defendants to retake Mr. Jennings deposition regarding
7 his supplemental report submitted on May 30, 2019 because both Defendants and Mr. Jennings were
8 underprepared for questioning on this report at the deposition which took place a mere three days
9 after the supplemental report was written. Although Mr. Jennings entire file should have been
10 produced before or at the deposition, Defendants were not prejudiced by this failure because
11 Defendants possess all the relevant information – the incident reports – which Defendants claim Mr.
12 Jennings did not bring for them. Defendants were therefore more than capable of questioning Mr.
13 Jennings on their own internal documents during his deposition. Nonetheless, in the spirit of
14 cooperation Plaintiff agrees to allow Defendants retake the Mr. Jennings' deposition on this on the
15 sole issue of the spreadsheet of the 196 incident reports Mr. Jennings reviewed.

16 NRCP 30(d)(2) states a “court may impose an appropriate sanction — including the
17 reasonable expenses and attorney fees incurred by any party — on a person who impedes, delays, or
18 frustrates the fair examination of the deponent.” Cases interpret the corresponding FRCP 30(d)(2) to
19 including situations where an individual “engag[s] in hostile, uncivil, and vulgar conduct” at a
20 deposition, where “a deponent refuses to answer a question.” *See, e.g. GMAC Bank v. HTFC Corp.*,
21 248 F.R.D. 182, 187 (E.D. Pa. 2008), *Maxwell v. S. Bend Work Release Ctr.*, No. 3:09-CV-008-PPS-
22 CAN, 2010 WL 4318800 (N.D. Ind. Oct. 25, 2010). NRCP 30(d)(2) only permits the Court to
23 impose expenses and fees for a deposition on the “person who impede, delays, or frustrates” the
24 deposition. NRCP 30(d)(2). Defendants request the Court hold “Plaintiff [] responsible for all costs
25 associate with that [the second] deposition” of Mr. Jennings. (Defendants’ Mot. at 27:23-4.)
26 Defendants’ motion, however, does not allege Plaintiff or her counsel did anything to impede, delay
27 or frustrate the deposition of Mr. Jennings. (*See generally* Defendant’s Mot.) Defendants’ motion
28 lacks such argument because neither Plaintiff nor her counsel impeded, delayed or frustrated Mr.

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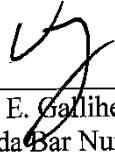
1 Jennings' deposition. Because Plaintiff did not impede, delay or frustrate Mr. Jennings' deposition
2 an award of attorney's fees and costs for the second deposition would be improper.

3 **V. CONCLUSION**

4 Based on the foregoing, Plaintiff respectfully requests the Discovery Commissioner deny
5 Defendants' motion for a protective order and motion to compel in its entirety.

6 DATED this 29th day of August, 2019

THE GALLIHER LAW FIRM

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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 OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER AND OPPOSITION TO DEFENDANTS' MOTION TO COMPEL** was served on the 30 day of August, 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)

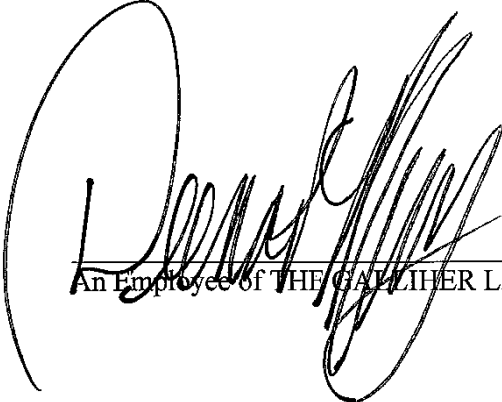
P _____ Electronic Mail/Electronic Transmission

_____ Hand Delivered to the addressee(s) indicated

_____ Receipt of Copy on this _____ day of August 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 1

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF 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

1 APPEARANCES:

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5
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15 I N D E X

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24 2018	
25	

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1 GARY SHULMAN,
2 having been first duly sworn to tell the truth, the
3 whole truth and nothing but the truth, was examined
4 and testified as follows:
5
6 EXAMINATION
7 BY MR. GALLIHER:
8 Q Would you state your name, please.
9 A Gary Shulman.
10 Q And your address.
11 A 10263 Jamapa Drive, Las Vegas, Nevada 89178.
12 Q Gary, have you ever had your deposition
13 taken before?
14 A No.
15 Q You understand today that you are under
16 oath?
17 A Yes.
18 Q And the oath you've taken carries with it
19 the same solemnity as if you were testifying in court
20 before a judge and a jury.
21 A Yes.
22 Q Do you understand that?
23 A Yes.
24 Q It also carries with it the penalties of
25 perjury. Do you understand that?

1 Q Now, when you relocated to Las Vegas to go
2 to work at the Venetian, is that the reason you came
3 to town, apart from family, to go to work at the
4 Venetian?
5 A Yes.
6 Q And when you started at the Venetian, what
7 was your position?
8 A Table games supervisor.
9 Q Tell me what a table games supervisor does.
10 A We basically circulate among certain
11 sections and different sections of table game areas,
12 being a host to the guests, and also trying to
13 supervise the dealers, try and catch mistakes.
14 But basically, you know, some people play on
15 credit, so I would process paperwork for someone who
16 has a credit line and wants to take money out right at
17 the table. And, like I said, be a host, you know, get
18 the waitress if they need a cocktail, a cigarette
19 girl, ashtrays. Just basically a host to the guests.
20 Q Now, did there come a time when you were
21 employed at the Venetian that your job title changed
22 in any way?
23 A No.
24 Q So would it be fair to state, then, for the
25 entire 13 years you were employed at the Venetian, you

1 A Yes.
2 Q A little general background first. How long
3 have you lived in Las Vegas?
4 A Just about 13 years. In May, it will be 13
5 years.
6 Q Where did you come from?
7 A At the time I was living in California for
8 90 days. I was living in Marietta near Temecula where
9 I worked for a casino called the Pechanga that was
10 there. And before that, I was in a casino in Arizona,
11 in Scottsdale, Arizona, for approximately three years.
12 Q And when you came to Las Vegas, was there a
13 reason why you relocated to Las Vegas?
14 A Yeah. I wanted to be -- you know, my
15 family, I have a brother and lot of cousins here. I
16 also wasn't real happy in California, and I knew the
17 Venetian at the time was considered a premier property
18 to work in and so that's why I came here. But it was
19 mostly to be with family.
20 Q When we talk about family, are you married?
21 A Yes.
22 Q What's your wife's name?
23 A Ellen.
24 Q Any children?
25 A She has a daughter; yes.

1 were a table games supervisor?
2 A That's correct. A little less than 13
3 years, but...
4 Q A little less than 13 years?
5 A Yes.
6 Q How far did you go in school?
7 A Excuse me?
8 Q How far did you go in school?
9 A I have a bachelor's degree from Colorado
10 State University.
11 Q In what discipline?
12 A Business administration.
13 MR. GALLIHER: Off the record.
14 (Discussion off the record.)
15 BY MR. GALLIHER:
16 Q All right. I'm here today to talk to you
17 about a fall which occurred at the Venetian Hotel and
18 Casino on November 4, 2016. And before I get into the
19 fall, you were subpoenaed to today's deposition; is
20 that right?
21 A That's correct.
22 Q Now, in response to that subpoena, did you
23 contact my office?
24 A Yes, I did.
25 Q And did you and I have a conversation about

1 today's deposition?
 2 A Yes, we did.
 3 Q And did you come by the office and meet with
 4 me about today's deposition last week?
 5 A Yes.
 6 Q And did we discuss your version of what
 7 happened?
 8 A Yes.
 9 Q And did I also show you the video
 10 surveillance?
 11 A Yes.
 12 Q And I showed it to you two or three times;
 13 is that right?
 14 A Yes.
 15 Q All right, so I want to talk to you about
 16 that fall. And you've seen the video surveillance?
 17 A Uh-huh.
 18 Q Did you see yourself in the video
 19 surveillance?
 20 A Yes.
 21 Q Why don't you start with what you remember
 22 about the fall itself on that date.
 23 A I remember getting relieved to take a
 24 30-minute break. We get three 30-minute breaks every
 25 day, traditionally working two hours at a time.

1 Vodka, water, maybe even coffee. I didn't really look
 2 to see what it was. I was basically concerned for the
 3 guest.
 4 Q And how much liquid, if you can quantify it,
 5 was on the floor when you approached?
 6 A I would say equivalent to half a cup that
 7 you have in your hand right now.
 8 Q So this cup is 16 ounces, so we would say
 9 roughly eight ounces of liquid?
 10 A Yeah. It's hard for me to be exact with
 11 that.
 12 Q Did you see any colored liquid or did it
 13 appear to be clear?
 14 A It just appeared to be clear.
 15 Q So if you were to give us your best estimate
 16 of what you thought you saw on that floor, would it be
 17 water or something else?
 18 A It would be water or something else. I
 19 mean, there's -- yeah, there's different things that
 20 are clear. Someone could have a vodka on the rocks
 21 and spill a little when they walk by. I really didn't
 22 pay much concern, even up until now as to what it was.
 23 Q But what you did know is that the floor was
 24 wet when you approached this lady?
 25 A Yes. Yes.

1 As I go on break, I heard a noise and I
 2 looked a little bit to my right and I noticed a lady
 3 down on the marble area near one of the columns very
 4 close to the Grand Lux, in between the Grand Lux Cafe
 5 and the restrooms.
 6 I went over to assist her. I did notice
 7 that the floor was wet. It was some -- it was wet
 8 pretty much near where she fell. I also saw some -- a
 9 little bit of liquid at the base of the column that
 10 she was next to.
 11 I went to get PAD, our public area
 12 department, to come and clean it up. I called for
 13 security, and basically waited for all the
 14 appropriate; people to get there and then I left.
 15 Q When you say you approached the lady on the
 16 floor, did you have any conversations with her?
 17 A I asked her if she was okay and she said
 18 that she hit her elbow, but other than that, she
 19 thinks she was okay.
 20 Q Now, you mentioned that you saw liquid on
 21 the floor. Do you know what it was? Was it clear?
 22 Was it not clear?
 23 A It was pretty much clear. Most of it was on
 24 like a black area of the marble. It was kind of hard
 25 to tell exactly. I mean, could be a number of things.

1 Q And it appeared that there was approximately
 2 eight ounces worth of liquid on that floor?
 3 A I would say if you were -- I mean, I'm kind
 4 of guessing a little bit, but if you were to gather
 5 everything up, it might be eight ounces.
 6 Q Can you give me an idea of the size of the
 7 spill itself?
 8 A The size of the spill, I know on the black
 9 marble it was basically just like a small area like
 10 that. And then there was drops that kind of lead to
 11 the bottom of the column that she was next to.
 12 Q And when you drew your little circle, if I
 13 was to give you a circumference, it looks to me like
 14 your circle is probably three to four inches in
 15 circumference; is that right?
 16 A That's about right. Yeah, it wasn't real
 17 big.
 18 Q And then, apparently, there were sprinkles
 19 or spots of water that led toward the column?
 20 A Yes.
 21 Q Now, how long were you at the scene of the
 22 fall?
 23 A I would say at least 10 minutes.
 24 Q So you spent approximately 10 minutes there.
 25 And as I understand your testimony, did you also

1 notify security of the fall?
 2 A I believe I called surveillance and they
 3 notified security. I may have called security. This
 4 is two and a half years ago. I think I notified my
 5 manager. Actually, her name was Chris Tonemah, and I
 6 think she called security.
 7 Q But you said something about you notified
 8 the PAD people.
 9 A Yes, I did. Actually went into the bathroom
 10 to get them. It was a lot quicker because there's
 11 always someone in there.
 12 Q When you went into the bathroom, did you
 13 find any PAD people there?
 14 A Yes.
 15 Q Do you remember whether it was a male or
 16 female or both?
 17 A It was just a male.
 18 Q So you found a male there. Did you see a
 19 female PAD employee in that bathroom or anywhere
 20 nearby?
 21 A Not that I recall.
 22 Q Can you give me your best estimate of how
 23 long it took the PAD people to arrive at the scene?
 24 A It was very quickly. After I went into the
 25 bathroom I pointed out to them, I said, you know,

1 There's a lady down, you know, she slipped on
 2 something that was wet. If you could please clean
 3 that up and also clean up the base of the column where
 4 there's more drops, I don't want anybody else
 5 slipping.
 6 Q Did you have that conversation with the
 7 male?
 8 A Yes. It was an Hispanic male.
 9 Q And to this date, do you know his name?
 10 A No, I don't.
 11 Q Now, how long after you had the conversation
 12 with this male did he arrive at the scene of the fall?
 13 A Just a matter of seconds, really. I went
 14 into the bathroom and waved him out and pointed to the
 15 area, and then told him basically what needed to be
 16 done and went there.
 17 Q And did he bring anything to clean up the
 18 spill?
 19 A Yeah, yeah. He had a mop and a bucket and I
 20 think he put one of them yellow signs there. I can't
 21 remember, but could have been a yellow sign they put
 22 down that say "Wet Floor."
 23 Q And did you observe him actually clean up
 24 the spill?
 25 A Yeah, yeah.

1 Q So I mean, as you testify here today, was
 2 there any doubt in your mind that there was water or a
 3 clear liquid on the floor as you approached the fall
 4 scene?
 5 A No, there was no doubt in my mind. The
 6 floor was wet.
 7 Q And do you know whether you saw any water or
 8 liquid on the clothing of the woman that fell?
 9 A I don't recall any -- any part. I didn't
 10 really look for that, but, no, I didn't recall seeing
 11 anything wet on her.
 12 Q Sounds like basically what you did is,
 13 you -- did you actually see the fall or did you
 14 approach her after the fall?
 15 A I approached her after the fall.
 16 Q And something drew your attention to the
 17 scene. Was it a noise?
 18 A It was a noise; yeah.
 19 Q And so you apparently zeroed in on the scene
 20 of the fall shortly after it happened?
 21 A That's correct.
 22 Q And then when you saw the lady down, you
 23 then approached her to make sure that she was okay?
 24 A Yeah, and to advise her to stay down until
 25 we can get help to make sure she's okay.

1 Q And is that what you did; you advised her to
 2 stay down?
 3 A Yes.
 4 Q Until help arrived?
 5 A Yes.
 6 Q So do you know how long after the fall the
 7 security officer arrived?
 8 A It was a good -- at least 10 minutes, maybe
 9 15.
 10 Q And have you ever experienced or seen falls
 11 before at the Venetian?
 12 A I can't say that I have, no.
 13 Q So did that seem like an unusually long
 14 period of time in your view, or not?
 15 A Usually they come much quicker than that;
 16 yeah.
 17 Q So about 10, 15 minutes later the security
 18 officer arrived. Now, do you remember what color
 19 uniforms they wear?
 20 A Some have a blue shirt with I think black
 21 pants, and then when you get to the next level, the
 22 supervisory level of security, usually a suit and tie
 23 just like I was.
 24 Q And in the video, there's other people shown
 25 wearing suits and ties. Can you tell me who they work

1 for?
 2 A I know one worked for I believe the front
 3 desk.
 4 Q And anyone else?
 5 A I think there was one other person there. I
 6 can't remember where, what department that person
 7 worked in.
 8 Q Now, you mentioned that you were employed at
 9 the Venetian for 13 years. And are you currently
 10 employed at the Venetian?
 11 A No, I'm not.
 12 Q And when did you leave the Venetian?
 13 A I was terminated officially on January 23rd
 14 of 2019.
 15 Q And what was the reason for your
 16 termination?
 17 A They said I made a comment that made another
 18 team member feel threatened.
 19 Q And did you make that comment?
 20 A I made the comment, but not -- it was not a
 21 threat in any way.
 22 Q Did you, as a result of being terminated at
 23 the Venetian, file for unemployment?
 24 A Yes, I did.
 25 Q And did you receive unemployment benefits?

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 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 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 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 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 Q And where was this?

2 A This was in the back area of the salon in
3 one of the private rooms. The rooms aren't numbered,
4 it would probably be Number 1 of 2. I'm not sure, I
5 don't work in that section.

6 Q Can you tell me about the meeting?

7 MR. ROYAL: Hold on a second. I'm going
8 to -- you are getting into attorney-client information
9 related to our discussion with an employee at the
10 time, and I'm going to instruct him not to answer.

11 MR. GALLIHER: Well, he can instruct you,
12 but you can answer if you want to whether he instructs
13 you or not.

14 BY MR. GALLIHER:

15 Q Let me ask this question preliminarily. At
16 the time you met with Mr. Royal in November 2018, had
17 you hired him as your attorney?

18 A No.

19 Q Had you paid him a retainer or any money to
20 represent you in connection with anything?

21 A No.

22 Q Have you asked him to represent you in
23 connection with anything?

24 A No.

25 Q All right, so you met with him and you are

1 claiming attorney-client privilege.
 2 Are you -- you are no longer employed at the
 3 Venetian; is that right?
 4 A That's correct.
 5 Q All right. So subject to his objection,
 6 which is, of course, made part of the record, I'm
 7 going to again ask you the question of: Tell me about
 8 the meeting.
 9 A Well, basically he asked me, you know, what
 10 I remember and what I don't remember.
 11 I explained to him a lot of what I already
 12 said happened, that I went over, I was heading towards
 13 my break, I saw a lady that was down. I went over to
 14 her and asked if she was okay. I noticed the floor
 15 was wet.
 16 At that time he said, "No, it wasn't wet.
 17 You didn't see anything wet. You are mistaken."
 18 And I said, "Well, I'm pretty sure it was.
 19 I mean, that's why I called PAD to clean it up. In 13
 20 years I've never called PAD to clean up a dry spot."
 21 And he says, "But, no, no, there was nothing
 22 wet there."
 23 And at that point, I kind of became
 24 concerned that I might get in trouble if I keep
 25 disagreeing with him. So I just said, "Okay, whatever

1 you say," and that was it.
 2 Q You talked about this pattern of harassment
 3 and threats and so forth on the part of the Venetian.
 4 Did you have -- was there a pattern of
 5 threats and intimidation and so forth on the part of
 6 the Venetian before you had this meeting with
 7 Mr. Royal?
 8 A No..
 9 Q And how soon after you had this meeting with
 10 Mr. Royal did that start?
 11 A I would say 30 to 60 days.
 12 Q And did that continue up to the time that
 13 you were terminated?
 14 A Yes.
 15 Q Approximately how many times were you
 16 written up by the Venetian?
 17 A In the entire 13 years or just like --
 18 Q Let's start with the time that -- the time
 19 up to the time that you had a meeting with Mr. Royal
 20 in November of 2018.
 21 A Before I met Mr. Royal?
 22 Q Yes. In other words, at the time frame up
 23 to the time that you met with Mr. Royal, how many
 24 times were you written up by the Venetian?
 25 A There was nothing for about three years and

1 then there was a couple of minor things.
 2 There was one incident approximately three
 3 years ago from this coming May where a dealer made a
 4 mistake sending the wrong amount of chips to a
 5 customer, and I didn't catch it and I got a written
 6 warning for that. That was the only thing that I
 7 really was aware of.
 8 In the very beginning when I was there two
 9 or three years, I read my schedule wrong and didn't
 10 show up, which is -- casinos really frown on that. So
 11 I was given what they call a Career Decision Day where
 12 you write down what you did wrong, what you plan on
 13 doing to prevent it from happening again, and then you
 14 have to take a day off, which could be a paid day off
 15 if you have vacation time, or an unpaid day off.
 16 Q So sounds at least like the written warnings
 17 were kind of few and far between during these initial
 18 years up to the time that you met with Mr. Royal.
 19 A Oh, yeah.
 20 Q Now, after you met with Mr. Royal, how many
 21 written warnings did you receive from the Venetian?
 22 A I received three that I knew about. Then I
 23 found out there was a couple more put in my file
 24 without me knowing about it, but they weren't written
 25 warnings. One was called a note to file and another

1 one was called a verbal coaching.
 2 They said that they are allowed to do that
 3 without telling you. I'm not sure why, but I didn't
 4 know they were in there until we did this peer review
 5 to try to recover my job.
 6 So but as far as written warnings, which are
 7 much more serious, there was three in a two-week
 8 period when I don't think I had three in the whole 13
 9 years before that or 12 years before that.
 10 Q And that was within the months after you met
 11 with Mr. Royal until the time you are terminated?
 12 A That's correct.
 13 Q You were terminated when?
 14 A The official termination date is
 15 January 23rd.
 16 Q Of 2019?
 17 A Yes.
 18 Q All right, so you've got a little less than
 19 a two-month time frame from the time you met with
 20 Mr. Royal in 2018 in November.
 21 And during that two-month time frame, how
 22 many written warnings did you receive? You said
 23 three?
 24 A Yes.
 25 Q And then you also said two other entries

1 were made in your job file -- I mean your employment
2 file --
3 A Yes.
4 Q -- regarding a verbal coaching.
5 And what was the other one?
6 A One was a note to file. I gave a customer,
7 a player at the table -- if you are not being a rated
8 player meaning we don't have your name, we don't
9 really give out thousand-dollar chips or higher.
10 And a mistake was made and the gentleman
11 left with chips, but we got him very quickly back.
12 And he was a rated player, so we found out who we was
13 and we were able to account for those chips.
14 I was talked to about it. They said at this
15 time we're not taking any disciplinary action, you
16 know. They knew I had some problems at the time and
17 my father with Alzheimer's in New Jersey and just a
18 lot of stress from that. So that was basically it.
19 Q All right. So what I'm getting at is,
20 during that roughly 60-day time frame between the time
21 you met with Mr. Royal and the time you were
22 terminated, would it be fair to state that you
23 received more written warnings at the time you had
24 during your 13 years at the Venetian?
25 A Absolutely.

1 Q Did you prevail at your initial hearing
2 before the unemployment board? In other words, did
3 you win?
4 A Yeah, we won. They didn't show up.
5 Q That apparently -- did that have to do with
6 the initial hearing or the appeal?
7 A The initial hearing was just a finding from
8 the Department of Employment that there was no
9 misconduct.
10 Q And then did the Venetian appeal that?
11 A Then the Venetian appealed that.
12 Q And did you appear at the appeal hearing?
13 A Yes.
14 Q Did the Venetian appear?
15 A They did not appear; no.
16 Q So what was the result of that appeal
17 hearing?
18 A That the appeal was dismissed.
19 Q And so you ended up receiving your
20 unemployment despite the fact that the Venetian
21 contested it?
22 A Yes.
23 Q Have you understood all my questions today?
24 A Yes.
25 Q Anything you want me to repeat or rephrase

1 Q And as you look back on that situation, do
2 you have an opinion regarding why that happened?
3 A Well, I believe that they were very upset
4 about me using my privileges under the Family Medical
5 Leave Act. I was getting lots of flareups with my
6 neck and my hip and I had to --
7 I was definitely using it more than I'm
8 accustomed to. Sometimes I wouldn't be able to come
9 to work. Sometimes I would have to have procedures
10 done where they burn away the nerves in my neck and
11 put steroids into my hip.
12 Repeat the question.
13 Q Well, so what I'm trying to determine, your
14 opinion why it is you started receiving all those
15 writeups after you met with Mr. Royal.
16 So are you telling me it had to do with your
17 health issues?
18 A Had to do with health issues; yes. I
19 frequently, maybe once a week, once every two weeks
20 would have to leave early or not come in at all. And
21 I know that they were upset because it creates
22 staffing problems when this happens.
23 Q Now, you apparently pursued unemployment.
24 Did you receive it?
25 A Yes.

1 for you?
2 A No.
3 MR. GALLIHER: All right. Pass the witness.
4
5 EXAMINATION
6 BY MR. ROYAL:
7 Q Okay. When is the last time you looked at
8 that video? Was it with Mr. Galliher?
9 A Yes, about a week ago.
10 Q Do you remember when I was -- I reached out
11 to you to try and meet before the deposition?
12 A Yes, uh-huh.
13 Q Did you tell Mr. Galliher about that, about
14 my effort to meet with you?
15 A I believe so; yeah.
16 Q And, first of all, why wouldn't you meet
17 with me, but you would meet with Mr. Galliher?
18 A Well, I've experienced and also seen other
19 things, just incredible, what I think are ethic
20 violations and integrity.
21 And after what they did to me, I really
22 didn't feel comfortable being affiliated in any way
23 from anybody that had anything to do with Venetian.
24 Q Okay. Is there something in our
25 communications and our interchange, since the time you

1 first met me, that led you to believe that I was being
2 somehow dishonest with you in any way?
3 A I don't know if I want to use the word
4 "dishonest." You know, I -- I saw the floor was wet
5 and you didn't seem happy about me saying that.
6 Q Okay. I'm having trouble recalling this
7 entire exchange you are talking about.
8 A Okay.
9 Q So let me ask it this way. You asked me --
10 let me get back to that.
11 You asked if -- prior, if you would meet
12 with me, whether or not you would be compensated. Do
13 you remember that?
14 A Yes.
15 Q Do you remember my response to that?
16 A You said to contact Mr. Galliher.
17 Q I don't --
18 A You didn't?
19 Q No, I didn't.
20 A Or that you would check with the opposing
21 counsel.
22 Q Okay. Well, let me -- did you get
23 compensated by Mr. Galliher?
24 A I just have a check I saw to cash for \$26.
25 Q What date did you meet with Mr. Galliher?

1 A It was a week ago today, I believe.
2 Q In this office -- in his office?
3 A Yes.
4 Q And how long was the meeting?
5 A Approximately an hour.
6 Q And other than reviewing the video, did you
7 review anything else?
8 A No.
9 Q Did you look at any photos of the scene; do
10 you remember?
11 A I didn't look at them with Mr. Galliher. I
12 had looked at them when you sent me e-mails with the
13 photos included --
14 Q Okay.
15 A -- as attachments.
16 Q Did you provide Mr. Galliher with anything
17 that I had written to you?
18 A No.
19 Q What else did you tell Mr. Galliher about
20 our meetings, other than what you have already
21 testified to today?
22 A Nothing.
23 Q Did Mr. Galliher indicate to you that
24 Ms. Sekera, his client, was carrying some coffee in
25 her hand at the time she fell?

1 A I don't recall.
2 Q Okay. Do you remember that?
3 A That she had a cup of coffee?
4 Q Right.
5 A No, I don't.
6 Q Okay. So as you sit here today, you don't
7 recall whether or not Ms. Sekera was carrying a
8 beverage at the time she fell?
9 A No. I was not aware of anything, any
10 beverage she was carrying at the time she fell.
11 Q Okay. But you did watch the video; correct?
12 A Uh-huh.
13 Q Yes?
14 A Yes.
15 Q And when you watched the video, did you
16 watch her fall?
17 A Yeah.
18 Q Okay. I'm going to show you the video. I'm
19 going to have you watch the video starting at
20 12:36:46. This is VEN019. I'm just going to have you
21 watch this.
22 A Okay.
23 Q Do you recognize the area -- before I start
24 it, do you recognize the area?
25 A Uh-huh.

1 Q Yes?
2 A Yes.
3 Q And I'm going to point. Do you see
4 yourself? I'm going to point up here to the top left.
5 I believe that's you walking towards the area.
6 A Okay.
7 Q I'm going to start it now.
8 A Okay.
9 Q Here she comes. Okay, do you see that?
10 A Yes.
11 Q Now she's on the ground now, or the floor,
12 at 12:36:54. I stopped it. Now I'm going to go back
13 again and I'm going to stop it at 12:36:49.
14 A Okay.
15 Q Can you see whether or not she's got
16 anything in her left hand?
17 A Yes, it does look like she has a cup of
18 coffee.
19 Q Okay. I'm going to start it. She goes
20 down; okay?
21 A Uh-huh.
22 Q What happens to the coffee? Do you see?
23 A Yep.
24 Q Okay. And someone responds there. There's
25 a woman who responds, she picks up the cup. See that?

1 A Uh-huh.
2 Q Yes?
3 A Right now; yes.
4 Q You just need to say yes or no. That's why
5 I'm saying that.
6 A Okay.
7 Q At 12:36:57 you are approaching?
8 A Uh-huh.
9 Q Correct?
10 A Yes.
11 Q Okay. I'm going to stop right here at
12 12:37:01. Do you remember being in that particular
13 position when you first arrived at the scene, talking
14 to the -- the plaintiff is on the floor.
15 A Yes.
16 Q Do you remember there being a couple of
17 women standing around?
18 A Yes.
19 Q And do you remember seeing this woman who
20 would be to your right, she's got a cup in her hand?
21 A I don't remember her there. I mean, I was
22 pretty much looking at the lady.
23 Q Okay. The lady on the ground?
24 A Yeah.
25 Q Okay. I'm going to start this again. And

1 MR. GALLIHER: When you say "this
2 gentleman," talking about the large fellow in the
3 foreground?
4 MR. ROYAL: This gentleman here?
5 THE WITNESS: Uh-huh.
6 MR. ROYAL: You need to say yes or no.
7 THE WITNESS: Yes.
8 BY MR. ROYAL:
9 Q Okay. Did you see anything in front of
10 where she's -- the woman is on the floor when you
11 approached?
12 A Yeah, I saw the floor was wet.
13 Q Okay. What part of the floor was wet? If I
14 show you a photo -- let's say if I show you a photo --
15 here's one, VEN0140 -- do you recognize the area
16 that's depicted?
17 A Yes.
18 Q Okay. And so if I show this particular
19 photo, are you able to point to the area where there
20 was water or something on the floor?
21 A Yeah. I saw it in this black area right
22 here, and then there was a couple drops that were at
23 the base of the column.
24 Q Okay. I'm going to ask you to mark what you
25 just pointed to on VEN040. I want you to circle where

1 then there's this gentleman, a larger gentleman in a
2 suit who comes and stands behind the woman. I stopped
3 it at 12:37:05. You don't know who that is?
4 A Which one?
5 Q This gentleman in the dark suit.
6 A No, I don't know who that is.
7 Q Okay. So when you said -- okay. So at
8 12:37:12 on the video, you actually say something and
9 then you leave.
10 Can you tell us what you did at that point?
11 A I basically -- I don't really recall the
12 exact words, it's too long ago.
13 I said, "Okay. Everybody is here that you
14 need to help you. I hope you feel better," and I
15 left.
16 Q Okay. Just like that?
17 A I believe so; yeah.
18 Q Okay. Where was -- where was the liquid
19 that you saw on the floor? Because at that point, the
20 time I just stopped it, you were just standing barely
21 in front of the woman on the ground -- on the floor.
22 Where was the spill?
23 A I saw the spill. It's kind of in between
24 where the lady and this gentleman is.
25 Q Okay.

