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2 IN THE SUPREME COURT OF THE STATE OF NEVADA
3

4 Supreme Court No. Electronically Filed
District Court Case No. A-18-77276-1 Mar 17 2020 02:21 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)**
Volume 12 (Exhibits 49-51)

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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 DATED this 13 day of March, 2020.
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5 ROYAL & MILES LLP

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7
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CERTIFICATE OF SERVICE

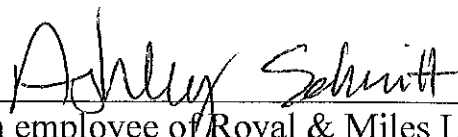
I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 17 day of March, 2020, I served true and correct copy of the foregoing APPENDIX TO PETITIONERS' EMERGENCY PETITION FOR WRIT OF 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 12 (Exhibits 49-51), by electronically filed with the Clerk of the Court by using ECF service which will provide copies to all counsel of record registered to the receive CM/ECF notification and by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
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and

Honorable Kathleen Delaney
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Respondent

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guests would violate the privacy rights of third parties. “Federal courts ordinarily recognize a constitutionally-based right of privacy that can be raised in response to discovery requests.” *Zuniga v. Western Apartments*, 2014 U.S. Dist. LEXIS 83135, at *8 (C.D. Cal. Mar. 25, 2014) (citing *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 191 (C.D. Cal. 2006)). However, this right is not absolute; rather, it is subject to a balancing test. *Stallworth v. Brollini*, 288 F.R.D. 439, 444 (N.D. Cal. 2012). **“When the constitutional right of privacy is involved, ‘the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced.’”** *Artis v. Deere & Co.*, 276 F.R.D. 348, 352 (N.D. Cal. 2011) (quoting *Wiegele v. Fedex Ground Package Sys.*, 2007 U.S. Dist. LEXIS 9444, at *2 (S.D. Cal. Feb. 8, 2007)). **“Compelled discovery within the realm of the right of privacy ‘cannot be justified solely on the ground that it may lead to relevant information.’”** *Id.* Here, Plaintiff has not addressed these privacy concerns, much less demonstrated that her need for the information outweighs the third party privacy interests. Therefore, the Court will not require Defendant to produce addresses or telephone numbers in response to Interrogatory No. 5. Defendant is directed to file a supplemental response to Interrogatory No. 5, as limited by the Court. (*See id.* at *7-8. Emphasis added.)

Sekera further incorrectly suggests that the case of *Shaw v. Experian Info. Solutions, Inc.*, 306 F.R.D. 293 (SD. Cal. March 18, 2015), cited by Petitioners, does not support the petition before the Court. (*See* RAB at 23.) In so doing, Sekera writes: “The *Shaw* Court actually required the defendants disclose the ‘names, addresses, and telephone number’ of third-parties without a protective

order on the same.” (*See id.*) To the contrary, the *Shaw* court held as follows: “the plaintiffs met the defendant’s stated privacy concerns **by stating that they would accept the information in redacted form.**” (*Shaw, supra*, at 299, emphasis added.) In other words, the *Shaw* court ensured that the privacy rights of third parties, such as those at issue here, were protected, something Sekera failed to note.

Petitioners refer the court to *Caballero v. Bodega Latina Corp.*, 2017 U.S. Dist. LEXIS 116869 (D. Nev. July 25, 2017). There, the plaintiff argued that her real issue for a slip/fall on a foreign substance was not just that the foreign substance was present, but that the floor was itself slippery and not appropriate for its intended use. Therefore, plaintiff argued that *Eldorado Club, Inc.* did not apply (as Sekera is arguing here). In *Caballero*, the court denied plaintiff’s motion to compel the production of prior incidents, even in unredacted form, because she did “not meet her threshold burden to show the discovery she seeks to obtain is ‘relevant to any party’s claim or defense’ under Rule 26(b)(1); therefore, the court did not even get to the proportionality part of the balancing test under the rule. (*See id.* at *22-23.) Here, the district court found the information to be relevant, but did not weigh the proportionality based on Plaintiff’s invented need for the information to counter any potential comparative fault argument.

A review of some cases cited by Sekera is necessary. Sekera's reference to *Wauchop v. Domino's Pizza, Inc.*, 138 F.R.D. 539 (N.D. Ind. 1991), for example, misses the mark. There, the defendant sought protection of certain information to protect its own reputation, not because it desired to protect the privacy rights of customers. Further, the *Wauchop* case did not involve the dissemination of protected health information. Here, Petitioners desire to protect Venetian guests from being contacted and harassed not only by Sekera, but by multiple others in connection with some other incident. Petitioners are moving to protect the valued privacy of Venetian guests. That was not an issue in *Wauchop*. As it presently stands, this privacy interest is neither valued nor protected by the District Court below. Sekera has not presented any Nevada case law supporting such a result, nor has Sekera cited any Nevada law supporting the proposition that NRCP 1 trumps all arguments related to the protection of private information.

Sekera also cites to *Khalilpour v. Cellco P'ship*, 2010 U.S. Dist. LEXIS 43885* (N.D. Cal. April 1, 2010), which relates to a class action where information was sought to identify the class members. This case actually supports the pending petition. What Sekera failed to relay in citing to *Khalilpour* is that there was already a protective order in place. Pursuant to this extant protective order the information at issue was to be used strictly within the litigation.

Accordingly, the *Khalilpour* court recognized a protectable privacy interest. (*See id.* at *10-11.)

Sekera's reference to *Busse v. Motorola, Inc.*, 351 Ill. App. 3d 67, 813 N.E.2d 1013 (2004), oddly does not even address the discovery issues at hand, but instead considered a motion for summary judgment on a claim of privacy invasion in a tort action. (*See* RAB at 22.) The *Busse* court held that "Private facts must be alleged" by a plaintiff to meet the elements of the tort, noting: "Without private facts, the other three elements of the tort need not be reached." (*See id.* at 72, 813 N.E.2d at 1017.) The instant matter does not involve any claim for invasion of privacy or its needed elements. Here, the privacy issues involve the production of the private information of individuals unaffiliated with the present litigation, including personal events and health related information tied to each name with contact information, which are by their very nature "private."

The case of *Keel v. Quality Medical System, Inc.*, 515 So.2d 337 (Fla. Dist. Ct. App. 1987), cited by Sekera, is likewise inapplicable. (*See* RAB at 22.) The *Keel* decision (actually consisting of a single paragraph) relates to a restraining order preventing a former employee from contacting customers of his former employer. It has nothing to do with any issues presently before the court here.

The case of *Brignola v. Home Props., L.P.*, 2013 U.S. Dist. LEXIS 60282 (E.D. Pa. April 25, 2013), cited by Sekera, relates to a motion to dismiss filed by

the defendant in a cause of action related to debt collection. (*See* RAB at 22.) It does not address a discovery issue at all and contains no analysis under Rule 26(b)(1).

Sekera's reference to *Mount Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly*, 2013 U.S. Dist. LEXIS 88239 (D.C. N.J. June 24, 2013), also supports Petitioners' position. (*See* RAB at 22.) While Sekera represents the case to stand for the proposition that concerns about protecting the privacy of contact information were "overblown", Sekera fails to relay that there was already a **confidentiality order** in place; therefore, the court recognized a protectable interest. It should be further noted that the *Mount Holly* case did not involve sensitive private health information provided by guests involved in an incident while visiting a business.

In *Henderson v. JPMorgan Chase Bank*, No. CV113428PSGPLAX, 2012 WL 12888829, at *4 (C.D. Cal. July 31, 2012), also cited by Sekera, the information at issue related to employees, not private party guests, and did not involve the dissemination of any private health information; therefore, it is not at all helpful. (*See* RAB at 24.) Also, Sekera fails to note that in *Henderson* there was already a working protective order in place regarding protection of personal contact information to address privacy concerns. Further, the court there noted that the plaintiff met the balancing test of Rule 26(b)(1) demonstrating a need for this

protected private information. (*See id.* at *16-17, citing *Knoll v. American Tel. & Tel. Co.*, 176 F.3d 359, 365 (6th Cir 1999) (approving protective orders to protect non-parties from “the harm and embarrassment potentially caused by nonconfidential disclosure of their personnel files.”)⁵ Sekera has not done that here.

Sekera’s reference to *Tierno v. Rite Aid Corp.*, 2008 U.S. Dist. LEXIS 58748 (N.D. Cal. July 31, 2008), is likewise misplaced. (See RAB at 24.) In citing to this case, Sekera again fails to advise the Court that there was already a protective order in place “to ensure that information is not misused”. (*See id.* at *8-9, citing *Pioneer Electronics, Inc. v. Superior Court*, 40 Cal 4th 360, 371 (2007) [“privacy intrusion is minimized where safeguards that shield information from disclosure are in place”].) No such safeguards were provided by the District Court herein to protect against the misuse of private information.

In citing to *McArdle v. AT&T Mobility LLC*, 2010 U.S. Dist. LEXIS 47099 *10 (N.D. Cal. April 16, 2010), Sekera once again failed to advise that the private information at issue there was subject to a protective order “limited to Plaintiff and his counsel in this case.” (See RAB at 24-25.) Again, no such order is in place protecting the privacy rights of Venetian guests here.

⁵The court in *Knoll* upheld the district court's issuance of a protective order to protect the privacy of nonparty personnel files sought by the plaintiff.

The case of *Puerto v. Superior Court*, 158 Ca. App. 4th 1242, 70 Cal.Rptr. 3d 701 (2008), cited by Sekera, is also supportive of Petitioners' position. (See RAB at 25.) There, the California court acknowledged the privacy rights of persons identified in disclosures, stating that "the trial court was well within its discretion in concluding that the witnesses had a reasonable expectation of privacy in their addresses and phone numbers" and that the trial court was free to order protection of the information at issue. (See *Puerto* at 1252, 1259, 70 Cal.Rptr.3d at 708, 714.)

In reality, Sekera has not cited to any case law supporting her position that rights under NRCP 1 are superior to any privacy rights of persons involved in other incidents on Venetian property. Further, Sekera has failed entirely to establish why she needs contact information of persons involved in other incidents at all – other than to rebut a comparative fault defense by Petitioners. Again, since Petitioners deny there was any foreign substance on the floor at the time of Sekera's fall (something she insists is "important to note" at RAB 2), the other incident reports would not be relevant at all to her stated purpose, as Petitioners are not asserting Sekera should have seen something on the floor that did not exist. Regardless, Sekera has not established relevance or proportionality for this unredacted information under NRCP 26(b)(1), and most certainly has not justified

her alleged right to share this private information to whomever she desires, however and whenever she so desires.

Petitioners have demonstrated that the Nevada legislature has expressed an interest in protecting the privacy rights of private parties, referencing NRS § 603A. Further, Senate Bill 220 was recently signed into law, which relates to internet privacy rights, generally prohibiting website and online services from selling of personal data of users against a user's will.⁶ This, again, demonstrates a desire by the Nevada legislature to protect private contact information of individuals, such as the information at issue in this writ proceeding. Most certainly, Sekera's alleged right to share personal data with anyone, anywhere, and in any way she desires is wholly inconsistent with the growing trend to protect this information.

⁶ SB 220, effective October 1, 2019, grants consumers the right to direct operators not to sell their covered information. The operator must honor the request only if the operator can reasonably verify the authenticity of the request and the identity of the consumer using commercially reasonable means. borrows the definition of "covered information" from existing Nevada law. "Covered information" under SB 220 includes the following: (1) a first and last name; (2) a physical address which includes the name of a street and the name of a city or town; (3) an e-mail address; (4) a telephone number; (5) a social security number; (6) an identifier that allows a specific person to be contacted; or (7) any other information concerning a person collected from the person through the Internet website or online service of the operator and maintained in combination with an identifier in a form that makes the information personally identifiable. (NV SB 220.)

V. Sekera's References to Irrelevant and Misleading "Facts" Should be Wholly Disregarded

Sekera has introduced information which is not only irrelevant to the present writ, but which has been used for the sole purpose of distracting the Court from the issue at hand, and to unfairly malign both Petitioners and their counsel, suggesting that Petitioners are unworthy of fair adjudication here. Petitioners will respond to these allegations as briefly as possible.

A. Sekera's references to other pending Venetian matters is inappropriate

Sekera has provided the Court with a false assertion that Venetian is somehow a bad actor because there were variances in incident reports produced in other cases occurring in different areas of the property on different dates and under different circumstances. (*See* RAB 10-11.) In so doing, Sekera has included a copy of a motion filed by Peter Goldstein, Esq., on February 13, 2019. (*See* RAB at 11.) Sekera failed to advise the Court that the motion filed by Mr. Goldstein, attached as APP224-35, was denied. (*See* Petitioners' Appendix, Vol. 4, Tab 23, VEN 496-98.)⁷ In fact, as noted earlier, Sekera has not presented this Honorable Court with one order supporting her contention that Petitioners have been in any

⁷ In attaching this motion, Sekera also failed to advise the Court that Mr. Goldstein filed all 660 pages of documents provided to him by Sekera's counsel on March 12, 2019, which were produced by Sekera counsel on February 7, 2019, after Petitioners' motion for protective order was filed and pending. (*See* Petitioners Appendix, Vol. 1, Tab 12, VEN 140-46.)

way sanctioned or admonished by the court below for alleged discovery abuses. Further, Sekera fails to note that in all other Venetian cases she has referenced, there are protective orders in place protecting the same type of information at issue here. This litigation is, in fact, the anomaly.

B. Sekera's reference to Gary Shulman's testimony is inappropriate

For reasons Sekera cannot articulate or justify, she has dedicated space in her Answering Brief to falsely assert that witness Gary Shulman was instructed "to lie" by Venetian's counsel during a meeting on June 28, 2018. (*See* RAB at 11.) First, this allegation is untrue and is presently the subject of a motion before the District Court. It is therefore improper to raise it in response to this petition. Second, it has nothing to do with the privacy rights at issue before the Court. It is disappointing that Sekera would make this outrageous claim and force Petitioners to address it before this Honorable Court. However, Petitioners will do so out of necessity.

Venetian's counsel first met with Mr. Shulman in his capacity as a Venetian Table Games Supervisor on Venetian property on June 28, 2018. (*See* RAB Appendix 1, APP032, deposition at 21:6-25; 22:1-5; 51:3-25; 52-53; 55:3-25; 56-62.)⁸ On June 29, 2018, Venetian's counsel sent correspondence to Mr. Shulman

⁸ Mr. Shulman initially testified that his meeting with Venetian defense counsel was November 28, 2018. (*See* RAB Appendix 1, APP033, deposition at 21:6-25.)

confirming what Mr. Shulman related regarding his recollection of events during the June 28, 2018 meeting; *to wit*: that he had not identified a foreign substance on the floor, among other things. (*See id.* APP041-42, deposition at 57:8-25; 58-61; 62:1-15.) Mr. Shulman communicated with Venetian's counsel on numerous occasions following the June 28, 2018 meeting and never conveyed to defense counsel or anyone affiliated with Venetian any understanding that he had been told "to lie" in this litigation. (*See id.* APP042, deposition at 62:5-15.)

To Petitioners' knowledge, the first time Mr. Shulman alleged that he was told "to lie" by Venetian's counsel (and thereafter harassed, intimidated and terminated by Venetian for an alleged failure to comply) was in his private conference with Sekera's counsel one week preceding his April 17, 2019 deposition. (*See* deposition at APP040-42, deposition at 51:3-25; 52-61; 62: 1-15.) The first time Mr. Shulman related his scandalous claim to anyone affiliated with the Venetian was, by his own admission, in the April 17, 2018 deposition. (*See id.* APP041, deposition at 55:21-25; 56:1-12; 65:5-15.)