1 you say there was something on the floor.
2 A Okay.
3 Q Okay. Can you make that darker, please?
4 A Do you want to make a circle?
5 Q No, I just want you to darken your circle.
6 A This spot?
7 Q Yes.
8 Now, is that the only area where you saw
9 anything on the floor? Was there anywhere else?
10 A That's all I saw.
11 Q Okay. So, in other words, you didn't see
12 anything, looking at the photo, to the right of that;
13 is that correct?
14 A That's correct.
15 Q I'd like you to just initial down at the
16 bottom left. Put your initials and today's date of
17 4/17.
18 A Okay.
19 MR. ROYAL: We'll mark that as "A."
20 MR. GALLIHER: Make it a joint exhibit.
21 MR. ROYAL: Okay, I'm fine with that. Mark
22 it as "1."
23 (Plaintiffs Exhibit I marked for
24 identification.)
25 /////

1 BY MR. ROYAL:
 2 Q All right. Let's look at this next photo,
 3 VEN041. Do you recognize what's depicted there?
 4 A This looks like the same area.
 5 Q Okay. Are you able to, using a pen, also
 6 mark this particular photo indicating where you saw
 7 something on the floor when you first arrived?
 8 A It was somewhere in this black area.
 9 Q Make a dark circle.
 10 A And, again, with scattered drops and then a
 11 little bit of a collection at the base of the column.
 12 Q Okay. So go ahead and sign that again. And
 13 while you are doing that, for the record, you've made
 14 a circle on both of those photos and you've had some
 15 dots which you indicate, I assume, to be sort of drops
 16 of something.
 17 A Yeah, like a splash mark.
 18 Q Let's just make that part of Exhibit 1.
 19 We'll just include it with Exhibit 1, all right?
 20 MR. GALLIHER: Okay.
 21 BY MR. ROYAL:
 22 Q Okay. So as far as you can recall, after
 23 12:37:14, which is depicted on this video, you never
 24 returned to the scene; is that correct?
 25 A Correct.

1 Q Did she tell you that she was wet?
 2 A No.
 3 Q Did you point out to her or say anything to
 4 her about something that you saw on the floor?
 5 A No.
 6 Q I want you to watch -- we're going from
 7 12:37:05 and I'm just going to let it run until you
 8 walk away. 12:37:13 you walk away.
 9 Okay. So you would agree that's probably in
 10 the 10-, 15-second range?
 11 A Yeah, but I think I come back.
 12 Q Okay. That's my -- I'm asking you what you
 13 did at that point.
 14 A I thought you're talking about the total
 15 time I was at the scene.
 16 Q No, I'm just -- I'm sorry, I didn't mean to
 17 be confusing. So you left and what did you do at that
 18 point?
 19 A I contacted my manager, Chris Tonemah.
 20 Q And what did Chris Tonemah do?
 21 A I believe she notified surveillance or
 22 security or both. I may have notified one or the
 23 other. I just don't recall.
 24 Q Okay. I'm just going to fast-forward until
 25 you come back and I want you to just keep watching.

1 Q Okay. So you are done at that point?
 2 A Yeah.
 3 Q So you were there about -- what? -- ten
 4 seconds? Sound about right?
 5 A Total time?
 6 Q Yeah.
 7 A No, more like closer to 10 minutes.
 8 Q Okay. Well, see how --
 9 A Or seven minutes. If it's 12:37 -- what
 10 time was that when I was walking away?
 11 Q Well, you are walking away at 12:37:14.
 12 When you arrived, it's 12:36:55. She's just fallen
 13 and you are approaching. See that?
 14 A Yes.
 15 Q My question was, initially when you first
 16 approached I asked, first of all, about, let's -- what
 17 was your conversation with her?
 18 A "Are you okay?"
 19 Q Okay. What did she say?
 20 A She said, "I hurt my elbow, but other than
 21 that I'm basically okay."
 22 Q Okay. Did she say she struck her head?
 23 A She didn't say anything about her head.
 24 Q Did she tell you that her back hurt?
 25 A No.

1 Okay. So you arrived back at 12:37:48?
 2 A Uh-huh.
 3 Q See yourself there?
 4 A Uh-huh.
 5 Q Yes?
 6 A Yes.
 7 Q And you are bent over and you are speaking
 8 with the plaintiff, the woman on the floor; correct?
 9 A Yes.
 10 Q Okay. Anything else that you recall about
 11 her? Anything she told you at this time as you were
 12 talking to her?
 13 A Nothing that I can recall.
 14 Q Okay. Again, the only thing you recall her
 15 saying to you about what she injured was her left
 16 elbow?
 17 A Yes. She didn't use the word "left," she
 18 just said "elbow."
 19 Q Okay, it's still running. You are standing
 20 there, that other gentleman is standing behind her.
 21 What are you waiting for at this point?
 22 A I believe I'm waiting for an EMT.
 23 Q And just for the record, it's 12:38:45. It
 24 zooms in and you are talking with the gentleman in the
 25 dark suit, a large gentleman. He's got his back to

1 the camera. I believe his name is Louie Calleros.
 2 Does that refresh your recollection at all?
 3 A No.
 4 Q Not somebody you worked with?
 5 A No.
 6 Q Okay, so I'm going to back up. Okay.
 7 A Uh-huh.
 8 Q Now, at 12:38:47 that's you talking to
 9 Mr. Louie Calleros, or at least who I represented to
 10 be Louie Calleros.
 11 A Okay.
 12 Q All right. That is you; correct?
 13 A Yes.
 14 Q Okay. I want you to watch. I'm going to
 15 start it now. 12:38:47, I want you to watch yourself.
 16 Where are you standing? Okay. All right.
 17 Do you see what you just did? I stopped at
 18 12:38:54. Did you see what you did?
 19 A Yeah, I made some type of gesture.
 20 Q Okay, let me go back again. I want you to
 21 watch where you go. Start at 12:38:48. I want you to
 22 watch your feet. Watch where you go.
 23 Okay. Stop it again at 12:38:53.
 24 Would you agree that you -- you walked
 25 through the area that you have marked where there

1 A Okay.
 2 Q Would you agree with that?
 3 A Yeah.
 4 Q Now, you were on a restroom break; correct?
 5 A I don't remember if it was my normal break
 6 or a restroom break. I'm starting to think that it
 7 was a restroom break because our breaks are typically
 8 on quarter after or quarter of the hour.
 9 And you are saying I approached at 12:37 so
 10 I was probably taking my own restroom break, which
 11 we're allowed to do if we need a break.
 12 Q And when you left the scene -- I stopped it
 13 at 12:39:06 and you are gone. And, in fact, we see a
 14 woman now who has appeared on the scene in the top
 15 right.
 16 Would that be your supervisor?
 17 A Yes.
 18 Q What was her name?
 19 A Chris Tonemah.
 20 Q Okay. So at this particular time you've
 21 gone to the restroom. Did you use the restroom at
 22 that time; do you recall?
 23 A I don't recall.
 24 Q I'm going to allow this to run until you
 25 come back. I've stopped it here at 12:39:21 and I'm

1 was -- you said there was water on the floor?
 2 A I don't -- half of that marble is cut out,
 3 so I can't -- I don't recall.
 4 Q Okay. Now, you were pointing back in the
 5 area of the restrooms; correct?
 6 A Yes.
 7 Q And what are you pointing at; do you recall?
 8 I stopped it at 12:38:52. You were pointing back to
 9 the restroom. What are you pointing at?
 10 A I believe I was waving over a PAD person.
 11 They wear black and white -- black and red, I'm sorry.
 12 Q Did you see someone at that point?
 13 A Yes.
 14 Q Looks like you are -- again, you are having
 15 a conversation with who I'll represent is Louie as you
 16 are pointing; right?
 17 That's what it looks like?
 18 A Okay.
 19 Q Does it?
 20 A I don't recall conversing with him, but I
 21 could have.
 22 Q Okay. Now, at 12:38:58, you leave the scene
 23 and we just see Mr. Louie Calleros. And I'll
 24 represent that it looks like you walked towards the
 25 area of the restroom.

1 just going to let it run a little bit. You return to
 2 the restroom area.
 3 Do you remember having a conversation with
 4 the PAD people or someone else?
 5 A I -- I remember instructing a PAD person to
 6 come over.
 7 Q Okay. Now, at 12:39:35, you are bent over
 8 talking with the woman on the floor. Do you remember
 9 that?
 10 A Yes.
 11 Q I'm sorry. Do you see that?
 12 A Yes.
 13 Q Okay. Now, at 12:39:43, another gentleman
 14 arrives from the left, also in a suit.
 15 Do you know who that is?
 16 A I don't know who it was. I believe I was
 17 told it was a front desk person, a team member.
 18 Q Okay, now I'm going to stop right here.
 19 There's a -- at 12:39:56, there is a gentleman from
 20 PAD who starts mopping. Okay.
 21 Do you see that?
 22 A Yes.
 23 Q At 12:39:58, I want you to see -- look at
 24 where he is standing. Do you see where he's standing?
 25 A Yeah.

1 Q Okay.
2 A Yes.
3 Q Is that in the area where you recall seeing
4 water that you have marked on Exhibit 1 today?
5 A Yes.
6 Q Okay. And that's where he is standing,
7 that's the only area where you saw something on the
8 floor other than the dots --
9 A Right.
10 Q -- from there leading to the column?
11 A Correct.
12 Q Okay. Okay. So while this is going on, it
13 looks like there's -- at 12:40:03, we saw three PAD
14 people in there.
15 Do you remember any conversations that you
16 heard among the PAD personnel?
17 A No.
18 Q Do you remember any conversations that you
19 had with security personnel who later came to the
20 scene?
21 A No. I don't remember what was said, if I
22 had a conversation with them.
23 Q Did you ever have any conversation with
24 anyone to determine how this substance got onto the
25 floor and how long it had been there?

1 That's where people seem to either slip or
2 drop things all the time.
3 Q Okay. Have you testified about everything
4 you can recall regarding your conversations with the
5 woman who was on the floor?
6 A Yes.
7 Q Okay. One moment here. Okay. Let me go
8 back about the timing, then. I want to make sure I
9 understand your testimony today as it relates to why
10 you were -- why you were terminated from the Venetian.
11 Because I feel -- I get a sense from your testimony
12 that you feel that I'm somehow connected to this.
13 Am I reading that wrong? Do you feel like
14 I'm somehow connected to your having been terminated
15 from the property?
16 A I don't know at this time.
17 Q Well, what does -- what do you feel like my
18 meeting with you had to do with anything associated
19 with your employment?
20 A I don't really know how to answer that. It
21 was just a lot of -- a lot of things that went against
22 me in the form of discipline, after I met you, that
23 were just kind of unique to what they usually
24 discipline people for.
25 Q Okay. So I want to make sure, because

1 A No.
2 Q In the course of your job as a table games
3 supervisor, did you have any kind of supervisory
4 responsibility for people working in the Public Area
5 Department?
6 A Could you repeat that?
7 Q Yeah. Did you ever have any supervisory
8 responsibility for people who worked in the PAD
9 department?
10 A No.
11 Q And as I understand it, this is the first
12 time that you responded to an incident like this; is
13 that correct?
14 A No. Well, as far as a lady falling, yes, we
15 had numerous -- I would say almost once a day we have
16 spills where we need to call PAD.
17 Q Okay. Okay. These are --
18 A "We" meaning me and other supervisors who
19 oversee it, especially when there's glass broken.
20 Q Sure. And this would be spills in the
21 gaming table area?
22 A Yeah. Traditionally right outside the area
23 where the people are sitting, or usually it's in the
24 marble walkways that they recently -- well, not
25 recently, but a few years ago they put in.

1 Counsel went through this with you and he established
2 that I met with you and then within two months you
3 were terminated.
4 A No.
5 Q I mean he said I met with you in November of
6 2018.
7 A Right.
8 Q And you were terminated in January of 2019?
9 A Right.
10 Q So within two months of my meeting with you,
11 everything went south and you don't know what to think
12 of that; right?
13 A No, I really don't.
14 Q Okay. And you are sure about the timing?
15 A I mean as far as what I think about it, it
16 seems -- it leaves me feeling suspicious.
17 Q Okay.
18 A Okay -- that there is some ulterior motive
19 to terminate me.
20 Q Okay. And again, ulterior motives, you
21 think it has something to do with what you told me in
22 a meeting about what you saw when you arrived at the
23 scene?
24 A It could be.
25 Q Okay. I've never said anything like that to

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 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.

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 say "we're investigating," who is
 2 investigating?
 3 A Me and other attorneys.
 4 Q Okay. What attorneys?
 5 A Christian Gabroy. I haven't hired anyone
 6 yet.
 7 Q Tell me then, what have you had attorneys do
 8 for you?
 9 A He represented me at the unemployment
 10 hearing.
 11 Q I see. And so is he going to -- did you
 12 talk -- strike that.
 13 Is he representing you now on some other --
 14 A No.
 15 Q -- thing?
 16 A No.
 17 Q You already got your unemployment; right?
 18 A I'm presently receiving unemployment.
 19 Q Okay. Right. So you are receiving
 20 unemployment, but you still feel like that the
 21 Venetian did something improper, you are
 22 investigating. I assume you are considering filing a
 23 lawsuit against Venetian.
 24 A Absolutely.
 25 Q Okay. And that's something that is still in

1 the works because you are investigating; correct?
 2 A Yes.
 3 Q Okay. At the time you met with me in June
 4 of 2018, you weren't considering suing the Venetian;
 5 right?
 6 A No.
 7 Q That didn't happen until when? When did you
 8 first think: I've got to consider suing the Venetian?
 9 When did that first come to your mind?
 10 A It first came to my mind when I was
 11 suspended pending investigation. It was Tuesday
 12 before Thanksgiving, which I think was November 20th,
 13 and also a couple days before that when they brought
 14 me in and I had recently -- I basically gave them six
 15 months of many, many different incidents of
 16 harassment. And they chose to ignore that and just
 17 talk about this innocent comment I made.
 18 Q Did you ever -- did I ever get linked into
 19 this harassment thing?
 20 A Not that I'm aware of.
 21 Q Okay. In other words, up until today I've
 22 never heard anything about this. So this is -- as I
 23 gather it, you've made some connection prior to the
 24 deposition today that I might have something to do
 25 with you having been fired or terminated; is that

1 A Yes.
 2 Q Okay. What's your e-mail address?
 3 A Vegasgary1@gmail.com.
 4 Q Did you ever get an e-mail from me?
 5 A Uh-huh.
 6 Q Yes?
 7 A Yes.
 8 Q Did you feel that I harassed or intimidated
 9 you by e-mail?
 10 A I really can't answer that. I don't think
 11 so.
 12 Q I'm going to show you a document that I'm
 13 going to mark as Exhibit A.
 14 (Defendants' Exhibit A marked for
 15 identification.)
 16 BY MR. ROYAL:
 17 Q Please look at that. Have you seen this
 18 before?
 19 A Yes.
 20 Q Okay. That's your e-mail address; correct?
 21 A Yes.
 22 Q Do you see the date? What's it dated?
 23 A June 29th.
 24 Q 2018?
 25 A 2018, the day after we met.

1 correct?
 2 A That's correct.
 3 Q And that's why you wouldn't meet with me;
 4 correct?
 5 A Well, I just felt uncomfortable meeting with
 6 anyone at Venetian at that point.
 7 Q Okay. Because you thought maybe I had
 8 something -- I might have -- I don't know.
 9 A I just knew the reason I got terminated was
 10 not the ones that they are listing on their paperwork.
 11 And so I didn't -- I don't have -- I don't trust
 12 anyone associated with the Venetian.
 13 Q Okay. All right. So it's your testimony
 14 today that when you and I met in June of 2018, that
 15 you told me, "I saw water on the floor as I approached
 16 her," and I said something to the effect of, No, you
 17 didn't, wink, wink.
 18 Correct?
 19 A Correct.
 20 Q So you got the impression from our meeting
 21 that I was intimidating you?
 22 A Yeah, that you didn't want me to be
 23 truthful.
 24 Q Okay. I was -- so your opinion at that time
 25 is I was trying to get you to lie under oath?

1 Q Right. And do you recall receiving this
 2 from me?
 3 A Yes.
 4 Q Okay. I would like to -- and when you
 5 reviewed this, by the way, and received this, did you
 6 see something in here that you felt was incorrect?
 7 A I'm going to have to read it again.
 8 Q Okay. That's fine, go ahead.
 9 A The only thing that is incorrect is in the
 10 last part on the first page. I didn't get to the
 11 second page yet.
 12 It says, "I went into the restroom area to
 13 advise PAD personnel to have them come to clean as a
 14 precaution."
 15 I told them I noticed it was wet. I didn't
 16 say anything "as a precaution."
 17 Q Okay, and -- and that's fine. Go to the
 18 next page. Let me know when you are done reading the
 19 next page.
 20 A Again in the second paragraph, very similar
 21 to the first one, or the last paragraph on the first
 22 page, it says I didn't see anything on the floor, but
 23 I did.
 24 Q Okay.
 25 A I don't remember really saying anything

1 about "something other than a dry marble floor may
2 have caused her to fall." I don't recall that.
3 Q Okay. So is it your testimony today that
4 what's depicted here does not reflect what you told me
5 during our meeting of June 28, 2018?
6 Is that your testimony?
7 A Yes.
8 Q And so you read this when you received it;
9 right?
10 A Yes.
11 Q And you can see, like for example on page 2
12 of Exhibit A, Number 6, in parentheses, I wrote,
13 "Note, this is something I inferred, but which I need
14 confirmation." That relates to plaintiff did not
15 state to you that she slipped on any substance.
16 Do you see that?
17 A Yes.
18 Q Okay. That indicates to you that I wanted
19 to follow up with you on that particular point;
20 doesn't it?
21 A Yes.
22 Q Okay. Because I needed confirmation from
23 you?
24 A Uh-huh.
25 Q Now, you received this and you read it and

1 you and I had subsequent communications; correct?
2 A Yes.
3 Q And --
4 A -- by e-mail only I believe.
5 Q Well, we also spoke on the phone. Do you
6 recall?
7 A I don't recall. We could have.
8 Q Okay. And so if something in here that I
9 wrote is incorrect, you would have corrected me;
10 right?
11 Actually, if I said there was nothing
12 with -- my understanding was you said there was
13 nothing on the floor. That would have raised some red
14 flags and you would have said, No, no, that's not what
15 I said. I'm sure there must be some communication
16 from you to me related to that -- right? -- correcting
17 it?
18 A I don't know.
19 Q But you would expect that. Because you are
20 testifying today that what is here on Exhibit A
21 representing that you had told me that you didn't see
22 anything on the floor, that that's completely false.
23 So I assume that you would have written me
24 and corrected me, especially when I asked you for
25 confirmation.

1 A Well, I told you at the time that the floor
2 was wet and so I know it wasn't.
3 So I said I called -- I got the PAD over to
4 clean it up because I thought it was wet. I saw it
5 was wet and you just kept refuting me, basically, "No,
6 you are mistaken. It wasn't wet."
7 Q Up until today during this deposition, after
8 having met with Mr. Galliher on this matter and having
9 gone out and retained or conferred with attorneys
10 about suing the Venetian, have you ever communicated
11 to me that you -- after receiving this e-mail that we
12 marked as Exhibit A, have you ever communicated that
13 the information I put in there was incorrect?
14 A No.
15 Q Okay. So today's the first day that you
16 have decided to tell me that what I put in the e-mail
17 of June 28 -- 29th, 2018, here has something that is
18 incorrect?
19 A I didn't decide to tell you. I was forced
20 to tell you. This is a deposition and I'm under oath.
21 Q Okay. All right, so you didn't correct me
22 previously. Even though you had months to do it and
23 we had other communications, you never corrected me
24 and told me that, what I understood from our initial
25 meeting, is that you saw nothing on the floor, until

1 today; correct?
2 A I told you that day there was something on
3 the floor, and I'm telling you today there was
4 something on the floor that was wet.
5 Q Okay. But in between when we were having
6 discussions and I sent you something in writing
7 saying, This is what I understand, you never corrected
8 me and said, No, that's not true?
9 A That's true; I never corrected you.
10 Q Right, okay.
11 You did read it before today. You did
12 understand that that was my understanding, but you
13 never responded and corrected me until today at your
14 deposition after you met with Mr. Galliher; correct?
15 A That's correct.
16 Q Okay, see if there's anything else here.
17 Do you remember Ms. Sekera apologizing for
18 falling?
19 A No.
20 Q Of course, you don't remember anything about
21 the coffee she was carrying; right?
22 A No.
23 Q You think today's the first time that you
24 noticed, in looking at that surveillance, that she was
25 carrying coffee? Is today the first time you noticed?

1 A Yeah, that's the first time I noticed.
 2 Q So when you're talking about stuff on the
 3 floor, you never made any kind -- you didn't give any
 4 consideration as to whether or not it's something that
 5 could have come from her coffee cup; right?
 6 A Yeah, I didn't relate anything to that
 7 because I didn't see her fall.
 8 Q Okay.
 9 A But by the time I got there, I believe the
 10 cup was on the floor or was in the other lady's hand.
 11 I probably just assumed at the time that that was the
 12 other lady's cup.
 13 No, I -- I didn't see the incident. I just
 14 saw her down on the ground.
 15 Q Okay. You never made a connection between
 16 Ms. Sekera holding a coffee cup in her left hand at
 17 the time she fell and you seeing something on the
 18 floor, like some foreign substance?
 19 A No. I don't know anything about the cup of
 20 coffee. I didn't even know she had one in her hand
 21 because I got there after it left her hand.
 22 Q When you spoke with her, did she say
 23 anything to you about what she thought caused her to
 24 fall?
 25 A She didn't say anything about what caused

1 through the area and didn't see anything on the floor
 2 where you said you saw something on the floor.
 3 Would that surprise you?
 4 A I don't know if it would surprise me. They
 5 walk by a lot of areas and miss them, so, no, that
 6 doesn't surprise me.
 7 Q Okay. So you would think that if that --
 8 you described it like eight ounces. Maybe it looked
 9 like someone had spilled something on the floor.
 10 A Uh-huh.
 11 Q Right?
 12 A Yeah.
 13 Q So eight ounces of water. Is that right;
 14 eight ounces? So once you spill that, it would splash
 15 pretty good; right? Even more than just three or
 16 four inches?
 17 A Could have. Could have been more. I don't
 18 really know. Once it's on the floor, I don't really
 19 know how to measure it.
 20 Q Right. So you drew this little circle which
 21 I think you said it was three or four inches in
 22 diameter.
 23 A Yes.
 24 Q And some drops leading to the column.
 25 A Yes.

1 her to fall.
 2 Q And she never said anything to you about her
 3 clothing being wet?
 4 A No.
 5 Q And the only thing that you saw on the floor
 6 of a foreign substance was in the area you've
 7 indicated on Exhibit 1 on those two photographs;
 8 correct?
 9 A Correct.
 10 Q You don't know how long this -- or strike
 11 that.
 12 What you saw on the floor, you don't know
 13 what it was; correct?
 14 A Correct.
 15 Q You don't know how it got there; correct?
 16 A Correct.
 17 Q You don't know how long it was there?
 18 A Correct.
 19 Q You are not aware of any kind of patrolling
 20 that was being done by the PAD personnel in that area
 21 prior to your arrival; is that correct?
 22 A Correct.
 23 Q We just had a PAD employee, Maria Cruz,
 24 testify just before you today that, just within a
 25 couple of minutes prior to this fall, she had walked

1 Q You would have expected that, had that been
 2 there for four or five minutes, somebody would have --
 3 before the woman got there, somebody would have
 4 stepped in that -- I mean slipped or something; right?
 5 MR. GALLIHER: Objection, calls for
 6 speculation.
 7 You may answer.
 8 THE WITNESS: What?
 9 MR. GALLIHER: I said, "Objection, calls for
 10 speculation." But you may answer it if you can.
 11 THE WITNESS: Repeat that question again.
 12 BY MR. ROYAL:
 13 Q If that water was there or that substance as
 14 you drew it on Exhibit 1 -- if that was there for,
 15 let's say hypothetically, three or four minutes before
 16 this occurred, you would have expected somebody to
 17 step in it at some point?
 18 MR. GALLIHER: Same objection.
 19 You may answer.
 20 THE WITNESS: Yeah. I don't know if I would
 21 expect someone to fall or not.
 22 BY MR. ROYAL:
 23 Q Or slip.
 24 A Yeah, or slip. I can't really speculate on
 25 that.

1 Q You've never seen anyone slip before when
2 they stepped on some foreign substance on the marble?
3 A At the Venetian? No.
4 Q Okay. So this is the first time?
5 A Most of the time when there's a spill, we
6 get chairs out there right away and make like a little
7 circle around it so people don't walk in it.
8 Q So this kind of event is pretty rare?
9 A Yes.
10 Q In fact, it's the only event that you can
11 recall ever being personally aware of?
12 A Of a slip-and-fall.
13 Q Yes.
14 MR. ROYAL: Okay. Thank you.
15 THE WITNESS: You're welcome.
16
17 FURTHER EXAMINATION
18 BY MR. GALLIHER:
19 Q Just a couple questions if I may. I'd like
20 to refer you to page 2 again of the e-mail that Mike
21 sent you, and the second paragraph and I'm going to
22 read what he said. He said, "Based on our discussion,
23 I understand you can affirmatively state the
24 following."
25 Then let's go to Number 5. It says, "You

1 Q And would it be fair to state what you see
2 in that fall, you see the plaintiff's feet go out from
3 under her when she's holding the coffee cup in her
4 left hand?
5 A Yes.
6 Q And she then falls. And do you notice
7 whether or not the top comes off the coffee cup?
8 A In the video?
9 Q Yes.
10 A I didn't look for that; no.
11 Q All right. Now, again you testified in
12 response to Mike's questions that the slip-and-fall
13 that you saw this day, that you observed this day, was
14 a rare event; is that right?
15 A Yes.
16 Q And --
17 A That doesn't mean it doesn't happen. It's
18 just that, you know, people don't slip -- I work in a
19 carpeted area and I don't remember seeing any
20 slip-and-fall.
21 Q All right. So what you are talking about,
22 when you talk about "rare event," you don't see
23 slip-and-falls occurring on the carpeted area?
24 A Correct.
25 Q And so if, for example, the Venetian's

1 advised PAD personnel in the restrooms of the
2 incident, not because you saw anything on the floor,
3 but because you assumed something other than a dry
4 marble floor may have caused her to fall."
5 Is that accurate?
6 A Not really. I never mentioned the word
7 "precaution" or -- yeah.
8 No, I don't know. I told him it was wet and
9 needs to be cleaned up. That's all I told him.
10 Q All right, so that's not what I'm reading.
11 A That's correct, that's a little different.
12 Q All right, so let's go to Number 7.
13 Number 7 says, "You did not see any substance on the
14 floor other than possibly some drops of liquid in
15 front of where Plaintiff was positioned on the floor,
16 that likely came from her coffee cup on the way down."
17 Again, is that an accurate statement?
18 Something that you said?
19 A No, that's not accurate because the liquid I
20 saw was in a -- like behind her. And the spill from
21 the coffee, if that was her coffee, was in front of
22 her.
23 Q You just saw the video surveillance again --
24 correct -- and you saw the fall?
25 A Yeah, on the video.

1 entire casino floor were carpeted, would you agree
2 with me you probably would see less slip-and-falls?
3 A Oh, definitely.
4 MR. ROYAL: Objection, form; calls for
5 speculation.
6 BY MR. GALLIHER:
7 Q All right. So your answer is?
8 A Yes.
9 Q All right. So and do you know if anybody,
10 to your knowledge, has ever complained to anyone at
11 the Venetian about the fact that they persist in
12 having marble floors as opposed to carpet?
13 A We've had people complain when -- not just
14 slips, but when someone actually dropped a glass or
15 bottle and it shatters and goes all over the place.
16 And, yeah, I've had people say, you know, "Why do you
17 have these marble floors? Everything's going to break
18 and really shatter on these things."
19 And, well, it makes a more convenient to go
20 back and forth from one property to the other when
21 you're hauling luggage and so forth. I think that's
22 why they put it in.
23 Q And also for an aesthetic effect?
24 MR. ROYAL: Objection.
25 /////

1 BY MR. GALLIHER:
2 Q These are actually very attractive floors --
3 are they not -- the marble floors?
4 A Yes.
5 MR. GALLIHER: That's all I have.
6 Make it quick, I got an hour to get to
7 dinner.
8 MR. ROYAL: Okay.
9 We can continue this.
10 MR. GALLIHER: What more could you ask?
11 MR. ROYAL: In fact, you know what? I want
12 to -- I'm going to reserve my right to. What more I
13 want to ask?
14 MR. GALLIHER: Well, I don't think there's a
15 right necessarily.
16 MR. ROYAL: That's fine. You said you had
17 to be somewhere.
18 MR. GALLIHER: I do, I do. I have to be
19 somewhere in an hour, but I don't necessarily want to
20 continue on.
21 MR. ROYAL: I can continue on as long as I
22 want.
23 MR. GALLIHER: That's fine. Then, have at
24 it.
25 MR. ROYAL: Okay. If you are going to put

1 BY MR. ROYAL:
2 Q Well, how much of it is true? How much of
3 Number 5 is true?
4 A Hardly any of it. Only at the beginning
5 where it says, I advised PAD personnel in the
6 restrooms of the incident.
7 Q Okay. And again, for clarity sake, you
8 never responded to me, ever, correcting that
9 particular fact until today at your deposition after
10 you met with Mr. Galliher; correct?
11 A Right. And it's possible I never even read
12 this whole thing if it's a three-page e-mail.
13 Q Well, but if I have something in writing
14 from you indicating you did, you would -- I assume
15 that might refresh your recollection?
16 A Something in writing that I --
17 Q Yeah. You responded to me, we communicated
18 about the e-mail. You responded to this; correct?
19 A I don't recall.
20 Q In fact, you asked me if you could have a
21 copy of the video so you could show it to your wife.
22 A That, I remember.
23 Q Okay. And you did that by e-mail; correct?
24 A Yes.
25 Q Okay. And your testimony today is you

1 limitations on me, then --
2 MR. GALLIHER: No, not at all, but you just
3 had an hour of questions. I want to know how much
4 more you have to ask him that you haven't asked him
5 already.
6 MR. ROYAL: Okay. Can I?
7 MR. GALLIHER: Yeah, please.
8
9 FURTHER EXAMINATION
10 BY MR. ROYAL:
11 Q Just so I'm clear, Counsel asked you, from
12 Exhibit A, went over these items "6" and "7."
13 MR. GALLIHER: "5" and "7."
14 MR. ROYAL: Oh, I'm sorry. Okay. Was it
15 "5" and "7"?
16 MR. GALLIHER: Yes.
17 BY MR. ROYAL:
18 Q He went over numbers "5" and "7" on page 2
19 of Exhibit A, which you claim today is completely
20 untrue.
21 MR. GALLIHER: Objection.
22 MR. ROYAL: Correct?
23 MR. GALLIHER: Objection, misstates
24 testimony.
25 You may answer.

1 didn't see anything on the floor in front of the
2 woman. Nothing, no liquid or anything on the floor?
3 A No.
4 Q Okay. Is that correct?
5 A Correct.
6 Q Okay. All right, thank you.
7 A You are welcome.
8
9 FURTHER EXAMINATION
10 BY MR. GALLIHER:
11 Q Gary, you met with me last week and we
12 discussed this deposition in this case; is that right?
13 A Yes.
14 Q At any time during the meeting, did I advise
15 you to do anything other than tell the truth at
16 today's deposition?
17 A No.
18 MR. GALLIHER: Thank you.
19 MR. ROYAL: Thank you.
20 MR. GALLIHER: All right. We're done.
21 Thank you, Gary.
22 THE COURT REPORTER: Mr. Royal, did you want
23 a copy of both of these depositions?
24 MR. ROYAL: Yes, please.
25 (The deposition concluded at 4:37 p.m.)

REPORTER'S DECLARATION

STATE OF NEVADA)
COUNTY OF CLARK)

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

That I reported the taking of the deposition of the witness, GARY SHULMAN, commencing on Wednesday, April 17, 2019 at the hour of 3:15 p.m.

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

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

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

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

Pauline C. May, CCR 286, RPR

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1 2:22 22:4 38:22,23 39:18,19 47:4 64:7 66:14 10 10:23,24 14:8,17 40:7 10- 41:10 10263 3:11 107 1:16 2:3 11:45 20:16 12 26:9 12:36:46 33:20 12:36:49 34:13 12:36:54 34:12 12:36:55 40:12 12:36:57 35:7 12:37 40:9 45:9 12:37:01 35:12 12:37:05 36:3 41:7 12:37:12 36:8 12:37:13 41:8 12:37:14 39:23 40:11 12:37:48 42:1 12:38:45 42:23 12:38:47 43:8,15 12:38:48 43:21 12:38:52 44:8 12:38:53 43:23 12:38:54 43:18 12:38:58 44:22 12:39:06 45:13 12:39:21 45:25 12:39:35 46:7 12:39:43 46:13 12:39:56 46:19 12:39:58 46:23 12:40:03 47:13 13 4:4,4 5:25 6:2,4 15:9 17:14 23:19	3 3 2:18 3:15 1:18 75:8 30 2:18 24:11 30-minute 7:24,24 38 2:22	9 9 20:2 90 4:8
	4 4 6:18 19:19 20:15 4/17 38:17 4:37 74:25	
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	6	

EXHIBIT 2

PAIN INSTITUTE OF NEVADA
 7435 W. Azure Drive, Ste 190
 Las Vegas, NV 89130
 Tel 702-878-8252
 Fax 702-878-9096

OFFICE VISIT

Date of Service: July 10, 2019

Patient Name: Joyce P Sekera
 Patient DOB: 3/22/1956

PAIN COMPLAINTS

Neck
 Low back

Mrs Sekera returns for follow up. She saw Dr. Smith yesterday and his notes say she got no relief from the RFA. She tells me this must be an error as she feels about 70% relief in her low back pain. Her memory isn't too good she tells me so can't remember exactly what he told her but that she would need surgery at some point. She has mild pain now, improved range of motion, has less AM pain, and walks longer / farther now.

Activities that aggravate the pain: Sitting and walking for prolonged periods

Activities that relieve the pain: Stretch and exercise

Description of the pain: Ache

Least pain throughout day (0-10): 3/10

Most pain throughout day (0-10): 3/10

Neck stiffness comes/goes and isn't too bothersome. She denies arm symptoms.

Activities that aggravate the pain: Turning to the left

Activities that relieve the pain: Heat

Description of the pain: Dull

Least pain throughout day (0-10): 0/10, no pain.

Most pain throughout day (0-10): 3/10

INTERIM HISTORY

Hospitalizations or ER visits: None

Changes in health: None

Problems with medications: None

Obtaining pain meds from other physicians: Patient denies.

New injuries or MVA's: No

Work Status: Unemployed

Therapy: Pt is not currently receiving physical or chiropractic therapy.

IMAGING/TESTING

MRI brain without contrast: Report dated 12/16/2016

Brain normal for age.

MRI cervical spine without contrast: Report dated 12/21/2016

Mild dextrocurvature with straightening of cervical lordosis.

C3-4: Mild bilateral facet hypertrophy.

C4-5: Mild bilateral facet hypertrophy. Mild left uncovertebral arthropathy.

C5-6: Mild disc protrusion with mild bilateral facet hypertrophy. Bilateral uncovertebral arthropathy with mild left greater than right neural foraminal stenosis.

C6-7: Mild broad disc protrusion AP diameter spinal canal 10 mm.

MRI lumbar spine without contrast: Report dated 12/21/2016

L1-2: Mild disc bulge.

L2-3: Minimal spondylosis and disc bulge.

L3-4: Mild disc bulge with mild facet and ligamentum flavum hypertrophy bilaterally. AP dimension of the spinal canal 11 mm.

L4-5: Left paracentral disc bulge with annular fissuring. Assessment and ligamentum flavum hypertrophy bilaterally. AP dimension spinal canal 11 mm.

L5-S1: Central disc bulge with facet hypertrophy bilaterally. AP dimension spinal canal 10 mm.

X-RAYS cervical spine with Flex/Ext : Report dated 7/31/2018

Cervical spine straightening with mild degenerative disc disease at C5, there is 6 to a lesser degree. C4-C5. Multilevel mild spondylosis. Flexion and extension views demonstrate no ligamentous laxity or instability.

AP and lateral thoracic and lumbar spine with right and left lateral bending: Report dated 7/31/2018

Mild endplate osteophytosis of the mid thoracic and lumbar spine. Equal excursion of right and left lateral bending. No significant scoliosis measured on chronic exam.

X-ray lumbar spine with flexion and extension: Report dated 7/31/2018

Mild degenerative disc disease at L1-L2 mL, 2-3 with multilevel mild spondylosis, most evident at L4-S1. Vascular calcifications noted with slight levoconvex curvature. No evidence of subluxation with flexion extension views.

CT lumbar spine: Without contrast: Report dated 7/31/2018

Mild levoscoliosis of the lumbar spine with anterior osteophyte formation at L1-L3. Moderate facet hypertrophy is seen at right L4-S1 levels and mild facet hypertrophy seen within the remainder of the lumbar spine.

Disc bulges causing mild spinal canal narrowing at L2-L3, L3-L4, and L4-L5 with bilateral lateral recess narrowing at L4-L5.

X-rays lumbar spine: Report dated 8/22/2018

Spurring seen mildly throughout lumbar spine, or focal involving L2-L3. Mild sclerosing of left SI joint.

JS990

PROCEDURES

03/09/2017

FJI B L5S1

Post Injection: Complete resolution of usual pain.

Sustained: No relief of usual pain.

05/08/2017

MBB B L5S1

Post Injection: Complete Resolution of usual pain.

Sustained: 2 days at 100% relief and pain eventually returned

11/30/2017

RFA B L5S1

Sustained: ROM has improve significantly, 80% resolution of usual pain. Tender ache with right side more than left.

06/20/2019

RFA B L5S1

Sustained: 70% reduction of usual pain with improved ROM again

MEDICAL HISTORY

Diabetes.type 2, HbA1C 6.5

Memory impairment from mild TBI

Low back pain

ALLERGIES

No known drug allergies

MEDICATIONS

Metformin 500mg qd

NV & CA PMP REVIEWED 6/5/17-6/5/19 NO MEDS FOUND

SURGICAL HISTORY

No prior surgeries reported.

FAMILY HISTORY:

Lung Cancer

SOCIAL HISTORY

Family Status: Single / not married , has children , lives with family

Occupation: Customer service / Unemployed

Habits: The patient smokes rarely. The patient does not drink. The patient denies recreational drug use.

SYSTEMS REVIEW

Constitutional Symptoms: Negative

Visual: Negative

ENT: Negative

Cardiovascular: Negative

Respiratory: Negative

Gastrointestinal: Negative

Genitinary: Negative

Endocrine: Negative

Musculoskeletal: See HPI

Neurological: Negative

Hematologic: Negative

Integumentary: Negative

Psychological: Negative

VITAL SIGNS

Height: 66.00 Inches

Weight: 205.00 Pounds

Blood Press: 134/78 mmHg

Pulse: 82 BPM

BMI: 33.1

Pain: 03

PHYSICAL EXAMINATION

GENERAL APPEARANCE

Appearance: Mild discomfort

Transition: Slight limited

Ambulation: Patient can ambulate without assistance.

Gait: Gait is normal

LUMBAR SPINE

Appearance: Grossly normal. No scars, redness, lesions, swelling or deformities.

Tenderness: Mild tenderness noted bilateral lower lumbar spine

Trigger Points: None noted.

Spasm: Mild spasm is noted in the paravertebral musculature.

JS991

Jul. 11. 2019 3:43PM

No. 6911 P. 3/3

Facet Tenderness: Facet joint tenderness is noted.

Spinous Tenderness: Spinous processes are non-tender.

ROM: Full ROM with mild pain on extension only

Straight Leg Raising: Negative at 90 deg bilaterally. Does not produce radicular pain.

PSYCHOLOGICAL EXAMINATION

Orientation: The patient is alert and oriented x3. No sign of impairment.

Mood / Affect: Mood is normal. Full affect.

Thought Process: Intact.

Memory: Intact.

Concentration: Intact.

Suicidal Ideation: None.

DIAGNOSIS

M47.817 LUMBOSACRAL FACET JOINT ARTHROPATHY / SPONDYLOSIS

M51.27 LUMBOSACRAL DISCOPATHY

M62.838 MUSCLE SPASM

PRESCRIPTIONS

None

PLAN

** RETURN: As needed when her pain returns

Katherine D Travnicek MD

Copy to: William Smith MD

Electronically signed by KATHERINE TRAVNICEK Date: 7/10/2019 Time: 11:20:13

JS992

VEN 1555

EXHIBIT 3

William D. Smith, MD



Street: 3061 S. Maryland Parkway, Suite 200
City/State/Zip: Las Vegas, NV 89109
Phone: (702) 737-1948
Fax: (702) 737-7195

Patient: Joyce P. Sekera

Patient #: 379090

DOB: 03/22/1956 (63 years)

Date of Encounter: 07/08/2019

History of Present Illness

The patient is a 63 year old female who presents for a follow-up visit. Note for "Follow-up visit": This woman continues to complain of back pain. She had a rhizotomy done I believe a week or two ago. It gave her some temporary improvement, but the pain returned.

Additional reasons for visit:

Transition into care is described as the following:

The patient is transitioning into care and a summary of care was reviewed.

Allergies

No Known Allergies 02/28/2018

No Known Drug Allergies 02/28/2018

Past Medical History

Cervical spondylosis with myelopathy

Other secondary scoliosis, lumbosacral region

Back pain, sacroiliac

Lumbar spondylosis with myelopathy

Family History

Mother: In good health

Father: Deceased

Brother 1: In good health

Sister 1: In good health

Social History

Occupation/Work Status: Retirement (Health Related)

Marital Status: Single

Children: 1.

Living situation: Lives with his mother.

Tobacco use: Current some day smoker. Smokes 1-2 cigarettes a week.

Alcohol Use: No alcohol use

Illicit drug use: Never

HIV risk factors: None

Highest recreation level prior to spine condition: No Response.

Other Problems

Unspecified Diagnosis

Past Surgical

None (02/28/2018)

JS994

VEN 1557

Diagnostic Studies

Chiropractor
Exercise Therapy
MRI Brain, Brain Stem
MRI, Cervical Spine
MRI, Lumbar Spine
Lumbar Spine X-ray

Vitals

07/08/2019 06:27 AM

Weight: 200 lb Height: 66 in

Body Surface Area: 2 m² Body Mass Index: 32.28 kg/m²

Assessment & Plan

Back pain, sacroiliac 724.6 | M53.3

- Patient Education: Smoking: Ways to Quit: smoking cessation
- **Review of Diagnostic Test**
Comments: Once again, I have reviewed her CT scan. The CT scan not only showed the rotatory scoliosis, but the left L5-S1 facet appears to have a fracture. This certainly is consistent with a work injury.

- How to access health information online
- Instructed / counseled on smoking cessation including modes of cessation. Readiness to quit and motivation assessed.

Lumbar spondylosis with myelopathy 721.42 | M47.16

- Patient Education: Low Back Pain: low back

With this in mind, once again, I do not see how this woman will be able to avoid surgical treatment for this. Rhizotomies in my opinion will give her some temporary relief, but certainly not long-term. Please do not hesitate to call me with questions. I will continue to see this woman as required.

Cc: Farmers W/C (702) 436-1189 (faxed)
Walter M. Kidwell, MD (702) 878-9096
Jeffrey Webb, Dc (702) 457-7083
Katherine Travnick, MD (702) 878-9096
Edson Erkvater, MD (702) 259-5554
Galliher Law (702) 735-0204



William D. Smith, MD

JS995

VEN 1558

EXHIBIT 4

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

MPOR

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

ROYAL & MILES LLP

1522 West Warm Springs Road

Henderson Nevada 89014

Tel: (702) 471-6777

Fax: (702) 531-6777

Email: mroyal@royalmilesllp.com

Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

Before the Discovery Commissioner

DEFENDANTS' MOTION FOR PROTECTIVE ORDER

COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL & MILES LLP, and hereby submits the following Motion for Protective Order.

///

///

///

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 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. I further declare that the exhibits identified in Venetian's Motion For Protective Order, as outlined below, are true and correct copies of documents produced in this matter.

3. This action arises out of an alleged incident involving a floor in a lobby area of the Venetian hotel on November 4, 2016.

4. That on or about August 16, 2018, Plaintiff served Plaintiff's Request for Production of Documents and Materials to Defendant in which Plaintiff requested reports related to slip and falls occurring within three years preceding the subject incident. (*See Exhibit A, attached hereto, No. 7.*)

5. That on or about December 17, 2018, I sent email correspondence to Mr. Galliher advising that documents were ready for production, but that Venetian would like an NRCP 26(c) protection order associated with the production to limit its use to the pending litigation. (*See Exhibit B, Email Correspondence Between Michael Royal, Esq., and Keith Galliher, Esq., dated December 18, 2018, with enclosure.*)

6. That Mr. Galliher and I shortly thereafter discussed Venetian's proposal in a telephone conference, which was rejected by Mr. Galliher.

7. That Venetian produced a total of sixty-four (64) prior incident reports in response to Plaintiff's request on or about January 4, 2019, with names, contact information, personal information

1 (i.e. DOB/SSN), and scene photographs redacted to protect the privacy of prior guests involved in these
2 incidents since Plaintiff would not agree to a protective order.

3 8. That Mr. Galliher thereafter contacted me to discuss his objection to Venetian having
4 provided redacted reports, and we once again discussed Venetian's agreement to provide unredacted
5 documents with a Rule 26(c) stipulation. Mr. Galliher explained that, in his view, any person involved
6 in one of the disclosed prior incidents on Venetian property is a potential witness in this case. He
7 further stated his intention to contact any or all of the persons involved in the prior incidents. I
8 expressed concern that the information relating to these non-party patrons could not only be improperly
9 used in this litigation, but that it could also be passed along to other counsel or persons wholly
10 unrelated to this action and used for other purposes (subjecting these guests to further intrusions into
11 their privacy). After respectfully considering my stated concerns, Mr. Galliher and I were unable to
12 reach an agreement.
13

14 9. That on January 23, 2019, I sent correspondence to Mr. Galliher again outlining
15 Venetian's position and offering to resolve this dispute by requesting a phone conference with the
16 Discovery Commissioner. (See Exhibit C, *Correspondence from Michael Royal, Esq., to Keith*
17 *Galliher, Esq.*, dated January 23, 2019.) Shortly thereafter, Mr. Galliher contacted me by phone and
18 agreed to have my office reach out to the Discovery Commissioner's office as suggested in an effort
19 to resolve this dispute expeditiously.
20

21 10. That my office was subsequently advised by the Discovery Commissioner's office that
22 a phone conference to resolve this dispute could not be arranged, but that a motion would need to be
23 filed.
24

25 11. That on January 29, 2019, I advised Mr. Galliher that a motion would need to be filed,
26 and that the sole issue from Venetian's perspective is its desire for a Rule 26(c) protective order.
27
28

1 (See Exhibit D, *Email Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*, dated
2 January 29, 2019.)

3 12. That I have complied with the requirements of EDCR 2.34 in good faith and that,
4 despite meaningful discussions held with Mr. Galliher, the parties were unable to resolve this discovery
5 dispute regarding the subject non-party identification information.

6 Executed on 1 day of February, 2019.

7
8 
9 Michael A. Royal, Esq.
10

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I.**

13 **STATEMENT OF FACTS**

14 This litigation arises from a November 4, 2016 incident occurring when Plaintiff slipped and
15 fell in a lobby area of the Venetian while taking a break from her work station where she was employed
16 as a salesperson for a vendor leasing space in the Grand Canal Shops. The cause of Plaintiff's fall is
17 in dispute, as Venetian denies that there was any foreign substance on the floor at the time the incident
18 occurred.
19

20 In the course of discovery, Plaintiff requested that Venetian provide three (3) years of prior
21 incident reports. (See Exhibit A, attached hereto.) Venetian produced sixty-four (64) incident reports
22 in redacted form (nearly 650 pages of documents), as Plaintiff would not agree to execute a stipulation
23 and order to protect the information pursuant to NRCP 26(c). Plaintiff now demands that all of the
24 nearly 650 pages produced responsive to her request be unredacted without providing the requested
25 protection by Venetian.
26
27
28

1 of Civil Procedure, at 388-90). Pursuant to the Nevada Rules of Civil Procedure, the court in which
2 the action is pending may make any order/recommendation which justice requires to protect a party
3 so that certain discovery abuses do not occur. (See NRCP 26). The compulsion of production of
4 irrelevant information is an inherently undue burden. (See *Jimenez v. City of Chicago*, 733 F. Supp.
5 2d 1268, 1273 (W.D. Wash. 2010) (citing, *Compaq Computer Corp. v. Packard Bell Elecs.*, 163
6 F.R.D. 329, 335-336 (N.D.Cal.1995)).

7
8 A. **This is the kind of circumstance NRCP 26(c) is designed to address**

9 In the instant case, Plaintiff is using discovery in a manner that is unduly burdensome by
10 requesting the production of personal and sensitive information from non-parties to this action;
11 information which is not otherwise relevant to any claims or defenses of this case. Plaintiff is
12 demanding the production of personal identification information, including Social Security numbers,
13 dates of birth, driver's license numbers, home addresses, and telephone numbers of individuals who
14 do not have any personal knowledge of the incident at issue. Once produced, this identification
15 information would be used to correlate non-parties with sensitive health information included in the
16 previously produced incident reports. It is not disputed by Plaintiff that the individuals involved in the
17 prior incidents are not parties to this action, and are not percipient witnesses to Plaintiffs alleged
18 accident.
19

20 Plaintiff cannot reasonably articulate how the identity of individuals involved in prior incidents
21 on Venetian's premises, with no relation to Plaintiffs case, could be relevant to any issue of Plaintiff's
22 claim. Plaintiff's personal injury litigation stems from the allegation that Plaintiff slipped and fell on
23 a marble floor. Individuals involved in prior slip-and-fall incidents would be unable to provide any
24 information regarding the alleged hazard which Plaintiff contends caused her fall. Reports of prior slip
25 and fall incidents, which occurred on different circumstances, and on different dates, in different areas
26 of the property have no relevancy to the issue of whether Venetian had notice of any condition
27
28

1 contributing to Plaintiff's fall on November 4, 2016. (See *Eldorado Club, Inc. v. Graff*, 78 Nev. 507
2 (1962); *Southern Pac. Co. v. Harris*, 80 Nev. 426, 431 (1964).)

3 All that stated, it is important to note that Venetian is not objecting to providing Plaintiff
4 with unredacted copies of prior incident reports, despite the fact that Venetian insists the
5 personal information of prior guests is not at all relevant to any issues regarding the subject
6 incident.¹ Venetian simply wants to keep all such information protected by order of the court
7 under NRCP 26(c) to ensure that it remains solely within the scope of this litigation. Venetian's
8 concern is that such information can be disseminated to the public in a multitude of ways, and passed
9 onto other persons having nothing to do with this litigation, thereby subjecting the persons identified
10 herein to multiple contacts by persons, who have access to their personal information, including events,
11 injuries, care provided, etc.

12
13
14 B. The policy interests of protecting the confidential personal information outweigh the
15 alleged need for discovery in this case

16 Even where inquiries could reasonably lead to the discovery of admissible evidence, courts
17 must still balance the proponent's interest in discovery of the information against any legitimate interest
18 of the other party. Further, discovery requests should be specifically tailored to result in the production
19 of materials relevant to the claims at issue, rather than broadly drafted in the hopes of uncovering
20 relevant information. "[Nevada's] discovery rules provide no basis for [a carte blanche] invasion into
21 a litigant's private affairs merely because redress is sought for personal injury." *Schlatter v. Eighth*
22 *Judicial Dist. Court*, 93 Nev. 189, 192 (1977). "[T]he initiation of a lawsuit, does not, by itself, grant
23 plaintiffs the right to rummage unnecessarily and unchecked through the private affairs of anyone they
24 choose. A balance must be struck." (*Ragge v. MCA/Universal Studios*, 165 F.R.D. 601, 605 (C.D.
25

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27
28 ¹Recall that Venetian contends that Plaintiff's fall had nothing to do with a foreign substance
being on the floor; regardless, Venetian provided Plaintiff with sixty-four (64) prior incidents involving
a foreign substance on the floor.

EXHIBIT 5



1 **DCRR**

Michael A. Royal, Esq.

2 Nevada Bar No. 4370

Gregory A. Miles, Esq.

3 Nevada Bar No. 4336

4 **ROYAL & MILES LLP**

1522 West Warm Springs Road

5 Henderson Nevada 89014

Tel: (702) 471-6777

6 Fax: (702) 531-6777

Email: mroyal@royalmilesllp.com

7 *Attorneys for Defendants*

8 *VENETIAN CASINO RESORT, LLC and*

LAS VEGAS SANDS, LLC

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 JOYCE SEKERA, an Individual;

12 Plaintiff,

14 v.

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

19 Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

20 **DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION**

Hearing Date: March 13, 2019, 9:00 am

21 Appearance: Keith E. Galliher, Jr., Esq., for Plaintiff, JOYCE SEKERA

22 Michael A. Royal, Esq., Royal & Miles LLP, for Defendants
23 VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC
(collectively "Venetian")

I.

FINDINGS

1. Defendant Venetian filed *Defendants' Motion for Protective Order* on February 1, 2019 related to the production of redacted prior incident reports in response to an NRCP 34 request by Plaintiff. Plaintiff filed an *Opposition to Defendants' Motion for Protective Order* on February 13, 2019, arguing that there is no basis to redact information in prior incident reports (other than Social Security numbers) or otherwise to afford them protection under NRCP 26(c). Defendant filed a *Reply to Opposition to Defendants' Motion for Protective Order* on March 5, 2019 and an *Addendum to Reply to Opposition to Defendants' Motion for Protective Order* on March 6, 2019 noting, among other things, that Plaintiff's counsel had already been sharing prior incident reports with other attorneys not involved in the present litigation.

2. A hearing on motion was held on March 13, 2019.

3. Venetian counsel argued that prior incident reports have been produced, which represent slip and falls occurring on marble floors in the common areas of the Venetian casino level.

4. Plaintiff's counsel argued that after comparing a production by Venetian in the case of *Smith v. Venetian*, Case No. A-17-753362-C, he discovered four incident reports produced in that case which were not produced by Venetian in this litigation. Defense counsel related that he is unaware of that issue and that he will investigate.

After reviewing the papers and pleadings on file, and consideration of arguments presented by counsel for the parties, the following recommendations are made.

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II.

RECOMMENDATIONS

IT IS RECOMMENDED that *Defendants' Motion for Protective Order* is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER RECOMMENDED that the prior incident reports produced by Venetian are to remain in redacted form as originally provided in response to an NRCP 34 request, the Court agreeing that this presents a privacy issue as it pertains to the identity of prior Venetian guests and includes protected HIPPA related information.

IT IS FURTHER RECOMMENDED that all information within the redacted prior incident reports produced by Venetian are to be protected under an NRCP 26(c) order, not to be shared with anyone who is not directly affiliated with the litigation (*i.e.* counsel, counsel's staff, experts, etc.), and when attached as exhibits to any filings with the Court are to be provided under seal.

IT IS FURTHER RECOMMENDED that if Plaintiff identifies a specific prior incident report she feels is sufficiently related to her fall, with substantially similar facts and circumstances, occurring in the same location, that counsel will have an EDCR 2.34 conference to discuss the request and determine whether the identity of those involved in the specific prior incident should be provided before filing a motion.

IT IS FURTHER RECOMMENDED that Venetian be required to review the alleged discrepancy of four prior incident reports produced in the matter of *Smith v. Venetian, supra*, and provide them in redacted form to the extent they are responsive to the Plaintiff's NRCP 34 request, and to provide all reports deemed responsive to Plaintiff's NRCP 34 request no. 7 related to prior incident reports of the Venetian.

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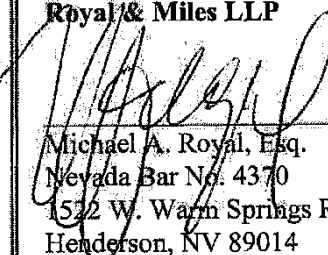
1 IT IS FURTHER RECOMMENDED that the motion is otherwise denied.

2 DATED this 2nd day of April, 2019.

3
4 
5 DISCOVERY COMMISSIONER


6 Submitted by:

7 **Royal & Miles LLP**

8 
9 Michael A. Royal, Esq.
10 Nevada Bar No. 4370
11 1522 W. Warm Springs Road
12 Henderson, NV 89014
13 Attorneys for Defendants
14 VENETIAN CASINO RESORT, LLC and
15 LAS VEGAS SANDS, LLC
16
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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
Attorney for Plaintiff

1 IT IS FURTHER RECOMMENDED that the motion is otherwise denied.

2 DATED this _____ day of _____, 2019.

3
4 DISCOVERY COMMISSIONER

5 Submitted by:

6 **Royal & Miles LLP**

7
8
9 Michael A. Royal, Esq.
10 Nevada Bar No. 4370
11 1522 W. Warm Springs Road
12 Henderson, NV 89014
13 *Attorneys for Defendants*
14 **VENETIAN CASINO RESORT, LLC and**
15 **LAS VEGAS SANDS, LLC**

Reviewed by:

THE GALLIHER LAW FIRM

16
17
18 Keith E. Galliher, Jr., Esq.
19 Nevada Bar No. 220
20 1850 E. Sahara Avenue, Suite 107
21 Las Vegas, NV 89014
22 *Attorney for Plaintiff*
23
24
25
26
27
28

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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
being served with objections.

10 **Objection time will expire on April 18 2019.**

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

12 _____ Mailed to Plaintiff/Defendant at the following address on the _____ day of
13 _____ 2019;

14
15 ☒ Electronically filed and served counsel on April 4, 2019, Pursuant to
16 N.E.F.C.R. Rule 9.
17

18 The Commissioner's Report is deemed received three (3) days after mailing or e-serving
19 to a party or the party's attorney, or three (3) days after the clerk of the court deposits a
20 copy of the Report in a folder of a party's lawyer in the Clerk's office. E.D.C.R. 2.34(f).