Indeed, Mr. Shulman had received the detailed correspondence of June 29, 2018 confirming defense counsel's understanding of his recollection of events, and despite multiple communications between June 28, 2018 and April 17, 2019, he failed to relay any concerns or convey any assertions to Venetian or its counsel

He later acknowledged that the meeting was, in fact, in June 2018. (*Id.* APP040, deposition at 51:3-25; 52:1-25; 53:1-19.)

regarding his claim that he was told “to lie”. (*See id.* at APP042, deposition at 59:3-25; 60:1-25; 61:1-25; 62:1-15.)⁹

Mr. Shulman was suspended by Venetian on or about November 20, 2018 for threatening a female supervisor. (*See* Petitioners Appendix, Vol. 4, Tab 25, VEN 510-12.) He was terminated on January 23, 2019. (*See id.*) On February 22, 2019, Mr. Shulman filed a complaint with the Nevada Equal Rights Commission (“NERC”) asserting he was wrongfully terminated by Venetian. (*See* Petitioners Appendix, Vol. 4, Tab 25, VEN 513-14.) Interestingly, there is no mention in Mr. Shulman’s NERC complaint of having been told “to lie” by Venetian’s counsel at any time, nor is there any reference to the subject litigation at all. (*See id.*)¹⁰

⁹ Note further that the June 28, 2018 meeting occurred before Petitioners identified any witnesses pursuant to NRCP 16.1 (in which Mr. Shulman was named as a witness), approximately one month prior filing the Joint Case Conference Report. (*See* Petitioners Appendix, Vol. 4, Tab 24, VEN 499-508.)

¹⁰ Mr. Shulman testified in deposition that he had a stellar record at Venetian prior to his meeting with Venetian defense counsel, but that shortly after his June 2018 meeting he was harassed at work and received multiple warnings leading to his termination. (*See* RAB Appendix 1, APP033-34, deposition at 23:2-25; 24:1-25; 25:20-25; 26:1-25; 27:1-25. *See also* Petitioners Appendix, Vol. 4, Tab 25, VEN 509.) Later in the deposition, Mr. Shulman recanted and said he had received a series of warnings prior to his one and only meeting with Venetian’s counsel on June 28, 2018 – therefore completely discrediting his earlier claim of harassment and warnings occurring only after the June 28, 2018 meeting. (*See id.* APP040, deposition at 51:7-25; 52:1-25; 53:1-12.) Mr. Shulman ultimately blamed his termination on Venetian’s alleged failure to appropriately deal with his chronic health issues and time he had taken off work under the Family and Medical Leave Act. (*See id.*, APP034, deposition at 28:1-22.) It should further be noted that Mr.

Sekera well knows that Mr. Shulman's assertion that he was told "to lie" by Venetian's counsel is spurious. Mr. Shulman is a disgruntled former employee who Sekera counsel met with privately to elicit arguably privileged information a week prior to Mr. Shulman's deposition without advising Venetian's defense counsel. This allegation has no place here.

It is very clear from a full and fair reading of the very deposition transcript Sekera produced with her Answering Brief that there is no merit these allegations. Yet, Sekera continues to use it as a weapon whenever possible in an effort to distort the issues and discredit Petitioners. It is off topic and manipulative. Petitioners have given it more attention that it deserves; however, salacious allegations of this nature sadly require a response. This assertion by Sekera should be wholly disregarded as having nothing to do with protecting the privacy rights of Venetian guests having absolutely no knowledge about Sekera's incident.

C. The District Court's granting of leave to amend under NRCp 15 to add a punitive damages claim is irrelevant

Sekera's reference to having received leave to add a claim for punitive damages has nothing to do with the issue of protecting the privacy rights of individuals identified in other incident reports. The fact is that the District Court

Shulman's suspension of November 20, 2018 occurred nearly five months prior to his April 17, 2019 deposition and his termination of January 23, 2019, occurred more than two months before his deposition was noticed by Sekera counsel. (See Petitioners Appendix, Vol. 4, Tab 26, VEN 515-17.)

judge granted leave under the low bar of NRCP 15. This amendment to the Complaint was not before the District Court on the underlying discovery motion and is irrelevant to the matter before this Honorable Court on this Writ Petition. To the extent Sekera introduces a new argument at any hearing on this Writ Petition, claiming she needs information for her punitive damages claim, that argument will not be well taken as the redacted incident reports already produced in this matter provide any information Sekera may need regarding other incidents.

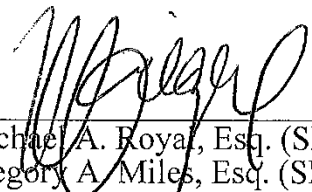
VI. CONCLUSION

This petition for relief relates directly to the privacy rights of guests involved in other incidents reported by owners and innkeepers, to protect them from the dissemination of personal information (*i.e.* incident facts, physical condition, health history, etc.), attached to their names and contact information. This is not “phonebook” information, as Sekera asserts. It is much more than that. Sekera did nothing below to demonstrate her right to this information balanced with the rights of non-employee guests involved in other incidents. Sekera did not meet the required criteria of NRCP 26(b)(1) once Petitioners demonstrated the “good cause” required under NRCP 26(c). The case law cited by both Petitioners and Sekera support protecting the information at issue. The Discovery Commissioner’s recommendation of producing the other incident reports in redacted form with NRCP 26(c) protection by limiting the use of this information

to the present case was consistent with Nevada law and the interests of protecting individual privacy rights. Petitioners respectfully submit that the relief requested should be granted not just for Venetian guests, but for all like situated persons sharing personal information following an incident on the location of a Nevada property owner.

DATED this 28 day of October, 2019.

ROYAL & MILES LLP

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

CERTIFICATE OF COMPLIANCE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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

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

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

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

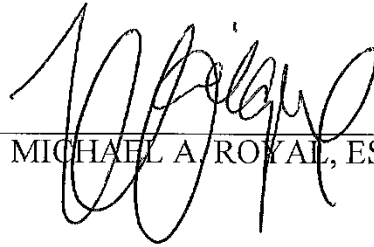
3. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains **6,356 words** in compliance with NRAP 32(a)(1)(A)(ii) (having a word count of less than 7,000 words).

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

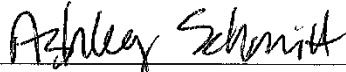
improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript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

Further affiant sayeth naught.

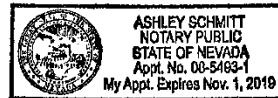


MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before
me by Michael A. Royal, Esq., on this
28 day of October, 2019.



NOTARY PUBLIC in and for said
County and State



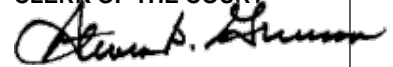
CERTIFICATE OF SERVICE

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 28 day of October, 2019, I served true and correct copy of the foregoing PETITIONERS' REPLY BRIEF, by delivering the same via the Court's CM/ECF system which will send notification to the following:

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An employee of Royal & Miles LLP



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Attorneys for Plaintiff

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

**PLAINTIFF'S OBJECTION TO
DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS
DATED DECEMBER 2, 2019**

Hearing Requested

1 Pursuant to NRCP 16.3, Plaintiff JOYCE SEKERA submits her Objection to the Discovery
2 Commissioner's Report and Recommendations from December 2, 2019.

3 DATED this 16th day of December 2019.

4 CLAGGETT & SYKES LAW FIRM

5 /s/ Geordan G. Logan

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26 *Attorneys for Plaintiffs*

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **I.**

INTRODUCTION

23 This is a personal injury case arising out of a slip and fall in the Venetian Casino Resort, on
24 November 4, 2016 around 12:30 p.m. Plaintiff Joyce Sekera was walking through Venetian. As Joyce
25 passed the Grand Lux Café Restrooms, she slipped and fell on water on the black marble floors. On
26 the way down Plaintiff struck her skull on the pillar and her left elbow on the ground. The first
27 Venetian employee to come to Joyce's aid, Gary Shulman, confirmed there was water on the floor.¹

28 ¹ Dep. of Gary Shulman, pp. 8:06–10; 8:23–9:11; 10:8–17. Attached hereto as Ex. "1."

1 Mr. Shulman also testified that he met with Defense Counsel and told him there was water on the
2 floor, to which Defense Counsel responded “No, you didn’t, wink, wink” “no, no, there was nothing
3 wet there” and “No, you are mistaken. It wasn’t wet.”²

4 Over the last two years Plaintiff underwent low back injections, medial branch blocks and two
5 rounds of radio frequency ablations.³ In June, after Plaintiff’s most recent set of radio frequency
6 ablations failed, Dr. Smith opined “I do not see how this woman will be able to avoid surgical
7 treatment.” “Rhizotomies in my opinion will give her some temporary relief, but certainty not long-
8 term.”⁴ Plaintiff will thus be undergoing L5–S1 surgery in the near future.

9 During discovery Plaintiff requested Venetian provide similar incident reports from November
10 4, 2013 to present, a total of five years of reports. In response to this request, Venetian produced 64
11 redacted incident reports. Plaintiff requested Venetian provide the unredacted reports so Plaintiff could
12 identify witnesses to counter Venetian’s comparative negligence claim that Plaintiff should have seen
13 liquid on the floor before she fell. Venetian refused to produce the unredacted reports and filed a
14 Motion for Protective Order. On May 14, 2019 the Court ordered Defendant to provide unredacted
15 incident reports and stated that the *“Court does not see any legal basis upon which [the redacted
16 information] should have been precluded.”*⁵

17 On May 28, 2019 the Court granted Plaintiff’s motion to amend her complaint to add a claim
18 for punitive damages agreeing with Plaintiff’s argument that punitive damages were appropriate
19 because Venetian knew its marble floors were unreasonably slippery and posed a high risk to guests
20 but nonetheless refused to increase their slip resistance. In granting Plaintiff’s motion, the court noted,
21 *“it would be a disservice to the case to not allow discovery that could support punitive damages.”*⁶

22 On August 5, 2019, Plaintiff filed a Motion to Compel Testimony and Documents, and on the
23 same day, Defendants filed a Motion for Protective Order as to Plaintiff’s Request for Production of
24

25 ² *Id.* at 56:16–17; 23:21–22; 61:5–6.

26 ³ Pain Institute of Nevada Record, 2, July 10, 2019. Attached hereto as **Ex. “2.”**

27 ⁴ Western Regional medical record, July 8, 2019. Attached hereto as **Ex. “3.”**

28 ⁵ Register of Actions, May 07, 2019 (emphasis added). Attached hereto as **Ex. “4.”**

⁶ Register of Actions, May 28, 2019 (emphasis added). Attached hereto as **Ex. “5.”**

1 Incident Reports from May 1999 to Present. The Discovery Commissioner heard these matters on
2 September 18, 2019. In the December 2, 2019 Discovery Commissioners Report and
3 Recommendations, the Commissioner recommended that Venetian's production of unredacted
4 incident reports, information related to the testing of its floors, removal of carpeting, and the reporting
5 of claims and injuries be limited to a period of five years prior to the subject incident to the present.
6 Additionally, the Commissioner recommended restricting Venetian's production of testing data and
7 carpet removal to the Grand Lux Rotunda, and Venetian's production of prior or subsequent incident
8 reports to slip and falls on marble flooring on the casino floor.⁷

9 Plaintiff submits this objection to the report and recommendation, because Plaintiff believes
10 the Discovery Commissioner erroneously restricted Venetian's obligation to produce the discovery
11 necessary to support punitive damages as ordered by this Court.

12 II.

13 LEGAL ARGUMENT

14 **A. DEFENDANTS' PRODUCTIONS MUST NOT BE LIMITED TO FIVE YEARS PRIOR** 15 **TO SUBJECT INCIDENT AS ANY PUNITIVE DAMAGES AWARD MUST CONSIDER** 16 **THE REPREHENSIBILITY OF DEFENDANTS' REPEATED MISCONDUCT**

17 Pursuant to NRS 42.005, "where it is proven by clear and convincing evidence that the
18 defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition
19 to the compensatory damages, may recover damages for the sake of example and by way of punishing
20 the defendant."⁸

21 "Oppression means despicable conduct that subjects a person to cruel and unjust
22 hardship with conscious disregard of the rights of the person. . . . [E]xpress malice is
23 conduct which is intended to injure a person; implied malice is despicable conduct
which is engaged in with a conscious disregard of the rights . . . of others."⁹

24 Accordingly, Plaintiff must establish by clear and convincing evidence Defendants' conscious
25 disregard of the rights of others. Conscious disregard is defined by NRS 42.001 as "the knowledge of

26 ⁷ Register of Actions, September 18, 2019. Attached hereto as **Ex. "6."**

27 ⁸ Nev. Rev. Stat. Ann. § 42.005

28 ⁹ Bongiovi v. Sullivan, 122 Nev. 556, 581, 138 P.3d 433, 450–51 (2006) (internal quotes omitted).

1 the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid
2 those consequences.”¹⁰

3 To that end, evidence of Defendant’s extensive history investigating, managing, and litigating
4 slip and fall incidents on its marble flooring represents an essential element of *discovery that could*
5 *support punitive damages*. Afterall, the very essence of *Conscious Disregard* is **knowledge** of
6 probable harmful consequences and a deliberate **failure to act** to avoid those consequences. Simply
7 put, conscious disregard must not be constrained by artificial time limits because it is the very vastness
8 of the history which establishes the depth and width of Defendant’s conscious disregard.

9 Furthermore, in determining whether the amount of a punitive damages award violates the due
10 process clause, Nevada follows the federal factors.¹¹ These factors are: “(1) the degree of
11 reprehensibility of the defendant’s conduct, (2) the ratio of the punitive damage award to the actual
12 harm inflicted on the plaintiff, and (3) how the punitive damages award compares to other civil or
13 criminal penalties that could be imposed for comparable misconduct.”¹²

14 Consequently, Plaintiff must be permitted the opportunity to discover evidence relative to the
15 degree of reprehensibility of the Defendant’s conduct. “Perhaps the most important indicium of the
16 reasonableness of a punitive damages award is the degree of reprehensibility of the defendant’s
17 conduct.”¹³ “This principle reflects the accepted view that some wrongs are more blameworthy than
18 others.”¹⁴ Indeed, repeated misconduct is more reprehensible than a single action:

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

24 ¹⁰ Nev. Rev. Stat. Ann. § 42.001

25 ¹¹ Bongiovi v. Sullivan, 122 Nev. at 582–83, 138 P.3d at 451–52.

26 ¹² Id., 122 Nev. at 582, 138 P.3d at 452 (internal quotes omitted).

27 ¹³ BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 575, 116 S. Ct. 1589, 1599 (1996).

28 ¹⁴ Id.

¹⁵ Id., 517 U.S. at 576–77, 116 S. Ct. at 1599–600.

1 What is more, the Nevada civil jury instruction on punitive damages instructs jurors:

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

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

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

9 In the end, to determine the reprehensibility of the defendant's conduct, we consider, among other
10 factors, whether **"the conduct involved repeated actions or was an isolated incident."**¹⁷

11 Here, Plaintiff's discovery requests for incident reports and other documents related to the slip
12 resistance of the marble floors dating back to 2000 directly relate to the "reprehensibility" of
13 Venetian's conduct. Afterall, the more times individuals notified Venetian of the hazardous nature of
14 its marble floors, the more reprehensible is Venetian's conduct—and in the end, it is precisely this
15 degree of reprehensibility that the jury must consider in arriving at any award of punitive damages.

16 Likewise, the more times Venetian acknowledged the hazardous condition of its marble floors
17 and deliberately failed to remedy it, the more reprehensible Venetian's conduct. Because each prior
18 incident shows another time Venetian was notified of the issue, all prior incidents are relevant to the
19 jury's determination of the amount of punitive damages. Similarly, each unfavorable slip test report,
20 correspondence, or other document acknowledging the dangerous nature of the floor are necessary for
21 the jury's determination of the amount of punitive damages. For that reason, the incident reports and
22 other documents from 2000 to present go directly to the reprehensibility of Venetian's conduct, and
23 as a result these documents must not be subject to the five-year constraint imposed by the
24 Commissioner's recommendation.