21
22 By: 
23 COMMISSIONER DESIGNEE
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EXHIBIT 6

A-18-772761-C Joyce Sekera, Plaintiff(s)
vs.
Venetian Casino Resort LLC, Defendant(s)

May 14, 2019 09:00 AM Objection to Discovery Commissioner's Report

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15B

COURT CLERK: Boyle, Shelley

RECORDER:

REPORTER: Silvaggio, Renee

PARTIES PRESENT:

Keith E. Galliher, Jr.

Attorney for Plaintiff

Michael A Royal

Attorney for Defendant

JOURNAL ENTRIES

Kathleen Galligher, Esq. present on behalf of Pltf.

Extensive colloquy and argument regarding Pltf's. request for production of disclosures regarding people slipping and falling on the marble flaws at the business premises, the redacted reports received, Pltf's. request for unredacted reports, Deft's. request Pltf. stipulate to a privacy order, and if the parties listed in the reports would be willing to cooperate with Pltf. COURT ORDERED, the Discovery Commissioner's FINDINGS REVISITED. COURT STATED FINDINGS. To the extent unredacted incident reports are to be provided, Pltf. should not be precluded from knowing who these people are and from getting all of this information. Redaction should only apply to social security numbers and personal identifying information only if anything is filed. COURT thinks Commissioner Truman made an error here, it is relevant discovery. Court does not see any legal basis upon which this should have been precluded.

COURT STRONGLY CAUTIONED, how this information is shared and who gets hold of it doesn't necessarily stop people from being upset as to how it is being shared. The Discovery Commissioner's FINDINGS REVERSED; unredacted incident reports are to be provided with no technically no limitation on how Pltf. utilizes them. COURT FURTHER ORDERED, the three Counter Motions DENIED on substantive grounds. COURT is not DENYING the Counter Motions on procedural grounds. Mr. Galliher to prepare the Order, provide a copy to opposing counsel for review as to form and content, and return it back to the Court within 10 days.

EXHIBIT 7

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Henderson NV 89014
Tel: (702) 471-6777 ♦ Fax: (702) 531-6777

RFP

Michael A. Royal, Esq.

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Gregory A. Miles, Esq.

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Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**RESPONSES TO PLAINTIFF'S THIRD REQUEST FOR PRODUCTION OF
DOCUMENTS AND MATERIALS TO DEFENDANT**

TO: Plaintiff JOYCE SEKERA; and

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

Pursuant to Rules 26 and 34 of the Nevada Rules of Civil Procedure, Defendant VENETIAN
CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel, ROYAL &
MILES LLP, responds to Plaintiff's first requests for production of documents and materials as
follows:

1 **REQUEST NO. 12:**

2 Any and all documents, reports, emails, correspondence, test results, including expert reports
3 generated by Plaintiffs and/or The Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas with
4 respect to the coefficient of friction, wet and dry, of the marble floors located on the ground floor and
5 Bouchon restaurant floor of The Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas from
6 three years before the fall, November 4, 2013, to the present.
7

8 **RESPONSE NO. 12:**

9 Defendants object to the extent this request lacks foundation and assumes facts not in evidence,
10 is overly broad, vague and ambiguous (*i.e.* "ground floor" would refer to the basement which has a
11 different floor surface, and "Bouchon restaurant floor" as Defendants did not own, manage, maintain
12 or control the premises of the Bouchon restaurant nor is there any evidence that Plaintiff ever in the
13 Bouchon restaurant at any time), is unduly burdensome and presupposes Defendants are in possession
14 of all information requested, further to the extent that it seeks information protected by attorney/client
15 privilege and/or attorney work product privilege, further to the extent it seeks information surrounding
16 expert consultants or seeks information related to the disclosure of experts prior to the time set forth
17 in the Joint Case Conference Report, and also to the extent it seeks information not reasonably
18 calculated to lead to the discovery of admissible evidence. Without waiving and subject to said
19 objection, Defendants respond as follows: As to any such reports obtained from November 3, 2013 to
20 November 4, 2016 on the main casino floor level where the subject incident occurred, Defendant has
21 no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1
22 and all supplements thereto. Discovery is continuing.
23
24

25 **REQUEST NO. 13:**

26 Any and all documents invoices, work orders or communications with respect to the purchase
27 and/or application of any coating placed on the marble floors located on the ground floor and Bouchon
28

1 restaurant floor of the Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas from three years
2 before the fall, November 4, 2013, to the present.

3 **RESPONSE NO. 13:**

4 Defendants object to this request as vague, ambiguous and overly broad as to "*any coating*
5 *placed on the marble floor*" (*i.e.* this conceivably would include water used to clean), "*ground floor*"
6 (as this refers to the basement area, which has an entirely different floor surface), and "*Bouchon*
7 *restaurant floor*" (Defendants did not own, manage, maintain or control the premises of the Bouchon
8 restaurant nor is there any evidence that Plaintiff ever in the Bouchon restaurant at any time), lacks
9 foundation and assumes facts not in evidence (*i.e.* that Plaintiff was ever in and around the Bouchon
10 restaurant at any time prior to the subject incident or that there was a foreign substance on the floor at
11 the time of Plaintiff's fall, which Defendants deny), to the extent it seeks information not reasonably
12 calculated to lead to the discovery of admissible evidence. Without waiving and subject to said
13 objection, Defendants respond as follows: As to the area where Plaintiff fell, from the time period of
14 November 4, 2013 to November 4, 2016 on the main casino floor level where the subject incident
15 occurred, please see Defendants' disclosures pursuant to NRCP 16.1, including but not limited to VEN
16 1078-VEN 1097. Discovery is continuing.

17 **REQUEST NO. 14:**

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

21 **RESPONSE NO. 14:**

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

1 possession of all information requested, to the extent that it seeks information protected by
2 attorney/client privilege and/or attorney work product privilege, to the extent it seeks information
3 surrounding expert consultants or seeks information related to the disclosure of experts prior to the
4 time set forth in the Joint Case Conference Report, and to the extent it seeks information not
5 reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject
6 to said objection, Defendants respond as follows: See documents previously identified by Defendants
7 as VEN 269 - 928, and all supplements thereto, which relate to the common areas of flooring on the
8 casino floor area where the subject incident occurred. Discovery is continuing.

10 DATED this 15 day of April, 2019.

11 **ROYAL & MILES LLP**

13 By: _____

14 Michael A. Royal, Esq.

15 Nevada Bar No. 4370

16 Gregory A. Miles, Esq.

17 Nevada Bar No. 4336

18 1522 W. Warm Springs Road

19 Henderson, NV 89014

20 Attorneys for Defendants

21 VENETIAN CASINO RESORT, LLC and

22 LAS VEGAS SANDS, LLC

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 15 day of April, 2019, and pursuant to NRCP 5(b), I
3 caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S THIRD**
4 **REQUEST FOR PRODUCTION OF DOCUMENTS AND MATERIALS TO DEFENDANT** to
5 be served as follows:
6

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

9 _____ to be served via facsimile; and/or

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

13 _____ to be hand delivered;

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

15 Keith E. Galliher, Jr., Esq.
16 THE GALLIHER LAW FIRM
17 1850 E. Sahara Avenue, Suite 107
18 Las Vegas, NV 89014
19 *Attorneys for Plaintiff*
20 Facsimile: 702-735-0204
21 E-Service: kgalliher@galliherlawfirm.com
22 dmooney@galliherlawfirm.com
23 gramos@galliherlawfirm.com
24 sray@galliherlawfirm.com
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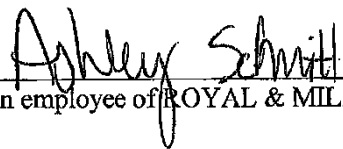
29 
30 An employee of ROYAL & MILES LLP

EXHIBIT 8

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

RFP

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Nevada Bar No. 4370

Gregory A. Miles, Esq.

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Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**RESPONSES TO PLAINTIFF'S SIXTH REQUEST FOR PRODUCTION OF
DOCUMENTS AND MATERIALS TO DEFENDANT**

TO: Plaintiff JOYCE SEKERA; and

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

Pursuant to Rules 26 and 34 of the Nevada Rules of Civil Procedure, Defendant VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel, ROYAL & MILES LLP, responds to Plaintiff's sixth requests for production of documents and materials as follows:

R:\Master Case Folder\383718\Discovery\3Produce (Plaintiff) 6th (Defendants).wpd

Case Number: A-18-772761-C

VEN 1582

1 **REQUEST NO. 23:**

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

5 **RESPONSE NO. 23:**

6 Defendants object to the extent this request lacks foundation and assumes facts not in evidence,
7 is overly broad, vague and ambiguous, is unduly burdensome and presupposes Defendants are in
8 possession of all information requested. Defendants further object to the extent that this request seeks
9 information equally accessible by Plaintiff and in the possession of her counsel (*i.e.* testing by experts
10 exchanged in the present litigation in accordance with NRCP 16.1), or that it is protected by
11 attorney/client privilege and/or attorney work product privilege (*i.e.* use of expert consultants as
12 contemplated by NRCP 26(b)(4)), further to the extent it seeks information surrounding expert
13 consultants or seeks information related to the disclosure of experts used in a consulting capacity
14 protected by NRCP 16.1(b), and further to the extent it seeks information not reasonably calculated
15 to lead to the discovery of admissible evidence, such as any testing performed following the subject
16 incident beyond what has been exchanged pursuant to NRCP 16.1. (Defendants contend that the
17 subject incident occurred on a dry marble floor, which is clearly established from surveillance footage
18 identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the kind of "*fishing expedition*"
19 contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189,
20 192 (1977), which it determined to be without reasonable justification. Without waiving and subject
21 to the above stated objection, Defendants respond as follows: *See* Defendants' Responses to Plaintiff's
22 Second Requests for Production of Documents and Materials to Defendant (12.07.18); *see also*
23 Defendants' NRCP 16.1 disclosure and all supplements thereto, including but not limited to documents
24 identified as follows: Tom Jennings April 23, 2018 Report (VEN 107 - 119); Joseph Cohen, Ph.D,
25
26
27
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1 August 8, 2018 (VEN 120 - 132); Tom Jennings October 23, 2018 Report (VEN 133 - 134); Tom
2 Jennings December 28, 2018 report (produced by Plaintiff pursuant to NRCP 16.1); Toby Hayes, Ph.D.
3 May 17, 2019 report (produced by Defendants pursuant to NRCP 16.1). Defendants reserve the right
4 to supplement this response if additional information becomes available. Discovery is continuing.

5 **REQUEST NO. 24:**

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

9 **RESPONSE NO. 24:**

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

23 ///

24 ///

1 **REQUEST NO. 25:**

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

6 **RESPONSE NO. 25:**

7
8 Defendants object to this request as vague and ambiguous (*i.e.* "*safety of the marble floors*"),
9 is overly broad in scope and time, unduly burdensome, seeks information protected by attorney/client
10 privilege and/or attorney work product privilege (*i.e.* information protected by NRCP 26(b)(4)), lacks
11 foundation, and seeks information which is not reasonably calculated to lead to the discovery of
12 admissible evidence, but is intended to vex, harass and annoy. (Defendants contend that the subject
13 incident occurred on a dry marble floor, which is clearly established from surveillance footage
14 identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the very kind of "*fishing expedition*"
15 contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189,
16 192 (1977), which it determined to be without reasonable justification. Without waiving and subject
17 to the above stated objection, Defendants respond as follows: Defendants have no documents
18 responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1, NRCP 34, and
19 all supplements thereto. *See also* Response to Request No. 23. Discovery is continuing.
20
21

22 **REQUEST NO. 26:**

23 Any and all correspondence, emails, memoranda, internal office correspondence, or other
24 documents directed to the Venetian from a Contractor, Subcontractor, Flooring Expert, or similar entity
25 which discusses or refers to the safety of marble floors located within the Venetian Hotel and Casino
26 from January 1, 2000 to date.
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1 **RESPONSE NO. 26:**

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

14 **REQUEST NO. 27:**

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

16 **RESPONSE NO 27:**

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

19 **REQUEST NO. 28**

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

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

9 **REQUEST NO. 29:**

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

12 **RESPONSE NO. 29:**

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

24 **REQUEST NO. 30:**

25 Any and all quotes and estimates and correspondence regarding quotes and estimates relating
26 to the modification of the marble floors to increase their slip resistance.
27
28

1 **RESPONSE NO. 30:**

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

10 DATED this 24 day of June, 2019.

11 **ROYAL & MILES LLP**

12
13 By: _____

14 Michael A. Royal, Esq.
15 Nevada Bar No. 4370
16 Gregory A. Miles, Esq.
17 Nevada Bar No. 4336
18 1522 W. Warm Springs Road
19 Henderson, NV 89014
20 Attorneys for Defendants
21 VENETIAN CASINO RESORT, LLC and
22 LAS VEGAS SANDS, LLC
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

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

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

9 _____ to be served via facsimile; and/or

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

12 _____ to be hand delivered;

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

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

17 Facsimile: 702-735-0204

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

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

EXHIBIT 9

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF CHRISTOPHER JOHNSON

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

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

Reported By: PAULINE C. MAY
CCR 286, RPR

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

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

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

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

EXHIBIT 10

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DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,
Plaintiff,
vs.

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

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

DEPOSITION OF CHRISTINA TONEMAH

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

On Friday, July 12, 2019
At 2:44 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 APPEARANCES:

2 For the Plaintiff:

KEITH E. GALLIHER, JR., ESQ.

- And -

KATHLEEN H. GALLAGHER, ESQ.

- And -

GEORGE J. KUNZ, ESQ.Galliher Law Firm
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Suite 107
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(702) 735-0049

8 For the Defendants:

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

15 * * * * *

18 I N D E X

20	WITNESS	PAGE
21	CHRISTINA TONEMAH	
21	Examination By Mr. Galliher	3
22	Examination By Mr. Royal	17
22	Further Examination By Mr. Galliher	24

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

6 **EXAMINATION**

7 **BY MR. GALLIHER:**

8 Q Would you state your name, please.

9 A Christina Tonemah.

10 Q And where do you work?

11 A I'm retired. I worked at the Venetian
12 Palazzo as a pit manager for 17 and a half years.

13 Q All right, you answered my next question.
14 So tell me what a pit manager does.

15 A My responsibilities in this particular area
16 is all the table games outside the baccarat pit. So I
17 cover, like, anywhere from -- when I first go in maybe
18 30 games and by 1:30, 2:00, I have probably 75 games
19 on the main floor that I coordinate. I supervised all
20 floor supervisors, dealers, pit clerks.

21 Q So did you supervise Gary Shulman?

22 A Yes, I did.

23 Q And how do you know him?

24 A I worked with him for 17 and a half years.

25 Q How would you describe him as an employee?

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1 A He was very good at what he does. He's
2 temperamental and pouty.

3 Q When you say "temperamental and pouty," tell
4 me.

5 A Well, he doesn't -- in my opinion, he's
6 not -- he didn't particularly like smoke very well,
7 manager suggestions that I would give him.

8 Q So did he have any type of open rebellion?

9 A No, not with me.

10 Q So it appears, at least, there were times
11 where he might have disagreed with your instructions.

12 A Correct.

13 Q But you supervised him for how long?

14 A For eight hours a day.

15 Q Over how many years?

16 A 17 years.

17 Q And during that time frame, did you issue
18 any disciplinary action against him?

19 A To the best of my ability to remember,
20 actual written down incidents, no. Verbal coaching,
21 yes.

22 Q Did you give verbal coaching to other
23 employees?

24 A Yes.

25 Q Was he worse or better?

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1 A No, no. I mean average.

2 Q All right. So he was basically an average
3 employee from a disciplinary standpoint?

4 A Correct.

5 Q But you indicated that apparently he was
6 skilled in terms of his position?

7 A Yes.

8 Q And could you tell me what you base that on,
9 because I don't know what he does.

10 A Well, he would supervise dealers and games
11 up to six, eight games at a time. And what we call
12 the novelty pit which is like Texas Hold 'Em,
13 Caribbean Stud, three-card poker, whatever other crazy
14 game war that they come up with, plus roulette, plus
15 blackjack, and he was a dice floorman also.

16 Q A "dice" what?

17 A "Floorman." Supervisor they call them
18 nowadays.

19 Q All right, so sounds like he supervised
20 numerous different games.

21 A Yes.

22 Q And at least it's your opinion that he did
23 that competently?

24 A Yes.

25 Q Did you have any other personal

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1 disagreements with Mr. Shulman, other than what we
2 have talked about, in terms of having to verbally
3 coach him?

4 A Not really. I don't talk politics or
5 religion at work.

6 Q Smart. All right. Now, the only thing we
7 know about you is you were named as a witness in this
8 case. Do you have any idea why?

9 A Probably because I was the manager of the
10 whole floor area, and floor supervisors would call me
11 if there was an incident anywhere on the floor in
12 their area that they dealt with.

13 Q And do you recall receiving a call from
14 Mr. Shulman on the date of this fall?

15 A This particular date and time, no, but it
16 was not unusual in a year to get four to six calls of
17 someone slipping, falling, drinks spilled, things like
18 that.

19 Q And when you talk about slipping, falling,
20 drinks spilled, are we talking about the marble floor?

21 A Or carpet. Wherever. Wherever it is, I
22 have to supervise and report that. That's why I carry
23 a cell phone. It's automatically at surveillance,
24 notify security, notify EMT and film the incident.

25 Q And is that when someone from the casino is

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1 the person who notices either the spill or the fall?

2 A If anybody reports it to a floorman, which
3 myself -- those are the steps I have to take.

4 Q So as I understand you are telling me, if
5 there's a fall, if there is a spill, it would be the
6 obligation of your underlings in the casino to notify
7 you of that event?

8 A Uh-huh.

9 Q Is that yes?

10 A Yes.

11 Q And then your obligation at that point in
12 time is to notify whom?

13 A I would notify surveillance.

14 Q And after you notify surveillance, would you
15 notify anyone else?

16 A No, they usually -- the steps that are in
17 place is, because I cover such a large area, I would
18 call surveillance, zero in on the area and I would
19 say, Call the EMT or security.

20 Those are the ground rules which I worked
21 under in the casino business for over 40 years.

22 Q So during -- you were at the Venetian, you
23 said, for 17 and a half years?

24 A Yes.

25 Q And during your 17 and a half years, can you

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1 give me your best estimate of how many times you made
2 that call to surveillance?

3 A I'd say probably four to six times a year,
4 maybe.

5 Q Is that your best estimate?

6 A That's my best estimate.

7 Q We have some video surveillance in this
8 case; do you understand that?

9 A Uh-huh.

10 Q Is that yes?

11 A Yes.

12 Q By the way, when I --

13 A I understand.

14 Q We're just making the record so don't -- I'm
15 not being rude. Let's go back to the video
16 surveillance.

17 I saw -- Mr. Royal showed it to me before
18 the deposition. I see you are on the video
19 surveillance for about four seconds.

20 A Correct.

21 Q And it looks like you had a phone in your
22 hand and you walk over to someone on the floor.

23 A Correct.

24 Q And do you remember whether you had a
25 conversation with that person or not?

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1 A I do not remember having a conversation.
2 All's I usually say is -- look at the situation, say,
3 "Don't move, stay right there, security is on the
4 way."

5 Q Is that what you probably would have done in
6 this case?

7 A Absolutely.

8 Q And then you are on the phone, so are you
9 phoning someone at the same time that you are over at
10 the scene of the fall?

11 A In this particular incident, as soon as it
12 was reported to me by Gary, I get on the phone. My
13 phone rings constantly because at this particular
14 time -- he was surprised I knew that it happened on a
15 Friday, and it had to be before 1:00 because I'm busy
16 opening games from 12:30 to 1:00 in an area that's
17 further away. That's why it took me longer to get
18 there.

19 Q Do you have an idea how long it took you to
20 get there after you received a phone call from
21 Mr. Shulman?

22 A Maybe a minute and a half. Maybe. I'm not
23 positive of that time. If I could recall exactly
24 where I was when I got that call, it would be get
25 better, but I only see myself very quickly on that.

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1 Q Do you know whether or not the woman that
2 was on the floor said anything?

3 A No.

4 Q You don't know or she didn't?

5 A I don't know if she said anything to me
6 because I know at this particular time, not only was I
7 opening games, assigning dealers and answering phone
8 calls -- and I don't stick around after I report it to
9 security and surveillance to get a name and everything
10 unless it's a bad accident, like if someone's
11 unconscious, passes out, heart attack. Then I'm more
12 attentive and on top of that.

13 Q And you mentioned reporting to security and
14 surveillance. Are those two separate calls?

15 A No, it's one call. Because when you are a
16 pit manager and you have that cell phone, when you
17 call surveillance, they know you need an area covered
18 and you need help sent to that area.

19 Q So would it be fair to state that your
20 initial call -- when you talk about surveillance, are
21 we talking about the surveillance within the security
22 department?

23 A The eye in the sky. It covers everything.

24 Q So when you're making that call, you are
25 making a call to the eye in the sky?

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- 1 A Correct.
- 2 Q When we talk about the term security and
3 surveillance, that would be one in the same; that
4 would be the eye in the sky?
- 5 A Correct.
- 6 Q So the call you made in this case would have
7 been to the eye in the sky?
- 8 A Correct.
- 9 Q So would you have made more than one call?
- 10 A Just the one. Had she been unconscious, I
11 would have made more.
- 12 Q If she would have been unconscious, who
13 would you have called?
- 14 A I would have called surveillance, they would
15 have called security. I would have gotten on the
16 phone with EMTs.
- 17 Q And I think we have earlier established
18 that, you recall during your tenure at the Venetian --
19 and, by the way, you worked strictly at the Venetian?
- 20 A I worked both Venetian and Palazzo.
- 21 Q So when we talk about the four to six calls
22 that you remember, is that when you were employed at
23 both places, the Venetian and Palazzo, or just the
24 Venetian?
- 25 A Just the Venetian.

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1 Q So divide it up for me. How much time did
2 you spend employed at the Palazzo and versus Venetian?

3 A Well, when you are assigned there, you are
4 working both casinos.

5 Sometimes I would be relief and relieve two
6 pit managers over here and two over at the Palazzo,
7 and I would be going back and forth between the
8 atrium, the waterfall sometimes, moving.

9 Q So it sounds like most of your time is spent
10 at the Venetian.

11 A The last two years I was there, yes.

12 Q Now, give me an idea of the hierarchy. You
13 supervise the table supervisors. You are a pit --

14 A Pit manager. At the time I was called pit
15 manager.

16 Q And who supervises you?

17 A Shift manager.

18 Q And who supervises the shift manager?

19 A Casino manager.

20 Q And when you talk about shift manager, is
21 that like one person per shift that's in charge?

22 A There's one person on the Venetian side and
23 one shift manager on the Palazzo side.

24 Q And how many of your capacity -- we used to
25 call them pit bosses.

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1 A That's what I was, pit boss.

2 Q So how many pit bosses?

3 A There were only two. They had one outside,
4 which was me, and one inside the baccarat room which
5 is someone else.

6 Q So there's one shift manager, two pit bosses
7 per shift?

8 A Correct.

9 Q And how many floor supervisors, table
10 supervisors?

11 A It could vary between -- on weekends we
12 usually -- now, this was an estimate only. Sometimes
13 up to 35.

14 Q And that would be strictly the Venetian?

15 A Correct.

16 Q Now, during your time at the Venetian, has
17 anyone ever told you or have you been made aware of
18 the fact that the marble floors at the Venetian are
19 dangerous when wet?

20 **MR. ROYAL:** Objection, form.

21 **BY MR. GALLIHER:**

22 Q You can answer.

23 A Oh. Yes.

24 Q And who is it that made you aware of this or
25 did you -- were you aware of it yourself?

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1 A I'm aware of it myself because of working in
2 the business for 40 years. I know the difference
3 between carpet areas and marble areas.

4 Q So would you agree with me that a marble
5 floor, when wet, is more dangerous than a carpeted
6 area when wet?

7 **MR. ROYAL:** Objection, form.

8 **THE WITNESS:** That's hard to say.

9 **BY MR. GALLIHER:**

10 Q Well, how about more slippery?

11 A It could be slippery because of your shoes
12 or -- heels are slipperier than tennis shoes, you
13 know, those apples-and-oranges type things.

14 Q I understand. But is it your understanding
15 that the marble floors at the Venetian were slippery
16 when wet?

17 A Can be.

18 Q And have you ever witnessed a fall yourself
19 on the marble floors at the Venetian?

20 A Yes.

21 Q On how many occasions?

22 A That I can -- probably three or four.

23 Q And when did those occur on the marble
24 areas?

25 A Either -- we call them the pathways. The

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1 pathways between the games, whichever direction you
2 are going, or in front of that circular area.

3 Q But the pathways are marble?

4 A Yes.

5 Q And then from what I understand, the
6 pathways separate carpeted areas because the casino
7 itself is carpeted and the poker room is carpeted.

8 A Well, the casino -- the casino floor
9 consists of carpet, pathway, carpet. All of that is
10 our casino floor. We don't distinguish, you know,
11 carpet you stay on, marble you don't. You know, it's
12 all my area.

13 Q How about where the tables are located? Are
14 they located on a carpeted area or are they also
15 located on marble?

16 A They are located on carpet.

17 Q And would that also be true of the poker
18 rooms?

19 A Yes.

20 Q And the baccarat room as well?

21 A Yes.

22 Q Are there other rooms where there are table
23 games located where marble floors are located?

24 A Just what you see when you walk in and the
25 baccarat area. But it -- quote, unquote, where the

1 table games sit, it's usually carpeted.

2 Q And do you know why that's the case?

3 A Yes. It's for cushion and comfort for
4 people who stand for six hours to eight hours a day.

5 Q Is there any -- are there any safety
6 concerns in terms of having carpet in those locations
7 versus marble?

8 A No.

9 Q So no one's ever made you aware or ever told
10 you that, Hey, we carpet the casino area -- I'm
11 talking about where the table games are located --
12 because we feel they're safer for the customers?

13 A No.

14 Q So the same for the baccarat room and poker
15 room?

16 A Uh-huh.

17 Q Is that yes?

18 A Yes.

19 Q Okay. So did you actually see the fall in
20 this case?

21 A No.

22 Q So the only thing you know about the fall is
23 the four seconds of video that you were shown?

24 A Correct.

25 Q And that will take you through what we

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1 talked about already?

2 A Correct.

3 Q Have you understood all my questions today?

4 A Yes.

5 Q Anything you want me to repeat or rephrase
6 for you?

7 A No.

8 Q Thank you.

9 **MR. ROYAL:** I'm going to ask you a few
10 questions. I'm going to show you the video and I'm
11 going to start it --

12

13 **EXAMINATION**

14 **BY MR. ROYAL:**

15 Q Okay. I'm going to start it -- I'm going to
16 start it at 12:39:03 and make a reference to VEN019.

17 At 12:39:04, you walk into the scene from
18 the -- into the camera I should say, at the top right.

19 A Yeah. I'm coming from Pit 8.

20 Q Okay. And is that you -- your right hand
21 has a phone up to your ear?

22 A Yes.

23 Q Okay. By that time, you are on the phone --
24 or strike that. Let me just show you the rest of
25 this.

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1 Okay. I'm going to stop it at 12:39:08.

2 What are you doing at that point?

3 A I'm pointing at her, asking her to stay
4 where she is, that I have alerted surveillance --
5 surveillance, security. To me they're the same. So
6 that's -- you know, and I believe I asked her, "Are
7 you okay?" And she nodded.

8 Q Okay.

9 A This person I don't know, other than I
10 believe he's either head of housekeeping or -- they
11 dress them different. That's a uniform, I can tell
12 you that.

13 Q Okay. You are talking about the large
14 man --

15 A Yeah.

16 Q -- standing between -- he's standing, kind
17 of blocking the woman on the ground?

18 A Correct.

19 Q Okay. Then you walk out of the scene at
20 12:39:12.

21 A Correct.

22 Q All right, and we don't see you again. At
23 this point, do you just go back to your shift?

24 A I go back over, yes. I'm always on the
25 clock, always. That's even considered on the clock.

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1 From that, after I asked her if she is okay, told her
2 not to move, surveillance arrives and stuff, I go back
3 over to my other area, which is called Pit 1, because
4 I'm opening games at quarter to 1:00.

5 Q Okay, so we just had you leave the area.
6 Now I'm back at 12:39:28. Do you recognize Gary
7 Shulman?

8 A Yes.

9 Q Okay. So tell me what is -- Gary Shulman,
10 when the incident occurred, I'll represent to you that
11 he was one of the first people to come and talk to the
12 woman on the floor. Okay?

13 A Correct.

14 Q So what is the responsibility -- or what was
15 the responsibility at this particular time of a table
16 games supervisor like Gary Shulman when he comes upon
17 a scene like this?

18 A He would call me.

19 Q And then what?

20 A And then he's free to move on because I know
21 his name. I recognize him in case I need his name for
22 anything, or if the security or surveillance calls me,
23 I can tell them which floorman was there.

24 Q Okay. Does he -- if there's no one on
25 the -- strike that.

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1 If there's no one around the person who is
2 on the floor in this case, I mean is there -- what
3 responsibility would he have, if any, any table
4 supervisor, to stay at the scene until you arrive?

5 A They really are not required to stay at the
6 scene unless they are -- to my knowledge, unless they
7 are severely hurt, knocked out, whatever.

8 Q Okay. And in this particular case, you
9 don't remember that being the case --

10 A No --

11 Q -- is that correct?

12 A -- no.

13 Q Anything about what you observed in your
14 interaction with the woman in the tape that she was
15 unconscious?

16 A No.

17 Q Okay. Are you aware of when -- you don't
18 remember the call you got from Gary Shulman?

19 A No, per se I do not, other than obviously
20 you see me walking to the scene. So he had to make me
21 aware that someone had fallen.