25
26 ¹⁶ NEV. J.I. 10.20 BAJI 14.71.

27 ¹⁷ State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 409, 123 S. Ct. 1513, 1516 (2003); see
28 also Wyeth v. Rowatt, 126 Nev. 446, 475, 244 P.3d 765, 785 (2010) (analyzing reprehensibility by
considering the defendant's "conduct involved repeated actions").

1 **B. DEFENDANTS' PRODUCTIONS MUST NOT BE LIMITED TO THE FLOORING IN**
2 **THE GRAND LUX AREA BECAUSE ALL THE MARBLE FLOORING THROUGHOUT**
3 **THE CASINO FLOOR IS IDENTICAL**

4 On October 11, 2018, Joseph Larson, a Venetian employee, testified that he worked at the
5 Venetian as an Emergency Medical Technician security officer from 2008 until 2017.¹⁸ Mr. Larson
6 testified that in the nine years he worked at the Venetian as an EMT, he responded to 150 to 175 slip
7 and falls on marble flooring.¹⁹ He stated that the slip and fall events he responded to occurred on the
8 marble floors as opposed to the carpeted floors.²⁰ Additionally, Mr. Larson testified that the 150 to
9 175 slip and falls on marble flooring that he has responded to include marble flooring on the tenth
10 floor adjacent to the Bouchon Restaurant, marble flooring on the tenth floor where they have an
11 additional Venetian check-in area, and marble flooring in the suites.²¹ Mr. Larson went on to explain
12 the end result of the majority of these slip and fall events on the marble floors:

13 Q And in connection with this 175 or so falls that you are aware of – slip-and-
14 falls on marble floors, how many times was the customer or anyone else injured in the
15 fall?

16 A I would say about 80 percent of the time. And that's as far as, you know, what
17 they told us on initial assessment.

18 Q So at least about 80 percent of the time when you reported to the scene of the
19 fall as an EMT, injury was reported to you by whomever fell?

20 A Correct.²²

21 The bottom line is that the marble flooring at the Venetian is dangerous; the Venetian possesses
22 substantial knowledge of the dangerous flooring; the Venetian has chosen not to eliminate the danger.

23 It is worth noting that Venetian has already litigated the issue of whether areas outside the area
24 of the subject fall are relevant to this case. In fact, Venetian raised this very argument before both the

25 ¹⁸ Depo. Joseph Larson, Oct. 11, 2018, p. 5:8–20. Attached hereto as **Ex. “7.”**

26 ¹⁹ Id. at pp. 24:24–25:12.

27 ²⁰ Id. at p. 24:11–15.

28 ²¹ Id. at pp. 25:15–26:3.

²² Id. at p. 28:1–11.

1 Discovery Commissioner²³ and this Court.²⁴ In particular, Venetian argued in its response to Plaintiff's
2 objection to the Discovery Commissioner's April 2, 2019 report and recommendation: "Reports of
3 prior slip and fall incidents, which occurred on different circumstances, and on different dates, in
4 different areas of the property have no relevancy to the issue of whether Venetian had notice of any
5 condition contributing to Plaintiff's fall on November 4, 2016."²⁵ At the hearing, the Court heard the
6 argument and thereafter decided not to limit the scope of Plaintiff's request for production to the
7 immediate area of Plaintiff's fall (the Grand Lux Café rotunda).

8 Consequently, as Venetian previously raised—and failed to prevail—on this argument before
9 both the Discovery Commissioner and this Court, the proper place for Venetian's restatement of the
10 same argument is a motion for reconsideration, not a subsequent bite at the apple before either the
11 Discovery Commissioner or this Court.

12 As to the Commissioner's recommendation to limit discovery of the Venetian's replacing
13 carpeted floors with marble floors is concerned, such a recommendation does not permit Plaintiff to
14 adequately address Venetian's conscious disregard for the safety of its guests. As a result, such a
15 recommendation does not permit the jury the opportunity to consider the degree of reprehensibility
16 necessary for an award of punitive damages.

17 For instance, Former Venetian executive, Christina Tonemah testified that the Venetian ripped
18 up the carpet on the casino walkways and replaced that carpet with marble flooring around the same
19 time or a year after Palazzo opened.²⁶ Palazzo opened at the end of 2007. In describing this
20 replacement, Mr. Larson described the area as:

21 Traditionally right outside the area where the people are sitting, or usually it's
22 in the marble walkways that they recently—well, not recently, but a few years ago they
23 put in. That's where people seem to either slip or drop things all the time.²⁷

24
25 ²³ Defs.' Mot. for Protective Order, Feb. 1, 2019, pp. 7:25–8:1. Attached hereto as **Ex. "8."**

26 ²⁴ Defs.' Resp. to Pl.'s Objection DCRR, Apr. 23, 2019, p. 17:13–15. Attached hereto as **Ex. "9."**

27 ²⁵ Id.

28 ²⁶ Depo. Christina Tonemah, July 12, 2019 p. 25:9–23. Attached hereto as **Ex. "10."**

²⁷ Depo. Joseph Larson, Oct. 11, 2018, p. 48:21–49:2.

1 Thus, Venetian not only consciously disregarded the dangerous condition of its marble floors,
2 but they actually added to the hazard by significantly increasing the square footage of marble in their
3 casino. The choice surrounding this increased hazard including correspondence, work orders and other
4 documentation related to the 2008 remodel is thus relevant to punitive damages. The fact that the
5 remodel occurred eight years ago or that it occurred outside the Grand Lux Café rotunda is irrelevant
6 because these facts establish the breadth of Venetian's conscious disregard. Any document that
7 indicates Venetian knew its marble floors were hazardous and consciously disregarded that hazard is
8 admissible and relevant to prove Plaintiff's case for punitive damages.

9 Afterall, the issue is not where the remodel occurred it's whether Venetian knew its marble
10 floors were unreasonably slippery and posed a high risk to guests but nonetheless consciously
11 disregarded the danger. As such, all internal documents, memorandum or reports indicating Venetian's
12 concern regarding the increased number of incidents and/or the safety of the marble floors, regardless
13 of the location of those floors, are discoverable because they are relevant to conscious disregard.

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III.

CONCLUSION

Based upon the foregoing, Plaintiff requests that the Court grant Plaintiff's Objection to
Discovery Commissioner's Report and Recommendations.

DATED THIS 16th day of December 2019.

CLAGGETT & SYKES LAW FIRM

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of December 2019, I caused a true and correct copy of the foregoing **PLAINTIFF'S OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS** on the following person(s) by the following method(s) pursuant to NRCP 5(b):

Via E-Service
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CLAGGETT & SYKES LAW FIRM

/s/ Maria Alvarez
An Employee of CLAGGETT & SYKES 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

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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 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 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 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 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 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 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 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 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 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 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 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 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 "I."
23 (Plaintiff's Exhibit 1 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 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 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 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

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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.

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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

15 (Pages 51 to 54)

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 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 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 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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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:

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.

XRAYS 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.

Joyce P Sekera

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.

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

Genitourinary: 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.

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

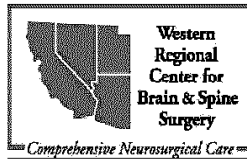
Katherine D Travnicek MD

Copy to: William Smith MD

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

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 #:

DOB:

Date of Encounter: 07/08/2019

History of Present Illness

The patient is a 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 02/26/2018

No Known Drug Allergies 02/26/2018

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 (02/26/2018)

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 Erkvwater, MD (702) 259-5554
Gallier Law (702) 735-0204



William D. Smith, MD

EXHIBIT 4

REGISTER OF ACTIONS
CASE NO. A-18-772761-C

**Joyce Sekera, Plaintiff(s) vs. Venetian Casino Resort LLC,
Defendant(s)**

§
§
§
§
§
§

Case Type: **Negligence - Premises
Liability**
Date Filed: **04/12/2018**
Location: **Department 25**
Cross-Reference Case Number: **A772761**

PARTY INFORMATION

**Defendant Las Vegas Sands LLC *Doing Business*
As Venetian Las Vegas**

Lead Attorneys
Michael A Royal
Retained
7024716777(W)

**Defendant Venetian Casino Resort LLC *Doing*
Business As Venetian Las Vegas**

Michael A Royal
Retained
7024716777(W)

Plaintiff Sekera, Joyce

Keith E. Galliher, Jr.
Retained
7027350049(W)

EVENTS & ORDERS OF THE COURT

05/07/2019 **Objection to Discovery Commissioner's Report** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)
05/07/2019, 05/14/2019

Minutes

05/07/2019 9:00 AM

- No parties present. COURT NOTED a Stipulation and Order to Continue was received, and ORDERED, matter CONTINUED to the next available setting. CONTINUED TO: 05/14/19 9:00 A.M. CLERK'S NOTE: A copy of this minute order was electronically served on all registered parties. /sb 05/07/19

05/14/2019 9:00 AM

- 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.

| [Parties Present](#)
[Return to Register of Actions](#)

EXHIBIT 5

REGISTER OF ACTIONS
CASE No. A-18-772761-C

Joyce Sekera, Plaintiff(s) vs. Venetian Casino Resort LLC,
Defendant(s)

§
§
§
§
§
§

Case Type: **Negligence - Premises Liability**
Date Filed: **04/12/2018**
Location: **Department 25**
Cross-Reference Case Number: **A772761**

PARTY INFORMATION

Defendant	Las Vegas Sands LLC <i>Doing Business As</i> Venetian Las Vegas	Lead Attorneys Michael A Royal <i>Retained</i> 7024716777(W)
Defendant	Venetian Casino Resort LLC <i>Doing Business As</i> Venetian Las Vegas	Michael A Royal <i>Retained</i> 7024716777(W)
Plaintiff	Sekera, Joyce	Keith E. Galliher, Jr. <i>Retained</i> 7027350049(W)

EVENTS & ORDERS OF THE COURT

05/28/2019 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)

Minutes

05/28/2019 9:00 AM

- Kathleen Galligher, Esq. present on behalf of Pltf. PLTF'S. MOTION FOR LEAVE TO AMEND THE COMPLIANT...DEFT'S. MOTION TO STRIKE ADDED EVIDENCE AND INFORMATION BY PLTF. IN REPLY TO DEFT'S. OPPOSITION TO PLTF'S. MOTION FOR LEAVE TO AMEND THE COMPLIANT AND TO STRIKE ALL UNAUTHENTICATED EVIDENCE, OR, ALTERNATIVELY, TO ALLOW DEFT'S. AN OPPORTUNITY TO RESPOND, ON ORDER SHORTENING TIME Extensive arguments regarding Pltf's. ability to add punitive damages, Deft's. concerns regarding representations made by Mr. Gary Shulman and if there was misrepresentation, if information in Pltf's. reply is accurate, if any information should be stricken, and prior recommendations made regarding Deft's. marble floors and discovery regarding the history of falls on the floors. COURT STATED FINDINGS, and ORDERED, Pltf's. Motion for Leave to Amend the Compliant GRANTED;it would be a disservice to the case to not allow discovery that could support punitive damages. Deft's. Motion DENIED. 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. Upon Mr. Royal's inquiry, COURT ADVISED, It's prior Order regarding the Protective Order still STANDS.

[Parties Present](#)
[Return to Register of Actions](#)

EXHIBIT 6

REGISTER OF ACTIONS
CASE No. A-18-772761-C

**Joyce Sekera, Plaintiff(s) vs. Venetian Casino Resort LLC,
Defendant(s)**

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§
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§
§
§

Case Type: **Negligence - Premises Liability**
Date Filed: **04/12/2018**
Location: **Department 25**
Cross-Reference Case Number: **A772761**

PARTY INFORMATION

Defendant	Las Vegas Sands LLC <i>Doing Business As</i> Venetian Las Vegas	Lead Attorneys Michael A Royal <i>Retained</i> 7024716777(W)
Defendant	Venetian Casino Resort LLC <i>Doing Business As</i> Venetian Las Vegas	Michael A Royal <i>Retained</i> 7024716777(W)
Plaintiff	Sekera, Joyce	Keith E. Galliher, Jr. <i>Retained</i> 7027350049(W)

EVENTS & ORDERS OF THE COURT

09/18/2019 **All Pending Motions** (9:30 AM) (Judicial Officer Truman, Erin)

Minutes

09/18/2019 9:30 AM

- (I) Defendants' Motion for Protective Order as to Plaintiff's Request for Production of Incident Reports from May 1999 to Present, Motion to Compel Information and Documents of Prior Incident Reports Provided to Plaintiff Expert Thomas Jennings and Identified in His May 30, 2019 Rebuttal Report and for Leave to Retake the Jennings Deposition to Address the 196 Prior Claims Referenced in His Report at Plaintiff's Expense (II) Plaintiff's Motion to Compel Testimony and Documents (III) Plaintiff's Reply in Support of Her Motion to Compel Testimony and Documents, Opposition to Defendants' Countermotion for Rule 11 Sanctions and Countermotion for Rule 11 Sanctions COMMISSIONER RECOMMENDED, Countermotion to Strike False Accusations Levied by Plaintiff in "I. Introduction" and "Legal Argument" Section "III.D." with Appropriate Sanctions is OFF CALENDAR as it does not relate to the Motion under EDCR 2.20(f). Commissioner stated Judge Delaney already made specific rulings in this case. Mr. Royal stated Plaintiff slipped and fell while working at the Venetian, and it was a transitory and temporary condition. Argument by Mr. Royal. Commissioner will limit production to five years before this incident. Argument by Mr. Galliher. Commissioner stated counsel could file an Order to Show Cause on discovery. Mr. Galliher requested the Commissioner set a deadline to produce unredacted Reports. Argument by Mr. Royal. COMMISSIONER RECOMMENDED, (I) Defendants' Motion for Protective Order is GRANTED IN PART and DENIED IN PART; 1) Plaintiff demand for information is PROTECTED as written, but it is appropriate given Judge Delaney's Rulings; Deft will provide the Reports from 11-4-11 to the present, and UNREDACT Reports; 2) is PROTECTED as written, but Mr. Royal can tailor it as Directed on the record; 3) testing from 2011 to the date of this incident in the Grand Lux Rotunda is allowed; 4) is PROTECTED; 5) any prior or subsequent Reports that deal with slip and falls on marble flooring; any Incident Reports for five years before the incident as Directed on the record. Mr. Royal requested a limitation to the Grand Lux area. Arguments by counsel. COMMISSIONER RECOMMENDED, marble floor is limited to slip and falls on the casino floor for five years prior to the present. Mr. Galliher confirmed the punitive damages claim is still alive. For that reason, Commissioner allowed subsequent Reports. COMMISSIONER RECOMMENDED, 6) Tom Jennings is Directed to produce information of prior incidents that he reviewed; 7) any prior

Incident Reports in Plaintiff's possession must be produced to Deft; 8) deposition is allowed to be continued, and Plaintiff will not pay for it; Topics 6 through 18 concern the computer data, and these Topics are tailored as Directed on the record. COMMISSIONER RECOMMENDED, (II) Plaintiff's Motion to Compel Testimony and Documents is GRANTED IN PART and DENIED IN PART as stated; (III) Plaintiff's Reply in Support of Her Motion to Compel Testimony and Documents, Opposition to Defendants' Countermotion for Rule 11 Sanctions and Countermotion for Rule 11 Sanctions is (II) Plaintiff's Motion to Compel Testimony and Documents is GRANTED IN PART and DENIED IN PART as stated. COMMISSIONER RECOMMENDED, alternative relief was provided pursuant to EDCR 2.34(e); do not produce documents until two weeks after the Final Order is filed, and the Writ would Stay that period of time. Mr. Royal to prepare the Report and Recommendation, and Mr. Galliher to approve as to form and content. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution. CLERK'S NOTE: Minute Order amended 9-27-19. jl

[Parties Present](#)

[Return to Register of Actions](#)