22 Q Okay. If he had come upon the scene and
23 just ignored it and didn't call you and you found out
24 about it later, would there be --

25 A I would ask him why.

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1 Q Why would you ask him that?

2 A Because our -- when you work in the casino,
3 you don't just watch the games. You observe
4 everything around your area.

5 From what I see there, I'm -- I can assume
6 Gary is either going on break because he started at
7 five until 12:00. He's probably going on his break
8 since it's after 12:30, 12:25. So I don't know if
9 that's his break time, but it looks like he walks onto
10 this.

11 Because where that is, it's a round circular
12 area with pillars here and here and over here and
13 here, and the restrooms are here. And this pathway
14 that you see him coming there is by the roulette pit
15 and pit -- they keep moving the pits. So that would
16 have been Pit 5, I believe. Yeah, I think.

17 Q So if he came upon the scene and he doesn't
18 make a phone call, just goes to the bathroom and lets
19 someone else handle it, is that --

20 A Well, they have been told that -- the
21 Venetian's very careful to tell floormen to observe
22 and report: See something, say something.

23 It's been that since the day the Venetian
24 opened its doors. It's you are trained to -- there
25 used to be things on the wall that states that: See

1 something, say something. So if you see somebody,
2 call. You need to report it.

3 Q So if he didn't on this particular occasion
4 report it, is that something that would initiate some
5 kind of coaching from you?

6 A If it was reported to me that he didn't do
7 that, probably. Either I would have to or they would
8 have called a shift manager.

9 Q Are you aware that Gary Shulman was
10 terminated?

11 A I have heard that since I left there. Like
12 I said, I left in January -- January 23, 2017, when I
13 left.

14 Q Do you know anything related to the --

15 A No, I don't.

16 Q -- circumstances of his termination?

17 A No, I don't. I have not spoken to him since
18 I left.

19 Q And just to go back. I want to make sure
20 I'm clear on those four or six falls a year that you
21 recall on floors.

22 Are those solely on marble floors?

23 A No. One was on carpet where she slipped by
24 a slot machine. Intoxication. But she wasn't knocked
25 unconscious or anything, she just misstepped, slipped,

1 got up. I don't know what she did because I was never
2 questioned about it. My thing is you go over, you
3 ask, "Are you okay? Please don't move. Security is
4 on the way."

5 Q All right. So when you said four to six
6 falls a year --

7 A Within a 12-month period.

8 Q But are those falls any kind of falls? You
9 said intoxication, is why I ask.

10 A It's very -- some people will drop their
11 drink and just keep on walking and not worry about it.
12 The next person comes along and steps in it. Some
13 people catch themselves on a chair, some people fall.

14 But, you know, very few do -- in a year's
15 period did I really deal with. I cleaned up a lot of
16 spills as in seeing it dropped and then pulling chairs
17 to cover it or putting down towels and immediately
18 getting on my little cell phone and calling PAD.
19 That's our process.

20 Q The reason I ask is these four to six falls
21 a year, you said one was on carpet. I'm just asking
22 about -- this is an estimate, four to six falls a year
23 on floors. I'm trying to make sure I understand what
24 floors are we talking about.

25 A I've only dealt with the one in the slot

1 area one time in 17 years. The others are in the
2 pathways which are the marble areas.

3 **MR. ROYAL:** Okay. That's all I have.
4

5 **FURTHER EXAMINATION**

6 **BY MR. GALLIHER:**

7 Q I have a few more. The questions about what
8 would happen if Gary Shulman didn't call you, do you
9 remember those questions?

10 A Yes, uh-huh.

11 Q But in this case, Gary Shulman did call you.

12 A Yeah, because you see me coming into the
13 area. Therefore, he had to have called me. I'm
14 assuming because I --

15 You have to understand that I walk the area
16 a lot because this is the beginning of my shift. I'm
17 opening games and assigning. I'm running for at least
18 the first hour and a half like a chicken with my head
19 cut off, trying to make sure all the floormen are in
20 their spots. I'm covering all that.

21 When that first break comes, that first
22 break they get -- and they have changed their breaks,
23 so I don't know if it was quarter to or quarter after.
24 You know, those things have changed.

25 From what I saw, I'm assuming that Gary's

1 walking down the pathway because he's going on break.
2 Which, either he's going to the bathroom, then on his
3 break and going to the food court. Because the
4 floormen in their suits can have lunch in the food
5 court area.

6 I don't know what Gary was doing, but, yes,
7 Gary must have called me. I'm assuming he did.
8 That's the only way I probably knew about it.

9 Q Okay. During the time that you were
10 employed at the Venetian in the casino, was there a
11 time where the entirety of the casino was carpeted?

12 A Wow. I believe when we first opened, the
13 first five years, everything was carpeted.

14 Q And was there a time when --

15 A Everything but the grand hallway.

16 Q I'm talking specifically about the casino.
17 We talked about the marble walkway.

18 A Correct.

19 Q Do you remember when the marble walkways
20 were installed?

21 A During their refurbishing probably after we
22 had been open -- probably the year after or the year
23 of the Palazzo opening, I would assume.

24 Q Do you remember what year that would be?

25 A No.

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1 Come on, give me a break. I'm 68 years old.

2 Q That's okay, I understand. But what I'm
3 getting at, basically, there was a time at least where
4 the carpeted portion of the casino, which is now the
5 marble walkway portion of the casino, was replaced.
6 In other words, the carpet --

7 A To the best of my recollection; yes. Yes.

8 Q And you mentioned in your testimony that you
9 would take it on your own volition to secure an area
10 where there was a spill that you saw.

11 A Correct.

12 Q And how many times did that happen? Your
13 best estimate.

14 A Probably on holiday weekends three, four
15 times. During the week, not that often.

16 Q So three or four times you would spot the
17 spill yourself --

18 A Correct.

19 Q During the weekends, you would spot it and
20 then you would secure it?

21 A Correct.

22 Q And tell me how you do that.

23 A If it's in the middle of the pathway, I
24 would put chairs around it and put paper towels or
25 towels down to soak it up.

1 Q Did you put up cones or anything like that?

2 A I didn't have access to cones. That's why I
3 used table game chairs.

4 Q So you would basically surround the spill
5 area with the chairs from the table games?

6 A Correct, or stand there and have people
7 around me.

8 Q And that would happen, as your best
9 estimate, three or four times on holiday weekends and,
10 rather, not too often during the week?

11 A Correct.

12 Q That be correct?

13 A Correct.

14 Q As a pit boss, did you -- were you required
15 to go to the scene of a fall if there was no injury
16 claimed?

17 A Well, every -- I mean if I got a call on one
18 from a floorman, of course I had to go.

19 Q Did the floormen, were they instructed to
20 call you if there was any fall or if there was an
21 injury fall?

22 A If there was an injury fall or -- or, well,
23 a fall, you know.

24 Q All right. So do you know?

25 A I'm trying to think. They always call me

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1 with everything. It was like being a mom of 38 to 40
2 kids plus 150 dealers, so...

3 Q So there wasn't really any protocol. It
4 would be up to the table supervisor that he was to
5 call you regarding the call?

6 A Most were very diligent about doing their
7 jobs, you know. We are encouraged to watch out for
8 our guests.

9 Q You are talking about the people who were
10 diligent doing their job. Gary Shulman would have
11 been diligent because he called you?

12 A Yes.

13 Q Thank you.

14 **MR. ROYAL:** Nothing further.

15 **MR. GALLIHER:** All right. Chris, thank you.

16 (The deposition concluded at 3:11 p.m.)
17
18
19
20
21
22
23
24
25

REPORTER'S DECLARATION

STATE OF NEVADA)
)
COUNTY OF CLARK)

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

That I reported the taking of the deposition of the witness, **CHRISTINA TONEMAH**, commencing on Friday, July 12, 2019 at the hour of 2:44 p.m.

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

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

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

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

Pauline C. May, CCR 286, RPR

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Las Vegas, NV 89146 (702) 419-9676*

EXHIBIT 11

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

4 DATED this 2 day of May, 2019.

5
6 **ROYAL & MILES LLP**

7
8 By 

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

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

13 STATE OF NEVADA)
14) ss.
15 COUNTY OF CLARK)

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

17 1. I am an attorney duly licensed to practice law in the State of Nevada and I am counsel
18 for Venetian Casino Resort, LLC, and Las Vegas Sands, LLC, in connection with the above-captioned
19 matter. I have personal knowledge of the following facts and if called upon could competently testify
20 to such facts.

21
22 2. This action arises out of an alleged incident involving a floor located within a common
23 area of the Venetian casino on November 4, 2016, when Plaintiff slipped and fell on a dry marble floor.

24 3. The incident report does not provide evidence that there was anything on the floor
25 causing Plaintiff to fall other than the following: "*She [Plaintiff] stated she was walking through the*
26 *area when she slipped in what she believed was water on the floor.*" (See Exhibit A, *Venetian Security*
27 *Narrative Report* (IR 1611V-0680), November 4, 2016, VEN 008-09.)
28

1 25. Mr. Larson also estimated in deposition that of the prior slip and falls to which he
2 responded in his nine (9) years as a Venetian security EMT, he could only think of perhaps "*a handful*
3 *of those*" which falls he said were "*usually related to footwear or somebody not being cautious about*
4 *where they are stepping.*" (See *id.* at 81, ln 19-25; 82, ln 1-9.) Mr. Larson that he took pictures of
5 Plaintiff's shoes to demonstrate their worn nature. (See *id.* at 70, ln 22-25; 71, ln 1-7; see also Exhibit
6 I, *Photos of Plaintiff's Shoes* (VEN 037-038).)

7
8 26. Of the sixty-four (64) prior incident reports provided to Plaintiff in this matter by
9 Venetian, none involve a guest slipping on a dry floor, such as the case here.

10 27. In addition to the sixty-four (64) prior incident reports provided to Plaintiff, she now
11 claims on pages 4-5 of the pending Motion for Leave to Amend the Complaint, that Venetian did not
12 provide reports of certain prior incidents which went into litigation. As for each, I offer the following
13 by way of response:
14

15 a. ***Ceja v. Venetian Casino Resort, LLC*** (A-16-737866). I represented Venetian
16 in this action. It was a slip and fall occurring in the Grand Canal Shops, which is not property owned
17 by Defendants. It, therefore, has no relevance to this matter.

18 b. ***Lim v. Venetian Casino Resort, LLC*** (A-15-728316). I am advised that there
19 is no corresponding security report related to this matter, that Venetian was unaware of the claim until
20 the Complaint was filed, and that Venetian was unable to ever confirm the incident location and facts
21 surrounding the occurrence. Defendants cannot state even today when, where and how this alleged
22 incident occurred.
23

24 c. ***Nguyen v. Venetian Casino Resort, LLC*** (A-17-749115-C). This incident
25 occurred at the upper mall level valet area and involved a guest who fainted after presenting a ticket
26 to valet. There was no evidence of a slip of any kind causing the fall. This incident is clearly not
27 remotely similar to the subject incident location or description.
28

1 d. *Rucker v. Venetian Casino Resort, LLC* (A-15-729566-C). This incident
2 involves a slip and fall on liquid in the main Venetian hotel lobby area. This incident should have been
3 included by Venetian in its response to the request for prior incident reports. Failure to include it was
4 inadvertent. I did not represent Venetian in this matter and was unaware of it. Defendants will
5 supplement NRCP 34 responses to provide this incident report.
6

7 e. *Rowan v. Venetian Casino Resort, LLC* (A-17-751293-C). This incident
8 occurred in the breezeway area of the Venetian after unknown guests jumped into a water fountain then
9 out, spilling large amounts of water onto the floor, leading to guest incident within the following two
10 minutes. This incident should have been included by Venetian in its response to the request for prior
11 incident reports. Failure to include it was inadvertent. I did not represent Venetian in this matter and
12 was unaware of it. Defendants will supplement NRCP 34 responses to provide this incident report.
13

14 28. Venetian has not withheld any of the above matters in some kind of calculated manner
15 to prevent her from being able to establish up to sixty-six (66) prior incident reports.

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

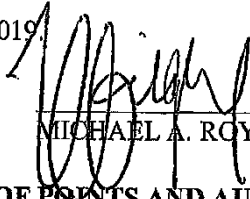
18

EXHIBIT	TITLE
A	Venetian Security Narrative Report (IR 1611 V-0680) (10.04.16) (VEN 008-09)
B	Transcript of Joyce Sekera Deposition (03.14.19) pp. 19-21, 75-79, 109
C	Surveillance Footage of Subject Incident (VEN 019)
D	Marked Venetian security scene photo (VEN 043) for demonstrative purposes
E	Correspondence from Michael Royal to Keith Galliher, Esq., dated 04.19.19
F	Correspondence from Keith Galliher, Esq., to Michael Royal, Esq., dated 04.23.19
G	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated 03.25.19
H	Transcript of Joseph Larson Deposition (10.11.18), pp. 48-55, 69-83

27
28

EXHIBIT	TITLE
I	Photos of Plaintiff's Shoes (VEN 037-038)

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

The cause of Plaintiff's fall is in dispute, as Venetian denies that there was any foreign substance on the floor at the time the incident occurred. This is very clear from surveillance footage of the incident and related testimony by responders. (See *id.*; see also *Declaration of Michael A. Royal, Esq.* paragraphs 2-12.) Regardless, Venetian produced sixty-four (64) prior incident reports from November 4, 2013 through November 4, 2016 related to incidents occurring in the common area of the Venetian casino level area where the subject incident occurred.

EXHIBIT 12

Steven D. Grierson

OPPS

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

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Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

Before the Discovery Commissioner

Hearing Date: August 2, 2019

Hearing Time: 9:00 am

**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**

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

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

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

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

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

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

7 IV.

8 **CONCLUSION**

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

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

17 DATED this 12 day of July, 2019.

18 **ROYAL & MILES LLP**

19
20 By 

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

EXHIBIT 13

Steven D. Grierson

1 MSNC
2 Peter Goldstein, Esq. (SBN 6992)
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6 Email: peter@petergoldsteinlaw.com
7 Tel: 702.474.6400
8 Fax: 888.400.8799
9 Attorney for Plaintiff
10 CAROL SMITH

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 CAROL SMITH, an individual,

14 Plaintiff,

15 vs.

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

18 Defendants.

Case No.: A-17-753362-C

Dept. No.: X

Discovery Commissioner

Date of Hearing:

Time of Hearing:

19 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR TERMINATING SANCTIONS.**
20 **MONETARY SANCTIONS FOR WILLFUL SUPPRESSION OF EVIDENCE PURSUANT TO**
21 **NRCP RULE 37**

22 **NOTICE OF MOTION**

23 TO: ALL PARTIES and their ATTORNEYS:

24 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Plaintiff, CAROL SMITH,
25 will bring the foregoing MOTION FOR TERMINATING SANCTIONS FOR WILLFUL
26 SUPPRESSION OF EVIDENCE, TO STRIKE DEFENDANT'S ANSWER AND FOR MONETARY
27 SANCTIONS FOR EXPERT FEES AND ATTORNEY FEES PURSUANT TO NRCP 37 on for
28 decision on the 20 day of March, 2019, at 9:00 o'clock a.m. or soon thereafter, in _____
of the above-entitled Court, as counsel may be heard.

1 DATED: _____

LAW OFFICES OF PETER GOLDSTEIN

2 BY: _____

3 PETER GOLDSTEIN, ESQ.
4 ATTORNEY FOR PLAINTIFF

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6
7 **I. Background – Statement of Facts**

8 This is a personal injury case arising from an incident at the Venetian Hotel Resort Casino in Las
9 Vegas on July 7, 2016. There was a large spill of water on the marble floor in Lobby 1 that Defendant
10 failed to timely discover and clean up, causing Plaintiff to slip and fall. Plaintiff suffered injuries
11 requiring four knee surgeries and diminution to her quality of life, including the inability to return to her
12 job as an instructional assistant for Irvine Unified School District, necessitating an early retirement.
13 Plaintiff alleges that the marble flooring is inherently unreasonable and dangerous because it is
14 extremely slippery when wet. Defendant's own expert testing of the flooring wet found a mean average
15 of 0.15 as the friction coefficient. Plaintiff's expert testing of the floor found it was significantly below
16 the 0.5 standard for safe walking surfaces. Although Defendants attempt to couch this case as one of
17 notice and focused on the 6 minute gap between the spill and the fall, Plaintiff's theory of liability
18 encompasses not only the fact that the floor is unsafe because when it mixes with water it becomes
19 extremely slippery, but also proffers the mode of operation theory of liability, essentially alleging that it
20 is foreseeable that the marble floor will become wet that water is extremely difficult to decipher and that
21 Defendants have chosen not to use any treatment to increase the friction coefficient of the marble floor.
22 In an effort to prove Plaintiff's case Plaintiff requested prior incident reports which Defendant has not
23 produced resulting in extreme prejudice to Plaintiff, and Plaintiff recently discovered Defendant
24 committed fraud on Plaintiff and this court.

25 **II. Discovery Commissioner's Orders**

26 This case concerns a marble floor that when wet, causes serious injuries to customers and patrons
27 due to frequent slip and fall events. Plaintiff alleges, among other things, that the marble floor itself,
28

1 when wet, constitutes an unreasonably dangerous condition. That the Venetian knows this and is
2 negligent in maintaining the floor (as products are available to make the floor more slip resistant when
3 wet) and is negligent in the training of Casino employees to mitigate the substantial risk that exists to
4 patrons when liquid is spilled on the marble flooring. The videos and the prior incidents go to notice
5 and Defendants have refused to stipulate to the admission of the prior incident reports, or even to discuss
6 the subject of admissibility nor has it produced the videos pertaining to the prior incidents. Plaintiff filed
7 two previous motions to compel prior incident reports and the videos that pertain to those reports. In the
8 Discovery Commissioner Report and Recommendation filed 12/27/2018, (see Exhibit 2) the Discovery
9 Commissioner made the following findings:

11 "there is a difference between a permanent condition and a transitory condition. If it is transitory, the
12 issue is whether or not the employees had reasonable notice of water on the floor to clean it up, so other
13 slip and falls are not relevant to the notice in that case. Here, Plaintiff is making the argument that the
14 Venetian's marble floor, in and of itself is not a problem, but turns into a fall hazard every time water
15 goes on the flooring, and that it is foreseeable people will bring in water bottles or drinks on the casino
16 floor which will end up on the tile, so the Discovery Commissioner finds the video is discoverable, with
17 certain protections."

18 On July 2, 2018, the Discovery Commissioner ordered Defendant to produce:

19 (i) Incident reports from five years prior to the incident (2011 – 2016) of slip and falls on the
20 marble floors located in Lobby 1, and

21 (ii) Incident reports from three years prior to the incident (2013 – 2016) of slip and falls on
22 marble floors anywhere on the property.

23 See EXHIBIT 1 (July Discovery Commissioner's Order)

24 On November 29, 2018, the Discovery Commission ordered Defendant to produce video
25 footage. See EXHIBIT 2 (November Discovery Commissioner's R&R).

26 Defendant has repeatedly acted in bad faith and engaged in misleading and fraudulent discovery
27 tactics. Plaintiff has had to file two separate motions to compel, on March 28, 2018, and September 27,
28 2018, respectively. See Docket.

1 **III. Willful Failure to Produce Evidence and Cooperate**

2 Defendant has failed to comply with any of the above orders. Defendant produced prior reports
3 of slip and falls on the marble floor in lobby one from 2014 to 2016, and zero reports from 2011 to
4 2014.

5 Defendant produced 25 incident reports to Plaintiff, ranging from 7/10/2014 – 5/25/2016, of slip
6 and falls on marble floors in both the lobby and other lobbies with marble floors. See EXHIBIT 3 (excel
7 spreadsheet of incident reports produced in Smith Case). Plaintiff recently became aware that The
8 incident reports produced are incomplete and deficient and Defendant failed to produce 35
9 reports from the same time period that they did produce in a different case, all those reports also
10 deal with slip and falls on wet marble floors. It is shocking that Defendants violated court orders and
11 selectively produced what they deemed to be discoverable to the Plaintiff. Moreover Defendant has
12 failed to produce any video footage that comply with the Discovery Commissioner's report and
13 recommendation, even though the District Court affirmed that recommendation on January 22, 2019.
14 Goldstein Decl at 3, 4. Furthermore, Defendant has failed to supplement its disclosures and produce
15 additional reports knowing full well that the production to the Plaintiff in this case was grossly deficient.
16 One can only discern that Defendant intended to mislead Plaintiff and the Court by producing less than
17 half of the slip and fall incidents relevant to the discovery requests. Plaintiff requests that Defendants be
18 punished for this egregious conduct as enumerated below.

19
20 **IV. Discovery of Additional Incident Reports, Intentionally Omitted and Willfully**
21 **Suppressed by Defendant**

22 Keith Galliher, Esq. represents the Plaintiff in the pending case *Joyce Sekera v. Venetian Casino*
23 *Resort*, case no. A-18-772761-C, another slip and fall case against the same Defendant (filed subsequent
24 to *Smith v Venetian*). Mr. Galliher and Mr. Goldstein discussed their respective cases and what the
25 Venetian produced with regard to prior slip and fall incident reports on February 7, 2019. Mr. Goldstein
26 learned that Venetian produced twice as many prior incident reports to Mr. Galliher in *Sekera* than what
27 was produced in *Smith*. Mr. Galliher produced those prior reports to Mr. Goldstein's office on February
28 7, 2019. They contain 660 pages of PDF documents of prior slip and falls on wet marble floors.

1 Moreover, Mr. Gallagher took the deposition of a former EMT/security officer whose testimony
2 suggested that there may have been as many as 300 to 400 falls on marble floors at the Venetian within
3 the last eight years. Goldstein Decl. at 5, 6, 7, 8.

4 After comparing and compiling the prior incident reports from both cases it was clear that
5 Venetian produced 35 additional incident reports to Keith Gallaher in *Joyce Sekera v. Venetian* of slip
6 and falls on marble floors in both Lobby 1 and other lobbies with marble flooring on the property from
7 2013-2016 that were produced by the Venetian yet were not produced in this case. See EXHIBIT 4 (list
8 of incident reports produced in *Sekera* case containing 61 prior reports in a spreadsheet with a column
9 indicating which incidents were not produced in Smith). More than half of the Sekera reports were
10 intentionally omitted and not produced in the Smith case.

11
12 **V. Plaintiff Has Been Harmed and Prejudiced by Defendant's Deceit**

13 This case has been ongoing since March 2017 and discovery has been conducted with
14 incomplete and misleading information. Discovery closes on February 14, 2019. Depositions of expert
15 witnesses have been conducted based upon false and incomplete information. All previous discovery has
16 been severely tainted and compromised as result of Defendants deceitful discovery tactics.

17 Plaintiff has relied on the incomplete and misleading reports produced by Defendant, and has
18 been severely prejudiced due to Defendant's willful and intentional suppression of evidence. If
19 Defendant's Answer is not stricken as a sanction for abusive litigation tactics, Plaintiff must re-conduct
20 its expert witness depositions and further discovery must be performed in light of this new information.
21 This is an extreme burden to Plaintiff in both time and expense, resulting in severe prejudice. Should
22 this motion be granted Plaintiff will submit a memorandum of fees and costs for the experts' retention
23 fees, expert depositions and attorney's fees incurred by conducting discovery based on misleading and
24 incomplete prior reports. Strikingly, during the depositions of Plaintiff's experts, one of defense
25 counsel's main lines of examination consisted of asking whether falls once or twice per month, rather
26 than nine or more per month constitute a danger knowing that his questions were based on false and
27 fraudulent discovery.

1 **VI. Plaintiff Requests Terminating Sanctions**

2 Defendant had these additional incident reports in its possession yet failed to produce them in
3 Discovery. Defendant has also completely failed to make any attempts to provide the ordered video
4 footage, to review and approve the proposed order after it objected to the discovery Commissioner's
5 report and recommendation or to engage in a good faith discussion of how to admit the prior falls into
6 evidence since the names of the victims of the prior falls were redacted. We can infer the bad intent in
7 this case. Defendant clearly found that it was better to be deceitful and attempt to hide evidence that
8 would harm their case than comply with discovery orders or to produce required documents in
9 discovery. It is impossible to know whether or not the *Sekera* case contains all the prior reports. At this
10 point, nothing the Defendant produced in this case can be relied upon as true and correct. Defendant's
11 deceit should not go unpunished. Even Defendants rationale and argument for redacting the names of
12 the victims of the prior falls is specious. Plaintiff believes that Defendant never obtained or attempted
13 to obtain medical records pursuant to the HIPAA requests that it had prior fall victims of the
14 dangerous slippery floor sign in order to shield providing the names of the victims in discovery. This
15 is another example of the subterfuge that Defendant has engaged in to hide its clear liability and justify
16 the following findings against Defendant:

- 17 (i) a willful suppression of evidence occurred; and
18 (ii) strike Defendant's Answer and affirmative defenses on liability and allow the case to
19 proceed to trial on damages only;
20 (iii) In absence of striking Defendant's Answer, allow for the additional incident reports
21 produced in the *Sekera* case to be admitted into evidence in this case and require Defendant to
22 produce videos associated with those omitted incident reports.
23 (iv) award costs for expert witness fees, both past and prospective;
24 (v) issue monetary sanctions for attorney fees against Defendant for its willful violation of
25 multiple Discovery Orders and violations of relevant discovery rules.

26 **VII. Willful Violation of Discovery Order**

27 NRCP 37 provides for discovery sanctions for a party's willful violation of a discovery order
28 and it is within the district court's "inherent equitable powers" to dismiss a defense for abusive
litigation practices. *Young v. Johnny Ribairo Bldg. Inc.*, 109 Nev. 88, 92, 787 P.2d 777, 779 (1990)

1 (quotation omitted).

2 It is undisputed that Defendant has willfully violated multiple discovery orders. Defendant
3 failed to produce video footage and has attempted to mislead this Court in its selective production of
4 incident reports and failed in its duty to supplement its disclosures in discovery.

5 **A. Legal Standard.**

6 NRCP 37(c)(1) sets forth the appropriate sanctions for parties who fail to disclose and/or to
7 supplement disclosures of information required by NCRP 16.1 and 26(e)(1) ad (2). NRCP 37(c)(1)
8 provides in pertinent part:

9 **(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.**

10 (1) A party without substantial justification fails to disclose information required by
11 Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required by
12 Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a
13 trial, at a hearing, or on a motion any witness or information not so disclosed. In
14 addition to or in lieu of this sanction, the court, on motion or after affording an
15 opportunity to be heard, may impose other appropriate sanctions. In addition to
16 requiring payment of reasonable expenses, including attorney's fees, caused by the
17 failure, these sanctions may include any of the actions authorized under Rule
18 37(b)(2)(A), (B), and (C) and may include information the jury of the failure to make
19 the disclose.

20 In addition to informing the jury of the failure to make a disclosure, pursuant to NRCP 37(c)(1), the
21 following sanctions are authorized under NRCP 37(b)(2):

22 (A) An order that the matters regarding which the order was made or any other
23 designated facts shall be taken to be established for the purposes of the action in
24 accordance with the claim or the party obtaining the order;

25 (B) *An order refusing to allow the disobedient party to support or oppose designated
26 claims or defenses*, or prohibiting that party from introducing designated matters in
27 evidence;

28 (C) An order striking out pleadings or parts thereof, or staying further proceedings until
the order is obeyed, or dismissing the action or proceeding or any part thereof, or
rendering a judgement by default against the disobedient party;

NRCP 37(b)(2)(A), (B), and (C) (emphasis added).

Discovery sanctions are within the power of the district court, and the Supreme Court will not
reverse particular sanctions imposed absent a showing of abuse of discretion. *GNLV Corp v. Service*

1 *Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995). While Nevada case law specific to
2 NRC 37(c)(1) is limited, the Nevada Supreme Court has a long-standing history relying on case law
3 interpreting its Federal counterpart, when interpreting the Nevada Rules of Civil Procedure. *See e.g.*
4 *Dougan v. Gustavson*, 108 Nev. 517, 835 P.2d 795 (1992); *Bowyer v. Taack*, 107 Nev. 625, 817 P.2d
5 1176 (1991). Federal courts have consistently held that Rule 37(c)(1) gave "teeth" to the disclosure
6 requirements mandated by the Rules of Civil Procedure. *Yeti by Molly Ltd. V. Deckers Outdoors*
7 *Corp.*, 259 F.3d 1101, 1106 (9th Cir.2011). The rule was "explicitly designed to punish negligent or
8 elusive behavior during discovery and to prevent any party from gaining an advantage as a result of
9 discovery antics." *Sanchez v. Stryker Corp.*, 2012 WL 1570569, at *2 (C.D. Cal. May 2, 2012) quoting
10 (*Yeti by Molly Ltd. V. Deckers Outdoor Corp.*, 259 F.3d at 1106).

11
12 Further, the Ninth Circuit has held that the burden is on the party who failed to comply with its
13 discovery obligations to demonstrate that it meets one of the two exceptions to sanctions. *Id.* At 1107
14 ("Implicit in Rule 37(c)(1) is that the burden is on the party facing sanctions to prove harmlessness.").
15 Indeed, the burden is on the proponent of the evidence to demonstrate that the failure to disclose was
16 either substantially justified or harmless. *Id.* Moreover, according to the Ninth Circuit, a district court
17 need not find willfulness or bad faith to impose sanctions pursuant to Rule 37(c)(1). *Hoffman v. Contr.*
18 *Protective Servs., Inc.*, 541 F.3d 1175, 1179 (9th Cir. 2008).

21 **B. Willful Suppression of Evidence**

22 Alternatively, Plaintiff is requesting that a rebuttable presumption be granted against Defendant
23 for willfully and intentionally omitting the additional incident reports as well as the surveillance video.
24 Pursuant to NRS 47.250, it shall be a disputable presumption that "evidence willfully suppressed would
25 be adverse if produced and a recommendation that all the prior incident reports be admitted into
26 evidence.