EXHIBIT 7

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 JOSEPH LARSON

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

On Thursday, October 11, 2018
At 2:15 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

2 For the Plaintiff: KEITH E. GALLIHER, JR., ESQ.
-And-
3 GEORGE J. KUNZ, ESQ.
Galliher Law Firm
4 1850 East Sahara Avenue
Suite 107
5 Las Vegas, Nevada 89104
(702)735-0049
6

7 For the Defendants: MICHAEL A. ROYAL, ESQ.
Royal & Miles LLP
8 1522 West Warm Springs Road
Henderson, Nevada 89014
9 (702)471-6777
10
11
12
13
14

15 * * * * *

17 I N D E X

18 WITNESS	PAGE
JOSEPH LARSON	
19 Examination By Mr. Galliher	3
Examination By Mr. Royal	37
20 Further Examination By Mr. Galliher	83

21	
22 EXHIBITS	PAGE
Plaintiff's:	
23 1 Venetian Security report	3
24 2 Color photographs	3

25 -o0o-

Page 3	Page 5
<p>1 (Plaintiff's Exhibits 1 and 2 marked for 2 identification.) 3 JOSEPH LARSON, 4 having been first duly sworn to tell the truth, the 5 whole truth and nothing but the truth, was examined 6 and testified as follows: 7 8 EXAMINATION 9 BY MR. GALLIHER: 10 Q Would you state your name, please. 11 A Joseph Larson. 12 Q Your business address. 13 A I don't have one. 14 Q All right. Your home address. 15 A 16 17 Q Have you ever had your deposition taken 18 before? 19 A Yes. 20 Q Do you understand today that you are under 21 oath? 22 A Yes. 23 Q The oath you've taken carries with it the 24 same solemnity as if you were testifying in court 25 before a judge and a jury?</p>	<p>1 Q How long have you been unemployed? 2 A Since March of 2017. 3 Q Since before March of 2017, where were you 4 working? 5 A Before that? 6 Q Yes. 7 A At the Venetian. 8 Q So what years did you work at the Venetian? 9 A I started in 2008, I think in the summer. 10 In 2008 and then, yeah, I quit on March 2017. 11 Q And was there a reason that you quit? 12 A The reason I quit was, I was I guess tired 13 of being an EMT. I had been an EMT for about a decade 14 so I felt it was time to make a career shift. 15 Q So when you worked at the Venetian from 2008 16 to 2017, were you an EMT the entire time? 17 A EMT security officer. 18 Q And when we talk about that, that's an 19 Emergency Medical Technician security officer? 20 A Correct. 21 Q Give me a brief description of your duties 22 as an EMT security officer. 23 A The primary duties of my job were to respond 24 to any medical incidents or any serious incidents that 25 occurred on the property. The additional functions of</p>
Page 4	Page 6
<p>1 A I understand that. 2 Q Also carries with it the penalties of 3 perjury? 4 A I understand that. 5 Q General background first. How long have you 6 lived in Las Vegas? 7 A I moved here two thousand -- towards the end 8 of 2007, beginning of 2008. 9 Q How far did you go in school? 10 A Some college. 11 Q And where did you get your college? 12 A Many places, various colleges. 13 Q Let's start and make it simpler. Where did 14 you last go to college? 15 A Last go to college? CSN. 16 Q Here in Las Vegas? 17 A Yes. 18 Q What years did you attend CSN? 19 A It would have been when I got here, so 20 probably around 2008. I'm not exactly sure on the 21 year. 22 Q Let's talk a little bit about employment. 23 Since you don't have a business address, you are 24 currently not employed? 25 A Currently unemployed.</p>	<p>1 my job were to also work as a security officer. We 2 weren't ever posted anywhere, we were free to roam 3 around the property as needed. 4 Q What training did you have in EMT work? 5 A I received my EMT-Basic in San Diego and 6 then when I moved out here, I got my 7 EMT-Intermediate -- which is now called an Advanced 8 EMT certification -- when I arrived here so I could 9 work. 10 Q So are you still an EMT-Intermediate? 11 A No, I have -- 12 Q Did you give up your certification? 13 A Correct. 14 Q So you don't have any intentions to reenter 15 the EMT field? 16 A Correct. 17 Q Do you have any aspirations in terms of what 18 field you want to enter? 19 A I'm currently in a cybersecurity scholarship 20 program. 21 Q Tell me what that is for old people. 22 A Okay. There's a company called Cisco. They 23 manufacture a lot of the networking hardware and 24 infrastructure and things like that for companies, 25 businesses, you know, whoever wants to buy the</p>

1 equipment.
2 Cisco itself is putting on a cybersecurity
3 program for a select number of students as a
4 scholarship program. You apply, you test in, they
5 give you a scholarship to pay for your training, and
6 then you take a test at the end.
7 Q Where do you go after you take a test?
8 A Once I pass a test, I'll be applying for
9 cybersecurity jobs.
10 Q With Cisco or elsewhere?
11 A Anywhere.
12 Q I presume that's a job that pays better.
13 A Yeah, I would say so.
14 Q All right. That's a good reason.
15 A Sure.
16 Q All right. We're here to talk to you about
17 a fall incident that happened at the Venetian while
18 you were there. And I presume -- have you had an
19 opportunity to review the report that you prepared for
20 today's deposition?
21 A I have, yes.
22 Q So let me show you this that's been marked
23 as Exhibit 1 to your deposition and ask you if that's
24 a true and correct copy of the report you reviewed.
25 A All of the pages?

1 A Yes, yeah. These would all be things that I
2 either entered by typing or checking a box.
3 Q So is everything in these first five pages
4 true and correct to the best of your knowledge?
5 A Yes.
6 Q Do you remember anything about this event
7 other than what's contained in this report?
8 A No.
9 Q Then let's look at the VEN017. That's the
10 next page after the first five.
11 A Yeah.
12 Q And can you tell me if any of the print --
13 or the writing on this page is your writing?
14 A All of the handwriting is mine except for
15 the signature line.
16 Q All right, so everything is yours except for
17 the signature line. What about the next page which is
18 VEN018?
19 MR. ROYAL: Can I just ask for
20 clarification? There's two signature lines.
21 THE WITNESS: Oh, I apologize. Yeah, the
22 second line with the "X" mark.
23 BY MR. GALLIHER:
24 Q And let me see what you are looking at. The
25 reason I ask that, Mike, is I'm looking at this page

1 Q Yes.
2 A Yeah.
3 Q Now, the report there has the Bates stamp
4 numbers from VEN005 through 009, and then switch to
5 VEN017 and then 018. See that at the lower right-hand
6 portion of the report?
7 A Yes, sir.
8 Q As we look at the report, I note that your
9 name appears -- at least typed in -- 00025821 on the
10 first five pages; am I correct? At the same location,
11 lower left?
12 A Yes; correct.
13 Q Is that an entry that you made or that
14 someone else made?
15 A I believe that is what -- when you print out
16 a report from the system, it just basically shows who
17 typed up the report.
18 So when something happens on property and
19 you are assigned to report through dispatch, that's
20 assigned to your name, basically your identity in the
21 computer system. So I believe that's just an
22 automatic stamp that gets added to this printout.
23 Q Now, as you look at this report -- I'm
24 referring to the first five pages initially -- is this
25 information that you entered into the system?

1 and I'm not seeing a signature line.
2 Oh, talking about a signature line under
3 "Joyce Sekera"?
4 A Yeah.
5 Q For some reason, I'm looking at this page
6 and it looks like it's cut off at the end.
7 MR. ROYAL: Yeah, yes. And by the way, I
8 had inquired about that and I don't know that we have
9 what's cut off too.
10 BY MR. GALLIHER:
11 Q So these are handwritten entries that you
12 made based upon your specific observation of Joyce
13 Sekera?
14 A Correct.
15 Q And again, everything on this page is true
16 and correct to the best of your knowledge?
17 A Yes.
18 Q So as we go to the next page, we've got --
19 you see there's some -- you got security officer time,
20 1326, and some printing where it starts with "marble
21 flooring."
22 See that?
23 A Yes.
24 Q Is that your handwriting?
25 A Yes.

1 Q So you made those entries as well?
2 A Correct.
3 Q How is it that you were dispatched to the
4 scene of the fall? Do you remember?
5 A I don't remember exactly, but I mean,
6 security dispatch would have contacted me on the radio
7 and told me where to go.
8 Q And do you remember how long after the fall
9 you arrived at the scene?
10 A I don't recollect.
11 Q And the reason I ask you, I'm looking at the
12 first page which is VEN005 and if you look up where it
13 says "Date and Time and Day of occurrence," see that?
14 A Yes, sir.
15 Q And it says 11/4/16, 12:39, Friday, to
16 11/4/16, 13:31 Friday. Is that correct?
17 A That's what it says, yeah.
18 Q So as I read that, looks like that's a
19 52-minute difference between the time that it starts
20 and the time that it ends.
21 A Basically --
22 Q See that?
23 A -- I would say.
24 Q Can you explain to me how we have this 52
25 minutes?

1 to respond after the incident.
2 Q Do you know if you entered the name "Chavez,
3 Rafael" there or if someone else did?
4 A I did.
5 Q On the lower right-hand-side portion of the
6 page, it says "Approved by Michael Dean." Who is he?
7 A That would be the supervisor.
8 Q And then on the upper -- again to the upper
9 portion of the report under Venetian Security there's
10 handwritten, "RC00008621." See that?
11 A Yes.
12 Q And what would that be?
13 A I do not know.
14 Q Is it like a report number? Event number?
15 A The event number would be the case number in
16 the upper right where it says is 1611V-0680.
17 Q All right. So it would be the case number,
18 that's the upper right; correct?
19 A Yeah.
20 Q And you don't know what is meant by the
21 handwritten RC00008621?
22 A Yeah, I don't know what that means.
23 Q Let's go then to the next page, VEN006.
24 Again, is this information that you entered?
25 A Yes. This information would be check boxes

1 A So what I'm gathering this says is when the
2 call started in the system, so when dispatch put it
3 into their system, and then 13:31 would be the time
4 that I cleared from my call.
5 Q So between the time that you were called to
6 the scene and the time you left the scene was 52
7 minutes?
8 A Yes.
9 Q And again, we're going to go through a few
10 things in this report with you --
11 A Yeah.
12 Q -- if that's okay?
13 A Sure.
14 Q By the way, just so you know, looking at the
15 same page we've got, "TM, one of one, Chavez, Rafael."
16 Do you see that a little lower in the page?
17 A Yes.
18 Q And we just deposed Mr. Chavez, he's a
19 member of your facilities department.
20 A Yes.
21 Q He told us he didn't arrive to the scene
22 until about 30 or 45 minutes until after the fall.
23 Does that square with your recollection?
24 A Time line-wise, I'm not sure of the exact
25 minutes, yeah, that's normal procedure for us, for him

1 that I clicked.
2 Q And so what happens is that you check a box,
3 you click a box, so to speak, and it automatically
4 prints out?
5 A It would just add that information to the
6 report.
7 Q And that also applies to the information on
8 VEN007?
9 A Yes, that's correct.
10 Q And when we talk about the -- looks like
11 more of the narrative report, which is VEN008 and
12 nine. All information you entered?
13 A Yes.
14 Q And everything in that, those two pages, is
15 true and correct to the best of your knowledge?
16 A Yes.
17 Q You don't have a recollection of this event,
18 other than what's contained in these two pages?
19 A Not independent of what I wrote.
20 Q So you are going to stick with what's in
21 these pages?
22 A Correct.
23 Q Now I'm just curious about something. As
24 the -- did you respond to this fall as the EMT, as
25 security, or both?

1 A I would have responded to this as EMT.
 2 Q Do you know whether or not there was another
 3 security officer that responded to the scene other
 4 than you?
 5 A I believe there was, but I'm not exactly
 6 sure.
 7 Q Well, if you -- the reason I ask that
 8 question, as I read the report, it pretty much talks
 9 about your evaluation physically of Joyce Sekera as an
 10 EMT; is that right?
 11 A Correct.
 12 Q And, for example, there's reference made in
 13 the upper portion of VEN008 to, "I noted that a Public
 14 Areas Department team member was on scene and mopping
 15 the floor in the area."
 16 See that?
 17 A Uh-huh.
 18 Q Is that yes?
 19 A Yes. I'm sorry.
 20 Q And that's something that you saw?
 21 A Yes, that's what I observed.
 22 Q Did you have any conversations with that
 23 team member -- that public area department team
 24 member, about what it was that they were mopping?
 25 A I did not. I did not have a conversation.

1 localized to the axillary line.
 2 See that? I'm talking about page 009 now.
 3 A Sorry, wrong page.
 4 Q Up at the top, first paragraph.
 5 A Oh. Okay, I see it.
 6 Q I'll read it again, just make sure I'm
 7 reading it correctly.
 8 "She added that she was beginning to feel
 9 minor pain and soreness to her left lower back and
 10 left side," in parentheses, "localized to the axillary
 11 line."
 12 See that?
 13 A Yes.
 14 Q What's the axillary line?
 15 A It is kind of an imaginary line that goes
 16 down your armpit across the side of your body.
 17 Q So it sounds like she had pain both in her
 18 left lower back and left side; is that right?
 19 A Yes.
 20 Q Now, again confirming everything else that
 21 you stated in this, these two pages, is true and
 22 correct to the best of your knowledge?
 23 A Yes.
 24 Q Now, there were apparently also some
 25 photographs taken at the scene. Are you aware of

1 Q Do you know if anybody else from security
 2 had a conversation with that person?
 3 A I don't know.
 4 Q So as you testify here today, you know there
 5 was mopping of the flooring in the area occurring, but
 6 you don't know what was being mopped up?
 7 A Correct.
 8 Q The rest of the report talks about your
 9 physical observations of your examination of Joyce
 10 Sekera; is that right?
 11 A Uh-huh. Yes; correct.
 12 Q And looks like, if I am reading my
 13 information correctly, we know, first of all, that
 14 there was a fall?
 15 A Yes.
 16 Q Right?
 17 A Yes.
 18 Q And we know there was an injury?
 19 A Yes.
 20 Q And the injury initially that you noted was
 21 to her left elbow?
 22 A That's correct.
 23 Q Then later you added that -- you stated that
 24 she added she was beginning to feel minor pain and
 25 soreness to her left lower back and left side

1 that?
 2 A I'm aware, yeah.
 3 Q Did you take them?
 4 A I would have; yes.
 5 Q Let me show you what we've marked for
 6 identification as Exhibit I to your deposition. And
 7 Mike was kind enough to give better copies than we
 8 had. Take a look at those and tell me if those are
 9 true and correct copies of all the photographs that
 10 you took.
 11 A Yes, these would be photographs I've taken.
 12 Q Now, did you take any other photographs
 13 other than those?
 14 A If I did, they would be attached. I don't
 15 recall taking any other pictures.
 16 Q Do you know if any other security officers
 17 took photos?
 18 A I'm not aware.
 19 Q And as you testify here today, you don't
 20 have a recollection of whether or not any other
 21 security officers presented at this scene of the fall?
 22 A Independently, no.
 23 Q Are there any documents that would have been
 24 prepared in the event that another security officer
 25 had arrived at the scene?

1 A Nothing officially, unless he would have
2 done a voluntary statement. But if the officer that
3 was on scene before me, if he didn't actually witness
4 anything and was just responding, we wouldn't ask him
5 to write a voluntary statement.
6 Q Do you have a recollection of whether or not
7 there was an officer there before you arrived?
8 A I'm not sure.
9 Q If there was an officer there before you
10 arrived, would that information be contained in the
11 report that we have just talked about?
12 A If he wasn't a witness to the incident, I
13 wouldn't have included him.
14 Q And what about witnesses to the fall? Is
15 that something that you would have taken care of in
16 terms of interviewing and getting statements from
17 them?
18 A Potentially, yes, if we had identified any
19 witnesses. But at that time, I was more concerned
20 about her well being.
21 Q So would it be fair to state that your focus
22 was on caring for Joyce Sekera as a result of her
23 injuries from the fall, rather than locating and
24 obtaining statements from witnesses?
25 A Yeah. That's my primary duty.