27 In *Bass-Davis v Davis*, 134 P.3d 103, the court clarified the distinction that must be drawn
28 between awarding a party a "rebuttable presumption" versus an "adverse inference." The court noted

1 that NRS 47.250(3) creates a rebuttable presumption when evidence is willfully suppressed or destroyed
2 with an intent to harm. See Bass-Davis, 134 P.3 at 107.

3 In this case, the evidence indicates that Defendant willfully omitted the inclusion of additional
4 incident reports that it actually had in its possession. This is worse than destroying evidence through the
5 general course of business. Defendant had the information and failed to produce it.

6
7
8 **VIII. Conclusion**

9 In summary, Defendant had these additional incident reports in its possession yet failed to
10 produce them in Discovery. Defendant has also completely failed to make any attempts to provide the
11 ordered video footage. We can infer the bad intent in this case. Defendant clearly found that it was
12 better to be deceitful and attempt to hide evidence that would harm their case than comply with
13 discovery orders or to produce required documents in discovery. It is difficult to know whether or not
14 the *Sekera* case contains all the prior reports. At this point, nothing the Defendant produced can be
15 relied on, accordingly Plaintiff respectfully requests that this court grant her Motion and find:

- 16 (i) a willful suppression of evidence occurred; and
17 (ii) recommend the District Court strike Defendant's Answer and affirmative defenses on
18 liability and allow the case to proceed to trial on damages only;
19 (iii) recommend allowing for the additional incident reports produced in the *Sekera* case to be
20 admitted into evidence in this case and require Defendant to produce videos associated with
21 those omitted incident reports.
22 (iv) award costs for expert witness fees, both past and prospective;
23 (v) issue monetary sanctions for attorney fees against Defendant for its willful violation of
24 multiple Discovery Orders and violations of relevant discovery rules.

25 Dated: February 13, 2019

PETER GOLDSTEIN LAW CORPORATION

Signed: 

PETER GOLDSTEIN, SBN 6992

Attorney for Plaintiff

[illegible][illegible]

- [illegible]

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

Dated February 13, 2019 at Las Vegas, Nevada.

Signed: 

Peter Goldstein, Declarant

1
2 CERTIFICATE OF SERVICE
3

4 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure and [N.E.F.R. 9(b)] I certify that
5 I am an employee of Peter Goldstein Law Corporation and that on February 13, 2019, I served a true
6 and correct copy of the foregoing document entitled **PLAINTIFF'S NOTICE OF MOTION AND**
7 **MOTION FOR TERMINATING SANCTIONS, MONETARY SANCTIONS FOR WILLFUL**
8 **SUPPRESSION OF EVIDENCE PURSUANT TO NRCP RULE 37** upon all parties listed below,
9 via the following means:
10
11

12 _____ Via U.S. Mail by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(B)]
13 X Via Electronic Filing [N.E.F.R. 9(b)]
14 X Via Electronic Service [N.E.F.R. 9]
15 _____ Via Facsimile [E.D.C.R. 7.26(a)]
16

17 Michael Edwards
18 Lisa Thayer
19 Lari Maile
20 Ryan Loosvelt
21 MESSNER REEVES LLP
22 8945 W. Russell Road, Suite 300
23 Las Vegas, Nevada 89148
24 Tel: (702) 363-5100
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Attorney for Venetian Casino Resort, LLC

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Date 2/13/19

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

EXHIBIT 14



1 **MAMC**

2 FARHAN R. NAQVI

3 Nevada Bar No. 8589

4 SARAH M. BANDA

5 Nevada Bar No. 11909

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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 ANGELICA BOUCHER, individually,

17 Plaintiff,

18 vs.

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

Defendants.

Case No.: A-18-773651-C

Dept. No.: X

**PLAINTIFF'S MOTION TO AMEND
COMPLAINT TO INCLUDE PUNITIVE
DAMAGES**

HEARING REQUESTED

Plaintiff ANGELICA BOUCHER, by and through her attorneys of record, FARHAN R. NAQVI and SARAH M. BANDA of NAQVI INJURY LAW, hereby moves this Court pursuant to Nevada Rule of Civil Procedure 15 to amend the Complaint to include punitive damages

Responding Defendant reserves the right to supplement this response pursuant to the Nevada Rules of Civil Procedure.

RESPONSE TO REQUEST NO. 10:

Defendant objects to this request as overbroad, irrelevant, and to the extent it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, please *see* Defendant's First Supplemental Early Case Conference List of Witnesses and Production of Documents at Bates Nos. VEN1423-VEN1782. Discovery is continuing and ongoing. Responding Defendant reserves the right to supplement this response pursuant to the Nevada Rules of Civil Procedure.¹⁹

The Defendant disclosed thirty-one (31) slip and fall incidents on the marble flooring in the Venetian, twenty-eight (28) of which occurred within two years of the incident at issue.²⁰ In the five (5) months preceding the subject incident, the Venetian responded to **at least** eight (8) known incidents involving patrons slipping on a liquid substance and falling to the ground.²¹

After taking the highly evasive depositions of two current Venetian Employees who responded to the incident (i.e. Emily Whiddon and Patrick Overfield), Plaintiff suspected that the Defendant had not produced all prior incidents involving slip and falls on the marble tile in the Venetian. After further researching the issue, the results are alarming and concerning, as outlined below.

Undisclosed Prior Incidents

A large concern in this case is the Defendant's failure to produce relevant prior incidents, which appears to be the Defendant's modus operandi. For example, a very recent review of the court filings revealed numerous incidents that were not disclosed, a few of which are outlined below:

¹⁹ See Defendant Venetian Casino Resort, LLC's Responses to Plaintiff's First Request for Production, attached hereto as *Exhibit 8*.

²⁰ See Venetian Security reports (7/22/11 – 5/25/16), collectively attached hereto as *Exhibit 9*.

²¹ See Venetian Security reports (2/20/16 – 5/25/16), collectively attached hereto as *Exhibit 9*.

- 1 • Joan Gartner v. Venetian, A-13-689661-C, which alleges a slip and fall on clear liquid in
2 the Grand Lobby on September 18, 2012. Venetian was also represented by Messner
3 Reeves LLP in this case.²²
- 4 • Bertha Matz v. Sands d/b/a Venetian, A-15-719757, which alleges a slip and fall on
5 liquid in the lobby on June 23, 2013. Venetian was also represented by Messner Reeves
6 LLP in this case.²³
- 7 • Nancy Rucker v. Venetian, A-15-729566-C, which alleges a slip and fall on clear liquid
8 in the lobby on August 23, 2014. Venetian was also represented by Messner Reeves LLP
9 in this case.²⁴

10 Additionally, the recent review of public records demonstrates that Defendant's modus
11 operandi of hiding relevant prior incident reports has been raised in another matter, Sekera v.
12 Venetian, A-18-772761-C.²⁵ In Sekera, Plaintiff's counsel spoke with counsel in another
13 Venetian matter (the Smith case) and realized that Venetian was not producing all incident
14 reports in all cases. For example, upon information and belief, Venetian produced 4 incident
15 reports in the Smith case that were not produced in the Sekera case and, even more alarmingly,
16 ***Venetian produced 36 incident reports in Sekera that were not produced in Smith.*** The
17 Plaintiff in Sekera created and filed the following table with its Motion for Leave to Amend
18 Complaint:²⁶

19
20
21
22
23
24
25 ²² See Defendant Venetian Casino Resort, LLC's Motion in Limine to Preclude Any Arguments Regarding
Alleged Spoliation of Evidence, Case No. A-13-689661-C, attached hereto as *Exhibit 10*.

26 ²³ See JCCR, Case No. A-15-719757-C, attached hereto as *Exhibit 11*.

27 ²⁴ See Complaint, Case No. A-15-729566-C, attached hereto as *Exhibit 12*.

28 ²⁵ See Plaintiff's Motion for Leave to Amend Complaint, Case No. A-18-772761-C, pertinent parts attached
hereto as *Exhibit 13*.

²⁶ See Plaintiff's Motion for Leave to Amend Complaint, Case No. A-18-772761-C, pertinent parts attached
hereto as *Exhibit 13 (Exhibit 7, sub-exhibit 4 to said Motion)*.



Incident Reports From Joyce Sekera v. Venetian Compared With Carol Smith v. Venetian

<u>Date of Incident</u>	<u>Incident Report ID</u>	<u>Location at Venetian</u>	<u>Disclosed in SMITH case?</u>
1 11/24/2013	1311V-5502	Grand Lux Café	No
2 11/24/2013	1311V-5588	Grand Hall	No
3 1/26/2014	1401V-5539	Lobby 1	No
4 5/2/2014	1405V-0423	Grand Hall	No
5 5/3/2014	1405V-0687	Grand Hall	No
6 5/3/2014	1405V-0704	Lobby 1	No
7 5/24/2014	1405V-5900	Lobby 1	No
8 6/28/2014	1406V-6937	Grand Lux Café	No
9 7/5/2014	1407V-1121	Lobby 1	No
10 7/10/2014	1407V-2272	Grand Lux Café	Yes
11 7/10/2014	1407V-2142	Grand Hall	No
12 7/13/2014	1407V-3057	Lobby 1	Yes
13 7/18/2014	1407V-4386	Lobby 1	No
14 7/25/2014	1407V-6125	Lobby 1	No
15 7/25/2014	1407V-6151	Grand Hall	No
16 7/29/2014	1407V-7161	Lobby 1	Yes
17 7/30/2014	1407V-7975	Lobby 1	No
18 8/4/2014	1408V-0843	Lobby 1	No
19 8/5/2014	1408V-1088	Lobby 1	No
20 8/28/2014	1408V-7104	Venetian Tower	Yes
21 8/31/2014	1408V-7791	Lobby 1	Yes
22 9/13/2014	1409V-2807	Lobby 1	No
23 9/15/2014	1409V-3261	Lobby 1	No
24 9/30/2014	1409V-6750	Grand Hall	No
25 10/11/2014	1410V-2293	Lobby 1	No
26 12/23/2014	1412V-4685	Lobby 1	No
27 1/17/2015	1501V-3857	Lobby 1	Yes
28 1/31/2015	1501V-6887	Lobby 1	No
29 2/9/2015	1502V-1803	Lobby 1	Yes
30 2/20/2015	1502V-4922	Lobby 1	Yes
31 3/8/2015	1503V-1561	Grand Hall	No
32 3/23/2015	1503V-5040	Lobby 1	No
33 4/24/2015	1504V-5396	Grand Hall	Yes
34 5/3/2015	1505V-0844	Grand Hall	No
35 5/22/2015	1505V-5319	Lobby 1	Yes
36 5/29/2015	1505V-7253	Lobby 1	No
37 5/30/2015	1505V-7506	Lobby 1	Yes
38 6/12/2015	1506V-2824	Lobby 1	No
39 6/30/2015	1506V-7480	Lobby 1	Yes
40 7/5/2015	1507V-1236	Venezia Tower	Yes
41 7/19/2015	1507V-5024	Grand Hall	No
42 7/19/2015	1507V-5121	Venetian Tower	Yes
43 7/20/2015	1507V-5392	Entrance/Lobby	No
44 8/2/2015	1508V-0957	Lobby 1	No
45 8/8/2015	1508V-1866	Grand Hall	No
46 8/8/2015	1508V-1869	Lobby 1	Yes
47 8/29/2015	1508V-7246	Lobby 1	Yes
48 9/6/2015	1509V-1497	Lobby 1	Yes
49 9/13/2015	1509V-3312	Grand Hall	No
50 12/27/2015	1512V-5875	Lobby 1	No
51 2/20/2016	1602V-4290	Lobby 1	Yes
52 3/6/2016	1603V-1233	Lobby 1	Yes
53 3/25/2016	1603V-5018	Lobby 1	Yes
54 4/9/2016	1604V-1850	Grand Hall	No
55 4/9/2016	1604V-1926	Lobby 1	Yes
56 4/20/2016	1604V-2136	Grand Hall	No
57 4/12/2016	1604V-2459	Lobby 1	Yes
58 5/5/2016	1605V-0952	Lobby 1	Yes
59 5/25/2016	1605V-5069	Lobby 1	Yes
60 7/7/2016	1607V-1506	Lobby 1	SMITH

36 Total Not Disclosed in Smith



1 From this table, the Defendant has not produced the following **32 incident reports** in the instant
2 case: 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 18, 19, 22, 23, 24, 25, 26, 28, 31, 32, 34, 36, 41,
3 43, 45, 49, 54, and 56. Also, of note, is that the Defendant did not disclose the instant case in
4 Sekera even though the instant case occurred merely a month before said incident.

5
6 Plaintiff's counsel sent an email to defense counsel on June 12, 2019 at 4:43 p.m. which
7 stated as follows: "In the meantime, I wanted to request that you also check with your client and
8 confirm that there are not any additional incident reports related to slip and falls on the marble
9 that have not been disclosed. I believe you produced 31 prior incidents in your First
10 Supplement."²⁷ Rather than confirming that all incident reports have been produced, Defendant
11 makes veiled allegations of impropriety against Plaintiff's counsel through the following
12 email,²⁸

13
14 I am writing to follow up with you regarding an additional issue you raised during our telephone conference yesterday. As we discussed Defendant's
15 responses to Plaintiff's Requests for Production of Documents in the *Baucher v. Venetian* case, you stated that you have Venetian incident reports or documents
16 produced by Venetian in several different, active lawsuits currently pending against Venetian. Specifically, you claimed that by comparing Venetian's
17 production of these incident reports among the various cases, you identified inconsistencies among Venetian's disclosures – the context of your statement
18 seemed to imply some degree of impropriety by Venetian that could be at issue in this case.

19
20 Considering the substance of your statements during our June 11, 2019 telephone conference, it appears that you – or your law firm – have obtained Venetian's
21 private/protected documents and information from unrelated, third-party sources, which is quite concerning to say the least.

22
23 In light of your claim that you contrasted Venetian's production of private/protected documents in extraneous, unrelated cases, further claiming that you
24 identified inconsistencies among Venetian's documents produced among the various cases, we request that you immediately contact our office in writing,
25 and provide the following information with respect to Venetian Casino Resort (Including Palazzo, Las Vegas Sands Corp., and any related company)

- 26
27 (1) Specifically identify each and every document produced by Venetian, Palazzo, or any subsidiary of Las Vegas Sands Corp. in any other civil action, that
28 was obtained by you (or your law firm obtained, received or reviewed that was provided by any source other than the Venetian or its representative(s), or
that was obtained by you or your law firm from any source other than the Venetian outside of a civil action in which your firm actively appeared;
- (2) Specifically identify all attorneys, law firms, or third-parties from whom you received such documents or protected information; and
- (3) Identify the date each document was received and the format it which it was received (paper, mail, email, electronically, etc.).

29 Please let me know if you have any questions.

30 Truly,

31 David Pritchett

32
²⁷ See Email from Sarah M. Banda, Esq. (6/12/19), attached as *Exhibit 14*.

²⁸ See Email from David P. Pritchett, Esq. (6/12/19), attached as *Exhibit 15*.

The email, in addition to misquoting Plaintiff's counsel as Plaintiff's counsel merely said that she believes there are other incidents that have not been disclosed, indirectly acknowledges that the Defendant has other incident reports and/or prior incident information that it has intentionally withheld. However, instead of disclosing the same, Defendant makes allegations that Plaintiff somehow obtained Venetian's private/protected documents. This too is untrue, as all the information attached to this Motion and all information Plaintiff is aware of was obtained through a recent search of public records and cases on the Court website.

To date, Defendant Venetian has engaged in a deliberate pattern of evasive discovery abuse. For example, on June 14, 2019, the Discovery Commission heard the Plaintiff's Motion to Compel Production of Documents, which was largely granted, and requested that the Court compel items, such as the insurance policies, which the Defendant has yet to produce even though this case has been pending for over a year.²⁹ The gamesmanship that has ensued thus far in the discovery process leads the Plaintiff to believe that the failure to produce prior incident reports is deliberate and further evidence of Defendant's belief that the rules do not apply to the Venetian. Therefore, Plaintiff has reason to believe Defendant Venetian is withholding additional highly relevant documents regarding prior similar incidents.

The Incident at Issue

This matter arises from an incident that occurred on June 11, 2016 at approximately 2:36 p.m. on the premises of the Venetian Resort Hotel Casino located at 3355 S. Las Vegas Boulevard, Las Vegas, Nevada 89109.³⁰ On said date, Plaintiff was visiting the subject location when she slipped and fell on a wet and slippery walking surface in the lobby area. The Venetian

²⁹ See Plaintiff's Motion to Compel Production of Documents, pleading only, attached hereto as *Exhibit 16*.

³⁰ See Venetian Incident Report related to the instant case, attached hereto as *Exhibit 17*.

EXHIBIT 15

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF KECIA POWELL

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

On Friday, July 12, 2019
At 3:33 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 Yes.

2 Q So the supervisors basically give you a
3 protocol that you've described?

4 A Yes.

5 Q And the purpose of that protocol, I assume,
6 was to ensure the safety of the guests.

7 A Yes.

8 Q To make sure that the guest did not impact
9 whatever liquid was on the floor --

10 A Well, it's not --

11 Q Let me finish -- and slip and fall?

12 A Yes.

13 Q All right.

14 A It's not just the floors, it's the carpet
15 too. If we have something spilt on the carpet, we
16 have to stand there until someone comes with the "Wet
17 Floor" sign. Or if it's a bio, we have to stand there
18 until the specialists do come.

19 It's not just the casino floor, the marble;
20 it's the whole entire casino.

21 Q But I guess my question is this, then. When
22 we talk about the marble floors when wet, versus the
23 carpeted floors when wet, which one is the most
24 slippery?

25 MR. ROYAL: Objection; form.

*Canyon Court Reporting, Inc.
6655 West Sahara Avenue, Suite B200
Las Vegas, NV 89146 (702) 419-9676*

1 **BY MR. GALLIHER:**

2 Q If you know.

3 A Excuse me?

4 Q If you know.

5 A If I know?

6 Q Yeah.

7 A It's the same, basically.

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

10 A Yeah.

11 Q But not more slippery than a marble floor
12 when wet; is that right?

13 **MR. ROYAL:** Objection, form.

14 **THE WITNESS:** I really don't know the
15 question, but our procedure is if we see something,
16 clean it. That's our terms in our department. If you
17 see paper, pick it up. If you see a wet floor, mop
18 it.

19 **BY MR. GALLIHER:**

20 Q So if you see a wet carpeted floor, you
21 wouldn't mop that?

22 A No. They have to send a specialist too.

23 Q So has your supervisor told you why you
24 would secure the wet floor and then mop it?

25 A "Secure the wet floor," what do you mean by

*Canyon Court Reporting, Inc.
6655 West Sahara Avenue, Suite B200
Las Vegas, NV 89146 (702) 419-9676*

EXHIBIT 16

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF PETE A. KRUEGER

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

On Friday, July 12, 2019
At 2:00 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 No.

2 Q Do you understand that to be the case?

3 A I couldn't really agree with that or
4 disagree with that.

5 Q All right. So you have no opinion, as you
6 testify here today, concerning whether or not the
7 marble floors at the Venetian are dangerous to
8 customers or people walking through them when wet?

9 **MR. ROYAL:** Objection, form.

10 **THE WITNESS:** I would have to say that any
11 floor, no matter what surface it is, if it's wet
12 should be cleaned up.

13 **BY MR. GALLIHER:**

14 Q And why is that?

15 A Because it's wet.

16 Q And is it just because it poses some type of
17 a danger to someone that's walking through it?

18 **MR. ROYAL:** Objection, form.

19 **THE WITNESS:** Like I said, any surface wet
20 should be cleaned up.

21 **BY MR. GALLIHER:**

22 Q And do you distinguish between any surface
23 and a marble surface when you talk about that concern?

24 A No.

25 Q So as you testify here today, do you think

1 that a marble floor when wet is any more dangerous
2 than any other surface when wet?

3 **MR. ROYAL:** Objection, form.

4 **THE WITNESS:** I would have to say no.

5 **BY MR. GALLIHER:**

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

9 A No.

10 **MR. ROYAL:** Objection, form.

11 **BY MR. GALLIHER:**

12 Q Right. We're doing double negatives.

13 A I got you.

14 Q So the answer to my question is you do not
15 believe that a marble floor, when wet, is any more
16 dangerous than any other surface when wet; is that
17 right?

18 A Correct.

19 **MR. ROYAL:** Objection, form.

20 **BY MR. GALLIHER:**

21 Q Do you work five days a week?

22 A I do.

23 Q And have you worked five days a week from
24 the time since you were employed at the Venetian up to
25 the present?

EXHIBIT 17

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

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

JOYCE SEKERA,)	
)	
Plaintiff,)	
)	REPORTER'S TRANSCRIPT
)	OF
vs.)	DEFT'S MOTION FOR
)	RECONSIDERATION ON OST
)	
VENETIAN CASINO RESORT,)	
)	
Defendant.)	
<hr/>)	

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: TUESDAY, JULY 30, 2019

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

1 The motion pending Friday, they were motioning for an
2 order to tell us to produce what they call 46 undisclosed
3 prior incident reports for the 3 year period or whatever
4 we produced previously. We had to investigate that. It
5 turns out that that's not true. And they had to withdraw
6 that. So I'm just saying the numbers they are constantly
7 throwing at the Court, which they've done again with
8 respect to this particular motion -- 466 to 700, or 1,000
9 or whatever they flow out to influence the Court -- should
10 not be -- really should not play into the Court's decision
11 as relates to the punitive damages. It's a simple
12 negligence case. That's our position, your Honor.

13 THE COURT: I hear you, Mr. Royal. I agree, and
14 you cited some case law of the general proposition that if
15 it's a simple, ordinary negligence case, you're not going
16 to get punitives. I agree with that. I feel strongly
17 about that, depending on where the evidence goes.

18 Where we are at, of course, is a stage where there
19 was a request to amend to put a claim in to attempt to
20 prove it. I know that your client would like to avoid
21 the, perhaps, breadth of discovery that would entail
22 making that discovery. But in order for me to deny it,
23 the arguments I'm hearing are primarily fact finder based
24 type arguments that really isn't the same place. This
25 isn't the same situation. There are other facts that are


1 divergent from what we would expect to see if we should
2 believe that there was something more than ordinary
3 negligence here. And that's really the fact finder's
4 purview, not the Court.

5 I don't quibble with the fact that you based your
6 motion for reconsideration on this analysis of the Elliot
7 deposition, because it is very possible and likely the
8 Court consider all the arguments that were being made at
9 that time, including what the Elliot deposition would
10 purport to show us.

11 I agree ultimately with Mr. Galliher that the Court's
12 ultimate decision was based on, again, not a situation of
13 numbers and not a situation of certainty of proof of
14 anything, but just this idea that there's enough here
15 showing historical information and potential testimony
16 from folks that would indicate there was a known hazardous
17 condition that there was enough here to get over that
18 hurdle, relatively low, to keep it in the case for
19 discovery purposes.

20 Mr. Galliher just indicated that perhaps the Court
21 would revisit it at trial. The Court could very well
22 revisit it on dispositive motion, once discovery has taken
23 place. It really just depends on what's there. I think
24 there is enough here for Mr. Galliher to survive. I don't
25 think the Court would be properly exercising its

EXHIBIT 18



1 **OBJ**

2 FARHAN R. NAQVI
3 Nevada Bar No. 8589
4 SARAH M. BANDA
5 Nevada Bar No. 11909
6 NAQVI INJURY LAW
7 9500 W. 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.

**PLAINTIFF'S LIMITED OBJECTION
TO THE DISCOVERY
COMMISSIONER'S REPORT AND
RECOMMENDATION ON
PLAINTIFF'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS**

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 COMES NOW, Plaintiff ANGELICA BOUCHER, by and through her attorney of
24 record, FARHAN R. NAQVI of NAQVI INJURY LAW, and hereby submits the following
25
26 PLAINTIFF'S LIMITED OBJECTION TO THE DISCOVERY COMMISSIONER'S REPORT
27 AND RECOMMENDATION ON PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF
28 DOCUMENTS.



1 This Objection is made and based upon the following Memorandum of Points and
2 Authorities, the Affidavit of Sarah M. Banda, Esq., the papers and pleadings on file herein, and
3 any oral argument as may be heard by the Court.

4 DATED this 23rd day of July, 2019.

5 NAQVI INJURY LAW

6
7 By: /s/ Sarah M. Banda
8 FARHAN R. NAQVI
9 Nevada Bar No. 8589
10 SARAH M. BANDA
11 Nevada Bar No. 11909
12 9500 W. Flamingo Road, Suite 104
13 Las Vegas, Nevada 89147
14 *Attorneys for Plaintiff*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **INTRODUCTION**

18 Plaintiff was forced to file the underlying Motion to Compel after Defendant
19 VENETIAN CASINO RESORT, LLC ("Venetian") refused to produce relevant and pertinent
20 information in this matter, including the applicable insurance policies, claims information, and
21 other documentation.¹ Plaintiff's Motion was granted almost in its entirety. This Limited
22 Objection is being filed to address one finding of the Honorable Discovery Commissioner,
23 which was made without support in the record and/or request of the Plaintiff. Specifically, the
24 Plaintiff *only* objects to the Discovery Commissioner's Finding that, "liquid on a walkway is a
25
26
27

28 ¹ See December 10, 2018 letter from Sarah M. Banda, attached as *Exhibit 2* to the underlying Motion to Compel;
see April 3, 2019 letter from Sarah M. Banda, attached as *Exhibit 3* to the underlying Motion to Compel; see
also Plaintiff's First Set of Requests for Production, attached as *Exhibit 4* to the underlying Motion to Compel.



1 transient condition.”² The issue of whether this case involves a transient/transitory condition was
2 not before the Discovery Commissioner.

3 II.

4 **STATEMENT OF FACTS**

5 This matter arises from an incident that occurred on June 11, 2016 on the premises of the
6 Venetian Resort Hotel Casino located at 3355 S. Las Vegas Boulevard, Las Vegas, Nevada
7 89109. On said date, Plaintiff ANGELICA BOUCHER (“Plaintiff”) was visiting the subject
8 location when she slipped and fell on a wet and slippery walking surface. As a direct result,
9 Plaintiff sustained significant injury, particularly as it relates to her lower back and extremities,
10 which has resulted in **numerous surgical operations**.
11

12 III.

13 **LEGAL ARGUMENT**

14 The Plaintiff objects to the finding in the DCRR filed July 9, 2019 that states that “liquid
15 on a walkway is a transient condition.”³ Nothing contained in Plaintiff’s Motion to Compel
16 required a determination whether the case at hand dealt with a transient or permanent condition.
17 Yet, the Discovery Commissioner erroneously, and without basis in the facts of the case and/or
18 law, made the determination that the water on the floor was a transient condition. This erroneous
19 determination will now be utilized by the Defendant to object to the Plaintiff’s attempt to gather
20 relevant and discoverable information in this case, such as information on prior incidents. Given
21 that Plaintiff did not raise the issue of transient versus permanent condition in her Motion to
22 Compel, nor did Plaintiff’s Motion argue any issue that required a determination whether this
23
24
25
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28 ² See DCRR filed July 9, 2019, at page 3, enclosed as *Exhibit 1*.

³ See DCRR filed July 9, 2019, at page 3, enclosed as *Exhibit 1*.

1 case involves a permanent or transient condition, the Plaintiff requests that this finding be
2 removed from the DCRR as it is an erroneous finding.

3 Additionally, had the Discovery Commissioner considered the specific facts of this case,
4 including the volumes of prior slip and falls on the marble flooring at the Venetian (some of
5 which have been disclosed by Defendant and some of which have not been disclosed – which
6 will be the subject of a forthcoming Motion to Compel), the matter of transient versus
7 permanent condition is not as clear cut as the Discovery Commissioner appeared to believe it to
8 be. The specific facts of this case, as it relates to whether the condition was transient or
9 permanent, were not presented as said facts were irrelevant to the issues before the Court in
10 Plaintiff's Motion. As former Discovery Commissioner Bonnie Bulla determined in another,
11 similar, and ongoing slip and fall case against the Venetian,⁴
12
13

14 Discovery Commissioner: But I think what you are not
15 understanding is that this case is not as simple as it looks at first
16 glance. There is a difference between a permanent condition and a
17 transitory condition... Here's the small, little, tiny problem that the
18 Venetian has – you have a floor that, in and of itself, isn't apparently
19 a problem, but every time water goes on that floor, which is
20 foreseeable – the people will bring in water bottles, or the drinks
21 will be shared on the casino floor and end up on the tile – then your
22 floors turns into something different. It turns into a fall hazard. And
23 if you didn't have that big, thick notebook sitting in front of you to
24 show all the slip and falls you've had on this flooring, we might be
25 able to argue something differently.

26 Thus, this is a unique set of facts that are distinguishable from the transient case of water on a
27 walking surface. This is a case of continuing condition and/or permanent condition.
28

⁴ See Recorder's Transcript of Hearing Plaintiff's Notice of Motion and Motion to Compel Further Responses from Defendant Venetian Casino Resort LLC to Plaintiff's Requests for Production of Documents Set 4, at pages 4-5, enclosed as *Exhibit 2*.



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As the issue of transient versus permanent condition was not before the Discovery Commissioner, the finding making such a determination should not be upheld by the District Court as the finding is erroneous.

IV.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court overrule the finding of the Discovery Commissioner that the case at hand involves a transient condition given that the issue was not before the Discovery Commissioner and, thus, the Discovery Commissioner made an erroneous determination based upon limited facts and information.

DATED this 23rd day of July, 2019

NAQVI INJURY LAW

By: /s/ Sarah M. Banda
FARHAN R. NAQVI
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CERTIFICATE OF SERVICE

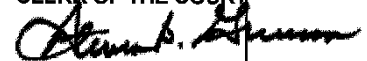
The undersigned hereby confirms that on the 23rd day of July, 2019, a true and correct copy of the foregoing **PLAINTIFF'S LIMITED OBJECTION TO THE DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION ON PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS** was sent by electronic filing notification where specified on the service list, to the following:

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Venetian Casino Resort, LLC

/s/ Rachel Bounds
An employee of NAQVI INJURY LAW



EXHIBIT 19



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 CAROL SMITH,

8 Plaintiff,

9 vs.

10 VENETIAN CASINO RESORT
11 LLC,

12 Defendant.

CASE NO.: A-17-753362

DEPT. X

13
14 BEFORE THE HON. BONNIE A. BULLA, DISCOVERY COMMISSIONER
15 WEDNESDAY, OCTOBER 31, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL**
18 **FURTHER RESPONSES FROM DEFENDANT VENETIAN CASINO**
19 **RESORT LLC TO PLAINTIFF'S REQUESTS FOR PRODUCTION OF**
20 **DOCUMENTS SET 4**

21 APPEARANCES:

22 For the Plaintiff: PETER GOLDSTEIN, ESQ.

23 For the Defendant: RYAN LOOSVELT, ESQ.

24
25 RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, October 31, 2018

2 * * *

3 [Case called at 10:09 a.m.]

4 DISCOVERY COMMISSIONER: Smith.

5 MR. LOOSVELT: Good morning, Your Honor. Ryan Loosvelt,
6 for Defendant Venetian, 8550.

7 DISCOVERY COMMISSIONER: Good morning.

8 MR. GOLDSTEIN: Good morning, Your Honor. Peter
9 Goldstein, for the Plaintiff.

10 DISCOVERY COMMISSIONER: Good morning. This is
11 Plaintiff's motion to compel further response from Defendant for requests
12 production of documents set 4, and typically how I handle this is if
13 there's a video that goes with the incident report, it needs to be turned
14 over, so I'm not really sure what happened here.

15 If it's a matter of the Plaintiff requesting you to go back and
16 look through all your videos, that's a different issue. I probably won't
17 require you to do that. But if there's video attached with an incident
18 report, the video needs to be turned over, and whether or not it's
19 admissible will be up to the department at the time of trial or before trial
20 based on a proper motion in limine.

21 I'm not really sure we have a whole lot to discuss today.

22 MR. LOOSVELT: Okay. So I appreciate that, Your Honor.
23 My understanding of the prior orders was to produce -- that the Plaintiff
24 was entitled to the number of incidences in these kinds of other areas
25 around -- in the surrounding lobbies, and so --

1 DISCOVERY COMMISSIONER: Didn't I require you to turn
2 over the incident reports too, or was that not part of our discussion?

3 MR. LOOSVELT: We did, Your Honor. These are what we
4 turned over [indicating], this much, includes the witness reports, the
5 Venetian reports, color photographs.

6 DISCOVERY COMMISSIONER: Were there videotapes on
7 some of those incident reports?

8 MR. LOOSVELT: Not attached to the actual incident reports,
9 but some of 'em reference that at one time video may have been
10 available for those, and some say that they were not available.

11 DISCOVERY COMMISSIONER: Didn't they have the video in
12 the file with the incident report?

13 MR. LOOSVELT: The reports say the videos are -- were
14 available when these reports were generated, so the videos may still be
15 in existence. They're not with the written files and things of that nature.

16 But our argument is that, you know, the argument that Plaintiff
17 is making is that it's these other falls, and my understanding in the
18 transcript he attached from another case of yours, Your Honor, is about
19 the number of falls, and you even said the only things you typically
20 require are the incident reports themselves, if that, if it's not just the list
21 of the incidents themselves.

22 DISCOVERY COMMISSIONER: Well, generally I'll say
23 though if the, you know, incident report has video -- usually it's kept
24 together, not always apparently, but usually it is -- then turn it over. I
25 mean, this is not rocket science here. It's not that difficult. If they keep

1 the video in a separate location from the incident report so it wasn't
2 readily available with the incident report, that's a different issue. But if
3 it's maintained separately that they can just pull all the video, make a
4 copy of it and turn it over.

5 MR. LOOSVELT: I appreciate that, Your Honor. Our position
6 is that it's not relevant, and that it's cumulative of other things, and
7 Plaintiff's motion basically admits that he wants to use these videos. He
8 actually states it in the motion. He wants to use these videos to prove
9 notice, foreseeability, duty, and breach of causation. He wants to use
10 these videos, put together a little montage of America's Funniest Home
11 Videos of slip and falls and show it to a jury, and we don't think that's
12 appropriate or even necessary, especially --

13 DISCOVERY COMMISSIONER: Well, I'm sure --

14 MR. LOOSVELT: -- since we've produced the incidents.

15 DISCOVERY COMMISSIONER: -- Judge Jones can handle
16 that in a proper motion in limine.

17 MR. LOOSVELT: All right. Thank you, Your Honor.

18 DISCOVERY COMMISSIONER: But I think what you are not
19 understanding is that this case is not as simple as it looks at first glance.
20 There is a difference between a permanent condition and a transitory
21 condition. And I agree with you. If it is transitory in nature, i.e. you're in
22 a pet store, and there's water on the floor, there's an expectation you go
23 in a pet store, you may have water on the floor, we know that. The issue
24 is whether or not the employees had notice of the water on the floor,
25 reasonable notice, to clean it up. Apparently, there's a Federal Court

1 case out there that says two-and-a-half minutes is reasonable notice.

2 But, having said that, that's the issue, so all the other slip and
3 falls are not relevant to the notice in this case.

4 Here's the small, little, tiny problem that the Venetian has --
5 you have a floor that, in and of itself, isn't apparently a problem, but
6 every time water goes on that floor, which is foreseeable -- the people
7 will bring in water bottles, or the drinks will be shared on the casino floor
8 and end up on the tile -- then your floor turns into something different. It
9 turns into a fall hazard. And if you didn't have that big, thick notebook
10 sitting in front of you to show all the slip and falls you've had on this
11 flooring, we might be able to argue something differently.

12 Now, whether that rises to the level of admissibility or not as
13 evidence at trial will be up to the Judge. But this is a very novel concept.
14 It's not at first blush what one would necessarily think of as a permanent
15 condition because the floor itself is not a fall hazard, but combined with
16 something, i.e. water -- and apparently you can't always distinguish
17 there's water on the floor, which cuts both ways, gentlemen -- the
18 problem is it becomes something different. It becomes a different
19 flooring.

20 Now, that's the argument. Whether or not the Judge will allow
21 or disallow the evidence will be up to the District Court Judge, and I
22 would defer to the Judge. This Judge will figure out what is proper. I
23 have no doubt. But this is discovery, so on all those incident reports
24 where there is a video, they need to be turned over.

25 I will put the video under a Rule 26(c) protective order --

1 MR. LOOSVELT: I'd appreciate that, Your Honor.

2 DISCOVERY COMMISSIONER: -- which means this -- we're
3 not doing America's Funniest Home Videos on the Internet. If I find out
4 that any of them get on the Internet, there will be consequences. They
5 will be protected and will remain protected until the Judge otherwise
6 orders, which means after the motions in limine are resolved.

7 MR. LOOSVELT: And there --

8 DISCOVERY COMMISSIONER: And if the Judge says you
9 can use them, then they can be used.

10 MR. LOOSVELT: I appreciate, Your Honor, and there was an
11 issue with -- there was a prior order of the protection of the guests or the
12 patrons that were in there. Their faces have been redacted from the
13 pictures, and so under the protective order, that should be okay.

14 DISCOVERY COMMISSIONER: Okay. So you'll get the
15 information. You'll get the videos if they still exist, the ones that go with
16 those incident reports to the extent that they had video, you'll have them,
17 you'll have them available, and then you'll have to decide whether to use
18 them.

19 I'm not going to have him redact any of the faces or anything
20 right now. I don't know how visible they are. If it turns out that the Court
21 does allow you to use them in order to maintain the privacy of the
22 individual involved, you may want to figure out how to redact facial
23 recognition so that they can be used. I would put that in as a caveat,
24 and then the Judge will be aware of my thought process on that.

25 MR. LOOSVELT: I appreciate the Rule 26 protections, Your

1 Honor.

2 DISCOVERY COMMISSIONER: So the motion's granted
3 within the parameters discussed; specifically you're going to turn over
4 the video without redaction to the extent that a video does exist and
5 correspond with an incident report; it will remain protected under 26(c)
6 until such time as the District Court Judge otherwise orders.

7 MR. GOLDSTEIN: Thank you, Your Honor.

8 DISCOVERY COMMISSIONER: All right. Let me know
9 when -- oh, trial's 5/28. Maybe I'll come watch.

10 MR. GOLDSTEIN: Would you like another Report and
11 Recommendation?

12 DISCOVERY COMMISSIONER: Yes, I would.

13 MR. GOLDSTEIN: Okay.

14 DISCOVERY COMMISSIONER: And if you would prepare it,
15 sir, and run it by Defense counsel to approve as to form and content, I
16 would appreciate it.

17 MR. GOLDSTEIN: Certainly.

18 DISCOVERY COMMISSIONER: I'll need it in ten days.

19 MR. GOLDSTEIN: Thank you.

20 [Hearing concluded at 10:18 a.m.]

21 * * * * *

22
23 ATTEST: I do hereby certify that I have truly and correctly transcribed the
24 audio-video recording of this proceeding in the above-entitled case.

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FRANCESCA HAAK
Court Recorder/Transcriber

EXHIBIT 20



1 **OBJ**
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5 Nevada Bar No. 6281
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17 *Venetian Casino Resort, LLC*

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA
13

14 CAROL SMITH, an individual,
15
16 Plaintiff,

17 vs.

18 VENETIAN CASINO RESORT, LLC; and
19 DOES 1 through 50, inclusive,
20
21 Defendant(s).

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

**DEFENDANT'S OBJECTION TO
DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS**

Date: October 31, 2018
Time: 9:00 a.m.

22 COMES NOW, Defendant, VENETIAN CASINO RESORT, LLC ("Venetian"), by and
23 through its attorneys of record of the law firm MESSNER REEVES LLP, hereby objects to the
24 Discovery Commissioner's Report and Recommendations with regard to the October 31, 2018 hearing
25 on Plaintiff's Motion to Compel Further Responses from Defendant Venetian Casino Resort, LLC to
26 Plaintiff's Requests for Production of Documents Set 4.
27
28

1 This Objection is made and based upon the pleadings and papers on file herein, together with
2 the attached Memorandum of Points and Authorities, and such argument as the Court may hear at the
3 time of the hearing on this matter.

4 DATED this 7th day of December, 2018.

5 MESSNER REEVES LLP

6
7 By 

8 MARK B. SCHELLERUP
9 Nevada Bar No. 7170
10 MICHAEL M. EDWARDS
11 Nevada Bar No. 6281
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16 Telephone: (702) 363-5100
17 Facsimile: (702) 363-5101
18 Attorneys for Defendant
19 Venetian Casino Resort, LLC

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 According to video evidence, Plaintiff slipped on water in one of the lobbies of the Venetian
23 that was spilled by another patron a few minutes beforehand. Plaintiff asserts a claim for negligence.
24 Because it was not an employee that spilled the water, Plaintiff must demonstrate that the Venetian
25 had actual or constructive notice of this particular condition.

26 However, Plaintiff seeks to relax that burden by *arguing* the floor at the Venetian is itself too
27 dangerous, because, despite being built within building codes with approved flooring material,
28 Plaintiff *argues* the floor, which is made of marble, is too slippery when wet as to constantly be an
inherently dangerous condition of which the Venetian is on notice of already.

Under Plaintiff's theory—she argues the 'mode of operation' approach to premises liability
applies here—the notice standards are relaxed, and she would not have to otherwise meet the
traditional rules of premises liability law to show actual or constructive notice of this particular
condition, but rather, as Plaintiff's argument goes, the Venetian was already on notice because marble,
in and of itself, when wet, is very slippery. Put another way, Plaintiff essentially argues hotels with

1 marble floors should be strict liability insurers of patrons who fall anywhere on marble floors from
2 any spill by anyone on their premises under any circumstances. But this is not a situation where the
3 narrowly applied mode of operation has any application to relax the notice rule.

4 Plaintiff initially sought the production of prior falls *anywhere* at the Venetian arguing "slip
5 and falls anywhere in the hotel are relevant to Defendant's notice that marble floors are dangerous."
6 Marble floors are not inherently dangerous and comply with building codes. The Discovery
7 Commissioner's initial Report and Recommendation compelling production of the incident reports
8 stated Plaintiff could have the *number* of falls in the lobbies, and ordered production of 3 years of all
9 prior falls anywhere at the Venetian on marble flooring, and for 5 years of all fall history anywhere in
10 the main lobby at issue.

11 This order resulted in production of incident report files, over 5 years, that occurred anywhere
12 on marble flooring throughout the hotel: some were in different lobbies; some in elevator banks; some
13 were near the food court; at least one was in a parking garage, etc. And they generally involve
14 differing circumstances and locations other than that there was a form of liquid on the floor that a
15 patron slipped on.

16 Defendant produced the detailed incident reports for the 5 years of incidents. The reports
17 themselves contained a lot of descriptive information and records, consisted anywhere from a few
18 pages to a dozen or so for each incident, had colored pictures of the people, floors, shoes, and
19 substances involved, medical statements, and witness and security statements, among other things, for
20 each incident. These documents also referenced whether or not a video of the incident was available
21 at the time.

22 Emboldened by the Discovery Commissioner's order of production (despite the limiting
23 language of entitlement to the *number* of other falls), Plaintiff served a follow up request for
24 production, seeking the production of approximately 29 videos (to the extent they exist, some do not)
25 from the 5 years of incidents anywhere in the hotel. Defendant objected, and the matter was again
26 presented to the Discovery Commissioner.

27 Plaintiff filed a motion to compel the video arguing the 'mode of operation' approach to
28 premises liability applied, so he was entitled to the video to show notice. Defendant opposed the

1 motion arguing the mode of operation approach does not apply, analyzing the history of the doctrine,
2 Nevada's limited adoption and narrow application of it, as well as cases to which the Nevada Supreme
3 Court looked for guidance.

4 The mode of operation approach evolved specifically out of the grocery store context, where
5 grocery stores began having customers perform duties that grocery clerks traditionally performed, for
6 example, the hand selection of fruit in a produce department, where the produce might fall and be
7 slipped upon. The rationale was that grocery stores knew of and created the increased risk of produce
8 falling on the floor by having customers now performing tasks traditionally assigned to employees;
9 their duty was akin to that of an employee who had caused the danger—the grocery store, undergoing
10 a mode of operation of having customers perform tasks previously the province of employees, were
11 deemed on notice of the increased danger of customers dropping and slipping on produce, and thus
12 might have a duty to put a mat down, for example, in those areas, to reduce the risk.

13 The Nevada courts, while adopting the approach, have stated it is very narrowly applied and
14 limited to those types of specific situations where it is a business' mode of operation to have
15 customers perform tasks previously assigned to employees that increase the risk of danger; under
16 those limited circumstances, the company is said to already have notice of the increased risk and
17 condition, and must therefore undertake further precautions. The mode of operation approach has no
18 application here however.

19 Here, one patron walking through a lobby dropped a water bottle that spilled. Several other
20 guests walked by it or through it without noticing it apparently. Then, just a few minutes after it was
21 spilled, Plaintiff unfortunately slipped and fell on it. There is no basis for the application of the mode
22 of operation approach here because the guest who spilled a water bottle was not performing a job
23 traditionally assigned to an employee such that the business can be said to have increased a risk of
24 falling by letting patrons perform functions formerly the province of an employee. Rather, a guest just
25 walked through the lobby.

26 Thus, under the circumstances here, Plaintiff must show actual or constructive notice of this
27 particular spill, and 29 videos from the previous 5 years of incidents anywhere on the property are not
28 relevant or admissible as to such notice—the reason Plaintiff states he wants the video. The purported

1 mode of operation approach was the reason identified in Plaintiff's motion to compel as *the* basis for
2 wanting the videos—to show notice. Defendant's Opposition detailed the history of the limited
3 application of the rule showing it did not apply here. Defendant also argued the prior video incidents
4 were not relevant to notice or other issues, were cumulative of other evidence, were prejudicial,
5 unduly burdensome, etc.

6 The Discovery Commissioner, however completely ignored the 'mode of operation' issue at
7 the hearing; it was never mentioned once. Instead, before argument even began, the Commissioner
8 stated the video should be produced. The Commissioner appeared predisposed to the *argument* that
9 marble floor is too slippery when wet regardless if there was a legal justification for the argument or
10 not. The ruling ordering production was thus error because the reason Plaintiff wants the videos for is
11 to show notice, but the videos are not relevant or admissible to that issue.

12 Ultimately, the Commissioner ruled that the *argument* was being made that marble floor, when
13 wet, is too slippery, and ordered the video produced as *discoverable* evidence on that basis. The
14 Commissioner did, at least, acknowledge, and order, that while she believes them to be discoverable,
15 it is ultimately up to the judge whether they are admissible during pretrial proceedings. The
16 Commissioner also ordered Rule 26(c) protective order limitations rendering the video confidential
17 and limiting their use until the district judge determines admissibility. Nevertheless, the production of
18 videos of more than 25 falls, over 5 years, from anywhere on the premises, was an erroneous ruling.

19 Defendant hereby objects to the Discovery Commissioner's Report and Recommendation
20 ordering production of the videos. The video is not produceable under the mode of operation
21 approach (which has no application to this case) or otherwise. The Commissioner's recommendations
22 for production are therefore erroneous and contrary to law.

23 II. STATEMENT OF FACTS

24 A. The Incident: Plaintiff Slips On Water, A Transient Foreign Substance, Spilled 25 By Another Guest When Dropping A Bottle 6 Minutes Before The Fall.

26 This matter involves allegations of personal injury resulting from a slip-and-fall accident
27 reported as having occurred on July 7, 2016. Plaintiff Carol Smith, a then 57-year-old registered
28

1 guest of the hotel, reported that she was on her way to the guest room elevators when she slipped and
2 fell on a large puddle of clear liquid. Security video footage of the incident was preserved.

3 The video shows approximately thirty minutes of activity prior to the subject incident. During
4 this time, heavy foot traffic is seen in the area of the incident, including several Venetian team
5 members who are seen walking through the area of the incident prior to the spill by a guest. The video
6 appears to show an unknown guest drop a bottle of water from her bag onto the floor at
7 approximately 12:08 p.m. The guest then picks up the water bottle, and exits the area with her family.

8 At approximately 12:12 p.m., 4 minutes after the guest was seen dropping a water bottle on
9 the floor, Plaintiff is seen walking through the lobby and into the adjacent gift shop. Plaintiff walked
10 over the area where she later fell without noticing anything on the floor or slipping. At 12:14 p.m., 6
11 minutes after the other guest dropped and spilled the water bottle, Plaintiff is seen exiting the gift
12 shop and slipping and falling. The video then shows Defendant's Public Area Department
13 responding to the scene and mopping the floor. Plaintiff was then transported from the area in a
14 wheelchair with the assistance of Security.

15 **B. Prior Discovery Concerning Other Slip and Falls Generally, The Other Incident**
16 **Reports With Pictures, And The Protective Order.**

17 Plaintiff initially requested for production all documents relating to complaints regarding slip
18 and falls for 5 years preceding the incident *anywhere* on the premises, and in *interrogatories* asked
19 for the identity of any patron or guest involved. Without conceding admissibility or relevance,
20 Defendant produced prior incident reports in the general vicinity referencing Lobby 1 where
21 Plaintiff's incident generally took place, redacting the identities of parties involved in slips and falls
22 (VEN371-499), in its Fifth Supplemental Disclosure. Defendant then filed a March 22, 2018 Motion
23 for Protective Order regarding Plaintiff's interrogatory seeking disclosure of personal identifying
24 information of guests and the corresponding redactions. Defendant argued the identity of individuals
25 in prior accidents is not relevant to an issue in the Plaintiff's claims, a temporary hazard case, among
26 other arguments. Def.'s Mot. For Prot. Order, 8:9-28.

27 Plaintiff filed a Motion to Compel further *interrogatory* responses seeking among other things
28 disclosure of the identities and contact information of the guests or patrons involved as "discoverable

1 witness information.” See Pl.’s Mar. 28, 2018 Motion to Compel, 8:3-27. Plaintiff’s Motion seeking
2 further interrogatory responses referred to Defendant’s production arguing that “slips and falls
3 *anywhere* in the hotel are relevant to Defendant’s notice that marble floors are dangerous,” though
4 was focused on discovery of the *individuals* who had fallen as witnesses. *Id.* (emphasis added).

5 The Discovery Commissioner recommended Defendant’s Motion for Protective Order be
6 granted, and the R&R states “re: transitory condition of the floor; counsel can have the number of
7 falls in the lobbies; ... if there is a specific fall event that happened in the general area of Plaintiff’s
8 fall, have a 2.34 conference with Defense counsel and bring back to Commissioner’s attention.” See
9 D.C. R&R signed July 2, 2018, also attached as Exhibit 7 to plaintiff’s Motion to Compel (emphasis
10 added).

11 The Discovery Commissioner granted Plaintiff’s Motion to Compel further interrogatory
12 responses in part, to supplement Interrogatory No. 18 to “go back five years of fall history for the
13 lobby at issue [which was already produced]; go back three years before the incident for other lobbies
14 with the same marble floor due to liquid on the floor.” *Id.* Defendant then served its Ninth
15 Supplemental Disclosure producing the incident reports as ordered by the court from 7/7/14-7/7/16,
16 the 3 year period for the other areas not involved or related to Plaintiff’s incident (VEN1892-2251).

17 Defendant’s disclosures of incident reports for 5 years in the same general area of Plaintiff’s
18 incident, and 3 years in other areas, contain, where available, Venetian reports, witness reports,
19 security reports, medical releases, and color photographs of the scene of the fall, injuries, the
20 guests/patrons and their shoes.

21 **C. Defendant Demands 29 Videos of Other Slip And Falls (Some of Which Do Not**
22 **Exist as Stated in the Reports) That Concern Different Areas and Circumstances.**

23 Despite the incident reports and colored photographs, the Court granting the motion for
24 protective order to keep the identities of the guests/patrons from other incidents from disclosure, and
25 the Court’s order regarding events that happened *in the general area of Plaintiff’s fall*, Plaintiff then
26 served a fourth set of requests for production seeking production of numerous videos from other
27 incidents—almost entirely from areas other than where Plaintiff’s incident took place—and whether
28 or not similar to the circumstances of Plaintiff’s incident.

1 The vast majority of incidents took place at locations different than Plaintiff's incident and
2 under different circumstances. Notably, 26 of the 29 videos Plaintiff is requesting are from the
3 supplemental disclosure concerning areas other than where Plaintiff's incident took place, and a
4 review of all the reports and supporting documentation show there are very few *if any* that took place
5 at the spot of Plaintiff's incident.

6 **D. Briefing on Plaintiff's Motion to Compel.**

7 Plaintiff filed a Motion to Compel on September 26, 2018, attached to this Objection as
8 **Exhibit "A."** Plaintiff's Motion to Compel argues "Marble floors are known to be slippery when
9 wet and that marble surface is prone to cause slips and falls when there is a liquid substance on the
10 flooring." Pl.'s Sept. 26, 2018 Motion, 3:10-12. This of course could be said of any floor. Plaintiff
11 next states that "it is foreseeable that patrons will spill water." *Id.* at 3:13. Again, this is overly
12 simplistic.

13 Plaintiff uses this basic argument—people spill water, and marble floors are too slippery when
14 wet—to advocate for the application of the mode of operation approach, under which he seeks
15 production of the video from 5 years of incidents anywhere on the premises for the purpose to show
16 notice to Defendant that all marble floors—though building code complaint—are purportedly already
17 known to be unreasonably dangerous. *See id.* at 6:10-12; 7:2-3 ("The requests are certainly relevant
18 to the issue of notice of an unreasonably dangerous nature of marble floors ... Video which depict
19 previous slip and fall incidents provide direct evidence of the slippery nature of the marble floors.";
20 "The videos and prior incidents go to notice ..."). Plaintiff then argues the marble floor is a
21 "permanent condition." *Id.* at 6:28.

22 Plaintiff's Motion argues the purpose of discovery is to take out the elements of surprise and
23 gamesmanship to ensure parties can evaluate the case on the merits. *Id.* at 4:22-23. But there is no
24 surprise here; Plaintiff knows about the prior incidents, and has the reports and pictures. Plaintiff's
25 Motion concedes the incidents have already been identified. The only purpose of the videos would be
26 to use them to show a jury for improper purposes.

27 Defendant filed an Opposition on October 19, 2018, attached to this Objection as **Exhibit**
28 **"B."** Defendant's Opposition detailed the history, adoption, rationale, and narrow application of the

1 mode of operation approach, and how it cannot apply to the circumstances here, as also discussed
2 below in Section III(A). Defendant also opposed production on grounds of relevance, that the
3 discovery is not reasonably tailored to lead to the discovery of admissible evidence, that the evidence
4 is cumulative of the incident report and pictures, that the evidence is inadmissible, and would only
5 tend to confuse, mislead, or prejudice the jury, and because the requests are overbroad and unduly
6 burdensome.

7 Plaintiff filed a Reply on October 25, 2018, attached to this Objection as **Exhibit "C."**
8 Plaintiff's Reply first details Plaintiff's fall, and discusses how the video of that incident is relevant
9 and corroborates her story. Pl.'s Reply, 2:8. Plaintiff has this video already. Plaintiff's Reply argues
10 that the video of Plaintiff's incident "is significant evidence because it rebuts the Defendant's position
11 that they lacked notice." Pl.'s Reply, 2:14-15. However, videos of other incidents, which is what the
12 Motion sought to compel, will not corroborate Plaintiff's story or show notice to Defendant of the
13 spill at issue in this case.

14 Plaintiff's Reply again argues that the mode of operation approach applies, and details the
15 grocery store example in *Sprague* (grape falling on floor in produce section) that, once again, is
16 dissimilar to the circumstances here, in one last effort to argue the mode of operation approach
17 applies. Plaintiff's Reply also in part improperly raises new issues and evidence because she could
18 not show the mode of operation approach applied here; new issues and evidence cannot be raised in a
19 Reply, and thus this Court need not consider it. To the extent the Court does, Defendant will address
20 the new matters here.

21 Plaintiff's Reply now argued generally that whether a landowner exercised reasonable care
22 involves the totality of the circumstances which may include prior similar occurrences, yet she
23 inappropriately cites a case (i) that does not say that, and (ii) that actually concerns a totally different
24 situation—the court was adopting a new standard for the open and obvious danger doctrine, not
25 applicable here. Pl.'s Reply, 4:8-13, citing *Foster v. Costco Wholesale Corp.* 128 Nev. 773 (2012).

26 The open and obvious doctrine previously eliminated landowner liability to visitors from open
27 and obvious dangers, for example, like a giant hole or other obstruction on the premises. In *Foster*,
28 the court adopted an exception to the doctrine ruling a landowner may be held liable if it should

1 anticipate the harm despite the hazards' open and obvious nature, but failed to remedy the risk.
2 Plaintiff's Reply thus also tried to misapply this doctrine too that has no application to the
3 circumstances in efforts to get the video of other incidents anywhere on the property.

4 Plaintiff's Reply then states that Defendant chose to install marble floors, that the expert said
5 that "when dry and clean, the marble affords sufficient friction" but when wet, can cause a slip due to
6 loss of traction. Pl.'s Reply, 7:1-7, and Exhibit 10 to the Reply. This is the lone piece of evidence
7 Plaintiff has offered (improperly in his Reply), and it states the floor meets friction standards.

8 Plaintiff's Reply then describes and attaches a transcript of a prior discovery hearing in a
9 totally different case (again, improperly withholding evidence in his Motion, and trying to sandbag
10 Defendant in Reply). Plaintiff's Reply argues the Commissioner in that other case allowed
11 production of prior flooring incidents. Nevertheless, a review of the transcript from the different
12 lawsuit, the portion of which Plaintiff omitted when quoting the transcript in her Reply, states:

13 "DISCOVERY COMMISSIONER

14 Now, I typically don't require anything else except the incident
15 report itself or a printout that shows how many slips and falls occurred in
that particular area."

16 Exhibit C: Pl.'s Reply, at its exhibit 7, Transcript, 4:1-2. Here, Plaintiff already has the incident
17 reports, however. The Commissioner in that transcript also stated in that other case that "you'll have
18 to have an expert look at the flooring because, otherwise, if the flooring is proper, where it meets
19 friction, coefficient, whatever it is, then it's not really relevant." *Id.* at 9:17-19. Here, as Plaintiff
20 herself pointed out, the floor does meet the friction standards. Finally, the motion to compel in that
21 other case was actually denied. *Id.* at 9:20-22

22 Despite all of this, however, the videos were recommended to be produced in this case in the
23 Discovery Commissioner's Report and Recommendation, attached as **Exhibit "D"** to this Objection.
24 The Transcript of the hearing on Plaintiff's Motion to Compel held October 31, 2018 is attached as
25 **Exhibit "E"** to this Objection. Not one mention is made by the Commissioner of the mode of
26 operation approach or what legal standard applies to allow production of the *videos*. The
27 Commissioner recommended the videos be produced as discoverable evidence, recommended Rule
28 26(c) protections keeping them confidential and limiting their use, and recommended that it was

1 ultimately up to the district court judge, at the time of pretrial proceedings, whether or not the video
2 would be admissible.