1 A Yes.
2 Q Is there any type of rule that a person
3 can't walk through the Venetian with a drink in their
4 hand?
5 A As far as I know, we didn't have any rules
6 like that.
7 Q In other words, if I were a customer at the
8 Venetian and I decided to buy a bottle of water or a
9 drink from one of the businesses located nearby, I
10 decided to walk through the Venetian, would you stop
11 me and tell me I couldn't drink?
12 A No.
13 Q So as far as you know, there's no
14 prohibition at the Venetian that would make it -- not
15 unlawful, but some cause for stopping a customer
16 saying, Hey, you can't drink that here?
17 A The only provision that I'm aware of -- in
18 fact, I don't even know if I would call it that. Call
19 it policy. There was a policy on having an actual
20 bottle of liquor. Like a bottle of Jack Daniels, say
21 for example, you couldn't walk around with that. A
22 simple beer, simple drink, would be fine, but no
23 actual, like, bottles of hard liquor you could get at
24 a convenience store.
25 Q And you are aware that you can buy hard

1 Q And you don't recall whether or not there
2 was any other security officer at the scene of the
3 fall to help you to the extent of contacting
4 witnesses, if there were any, and getting statements
5 from them?
6 A I don't recall if there was other officers
7 there.
8 Q If there were statements taken, is that
9 something that would be part of her?
10 A If a statement was taken, yes.
11 Q And when you reviewed the report in
12 connection with today's deposition, the only
13 information that you reviewed is the information that
14 we have previously discussed in this report?
15 A Correct.
16 Q There was nothing else in the file that you
17 saw, other than this report and your photographs?
18 A Correct.
19 Q As far as you know, there were no other
20 witnesses that were identified or statements obtained
21 from?
22 A Correct.
23 Q Now, you were at the Venetian in the
24 security department part as an EMT for approximately
25 nine years?

1 liquor inside the convenience store at the Venetian?
2 A Yes.
3 Q So the fall occurred near the restroom
4 adjacent to the Grand Lux Cafe; right?
5 A Correct.
6 Q That's a marble floor?
7 A Correct.
8 Q Is that the first fall that you were aware
9 of on a marble floor at the Venetian when you worked
10 there?
11 A First fall?
12 Q Yes, ever.
13 A No, that wasn't the first.
14 Q Give me an idea of how many falls you
15 personally attended to when you were at the Venetian
16 in security.
17 A Like an actual number?
18 MR. ROYAL: I'm sorry --
19 BY MR. GALLIHER:
20 Q I'm asking for your best estimate.
21 MR. ROYAL: Are you asking falls on marble
22 floors or just any falls?
23 BY MR. GALLIHER:
24 Q We can clarify that after he answers the
25 first question and I can go from there.

1 A I know off the top of my head, I wrote -- in
2 nine years' time, I wrote about 2600 reports.
3 Q Okay.
4 A Of those being slip-and-falls, that's hard
5 to say. Because of those 2600 reports I wrote, that
6 would include also security details, that would
7 include trespasses, serious incidents, other types of
8 medical.
9 Q Well, maybe just give me your best estimate.
10 I don't expect you to be exact unless your memory is a
11 lot better than mine.
12 MR. ROYAL: Object to form.
13 Go ahead and answer.
14 THE WITNESS: My best guess over nine
15 years --
16 MR. ROYAL: He's not asking you to guess, by
17 the way.
18 BY MR. GALLIHER:
19 Q Best estimate.
20 A Okay, best estimate. Best estimate, I would
21 say maybe 300.
22 Q Okay. So of those 300 as your best
23 estimate -- by the way, just so you know the
24 difference between a best estimate and a guess, if I
25 were to ask you how long this conference table was

1 marble flooring inside the Venetian?
2 A I would say a little more than half.
3 Q So maybe somewhere between, let's say, 150
4 and 200?
5 A Yeah.
6 Q Would that be fair?
7 A Yeah.
8 Q All right. Yes?
9 A I would say 150 to, like, 175. I wouldn't
10 go the full 200.
11 Q So 150 to 175; would that be fair?
12 A That's right.
13 Q Is that a --
14 A That's a good estimate.
15 Q By the way, there's also marble flooring on
16 the fifth floor adjacent to the Bouchon Restaurant and
17 also where they have the other additional check-in
18 area at the Venetian?
19 A That would be the 10th floor.
20 Q The 10th floor. Were you responsible for
21 responding to falls there?
22 A Anywhere on property I was responsible.
23 Q So when we talk about the 150 to 175
24 slip-and-falls on marble floors, we're talking about
25 throughout the hotel, whether it be the first level or

1 from one side to the other, you could give me the best
2 estimate because you can see it.
3 If I were to ask you how long is my desk in
4 my office from one side to the other side, it would be
5 a guess. Why? Because you hadn't seen it.
6 So your best estimate is that you wrote
7 approximately 200 reports involving slip-and-fall
8 events at the Venetian during the nine years that you
9 were there?
10 A Correct.
11 Q Now when I talk about slip-and-falls, would
12 it be fair to state that the slip-and-falls would
13 occur on the marble flooring as opposed to the
14 carpeted areas?
15 A Between the two of those options? Yes.
16 Q So when you talk about the reports that you
17 wrote, would it be fair to state that those reports --
18 when we're talking about slip-and-falls, that
19 generally they would involve the marble floor?
20 A I wouldn't say a large number of them
21 because we also respond to slip-and-falls even on the
22 concrete in the sidewalk out in the front of the
23 property, the pool deck upstairs.
24 Q So can you narrow the number of reports that
25 you wrote regarding slip-and-falls occurring on the

1 the tenth level?
2 A Correct. And that also includes the suites
3 as well.
4 Q And we talk about the suites, we talk about
5 the suites that have marble floors?
6 A All of them, yes.
7 Q How many suites are there?
8 A Between the Venetian and Palazzo, a little
9 over 7000.
10 Q 7000 suites?
11 A Yes.
12 Q So all of the rooms have marble floors?
13 A Yes, in the bathroom areas.
14 Q Apart from the bathroom areas, any other
15 areas inside the suites that have marble floor?
16 A Just the bathroom and the main entryway.
17 Q So during that nine years when you were
18 there and a security officer, how many times did you
19 respond to falls occurring inside the suites on the
20 marble floors in the bathroom?
21 A That would include the 150 to 175.
22 Q What I'm trying to distinguish between is
23 the falls that occurred inside the suites versus the
24 falls that occurred on the ground floor and the 10th
25 level.

1 A Okay. So of that 150 to 175, how many were
2 in the suites that we're tracking?
3 Q Right.
4 A I would estimate that it was -- nine years
5 is a long time. I apologize.
6 Q That's okay.
7 A I would say probably 75 --
8 Q So --
9 A -- would have occurred in the suites.
10 Q So best estimate is 75 or so occurring in
11 the suites and 100 or so occur outside the suites on
12 the floor, either on the ground floor or the tenth
13 floor?
14 A In the public areas; yeah.
15 Q How many hours a day did you work as an EMT?
16 A Eight hours.
17 Q Did you respond to those fall events because
18 of your training as an EMT or because you were a
19 security officer or both?
20 A Because I was an EMT.
21 Q So would it be fair to state that you
22 responded to these calls to determine whether or not
23 there were injuries?
24 A Yes, and to determine the extent of their
25 injuries.

1 Q Did you venture beyond the Venetian or did
2 you stick with Venetian and somebody else took care of
3 the Palazzo?
4 A Normally someone else took care of the
5 Palazzo. If they were busy, we would cover their side
6 for any calls and vice versa.
7 Q So when you give me the 175 number, is that
8 strictly Venetian or is that Venetian and Palazzo?
9 A That's both.
10 Q And can you apportion between the two? In
11 other words, how many at the Venetian versus how many
12 at the Palazzo?
13 A I don't know if I could estimate that only
14 because -- I say that only because I worked at the
15 Palazzo in the beginning and I transferred over to the
16 Venetian a couple years after.
17 Q Did the Palazzo have the same marble floors
18 as the Venetian?
19 A They had carpet. Their casino floor was
20 mostly carpet. Their suites were the same in terms of
21 bathroom and entryway being marble. Public areas, I
22 don't think they had marble on their floor.
23 Q So if the Palazzo didn't have marble on
24 their floors, the slip-and-falls that occurred in the
25 public areas would have occurred primarily in the

1 Q And in connection with this 175 or so falls
2 that you are aware of -- slip-and-falls on marble
3 floors, how many times was the customer or anyone else
4 injured in the fall?
5 A I would say about 80 percent of the time.
6 And that's as far as, you know, what they told us on
7 initial assessment.
8 Q So at least about 80 percent of the time
9 when you reported to the scene of the fall as an EMT,
10 injury was reported to you by whomever fell?
11 A Correct.
12 Q Did you work an eight-hour shift?
13 A Yes.
14 Q How many days a week?
15 A Five days.
16 Q Were there any other EMT security officers
17 on duty while you were on duty?
18 A Yes.
19 Q And how many other EMT security officers
20 would be on duty when you were on duty?
21 A Including myself, it would be two.
22 Q So it would be two per shift?
23 A Two per shift per side and some days it
24 would be three. By "per side," I mean Venetian and
25 Palazzo. Palazzo had their own EMTs as well.

1 Venetian?
2 MR. ROYAL: I'm going to object to form.
3 BY MR. GALLIHER:
4 Q By the way, he gets to object. You get to
5 answer unless he tells you not to.
6 MR. ROYAL: Go ahead.
7 THE WITNESS: I apologize. I'm sorry, can
8 you repeat the question?
9 BY MR. GALLIHER:
10 Q We've established, based on your testimony,
11 the Palazzo is primarily carpeted when we're talking
12 about the public areas. The suites are the same as
13 the Venetian to the extent they have marble on the
14 bathroom areas; right?
15 A Correct.
16 Q The Venetian has the marble floors in the
17 public areas, both on the casino floor, hotel floor
18 and the 10th floor?
19 A Correct. I would add that as I'm thinking
20 about it -- it's been two years, year and a half since
21 I've been there.
22 The main entryway to the Palazzo where the
23 front desk is and their statue water feature is, and
24 the floor below that is all marble. So the casino
25 floor is --

1 Q So at least as you testify here today, you
2 are unable to give me any quantification, so to speak,
3 of what percentage of falls you investigated at the
4 Venetian versus the Palazzo?
5 A I -- I would be unable to.
6 Q And that includes slip-and-falls?
7 A Correct.
8 Q And I think we have established previously
9 there was roughly 175 slip-and-fall events that you
10 personally investigated?
11 A My estimate; yes.
12 Q And 80 percent of the time the people were
13 injured?
14 A Correct.
15 Q Now, you said there were two EMTs per shift.
16 Was that at the Venetian, Palazzo or both?
17 A Both.
18 Q So was it two plus two equals four or just
19 two together?
20 A Correct. And depending on scheduling and
21 depending on the shift, some shifts had more EMTs than
22 others. On day shift and the shift I worked, it was
23 between two and three EMTs.
24 Q So was it between two and three EMTs for the
25 Venetian?

1 A Yes, and that just depends on scheduling.
2 But more often than not, it was two.
3 Q What about the swing shift when -- I
4 presume -- a casino was busier, was there more EMTs?
5 A The Venetian had four EMTs scheduled, you
6 know, with varying days off. The Palazzo had three
7 and then that switched for overnight. The Venetian
8 had three EMTs on their overnight, the Palazzo had
9 four EMTs on their overnight.
10 Q What was the reason for that?
11 A I don't know.
12 Q You weren't part of the plan?
13 A No. Yeah, I didn't schedule anything.
14 Q So the total number of EMT security
15 officers, such as yourself, at the Venetian would vary
16 between two and four depending upon the shift --
17 A Correct.
18 Q -- and the conditions?
19 For example, if there was a major convention
20 there, I would presume they would have more EMTs on
21 the shift than the normal EMTs because of the volume
22 of customers.
23 A Depending on the day, yeah, it would change.
24 Q And who was responsible for scheduling the
25 EMT security officers?

1 A That would fall on the shift manager or the
2 assistant shift manager.
3 Q When you say shift manager or assistant
4 shift manager, is that of the security department?
5 A Yes.
6 Q And do you remember the names of the
7 security manager or assistant security manager while
8 you were there?
9 A George Valley(phonetic) would have been --
10 November 2016, George Valley would have been the shift
11 manager. Michael Dean I think was a new addition at
12 that time, if I recall correctly, and I think Jacob
13 Johnson was the other assistant manager.
14 Q Let me shift gears again, go downstairs.
15 We're adjacent to the area where the fall happened,
16 which is next to the restroom areas by the Grand Lux
17 Cafe.
18 With me?
19 A Yes.
20 Q Do you know whether or not there are any
21 businesses in, let's say, within a 100-foot radius of
22 where the fall occurred that sell drinks?
23 A There would be -- at Grand Lux Cafe, they
24 had a small bistro.
25 Q Bakery?

1 A Like a bakery where you could order coffee
2 or a pastry.
3 Q Water?
4 A Probably. I never shopped there.
5 Q And if you walked down the hallway to the
6 left past the restrooms, is there a food court?
7 A There is a food court around the corner.
8 Q Do you know how many businesses occupy the
9 food court?
10 A I don't know.
11 Q And then as you walk past the food court
12 around the corner, there is Bouchon Bakery?
13 A Bouchon Bakery, that would be the opposite
14 direction of the food court.
15 Q What I'm getting at is this -- I'll try to
16 show you with my hand as best I can. We've got the
17 Grand Lux Cafe. To the immediate -- as we face it to
18 the immediate left, we've got the bakery.
19 A Yes.
20 Q And then to the immediate right, we've got
21 the restrooms?
22 A All the way to the right; yes.
23 Q And then past the restrooms to the right, as
24 you walk down that hallway, you've got the food court?
25 A Yes.

1 Q And that's where the physical business --
2 there are five businesses in the food court. So if we
3 go past the food court to the right and go around the
4 corner, do you recall seeing the Bouchon Bakery there?
5 A From your diagram, it would be -- it would
6 be -- as you are facing Grand Lux Cafe, as you look to
7 the right, you would see the escalators. Underneath,
8 on the backside of the escalators, was Bouchon Bakery
9 and then again to the right would be the restrooms,
10 and then to the right would be the food court.
11 Q As you go around the corner, the Bouchon
12 Bakery is behind the escalator -- we'll talk about
13 that in a minute.
14 To the right of the Bouchon Bakery, is there
15 a shop that sells hard liquor, beer, wine, water?
16 A A gift store; yes.
17 Q But it sells those items?
18 A Yes.
19 Q And then at the top of the escalator, is
20 there a Coffee Bean?
21 A A Coffee Bean? Yes.
22 Q At the top?
23 A Yes, at the top of the escalator.
24 Q And do you know whether or not they sell --
25 apart from coffee, do you know whether or not they

1 sell soft drinks, bottled water?
2 A I imagine they would.
3 Q I just want to know whatever you remember.
4 Do you remember whether or not there was a
5 cooler inside the Coffee Bean inside where all the
6 drinks were displayed in bottles?
7 A I don't remember.
8 Q For example, if I were to buy bottled water
9 at the Coffee Bean and if I were to go down the
10 escalator into the area adjacent to the Grand Lux and
11 the restroom and I had my bottled water and you saw
12 me, you wouldn't be stopping me and telling me I
13 couldn't drink the water?
14 A Correct.
15 MR. GALLIHER: I want to take a little bit
16 of a break. We may be almost done.
17 (Short Break.)
18 BY MR. GALLIHER:
19 Q As I understood what you testified earlier,
20 you left the Venetian because you decided you didn't
21 want to be an EMT any longer.
22 A Yeah. I mean it's a little deeper than
23 that, but...
24 Q But you didn't leave under bad terms?
25 A No, not at all.

1 Q So as you testify here today, you don't have
2 any axe to grind against the Venetian or have any bad
3 feelings against the Venetian?
4 A Not at all.
5 Q Have you understood all my questions?
6 A Yes.
7 Q Anything you want me to repeat or rephrase
8 for you?
9 A No.
10 MR. ROYAL: I have a few questions.
11
12 EXAMINATION
13 BY MR. ROYAL:
14 Q All right. Let's go back to -- I think we
15 marked it as Exhibit 1. Do you have it in front of
16 you? Now, I just -- let's see. Look at VEN005. So
17 this indicates up at the top 12:39 on Friday,
18 November 4, 2016, and then at 13:31 on Friday you
19 cleared.
20 So you were involved in this incident for,
21 looks like, almost an hour. Look about right?
22 A Yes.
23 Q Okay. The information that's on this
24 particular page where it says "Joyce Sekera," where
25 did you get that? There's a home address, phone

1 number and so forth.
2 A That would have been provided to me, which I
3 would have written down on the medical release, which
4 is VEN017.
5 Q And who provided that?
6 A I completed that with her.
7 Q With who?
8 A With Joyce. I'm sorry.
9 Q Okay.
10 A So any information that would have been
11 verbally given to me and I would have copied it down
12 on this form.
13 Q Which is "this form"? You mean VEN017?
14 A Correct.
15 Q Let's go to that, then.
16 Okay. So I think we have established that
17 everything on this particular page is in your
18 handwriting except for it says Signature with an "X"
19 and a circle around the "X."
20 A Correct.
21 Q Okay. All right. There's an indication
22 where it says "LV Tour," with an arrow, "GCS." Do you
23 know what that means?
24 A That would be Grand Canal Shops.
25 Q And what is LV Tours; do you know?

1 A I believe that's the company she worked for.
 2 Q Is that information she gave?
 3 A Yes.
 4 Q And how about above that? There's some
 5 abbreviations, "WFA," and just tell us what all that
 6 is.
 7 A That's a physical descriptor. That would be
 8 white female, 5'6", 160 pounds, brown eyes, brown
 9 hair.
 10 Q Is that information she gave you?
 11 A That's what I observed.
 12 Q All right. So some of the things on here,
 13 on this particular page, is information that you
 14 observed; other information is information she
 15 provided to you?
 16 A During the assessment and interview; yes.
 17 Q Okay. Now, when you were completing this
 18 particular form, do you recall where you completed
 19 this? Was it at the accident scene; do you remember?
 20 A It would have been a combination of both.
 21 Q "Both" what?
 22 A I'm sorry. So when responding to the scene,
 23 I usually jot down a few notes and then I would have
 24 completed the form with her on assessment -- on
 25 further assessment of the left elbow injury.

1 Q Okay. Where did you get the information
 2 that you just read to us?
 3 A That would have been from me talking to her.
 4 Q So where it says, "fell backwards onto base
 5 of pillar," that's not something you witnessed; right?
 6 A Correct.
 7 Q And then where it says negative loss of
 8 consciousness, negative H/N/B means -- what again?
 9 A Head, neck or back pain.
 10 Q So when it says negative LOC, did you have a
 11 conversation? Did you ask if there was loss of
 12 consciousness?
 13 A Yes.
 14 Q Why did you ask that -- why would you ask
 15 that?
 16 A For any slip-and-fall we always ask that.
 17 It's pretty much the three standard questions that
 18 everyone is asked.
 19 Q So you asked about loss of consciousness
 20 which she denied?
 21 A Correct.
 22 Q You asked about injuries to the head, neck
 23 or back, which she initially denied?
 24 A Yes.
 25 Q You asked if she was weak or dizzy, which

1 Q Okay. Now, as I recall -- or at least it
 2 appears that you indicated that you left the area to
 3 do your assessment. Is that correct?
 4 A Yes.
 5 Q All right, we'll get to that. So when you
 6 say "both," some of this was completed at the scene
 7 and some was completed in a different area?
 8 A Correct. The initial assessment, what I do
 9 on scene is determine that there's no life-threatening
 10 injuries, that she's able to stand and care for
 11 herself and that we don't need an ambulance
 12 immediately. Which would be most of this top line
 13 stuff -- I'm sorry. Here in the middle of the page it
 14 will say S, slash, F, slip-and-fall, fell backwards
 15 onto base of pillar, then negative LOC, which is
 16 negative loss of consciousness, negative H/N/B for
 17 negative head, neck, back pain. And then negative
 18 weak, dizzy.
 19 So as long as she wasn't displaying anything
 20 like that, we know that we would be able to move her
 21 without having to call an ambulance.
 22 Q So you just read on VEN017 where it says
 23 Venetian, Palazzo EMT. That's where your handwriting
 24 starts there starting with "S/F."
 25 A Correct.

1 she denied?
 2 A Correct.
 3 Q Go to the next line starting with the "L"
 4 that's circled and just read across if you would.
 5 A Okay. It would be left elbow and then the
 6 arrow symbol and then positive "C" would be
 7 tenderness, and then negative would be -- negative
 8 "IC" would be no instability or crepitation.
 9 Q Is that something that -- or how do you get
 10 that information? Is that by your assessment or is
 11 that from a report? In other words, she's giving you
 12 that information?
 13 A This would be my assessment. So the
 14 tenderness would be, as we palpate or feel the injury,
 15 they would tell us if touching it would increase the
 16 pain which would be the tenderness.
 17 And then instabilities or crepitation would
 18 be any issues with the bone, if we felt anything
 19 shifting or if the joint didn't feel whole or correct
 20 or stable.
 21 Q Okay. Now, there's a notation under where
 22 it say "pillar" in that first line that you read where
 23 it says "S/F," and under "pillar" there's a line down
 24 with an arrow. Can you read that?
 25 A Guarded posterior cranium.

1 Q What does that mean?
 2 A So from what she told me and what was
 3 documented in the report was that, when she fell she
 4 put her hand behind her head as she fell to protect
 5 her head. So the guarded posterior would be the rear
 6 and cranium is head, so she guarded the back of her
 7 head as she fell at the base of the pillar.
 8 Q Okay. When you did this examination, did
 9 you palpate anything other than the left elbow that
 10 you recall?
 11 A Normally we would palpate -- yes. We would
 12 palpate the head, neck and back, the spinal column for
 13 any additional pain.
 14 Q Okay. And tell us about your palpation of
 15 the head. How does that work; how did you do that?
 16 A Usually we would just kind of feel around
 17 the back of the skull. We feel for any depressions or
 18 anything that's shifting, anything that doesn't feel
 19 stable. Check for blood on gloves while doing that,
 20 because a lot of open injuries in the hairline get
 21 concealed pretty well.
 22 So we just kind of take a general feel of
 23 the entire cranium or head.
 24 Q When you did that in this case, did you note
 25 any complaints of tenderness?

1 A Okay. Plus CMS, it's -- CMS is shorthand
 2 for circulation motor and sensory. So in the left arm
 3 we would assist at the -- assess at the fingertips
 4 whether there was circulation going past the elbow.
 5 So in the form of what we would call a like
 6 a capillary test where you press on the nail bed and
 7 see how quickly blood would return. Motor, we would
 8 ask them to move their fingers, and then sensory, if
 9 they can feel at the tips of their fingers.
 10 She reported -- and that's written here,
 11 tingling in left P2 and P3. That's phalanges -- or
 12 phalanx for the individuals, phalanges for both. P2
 13 is the index finger, P3 is the middle finger.
 14 And then after that I wrote "Limited ROM,"
 15 that's range of motion, due to pain. So she didn't
 16 have full movement of the elbow joint due to the pain
 17 that she was reporting.
 18 Q All right. So everything you just read to
 19 us related to the left elbow?
 20 A Correct.
 21 MR. GALLIHER: Wait a minute. Objection,
 22 you stated he was talking about two fingers.
 23 MR. ROYAL: Okay. You are right. You are
 24 right.
 25 /////

1 A No.
 2 Q Tell us about the neck down to the low back,
 3 when you did that assessment.
 4 A So for the neck, we would do mainly the
 5 spinal region. We wouldn't do anything from, like,
 6 the sides of the back, but we would do the spinal
 7 region.
 8 So neck would be the cervical spine from the
 9 bottom of the head to the top of shoulders, and the
 10 rest would be the thoracic spine all the way down to
 11 the sacrum.
 12 Q And you did that in this case after you did
 13 the palpation of the head?
 14 A Correct.
 15 Q Were there complaints of pain from the neck
 16 down to the low back when you did -- on palpation that
 17 you recall?
 18 A If it's not written here, it wasn't stated.
 19 Q I don't know because I can't tell exactly
 20 from your writing. Do you see anything like that?
 21 A No, no, I don't.
 22 Q Why don't you read to us. I'm going to
 23 point to, it says plus CMS and just go ahead and read
 24 down to where it says -- or just to the end of the
 25 line.

1 BY MR. ROYAL:
 2 Q Everything you just said related to your
 3 examination of the left elbow?
 4 A Left elbow and left arm, yes.
 5 Q Were there any other body parts during your
 6 examination where she exhibited -- Ms. Sekera
 7 exhibited limited range of motion due to pain?
 8 A No.
 9 Q All right, down, then it says left --
 10 auxiliary pain?
 11 A Axillary pain.
 12 Q Excuse me. What is that?
 13 A That would be that armpit line, that
 14 imaginary line straight down the armpit.
 15 MR. GALLIHER: On the left side?
 16 THE WITNESS: Left side, correct.
 17 BY MR. ROYAL:
 18 Q Okay. Tell us what that indicated to you,
 19 if anything.
 20 A Any indication -- I mean it could have been
 21 numerous things. It indicated to me -- I mean I
 22 didn't witness the fall so I don't know exactly how
 23 she landed, but towards the end she was reporting left
 24 axillary pain and soreness there.
 25 But not to jump ahead, but left flank and

1 lateral back pain would be also just left back side.
2 So I mean it could be any number of things if she
3 landed on at the base of the pillar.
4 What it would indicate to me is she maybe
5 made contact there and she maybe wasn't feeling it
6 because maybe the pain in her elbow was masking other
7 pain.
8 Because I did notate a little below that
9 that there was an increase, there's an arrow up and
10 seven out of 10, that was her pain in the area at the
11 time.
12 Q Pain for what?
13 A At the left elbow.
14 Q Did she give you a pain -- degree of pain in
15 anything other than the left elbow, that seven out of
16 10?
17 A No.
18 Q She didn't rate this back pain?
19 A No.
20 Q This lateral back pain, was that -- did she
21 explain about that after you had already done your
22 palpation? Was it during when you were palpating the
23 spine?
24 A That would have been towards the end. It's
25 stated in the narrative.

1 Q Okay, we'll go to the narrative. That's
2 okay. Let's just read the rest of this as we can.
3 So there's -- go ahead and read it, what you
4 can. I realize a little bit's cut off here, but to
5 the degree you can just read the rest of it, under
6 where it says left flank.
7 A Okay. So at the angle, that's positive
8 video, and I'm not sure if that's from surveillance or
9 security control. It would be one of those two
10 entities that told me that we had video of the
11 incident. And below that is just kind of the quick
12 notes I took while they were talking to me on the
13 phone which would be left foot slipped, 30 minutes
14 prior, no spill, below that.
15 Q Do you know what that means?
16 A That would have been -- they reviewed
17 coverage 30 minutes before the fall and they said no
18 spill was observed.
19 MR. GALLIHER: And I'll allow the testimony,
20 but it's hearsay. But you can go ahead and answer.
21 THE WITNESS: But they didn't observe any
22 spill in the video footage.
23 BY MR. ROYAL:
24 Q Did you ever observe any spill?
25 A I did not see any wet areas.

1 Q Did Ms. Sekera indicate to you she had
2 observed any spill at any time, that you recall?
3 A She said she had slipped and -- I think what
4 I said in the report was that something like water,
5 but I never observed what she stated she slipped in.
6 Q Okay. Let's go through the rest of this on
7 017.
8 A So continuing, that's "RX," which would be
9 treatment, which is splint to left elbow, slash FA,
10 which is forearm. And below that is positive CMS
11 which is -- what that indicates is after we apply a
12 splint to somebody, we want to reassess their injury
13 and anything distal or further down the body, so that
14 would be the fingertips.
15 So we would reevaluate CMS at the fingertips
16 again after the splint to make sure the splint isn't
17 doing any damage or hindering anything.
18 After that it goes negative triangle, which
19 is delta or change. So negative change. There is a
20 "P" with a line above it that's post, after. So
21 negative change after application.
22 And then that's negative HX, which is
23 history.
24 Q What does that mean?
25 A That would be no history of injury to that

1 elbow.
2 Q Prior to the fall?
3 A Correct.
4 Q And that's information obtained from where?
5 A The assessment interview, speaking with her.
6 Q Okay. So let's go to, still on Exhibit I,
7 VEN006. You asked about -- this was called the case
8 MO, and you were asked about I guess how you put this
9 information together. You said you checked boxes.
10 A Correct.
11 Q On a computer program you used?
12 A Correct.
13 Q When did you complete this report? Did it
14 say here?
15 Look at the VEN006 at the bottom by your
16 name. It says date and time, it says 15:30. What's
17 that?
18 A That would be November 4, 2016, at 3:30 p.m.
19 That, I believe -- and I'm not 100-percent sure
20 because I normally don't see these printouts. These
21 aren't what we normally look at in the report system,
22 but I think that's the time the report was submitted.
23 Q So if that's accurate, you would have
24 prepared this report within two hours of clearing?
25 A Correct.

1 Q All right. Look at where it says, under "MO
2 data," it says "Incident Information." About the
3 fourth line down says "PHI, outside vendor." What is
4 that?
5 A "PHI" is protected health information and
6 then "outside vendor" would be not a Palazzo Venetian
7 team member and not a guest of the hotel. So that
8 would be somebody who is a temp worker or somebody who
9 works in a business on the Venetian Palazzo property
10 that's not officially employed by the Venetian or
11 Palazzo.
12 Q Then you have Surface Conditions: Dry,
13 marble, flat.
14 A Correct.
15 Q Why did you select dry as opposed to wet?
16 A The reason I did that is because that was my
17 assessment of the area, and that was done on an
18 accident scene check which is VEN018.
19 Q Let's go to -- still in Exhibit I, VEN007.
20 This is called a Person Profile. Is this the same
21 kind of form you fill out -- in other words, where you
22 get on and you click boxes?
23 A Correct.
24 Q Just give us -- based on what you clicked
25 here under "MO information," give us a summary of at

1 incident that you recall?
2 A Not that I'm aware of. Not that I would
3 recollect.
4 Q Still on the first paragraph, let's go to
5 the second-to-last sentence. It says "Sekera
6 apologized for falling and did not appear to be in any
7 immediate distress."
8 Do you have any independent recollection of
9 that initial conversation with Ms. Sekera where she
10 apologized?
11 MR. GALLIHER: Other than what's in the
12 report?
13 MR. ROYAL: Right.
14 BY MR. ROYAL:
15 Q I'm asking, do you have an independent
16 recollection of that conversation?
17 A Outside of this report, no.
18 Q Then you write, "I did not note any obvious
19 injuries or threats of life."
20 When you say you didn't note any obvious
21 injuries, what are you referring to?
22 A Any pools of blood, any obvious fractures.
23 Anything that you could just look at somebody and
24 understand something's not right about their
25 condition.