3 The mode of operation approach does not apply here to relax the notice standard. The videos
4 are not relevant to show notice. The motion should have been denied.

5 **III. LEGAL ARGUMENT**

6 **A. Plaintiff's Motion Incorrectly Argues The 'Mode of Operation' Analysis Applies To**
7 **This Case To Obtain The Videos, When Caselaw Demonstrates It Does Not; The**
8 **Approach Is Only Applied, If At All, Very Narrowly In Circumstances Unlike Here.**

9 The notice requirement is relaxed under the mode of operation approach, but the rule's
10 application is specifically limited, by the Nevada Supreme Court, to where an "owner of a self-
11 service establishment has, as a cost-saving measure, chosen to have his customers perform tasks
12 that were traditionally performed by employees." *FGA, Inc. v. Giglio*, 128 Nev. 271, 281, 278
13 P.3d 490 (2012). The rule, however, is not applicable here for a slip in fall from a bottle of water
14 spilled in a lobby of a hotel.

15 In order to *avoid* her legal burden to prove Defendant's actual or constructive notice of an
16 alleged unreasonably dangerous condition—here, the water spilled on the floor for 6 minutes—
17 Plaintiff tries to convert this case into something it is not under the limited 'mode of operation'
18 approach. In so doing, Plaintiff seeks to improperly expand the "*narrowly*" applied 'mode of
19 operation' analysis into a new broad, vast realm, that would undermine negligence and premises
20 liability law as we know it and convert business owners into strict liability insurers. The law does not
21 allow for this, however. Plaintiff's attempt to use the doctrine to obtain video of incidents anywhere
22 on property to try and show notice is improper.

23 As demonstrated below, the Nevada Supreme Court has not recognized or expanded the
24 narrow approach to cover the circumstances at issue here, which is why Plaintiff's Motion did not
25 analyze the Nevada cases that address it, nor the underlying rationale Nevada relies upon in
26 acknowledging the doctrine's limited use. Instead, Plaintiff's Motion just *says* and assumes it
27 applies, with no showing or support under law, so that Plaintiff can attempt to avoid her notice
28 burden, and accordingly try to obtain and use a montage of approximately 30 irrelevant videos of

1 unrelated slip and falls, from different foreign substances, in different spots, to try and prejudice,
2 confuse and mislead the jury into imposing liability against Defendant *for the unrelated slip and fall*
3 *that is at issue here*. This is simply not appropriate or proper.

4 "The owner or occupant of property is not an insurer of the safety of a person on the premises,
5 and in the absence of negligence, no liability lies." *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250,
6 849 P.2d 320 (1993), citing *Gunlock v. New Frontier Hotel*, 78 Nev. 182, 185, 370 P.2d 682, 684
7 (1962). "An accident occurring on the premises does not of itself establish negligence." *Id.* "A
8 business does owe its patrons a duty to keep the premises in a reasonably safe condition for use." *Id.*,
9 citing *Asmussen v. New Golden Hotel Co.*, 80 Nev. 260, 262, 392 P.2d 49 (1964).

10 "Where a foreign substance on the floor causes a patron to slip and fall, and the business
11 owner or one of its agents caused the substance to be on the floor [unlike here], liability will lie, as a
12 foreign substance on the floor is usually not consistent with the standard of ordinary care." *Id.*, citing
13 *Asmussen*, 80 Nev. at 262; *see also Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 509, 377 P.2d 174, 175
14 (1962); *FGA, Inc. v. Giglio*, 128 Nev. 271, 280, 278 P.3d 490 (2012). "Where the foreign substance
15 is the result of the actions of persons other than the business or its employees [similar to here],
16 liability will lie only if the business had actual or constructive notice of the condition and failed to
17 remedy it." *Id.*, citing *Asmussen*, 80 Nev. at 262; *see also Eldorado Club*, 78 Nev. at 510; *FGA, Inc.*,
18 128 Nev. at 280.

19 Here, because it was not an employee that spilled the water, Plaintiff therefore has the burden
20 to show that Defendant had actual or constructive notice of the water in the lobby within 6 minutes
21 from it being spilled in order to hold Defendant liable under the law. *Sprague*, 109 Nev. at 250;
22 *Asmussen*, 80 Nev. at 262; *Eldorado Club*, 78 Nev. at 510; *FGA, Inc.*, 128 Nev. at 280. Plaintiff
23 seeks to make new law here by applying the mode of operation approach where it does not belong to
24 avoid her burden to show actual or constructive notice, and seeks the videos from Defendant under
25 that misapplied theory.

26 Plaintiff's Motion does not analyze the rationale, bases, or instances of where the mode of
27 operation rule has been applied or declined to have been applied; instead, her Motion merely states
28 that the *FGA, Inc. v. Giglio* case generally recognized the implicit adoption of the mode of operation

1 approach in *Sprague* under certain circumstances, but does not address under what specific
2 circumstances it does apply, which is telling. See Pl.'s Mot., 3:18-20. Plaintiff's Motion then
3 summarily jumps to the conclusion that the mode of operation approach applies here and that
4 therefore she is entitled to the videos of all prior slips and falls on marble regardless of the
5 circumstances. An analysis of the rationale, adoption, and bases for the mode of operation rule along
6 with Nevada's jurisprudence on the issue demonstrates why it does not apply to this case, and
7 consequently, why the videos should not have been ordered produced.

8 Under the mode of operation rule *when it applies*, "the plaintiff satisfies the notice
9 requirement if [s]he establishes that an injury was attributable to a reasonably foreseeable dangerous
10 condition on the owner's premises **that is related to the owner's self-service mode of operation.**"
11 *FGA, Inc.*, 128 Nev. at 281 (emphasis added). It is the latter phrase in bold that has significance here
12 requiring the circumstances to meet the self-service nature of a certain business whereby the business
13 has customers service themselves in the manner traditionally performed by its employees. *FGA, Inc.*,
14 128 Nev. at 281. The rationale is that the owners have created an increased risk of a potentially
15 hazardous condition "**by having their customers perform tasks that are traditionally carried out**
16 **by employees.**" *FGA, Inc.*, 128 Nev. at 282. The *FGA* court declined to apply the mode of operation
17 approach in that case, however, because it did not fit the circumstances.

18 The *FGA, Inc.* court analyzed the rationale for, and origins of, the mode of operation
19 approach. The Court acknowledged there was "a modern trend toward modifying th[e] traditional
20 approach to premises liability to **accommodate newer merchandising techniques, such as the shift**
21 **that grocery stores have made from clerk-assisted to self-service operations.**" *FGA, Inc.*, 128
22 Nev. at 280 (emphasis added), citing *Sheehan v. Roche Bros. Supermarkets, Inc.*, 448 Mass. 780, 863
23 N.E.2d 1276, 1281-82 (2007) (customer slipped on grape at grocery store, similar to *Sprague*). "The
24 modification of the traditional premises liability approach is, in large part, **based on the change in**
25 **grocery stores from individualized clerk-assisted to self-service operations.**" *Roche Bros.*
26 *Supermarkets, Inc.*, 863 N.E.2d at 1281. "One such variation is the 'mode of operation' approach."
27 *FGA, Inc.*, 128 Nev. at 280. "This approach focuses on the nature of the business at issue." *Id.*

28

1 According to the Nevada Supreme Court, “[t]he rationale underlying the mode of operation
2 approach is that an **owner of a self-service establishment has, as a cost-saving measure, chosen to**
3 **have his customers perform tasks that were traditionally performed by employees.”** *FGA, Inc.*,
4 128 Nev. at 281 (emphasis added). “If a customer who is performing *such a task* negligently creates
5 a hazardous condition, the owner is ‘charged with the creation of this condition just as he would be
6 charged with the responsibility for negligent acts of his employees’ because it was the owner’s choice
7 of mode of operation that created the risk.” *Id.* (emphasis added). For example, at Wal-Mart, “[a]
8 self-service flower display creates a risk of minor drips and spills as flowers are removed from
9 containers of water by customers.” *Mills v. Wal-Mart Stores, Inc.*, 2017 WL 4038398 (D. Nev. Sept.
10 13, 2017).

11 While the *FGA* Court acknowledged the mode of operation approach was a trend applied in
12 certain limited circumstances, it also recognized that the “majority of jurisdictions adopting [the rule]
13 have applied it **narrowly.**” *FGA, Inc.*, 128 Nev. at 281 (emphasis added). Other Nevada courts have
14 similarly recognized its narrow application as well. *See, e.g., Esprecion v. Costco Wholesale Corp.*,
15 2016 WL 4926424, *3 (D. Nev. Sept. 14, 2016) (“The Nevada Supreme Court has limited *Sprague*,
16 however, noting that the ‘mode of operation’ approach to landowner liability adopted in that case had
17 been applied ‘narrowly’ in the other states that had adopted some version of it. Accordingly, **the**
18 **FGA Court rejected an expanded theory of liability under circumstances dissimilar to those in**
19 ***Sprague.***”); *Mills v. Wal-Mart Stores, Inc.*, 2017 WL 4038398 (D. Nev. Sept. 13, 2017) (“The
20 Supreme Court of Nevada has recognized a modified theory of traditional premises liability, called
21 ‘mode of operations,’ **in self-service retail establishments, such as grocery stores ... [s]pecifically,**
22 **when [] an owner allows customers to self-serve...**”);

23 The Court in *FGA, Inc.*, after analyzing the mode of operation approach, its origins, and its
24 rationale, actually found “**no reason to extend mode of operation liability to such establishments**
25 **absent such a showing as their owners have not created the increased risk of a potentially**
26 **hazardous condition by having their customers perform tasks that are traditionally carried out**
27 **by employees.”** *FGA, Inc.*, 128 Nev. at 282. *Giglio* was arguing for application of the mode of
28

1 operation liability to extend beyond the self-service context just as Plaintiff does here, but the *FGA*
2 court specifically declined to do so.

3 There is no applicable 'self-service mode of operation' at play under the circumstances of this
4 case such as, for example, in the grocery store produce section where the approach emanated from.
5 There was no 'such self-service task' carried out by the guests here that was traditionally performed
6 by Defendant's employees, and therefore the mode of operation approach has no application here
7 despite Plaintiff's attempt to stretch the rule. Plaintiff's argument that marble is too slippery when
8 wet because others have fallen on foreign substances too does not implicate the mode of operation
9 approach; there was no self-service task here traditionally performed by Defendant's employees so
10 the rationale does not apply, and Plaintiff must prove actual or constructive notice under the normal
11 premises liability standard. Walking through a lobby on floors that are alleged to be too slippery
12 *when wet* does not implicate the mode of operation approach, but one can imagine the ramifications
13 to the Las Vegas hotel industry if it did. The rationale simply does not apply here.

14 Plaintiff seeks production of the video under the misnomer that the mode of operation
15 approach may apply to this case, which it does not. Plaintiff wants to forego her burden to show
16 actual or constructive notice and inflame the jury with an 'America's Funniest Home Videos' style
17 montage of 5 years of slip and falls from anywhere on the property. Most if not every hotel in town
18 has had their share of slips and falls in their lobbies; this in and of itself does not implicate the mode
19 of operation rule nor entitle plaintiffs to years of slip and fall videos anywhere on the premises.
20 Discovery is not without limits.

21 **B. Plaintiff's Motion to Compel Should be Denied Because the Requests are Unduly**
22 **Burdensome, Irrelevant, Cumulative, Not Likely to Lead to the Discovery of**
23 **Admissible Evidence, Prejudicial, and Misleading.**

24 Plaintiff still has her burden to show that Defendant had notice of the foreign substance at
25 issue in this case. The approximately 25-30 videos of other unrelated falls, with various substances,
26 occurring in various manners, in various locations, is irrelevant, inadmissible to show notice,
27 cumulative of the incident reports already produced (that contain pictures), prejudicial, confusing and
28 misleading to a jury, and not likely to lead to the discovery of admissible evidence.

1 The Court "shall" limit the "frequency or extent of use of discovery methods ... if it
2 determines that ... the discovery is unreasonably cumulative or duplicative, taking into account the
3 needs of the case, the amount in controversy, limitations on the parties' resources, and the importance
4 of the issues at stake in the litigation," or if "the discovery is unduly burdensome or expensive." Nev.
5 R. Civ. P. 26(b)(2).

6 The court may also limit discovery where it is irrelevant to the subject matter involved in the
7 pending action, or if the information sought is not reasonably calculated to lead to the discovery of
8 admissible evidence. Nev. R. Civ. P. 26(b)(1). Evidence is only relevant if it has "any tendency to
9 make the existence of any fact that is of consequence to the determination of the action more or less
10 probable than it would be without the evidence." *Garner v. State*, 116 Nev. 770, 780, 6 P.3d 1013,
11 1020 (2000), overruled on other grounds by *Sharma v. State*, 118 Nev. 6489, 56 P.3d 868
12 (2002)(quoting NRS 48.015).).

13 Alternatively, even if evidence is deemed relevant in some manner, it is still not admissible if
14 its probative value is substantially outweighed by (i) the danger of unfair prejudice, (ii) of confusion
15 of the issues, (iii) of misleading the jury, or outweighed by considerations of (iv) undue delay, (v)
16 waste of time, or (vi) the needless presentation of cumulative evidence. NRS 48.035(1),(2). Trial
17 courts generally have discretion in determining whether evidence is relevant and admissible. *Thomas*
18 *v. Hardwick*, 126 Nev. Adv. Op. 16, 231 P.3d 1111, 1117 (2010).

19 Here, Plaintiff's Complaint is based in negligence and she has the burden to prove Defendant
20 had actual or constructive notice *of the water spill at issue in this action*. *Sprague*, 109 Nev. at 250;
21 *Asmussen*, 80 Nev. at 262; *Eldorado Club*, 78 Nev. at 510; *FGA, Inc.*, 128 Nev. at 280. Prior slip
22 and falls under differing circumstances in different spots of the various lobbies, or by elevators, or the
23 parking garage, are not relevant to the slip and fall here nor admissible to show liability or notice
24 against Defendant *for this slip and fall*, and could only serve to inflame, confuse, and prejudice the
25 jury. Plaintiff is already in possession of the incident reports that also contain color pictures of the
26 events, which were redacted per court order to preserve the identity of the people involved.
27 Production of the videos is cumulative at best and also would disclose the identities that have been
28 redacted. There is no need for the videos other than for improper purposes.

1 The spilled water on the spot of the lobby floor where Plaintiff slipped was a temporary
2 condition, not a structural, permanent, or continuing defect. In *Eldorado*, the court held it was error
3 to admit prior accidents of slips and falls on a ramp to show notice of the condition even though the
4 prior slips were on the same instrumentality, a lettuce leaf. As in *Eldorado* where the instrumentality
5 causing the slip on the ramp was a lettuce leaf, a temporary situation not attributed to the ramp
6 without the leaf, the instrumentality causing the slip here was the spilled water in the lobby, not the
7 floor itself.

8 "The admissibility of evidence of prior accidents in this kind of a case, to show notice or
9 knowledge of the danger causing the accident, is generally confined to situations where there are
10 conditions of permanency." *Eldorado*, 78 Nev. at 511. Plaintiff's condition of permanency here is
11 the installation of marble floor that meets building codes. "Evidence of the type here in question is
12 usually excluded where it relates to a temporary condition which might or might not exist from one
13 day to the other," like the spill at issue in this case. *Id.* "[W]here a slip and fall is caused by the
14 temporary presence of debris or foreign substance on a surface, which is not shown to be
15 continuing, it is error to receive 'notice evidence' of the type here involved for the purpose of
16 establishing the defendant's duty." *Id.* (emphasis added).

17 The videos Plaintiffs seek are not relevant or admissible and will not lead to the discovery of
18 admissible evidence. The evidence is cumulative of the incident reports already produced, and the
19 requests are unduly burdensome. The only purpose of the evidence would be to prejudice or mislead
20 a jury. The probative value of the videos does not outweigh any of these considerations.

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PROOF OF SERVICE
LV-Smith v. Venetian Casino Resort, LLC
Case No.: A-17-753362-C

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

On December 7, 2018, I served the following document(s):

**DEFENDANT'S OBJECTION TO DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS**

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

Peter Goldstein, Esq.
Nevada Bar No. 6992
PETER GOLDSTEIN LAW CORP.
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Las Vegas, NV 89135
Telephone: (702) 474-6400
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Attorneys for Plaintiff

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

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

Executed on December 7, 2018, at Las Vegas, Nevada.


An employee of Messner Reeves LLP

EXHIBIT 21



ORDR

Peter Goldstein, Esq. (SBN 6992)

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Tel: 702.474.6400

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Attorney for Plaintiff
CAROL SMITH

DISTRICT COURT

CLARK COUNTY, NEVADA

CAROL SMITH, an individual,

Plaintiff,

vs.

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

Defendants.

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

ORDER

Defendant filed an objection to the Discovery Commissioner's Report and Recommendation.

A hearing was held on January 22, 2019. Peter Goldstein appeared on behalf of the Plaintiff, and Ryan Loosvelt on behalf of the Defendant. The Court stated that the admissibility of the documents sought by Plaintiff, would be made at the time of trial, and affirmed the Discovery Commissioner's Report and Recommendation.

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1 IT IS HEREBY ORDERED that the Discovery Commissioner's Report and Recommendation is
2 AFFIRMED, and Plaintiff's Motion to Compel is Granted, Defendant must produce video for incident
3 reports on other marble floors on the property for which video evidence is maintained and supplement
4 Request for Production of Documents, set four and Defendant must produce all video tapes that pertain
5 to all the incident reports that were produced previously.


7 IT IS SO ORDERED.

10 DATED this 28 day of February 2019.

11 
12 DISTRICT COURT JUDGE
13 SW

13 Respectfully Submitted by:


14 PETER GOLDSTEIN LAW CORPORATION

15 
16 PETER GOLDSTEIN, ESQ. [SBN 6992]
17 10785 W Twain Ave, Ste. 230
18 Las Vegas, Nevada 89135
19 Attorney for Plaintiff
20 CAROL SMITH

Date: 2.14.19

18 Approved as to form and content:

19 MESSNER REEVES

21 
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23 8945 W. Russell Road, Suite 300
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25 Attorneys for Defendant
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27
28

Date: _____

EXHIBIT 22

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13 **VENETIAN CASINO RESORT, LLC and**
14 **LAS VEGAS SANDS, LLC**

DISTRICT COURT

CLARK COUNTY, NEVADA

15 JOYCE SEKERA, an Individual;
16
17 Plaintiff,

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

18 v.

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

26 Defendants.

27 **RESPONSE TO PLAINTIFF'S OBJECTION TO DISCOVERY COMMISSIONER'S**
28 **REPORT AND RECOMMENDATIONS DATED APRIL 2, 2019. COUNTERMOTION TO**
STRIKE FACTS AND ARGUMENTS NOT BRIEFED BEFORE THE DISCOVERY
COMMISSIONER. . COUNTERMOTION FOR ORDER DIRECTING PLAINTIFF
TO COMPLY WITH PROTECTIVE ORDER BY RETRIEVING ALL INFORMATION
DISTRIBUTED TO PERSONS OUTSIDE THE LITIGATION, AND COUNTERMOTION
FOR APPROPRIATE SANCTIONS UNDER NRCP 37(b)(2)

1 1. **Guest Privacy Rights**

2 The Discovery Commissioner agreed that the people identified in the prior incident reports have
3 certain rights to privacy, that there is **protected HIPAA information** in the prior incident reports, and
4 that producing these reports in redacted form to protect the privacy of these individuals is appropriate.
5 (See Exhibit B.) The Health Insurance Portability and Accountability Act of 1996 (*HIPAA*) prohibits
6 unauthorized disclosure of certain protected health information. (See 42 USCS. § 1320d *et seq.*; 45
7 C.F.R. §§160-164.)
8

9 Providing Plaintiff with *carte blanche* personal information of all Venetian guests previously
10 involved in incidents sets up Defendants for a cause of action for invasion of privacy by these persons.
11 (See *e.g. Iorio v. Check City P'ship, LLC*, No. 64180, 2015 Nev. Unpub. LEXIS 658, 2015 WL
12 3489309, at *3 (Nev. May 29, 2015); *People for Ethical Treatment of Animals v. Bobby Berosini, Ltd.*,
13 111 Nev. 615, 895 P.2d 1269, 1279 (Nev. 1995) holding modified by *City of Las Vegas Downtown*
14 *Redevelopment Agency v. Hecht*, 113 Nev. 632, 940 P.2d 127 (Nev. 1997), holding modified by *City*
15 *of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 644, 940 P.2d 134 (Nev. 1997).)
16

17 2. **Guest Personal Information**

18 Defendants employ emergency medical technicians who respond to injury related matters on
19 Venetian property. Those EMTs routinely perform triage like exams and render first aid care, which
20 includes not only collecting information about present condition of a guest, but also information related
21 to past medical history, medications, etc. They also frequently provide information relayed by
22 responding paramedics, which information is intended to be relayed to hospital personnel. Statements
23 to responding EMTs and outside EMS personnel are often recorded in incident reports. By collecting
24 and reporting this information, Venetian contends that it is a provider within the umbrella of HIPAA
25 and, as such, cannot release information related to complaints of injury. Take Plaintiff's own incident,
26 for example. Plaintiff was examined by Joe Larson, EMT, who provided intricate details of his
27
28

1 Venetian's property; individuals who are not believed to have any personal knowledge or information
2 regarding any of the facts surrounding Plaintiff's alleged incident.

3 2. **Plaintiff is using information produce for improper purposes and cannot**
4 **articulate a reasonable need for guest contact information**

5 Disclosure of the guest information as it pertains to this litigation alone creates an issue for
6 Venetian, as it is potentially detrimental to its business interests to protect the confidential information
7 of its guests. Were Venetian to disclose this information without court ordered protection, subjecting
8 its customers to unrelenting contact by persons uninvolved with the litigation, it would likely diminish
9 the customer/client relationships which Venetian has extended extraordinary effort and resources
10 establishing. There is a recognized interest in protecting the disclosure of personal client information,
11 as unauthorized disclosure would likely be perceived negatively by customers and potential customers.
12 (See e.g., *Gonzales v. Google, Inc.*, 234 FRD 674, 684 (N.D.CA 2006) (disclosing client information
13 "*may have an appreciable impact on the way which [the company] is perceived, and consequently the*
14 *frequency with which customers use [the company] ").*)
15

16 Guests who stay at Venetian do so with an expectation that their personal information
17 (especially when it involves health issues) will not be disclosed or disseminated freely without their
18 consent. Accordingly, Venetian respectfully requests that the private identification information of its
19 guests involved in prior incidents be protected from disclosure by anyone not involved in this litigation
20 as legal counsel, an expert witness, or otherwise.
21

22 **What has Plaintiff done to demonstrate her need for this information is so great that it**
23 **outweighs the privacy rights of Defendants' guests?** She provides the following:
24

25 . . . Plaintiff needs the names and contact information on the incident reports
26 because they are potential witnesses. The identity of the individuals who fell at
27 Venetian and were injured on its marble floors as a result of impacting liquid are
28 important because they will enable Plaintiff's Counsel to locate these witnesses and
present them to counter Venetian's expected claims that Plaintiff was
comparatively negligent because she did not see the liquid substance on the floor
before she fell.

EXHIBIT 23



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DISTRICT COURT
CLARK COUNTY, NEVADA

19 JOYCE SEKERA, an Individual,
20
21 Plaintiff,

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

22 v.

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

Defendants.

**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**

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 Plaintiff's 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 16th supplement to its list of witnesses and production
23 of documents for early case conference. (Defendant's 16th 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 means. Venetian's argument does not describe why Plaintiff's request is "not sufficiently limited in
2 time." Finally, Plaintiff the Court can only guess at to what Venetian means by "ect." Venetian's two
3 sentence explanation as to why good cause exists is grossly inadequate to satisfy the burden of proof
4 as it is too broad, too vague and lacks specific examples and articulated reasoning. For this reason
5 alone, Venetian's motion for a protective order should be denied.

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

26 //

27 //

EXHIBIT 24

Steven D. Grierson

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18 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

14 JOYCE SEKERA, an Individual,
15 Plaintiff,

16 v.

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

25 Defendants.

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

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO QUASH
THE SUBPOENA TO DAVID ELLIOT,
P.E. AND FOR A PROTECTIVE
ORDER AND COUNTERMOTION TO
STRIKE MOTION FOR PROTECTIVE
ORDER AND FOR ATTORNEY'S FEES**

24 Plaintiff hereby submits her Opposition to Defendant's Motion to Quash the Subpoena to
25 David Elliot, P.E. and For a Protective Order and Countermotion to Strike Motion for Protective
26 Order and for Attorney's Fees.
27 //

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

2. Any reports, opinions or other documents generated by you, regarding the safety of the marble flooring utilized by The Venetian Las Vegas within its hotel and casino.

3. Any slip testing, reports or documents generated by you during the period of your consultancy with the Venetian Las Vegas regarding the safety of the marble flooring within its hotel and casino.

(Subpoena Duces Tecum to Elliott, attached as Exhibit "5.")

III. OPPOSITION TO DEFENDANT'S MOTION TO QUASH THE SUBPOENA TO DAVID ELLIOT, P.E. AND FOR A PROTECTIVE ORDER

A. The Information Plaintiff Seeks is Not Privileged and Not Attorney Work Product

Based on Elliott's deposition testimony in *Farina v. Desert Palace, Inc.* Plaintiff believed Venetian hired Elliott as a consultant between 2000 and 2009 to evaluate the safety of its marble floors. Thus, Plaintiff subpoenaed Elliott for a copy of this consulting contract and any reports, opinions, slip tests and other documents Elliott generated in relationship to this consultancy. To clarify, Plaintiff believes Venetian, *not Venetian's attorneys*, hired Elliott as a private consultant, *not an expert, outside of the course of litigation* to evaluate the safety of its marble floors. Plaintiff limited all of her requests for production to this consulting relationship.

Attorney-client privilege does not apply to these requests because Plaintiff requested Elliott's reports to Venetian, *not Elliott's reports to Venetian's attorneys*. See NRS 49.035, et. seq. As far as Plaintiff is concerned Venetian's attorneys' knowledge of the dangerous condition of the marble floors is irrelevant. Venetian's attorneys' are not managers and their conscious disregard of the dangerous condition is thus insufficient to hold Venetian liable for punitive damages. Plaintiff only seeks Elliott's reports, opinions, slip tests and other documents which he provided to Venetian's employees and management. Plaintiff is also not requesting documents that reflect an Mr. Royal's or any other lawyer's impressions, conclusions, opinions, or legal research or theories. Thus, work product does not apply.

The only documents Plaintiff seeks related to litigation are ones discoverable under the rules i.e. Elliott's reports in cases where Venetian disclosed him as a testifying expert. Plaintiff is not seeking non-testifying expert materials in violation of NRCPP 26(b)(4)(D). (Defendant's Mot. at

1 9:10-12.) Plaintiff is not seeking draft reports in violation NRCP 26(b)(4)(B). (Defendant's Mot. at
2 9:12-17.) Plaintiff is not seeking potentially privileged communications between Venetian's
3 attorneys and Elliott. (Defendant's Mot. at 9:17-21.) The undersigned is not in the habit of making
4 frivolous discovery requests as Venetian suggests. Of course, Venetian would know this if it
5 conducted the mandatory meet and confer under NRCP 26(c)(1) and EDCR 2.34(d).
6

7 **B. Elliott's Consulting Reports Are Discoverable as They Relate to Plaintiff's**
8 **Claim for Punitive Damages**

9 NRCP 26(b)(1) defines the scope of discovery as:

10 any nonprivileged matter that is relevant to **any party's claims or defenses** and
11 proportional to the needs of the case, considering the importance of the issues at
12 stake in the action, the amount in controversy, the parties' relative access to
13 relevant information, the parties' resources, **the importance of the discovery in**
14 **resolving the issues**, and whether the burden or expense of the proposed discovery
15 outweighs its likely benefit

16 NRCP 26(b)(1) (emphasis added). Plaintiff seeks a copy of Elliott's consulting contract with
17 Venetian and any reports, opinions, slip tests and other documents he generated as a result of this
18 contract to prove Venetian acted with conscious disregard when it refused to increase the slip
19 resistance of its marble floors.

20 In Nevada, a plaintiff may recover punitive damages when evidence demonstrates the
21 defendant acted with "malice, express or implied." *Wyeth v. Rowatt*, 126 Nev. Adv. Rep. 44, 244
22 P.3d 765, 783 (2010) *quoting* NRS 42.005(1). " 'Malice, express or implied,' means conduct which
23 is intended to injure a person or despicable conduct which is engaged in with a conscious disregard
24 of the rights or safety of others." *Id. quoting* NRS 42.001(3) (emphasis added). "A defendant has a
25 'conscious disregard' of a person's rights and safety when he or she knows of 'the probable harmful
26 consequence of a wrongful act and a willful and deliberate failure to act to avoid those
27 consequences.' " *Id. quoting* NRS 42.001(1). To succeed on her claim for punitive damages,
28 Plaintiff must show Venetian was aware its marble floors posed a hazard to guests, and deliberately
failed to take any steps to improve the condition of those floors. NRS 42.005(1) requires Plaintiff
prove her punitive damages claim by clear and convincing evidence. NRS 42.005(1).

EXHIBIT 25



1 **OPPS**

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14 LAS VEGAS SANDS, LLC

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

18 Plaintiff,

19 v.

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

27 Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

Before the Discovery Commissioner

Hearing Date: August 2, 2019

Hearing Time: 9:00 am

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

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

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

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

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

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

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

7 **IV.**

8 **CONCLUSION**

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

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

17 DATED this 12 day of July, 2019.

18 **ROYAL & MILES LLP**

19 By 

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

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

22 1522 W. Warm Springs Rd.

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25 LAS VEGAS SANDS, LLC, and

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27
28