1 least what you indicated to be Ms. Sekera's state of
2 mind --
3 A Okay.
4 Q -- at the time you were doing your
5 assessment.
6 A That would be the patient assessment and
7 speech. When I clicked, Patient is alert, airway
8 status open, breathing adequate, circulation present,
9 patient has a trauma, slash, injury, abrasions,
10 tenderness and that her speech was normal.
11 Q At any time during your assessment, did she
12 have any -- did she exhibit any signs of a concussion
13 or anything of that nature?
14 A Nothing that was immediately noticeable.
15 Q Let's go to your VEN008, 009. This is a
16 narrative report.
17 All right, a few questions from this. It
18 says you arrived on scene and met with Las Vegas Tours
19 employee Sekera, Joyce.
20 Do you know what Las Vegas Tours is?
21 A I'm not exactly sure what they do. I know
22 they have a couple booths up in the Grand Canal Shops,
23 but I don't know exactly what they sell. I mean I
24 would imagine it's tours, but I'm not --
25 Q Had you ever seen Ms. Sekera before this

1 Q Okay, next sentence -- or rather the next
2 paragraph says, "Sekera was alert, oriented to person,
3 place, time and events."
4 At what point -- does this report indicate
5 at what point you had this particular conversation
6 with her to make that determination? Was it during
7 your initial assessment or was it later?
8 A This would be the initial assessment. This
9 would be right when I walked up and started talking to
10 her.
11 Q Okay. So the next sentence says "She stated
12 that she was walking through the area when she slipped
13 in what she believed was water on the floor."
14 See that?
15 A Yes.
16 Q When you say "She stated" in this report,
17 what is -- what does that indicate? What is that
18 meant to indicate? Can you explain that?
19 A In this, in my report writing, if I don't
20 add quotations, it's not a direct quote of what they
21 said. This would just be a paraphrase of what she
22 explained to me happened before she ended up on the
23 floor.
24 Q Okay. So she said she believed water was on
25 the floor. Did she ever identify to you anything else

1 beyond saying it was on the floor? Did she describe
2 it? Did she give any indication about size or
3 location?

4 A No, not that I can recall.

5 Q The next sentence says "She reported that
6 she fell backwards and put her right hand behind her
7 head to protect it."

8 When you say "She reported," is that any
9 different than when you said "She stated"?

10 A No.

11 Q Do you recall -- okay. Then it says, the
12 next sentence, "She landed on the marble floor and her
13 left elbow struck the base of the pillar next to her."

14 You didn't say "she reported" or "she
15 stated" prior to that particular statement. Is there
16 a reason for that?

17 A That would have been a continuation of the
18 previous sentence --

19 Q Okay.

20 A -- because obviously I wouldn't have seen
21 it.

22 Q Okay. The next sentence, "She denied
23 striking her head during the fall and denied losing
24 consciousness prior to or after falling."

25 Do you see that?

1 A Yes.

2 Q When you say "She denies," would you explain
3 to us how we're supposed to read that in this report?

4 A So that would be me asking her just
5 basically that: Did you feel like you were going to
6 pass out or did you pass out before falling, before
7 being on the floor? And do you remember being on the
8 floor and everything up until seeing me, is basically
9 how I would put it.

10 And then that's just kind of a paraphrasing
11 of that conversation.

12 Q Okay. So when we read this and it says she
13 denied striking her head, that indicates you had a
14 conversation with her?

15 A Correct. I would have asked her, you know,
16 how she fell, did her head hit anything; and then in
17 line with that, it would be other questions about loss
18 of conscious or levels of consciousness.

19 Q Okay. So as you sit here today and as you
20 read this report so far, does any of this refresh your
21 recollection as to any of the conversation you
22 actually had with Ms. Sekera?

23 A The exact conversation, no. No, I --
24 outside of what's written here, I have no independent
25 recollection of this conversation.

1 Q The next sentence, "She denied any head
2 pain, neck pain, weakness, dizziness or nausea at that
3 time."

4 Again, when you use the words "She denied,"
5 what does that indicate to us?

6 A That would be her saying, no, to basically
7 any of those things: Do you have any head pain, neck
8 pain, back pain? The weakness and dizziness would
9 have been included in the loss of consciousness
10 conversation.

11 Q Okay. So up to this point in paragraph 2,
12 other than the first sentence where you said she was
13 alert, oriented to person, place and time, pretty much
14 what we've been reading is information she has
15 provided to you; is that correct?

16 A Yes, correct.

17 Q All right. The next sentence says "I noted
18 she was guarding her left elbow and reported she was
19 only experiencing pain there at that time."

20 See that?

21 A Correct.

22 Q Okay. So you observed -- tell us about what
23 you observed in that sentence versus what information
24 she gave to you.

25 A So from what I typed there, guarding is

1 basically kind of protecting or shielding. So a lot
2 of times people, when they're guarding an injury, they
3 won't put their hands directly over it, but they'll
4 guard like a body part near it. I didn't exactly
5 explain that she was holding an arm across her chest
6 or anything like that.

7 But guarding in the medical assessment is
8 usually something along those lines, that the patient
9 is protecting the injury from any further movement or
10 anything affecting it.

11 Q Okay. The next sentence, "She was
12 embarrassed, to which I offered to assist her to a
13 more private area." Again she stated she was
14 embarrassed, I should say.

15 That, again, was conversation you had with
16 Ms. Sekera?

17 A Yes.

18 Q Okay, let's continue. "She agreed and was
19 assisted to a standing position."

20 Did you do that?

21 A I would have, yeah.

22 Q Then it says, "I asked if she felt any new
23 pain, weakness, dizziness or nausea, to which she
24 denied at that time."

25 Can you explain to us why you would ask that

1 a second time? Looks like you had already covered
2 that before.

3 A So like I said previously with the
4 splinting, anytime we change a condition for a
5 patient, you always want to reassess. So anytime you
6 do something you want to reassess: Is this hurting
7 you more? Does this make you feel better?

8 And then usually when somebody falls,
9 picking them back up, you know, sometimes people will
10 feel a little weak or dizzy, in my experience doing
11 that job. So that became just a normal question I
12 would ask whenever I would assist anybody to stand,
13 regardless of injury, is if there was any weakness or
14 dizziness upon standing up.

15 Q Okay. Continuing it says, "She agreed to be
16 assessed in the medical room and refused wheelchair
17 assistance."

18 What's the medical room?

19 A The medical room is a section of the
20 security office that the EMT stage out of. We have
21 our own computers, or own phone, own private area that
22 wasn't under camera coverage. Because most of the
23 security office had camera coverage because obviously
24 we wouldn't want any cameras in the medical room. So
25 the medical room is a more private place that I could

1 unstable or were able to walk on their own without
2 assistance.

3 Q Now, this next paragraph, it goes from -- it
4 goes on to VEN009, starting with the last paragraph.
5 This appears to be just details associated with your
6 assessment -- your assessment of the left elbow.

7 A The paragraph that ends on 008?

8 Q I'm sorry. Secure left elbow.

9 A Yeah, that would be my assessment of the
10 injury.

11 Q Now, I'm just sort of looking at this
12 chronologically the way you drafted this. Does this
13 sort of refresh your recollection as to where you did
14 this extensive left elbow assessment? Whether it was
15 at the accident scene or the medical room?

16 A This would have happened in the medical
17 room.

18 Q Okay. Now going on to VEN009 at the top
19 starting with "She added." "She added that she was
20 beginning to feel minor pain and soreness in her left
21 lower back and left side localized to the axillary
22 line."

23 Can you explain what that means again?

24 A So that would have been during my
25 conversation with her. This would have been after

1 get her to and then finish the assessment there.

2 Q How did you get to the medical room from the
3 scene when you first met Ms. Sekera?

4 A From the report, looks like we walked
5 because she refused the wheelchair.

6 Q Do you remember anything about that walk?

7 A No.

8 Q Do you remember her having any trouble
9 ambulating from the accident scene to the medical
10 room?

11 A No. And if she did, I would have put her in
12 a wheelchair anyway.

13 A lot of times you would get a patient who
14 would overestimate their ability to walk. There were
15 ways that we could have conversations with people to
16 make them understand that, you know, if it's from a
17 previous fall, we don't want them falling again. We
18 don't want things getting worse.

19 So even though a wheelchair is
20 embarrassing -- a lot of people said it was
21 embarrassing, we would always prefer that route to
22 having them fall again, and most people were
23 understanding of that.

24 And that was part of us walking with them.
25 We wanted to make sure that they didn't appear

1 treatment because all my report writing is
2 chronological. That would have been after treatment
3 of her elbow.

4 So once it was splinted -- let's see,
5 splinted and slinged, she began to report minor pain
6 and soreness, left lower back and left side. So that
7 would have been at the end of my assessment.

8 And usually for writing like this to be a
9 little more concise, throughout the entire call we
10 usually ask if they want an ambulance, if they want to
11 see a doctor or seek any further medical attention.
12 And the way I wrote my reports is that that would be
13 towards the end.

14 I mean if somebody says yes to an ambulance,
15 obviously that would be chronologically reported. But
16 to make the report more concise, I added the seeking
17 medical attention part towards the end of those
18 reports.

19 Q I'm going to ask you one more time about
20 this minor pain and soreness to her left lower back
21 and left side, localized to the axillary line, because
22 I'm not clear on where this is.

23 Where is the pain in the left lower back?
24 Is it like in the kidney area? Is it on the side or
25 the spine?

1 A Okay. So, yeah, it would be the area -- so
2 imagine on the left side, the invisible line like the
3 middle of the armpit going all the way down towards
4 the flank, which would be just above the beltline and
5 then around to the back.

6 Q So you've indicated going to the back either
7 to the spine or -- how far to the middle of the back?

8 A Yeah, usually -- I don't know if it was to
9 the spine. If it's not documented, I'm not exactly
10 sure how far it extended.

11 Q Okay. All right. Now on VEN009 starting
12 with "Sekera agreed to seek medical attention."

13 See that?

14 A Yes.

15 Q Okay. Then it says, "but refused ambulance
16 transport." That means what? That means you had a
17 conversation about whether you should call an
18 ambulance?

19 A Yes.

20 Q The next sentence says, "She stated her job
21 did not provide worker's compensation."

22 Do you know why that would be part of your
23 conversation?

24 A The reason that's in there is because she
25 was a third party -- I'm sorry. What was the exact

1 worked at the property, but wasn't exactly a team
2 member with us.

3 Those employees on our property do have
4 access to our back-of-house areas, so it's not against
5 anything for me to bring her back to a secure area
6 like that. And in the case of a guest, if they ask
7 for more privacy, there are other areas near the
8 casino floor that we could assess them that isn't the
9 medical room.

10 Q Okay. Back to VEN009, Exhibit I, and it
11 indicates, "She refused to complete a voluntary
12 statement for the incident."

13 Can you explain what that indicates or
14 reads?

15 A Sure.

16 So our policy for reporting injuries to
17 outside vendors or third-party employees on property
18 was that they would fill out the medical release,
19 which is VEN017.

20 They would fill out the medical release and
21 they were given the option of completing a voluntary
22 statement for their employer. But, like, it's implied
23 it's a voluntary statement. If they don't want to
24 complete any paperwork for their injury, they don't
25 have to.

1 phrasing? On VEN006, "PHI, outside vendor."

2 Because she was in line with, like, a temp
3 worker or somebody who works at the Venetian Palazzo,
4 but is not employed by the Venetian Palazzo, we would
5 ask them if they had worker's compensation only
6 because that would require them to report to their
7 manager and that would require them to fill out the
8 worker's compensation paperwork.

9 And that -- mostly we saw temp workers for
10 injuries, but that's for third-party stuff like this.
11 And they had their own worker's comp, but most people
12 aren't aware of how to engage that conversation with
13 the manager or how to start the worker's compensation
14 process.

15 So that's just the normal thing we ask them,
16 anybody that's not employed by the Venetian Palazzo.
17 Only because, like I said, they have to report to the
18 manager and let them know they were injured.

19 Q That brings up another question. Is it
20 unusual to take someone from, let's say, the public
21 area back to the medical room? Just a normal guest?

22 A I wouldn't take a guest back to the medical
23 room.

24 Q Why did you on this occasion?

25 A Because she was an outside vendor. She

1 Q And you said "She was escorted to her booth
2 in the Grand Canal Shops, collected her belongings and
3 was escorted to her vehicle in the team member garage
4 on Level 8."

5 Do you see that?

6 A Yes.

7 Q Can you explain, to the best you can, what
8 that means?

9 A So after all the paperwork and photographs
10 were completed and everything I had -- everything I
11 needed I had, I offered to walk her back up to where
12 she worked, collect her belongings -- I guess I don't
13 know what that entailed and probably a purse, but
14 that's just guessing -- and then she was escorted to
15 her vehicle.

16 So I walked with her basically just to make
17 sure she was okay. Only because she was injured and
18 she was also complaining of the additional things, but
19 didn't want to go by ambulance.

20 More often than not -- and I think everybody
21 is different about it as far as EMTs. If somebody is
22 injured on property and I have the ability to walk
23 with them, I'll do it only because they are on our
24 property and I'm caring for them. I always take it
25 upon myself to escort injured team members or

1 employees.
2 Q So in this case, from the accident scene,
3 where did you walk with her?
4 A So from the accident scene, it would have
5 been through the hotel -- the elevator lobby to the
6 back of house, to the security office, and the medical
7 room in the security office where the rest of the
8 report was finished, paperwork was collected.
9 And then we would have gone from the medical
10 room back out to the casino floor and then her booth,
11 which is where she worked up on the second floor out
12 of the Grand Canal Shops. And then she would have
13 collected her stuff and I would have walked with her
14 to wherever her car was parked.
15 Q Okay. Did you indicate, anywhere in your
16 report, any concerns related to her ability to operate
17 a vehicle on her own?
18 A Not in the report itself, but I would have
19 asked her. And it's not documented, so I can't say.
20 Q Okay. So once you -- what happened after
21 you got to the team member garage? Strike that. Let
22 me ask another question.
23 This team member garage, what is that? On
24 Level 8, what's a team member garage?
25 A Where all the employees park their vehicles

1 have to do an accident scene check. That is policy
2 for us to complete.
3 I don't remember this exact incident, but my
4 normal procedure is to go where the incident happened,
5 take a look around and just evaluate the area, see if
6 there's anything uneven, see if there's any
7 obstruction, see if there's just anything that might
8 present a hazard.
9 Because if there is something present -- and
10 this was done in conjunction with facilities. So if
11 there was something present, I would need to stand
12 there and make sure nobody else got injured from it or
13 tripped on something or slipped on something. So it
14 would be on me to make sure either nobody else slipped
15 or fell in that area, and that was done with the PAD
16 department.
17 Q The next line down says, "A previous wet
18 spill was reported and cleaned by PAD."
19 When you refer to a previous wet spill, what
20 information did you have other than Ms. Sekera saying
21 that she believed she stepped in water?
22 A As far as my recollection, she was the only
23 one that told me.
24 Q And is there anything in your report
25 indicating whether or not Ms. -- other than Ms. Sekera

1 and they walk onto the property.
2 Q Then after you walked her to -- Ms. Sekera
3 to her car, last paragraph indicates that you returned
4 to the area; is that right?
5 A Yes.
6 Q Did you -- you don't have an independent
7 recollection of that, do you?
8 A No, not outside of the report.
9 Q Okay. Now, it says, "Video coverage is
10 available per surveillance."
11 Do you recall ever reviewing any actual
12 surveillance?
13 A I'm not allowed to look at the video
14 coverage.
15 Q Okay. So you haven't?
16 A No.
17 Q On VEN018, if you could go to that for a
18 minute. Your notes indicate, "Defects noted, explain
19 in detail." It says "Marble flooring appears flat,
20 even and dry."
21 See that?
22 A Yes.
23 Q Do you recall what you did to make that
24 determination or not?
25 A So for this -- any slip-and-fall, we always

1 saying she believes she slipped in water, any other
2 objective observation you made about the existence of
3 water prior to this slip-and-fall?
4 A No.
5 MR. ROYAL: Did we mark those?
6 MR. GALLIHER: They're marked as 2.
7 MR. ROYAL: Can I look at those?
8 BY MR. ROYAL:
9 Q I just ask you, on Exhibit 2, on these
10 photographs that we looked at, there's VEN035, I
11 assume you took that photo.
12 A Yes.
13 Q All those photos; right?
14 A Correct.
15 Q Was that taken in the -- can you just tell
16 us where this was taken.
17 A That would be the medical room.
18 Q Okay. And how about Photo 036?
19 A Also in the medical room.
20 Q And that's of the left elbow?
21 A Yes.
22 Q And how about 037?
23 A Medical room.
24 Q Do you know why you took that picture?
25 A It's policy for us to photograph shoes if

1 we're able to. Tops and bottoms of shoes.
 2 Q And 038?
 3 A Medical room.
 4 Q Okay. That's the bottom of the shoe?
 5 A Correct.
 6 Q 039?
 7 A That's the area of incident.
 8 Q Do you remember when this one was taken,
 9 039? Would that have been after you returned to the
 10 scene?
 11 A Yes. That photograph, I don't know exactly
 12 when that was taken, but my normal operation was to
 13 take photographs during the accident scene check.
 14 Q All right. So VEN014, you took that?
 15 A Yes.
 16 Q And in this particular photograph or
 17 anywhere around this pillar, did Ms. Sekera ever point
 18 to you and say, "This is where I believe the water
 19 was"?
 20 A Not to my recollection.
 21 Q All right, 041, that's also of where you
 22 found Ms. Sekera?
 23 A Yes.
 24 Q On 042, why did you take this photo?
 25 A That would be the pillar she pointed to as

1 A Yes.
 2 Q There's an officer in a blue uniform -- I'm
 3 sorry, there is a man in a blue uniform. Do you see
 4 that?
 5 A Yes.
 6 Q Do you know who that is?
 7 A Not off the top of my head.
 8 Q Counsel had asked on direct whether or not
 9 there was another security officer there. Does
 10 looking at this, still at 12:43:15, at all refresh
 11 your recollection?
 12 A No.
 13 Q I'm not left-handed so this is a little
 14 tricky. Hang on. So I've let it -- it's now rolling,
 15 it's 12:43:22. You are bending over.
 16 You are talking to -- I assume that's
 17 Ms. Sekera.
 18 A I believe so.
 19 Q Okay. Is this the first time you've seen
 20 this footage?
 21 A Yes.
 22 Q Does anything that you are seeing at this
 23 point refresh your recollection --
 24 A No.
 25 Q -- about anything you testified to?

1 the falling event.
 2 Q And other than her left elbow, did she
 3 complain to you about anything else striking the
 4 pillar?
 5 A Striking the pillar? No.
 6 Q Did she complain to you about anything else
 7 striking the floor or any other object other than her
 8 left elbow?
 9 A No.
 10 Q Okay. And this last photo, 0043, you took
 11 that and that was of the incident area?
 12 A Yes.
 13 Q Okay. I just have a couple more here. I'm
 14 going to show you --
 15 MR. ROYAL: Off the record for a second?
 16 (Discussion off the record.)
 17 BY MR. ROYAL:
 18 Q And I'm trying to remember what I -- for the
 19 record, I've got up here the surveillance photo of the
 20 incident starting at 12:43:15.
 21 And it's still right now, but do you
 22 recognize yourself?
 23 A Looks like me.
 24 Q And would that be you on the right with the
 25 backpack?

1 A No, not independently.
 2 Q Hold on one second.
 3 MR. ROYAL: Give me a second here.
 4 BY MR. ROYAL:
 5 Q Okay. I'm going to show you now video
 6 starting at 12:44:45. Ms. Sekera is now standing up
 7 and you are in -- is that a white shirt --
 8 A Yes.
 9 Q -- white uniform?
 10 A That's correct.
 11 Q And then we still have this other officer
 12 here in the blue uniform. We don't know who he is at
 13 this point; is that right?
 14 A I don't recognize him.
 15 Q So I'm just going to hit Go here, so it's
 16 rolling at 12:44:45 forward. You see the officer in
 17 the blue uniform, looks like he's gone somewhere else
 18 and just you and Ms. Sekera are walking from the scene
 19 and you've got the wheelchair; right?
 20 A Yes.
 21 Q And where are you going at this particular
 22 point?
 23 A To the medical room.
 24 Q Okay. So these cameras at 12:45:14, they
 25 depict you going into what looks like the elevator

1 lobby area.
 2 A Yes.
 3 Q And at 12:45:25 you are going through this
 4 door, and where does that lead?
 5 A To the back of house.
 6 Q Are guests typically allowed back there?
 7 A No.
 8 Q Okay, 12:45:40 we see you again with the
 9 wheelchair and Ms. Sekera in the back hall, and it
 10 just continues as you are going towards the medical
 11 room.
 12 Looking at any of this, does it refresh your
 13 recollection as to anything you testified to today?
 14 A Nothing outside the report.
 15 Q At 12:46:05, that's you and Ms. Sekera
 16 walking towards the camera?
 17 A Yes.
 18 Q At this particular time, does she at least
 19 appear to have difficulty ambulating to you?
 20 A No.
 21 Q Do you have an idea of the estimated
 22 distance that you walked from the incident scene to
 23 the medical -- to this room you are going into at
 24 12:46:42?
 25 A Total distance walked?

1 Q It's okay, best guess.
 2 A My best estimate is a couple hundred feet.
 3 Maybe -- trying to do the math in my head because each
 4 pace is about three steps or each pace is about
 5 two feet.
 6 Q You know what? It's not --
 7 A I don't know.
 8 Q So at 12:46:54, that's when you -- just
 9 because you disappeared, that's when you go into the
 10 medical room?
 11 A Correct.
 12 Q So I want you to -- all right, now I'm going
 13 to show you footage -- oh, boy. I'm going to show you
 14 footage starting at 13:02:37, and you said there's no
 15 cameras in the room where you were doing your
 16 assessment.
 17 A Correct.
 18 Q All right. So at 13:02:39, that looks like
 19 you and Ms. Sekera coming from the medical room.
 20 A Yes.
 21 Q All right. So according to at least the
 22 time difference there, looks like your assessment in
 23 the medical room was somewhere close to about 15
 24 minutes.
 25 A Yeah -- yes.

1 Q All right. So from this point, I'll just --
 2 I'll represent to you that this -- maybe I'll just
 3 kind of speed this up -- that this shows you walking
 4 back from the medical room, the same -- looks like the
 5 same course that you took to get there.
 6 Would you agree?
 7 A Yes.
 8 Q Okay. I'm at 13:04:06. We see you coming
 9 from those rooms that lead to the back area, and then
 10 now you are out in the common area -- the guest area?
 11 A Yes.
 12 Q Okay. At this point, we're -- at this point
 13 you are going where?
 14 A Back up to her booth or place of employment.
 15 Q So I'm going to speed this up a little bit.
 16 Now at 13:05:25, what are we seeing here? You see
 17 yourself and Ms. Sekera?
 18 A Yes.
 19 Q Where is that?
 20 A That's up in the Grand Canal Shops.
 21 Q Okay. It's a floor above?
 22 A Yes.
 23 Q A floor above where the incident occurred;
 24 is that right?
 25 A Not exactly, but, yeah.

1 Q What do you mean "Not exactly"?
 2 A Not like directly on top of it, but a floor
 3 above it.
 4 If you were to pinpoint exactly where it was
 5 above it, it would be further down that hallway on the
 6 left side of the video there.
 7 Q But it was one floor above?
 8 A Yeah.
 9 Q Okay. I'm going to speed it up quite a bit
 10 here. We're now at 13:13:08. Looks like you are
 11 backtracking, basically going back to the area that
 12 you came once you went up to the Grand Canal Shops. I
 13 don't know if you can tell.
 14 A Yeah, yeah.
 15 Q And at this point you are headed towards
 16 the --
 17 A The garage.
 18 Q Okay. We just watched at 13:08 -- 13:08:50,
 19 up to 13:09. Now it's continuing at this point, she's
 20 in a sling, she's walking on her own and just headed
 21 towards -- looks like the elevator.
 22 A Correct.
 23 Q And that's the elevator to get to the
 24 parking area?
 25 A Correct.

1 Q Okay, now it's at 13:10:08. Looks like you
2 are getting onto an elevator. Is this to go up to the
3 team member parking garage?
4 A To Level 8; yeah.
5 Q Okay. This looks like it ends at 13:10:32.
6 As you and Ms. Sekera are getting out of the elevator
7 on that particular floor to the team member parking,
8 see that?
9 A Yes.
10 Q Does anything that we just went over refresh
11 your recollection as to anything that is beyond, you
12 know, either what you can see in the video or what's
13 in your report that we have covered marked as
14 Exhibit 1?
15 A Nothing stands out.
16 Q If Ms. Sekera had complained to you about
17 anything else during the time that you were doing this
18 escort, either to the medical room or from the medical
19 room to the garage, is that something that you would
20 have typically included in your report?
21 A Yes.
22 MR. ROYAL: I just got a couple more
23 questions here.
24 BY MR. ROYAL:
25 Q You were asked about prior incidents and

1 best estimates and so forth about slip-and-falls. I
2 want to cover a couple things about that.
3 There are occasions when you respond to
4 incidents like this where there are more than one EMT
5 that responds?
6 A Yeah, yeah, that's happened.
7 Q On some of those estimates that you
8 provided, how many of those would include other EMTs
9 responding with you?
10 A I wouldn't be able to estimate that.
11 Q Would it be more than 10 percent? More than
12 20 percent?
13 A I would say maybe 50 percent.
14 Q Of those 175 that you -- or I'll say 150 to
15 175, which is what my notes indicate you said.
16 How many of those falls on marble floors
17 were trips versus slips?
18 A I don't know if I would be able to estimate
19 that.
20 Q Are you -- when you said 175 or up to 175,
21 would that include just slips with a foreign substance
22 or was it any kind of a fall on a marble floor?
23 A More often than not it was a slip. If it
24 was a trip, it would be an unusual circumstance only
25 because they were very good -- PAD and facilities were

1 very good about obstructions and things that people
2 could trip over.
3 More often than not, it was a slip over a
4 trip, but I couldn't give you a number.
5 Q Of the 150 to 175 that you estimated, how
6 many of those related to slips on marble floors where
7 there was no foreign substance?
8 A No foreign substance?
9 MR. GALLIHER: Again, I'll object on grounds
10 of foundation. There's no foundation for your
11 testimony, but you may answer.
12 THE WITNESS: Can you repeat the question?
13 BY MR. ROYAL:
14 Q Do you understand what I mean by foreign
15 substance?
16 A Yeah, like a fluid or anything like that.
17 Q Yeah. So of the 150 to 175 -- or let me ask
18 it this way.
19 Do you recall if you responded to any falls
20 or slips on a marble floor that did not involve a
21 foreign substance?
22 MR. GALLIHER: Same objection. You may
23 answer.
24 THE WITNESS: A slip that did not involve --
25 there might be a handful of those. It's usually

1 related to footwear or somebody not being cautious
2 about where they're stepping. Those are pretty
3 common.
4 BY MR. ROYAL:
5 Q Does that have anything to do with why you
6 take pictures of shoes?
7 A Yeah, yes. Actually, yeah. We take shoes
8 to document evidence of how good of footwear the
9 person was wearing when they're on our flooring.
10 Q Okay. As you sit here today, you didn't
11 make any conclusions as to whether or not there was
12 any kind of foreign substance on the floor that caused
13 Ms. Sekera to fall in this particular incident;
14 correct?
15 A That's correct; I didn't observe anything.
16 Q The only information you had is that she
17 said to you she believed she stepped in water?
18 A Correct.
19 Q As you -- do you recall or did you see
20 anything in your report related to Ms. Sekera
21 complaining that her pants were wet after the fall?
22 A No. I didn't document and it wasn't
23 discussed.
24 Q Did she say anything to you other than she
25 believed there was water on the floor?

1 A Aside from that, no.
2 Q Did she indicate to you -- do you recall her
3 indicating to you whether she had anything in her hand
4 at the time she fell? A beverage of any kind?
5 A I don't independent recall that, but the
6 video coverage showed me that she had a white cup in
7 her hand.
8 Q Did she ever indicate to you, as you
9 recall -- if you recall -- that she felt liquid on the
10 floor with her hand after the fall?
11 A I don't recall that.
12 Q If she told you that, typically is that
13 something you would put in your report?
14 A Yes.
15 Q Did she exhibit anything that indicated to
16 you that she was dazed and confused as a result of the
17 fall, based on your observation or based on your
18 reporting?
19 A No, no. I didn't see anything like that.
20 MR. ROYAL: Okay. That's all my questions.
21
22 FURTHER EXAMINATION
23 BY MR. GALLIHER:
24 Q Back to me. Let's start with VEN018.
25 And I think we established earlier that the

1 Q And no one else reported it to you; right?
2 A That would be her saying that to me; yes.
3 Q Who reported to you that the previous wet
4 spill was cleaned by PAD?
5 A I would attribute that to the phrasing,
6 then, because I observed PAD cleaning when I arrived
7 on scene. She would be the one that told me that the
8 wet spill was there.
9 Q So let's go back to VEN008, first paragraph,
10 and -- all right. "I" -- meaning you, "noted that a
11 Public Areas Department team member was on scene and
12 mopping the floor in the area."
13 Correct?
14 A Correct.
15 Q Now, would that indicate to you that there
16 must have been something wet on the floor because
17 somebody was mopping it up?
18 MR. ROYAL: Objection, foundation; calls for
19 speculation.
20 THE WITNESS: Potentially? If I didn't see
21 anything, I wouldn't -- I mean if I didn't see
22 anything, I wouldn't make a notation of it.
23 So if I saw a wet spill, I would make a
24 notation of it in the report.
25 /////

1 handwriting at the top half of the page where it
2 says -- starts with "Marble flooring" was your
3 handwriting.
4 A Correct.
5 Q And what exactly is PAD? Is that Public
6 Areas Department?
7 A Correct, yeah.
8 Q So I'm reading the sentence that Mr. Royal
9 read to you and I want to ask you about it. It says
10 "A previous wet spill was reported and cleaned by
11 PAD"; is that right?
12 A Yes.
13 Q That's what you wrote down?
14 A Yes.
15 Q How would Ms. Sekera know that PAD cleaned
16 it?
17 MR. ROYAL: Objection, form.
18 THE WITNESS: So this statement was -- this
19 observation was made by me. It wouldn't be anything
20 that she said to me.
21 BY MR. GALLIHER:
22 Q Well, but earlier you testified that the
23 previous wet spill was reported and you said that was
24 Ms. Sekera.
25 A Yes.

1 BY MR. GALLIHER:
2 Q Remember something. You didn't come
3 immediately after the fall, you came after it was
4 cleaned up.
5 A Correct.
6 Q And what I'm asking you is that, you made a
7 specific note in your report that there was a Public
8 Areas Department team member on the scene mopping the
9 floor in the area; right?
10 A Correct. They had a mop and they were
11 mopping through the area. I didn't see a puddle of
12 anything being mopped up. I just saw that they
13 were -- they had a mop in their hand.
14 Q Did you walk over to where the Public Area
15 Department person was and ask them what they were
16 mopping up?
17 A No.
18 Q Did you go over and look to see whether the
19 mop was wet?
20 A No.
21 Q Did you go over to look to see whether or
22 not there was a wet spot that was being mopped?
23 A No.
24 Q So all you know is that in the immediate
25 vicinity of the fall, there was a Public Areas

1 Department team member mopping the floor --
 2 A Correct.
 3 Q -- right?
 4 A That's what I saw.
 5 Q And go back to VEN018. So what we've got is
 6 a wet spill is reported and you said that was reported
 7 by Ms. Sekera, and then we have your personal
 8 observation that the floor was being mopped in the
 9 area of the fall; right?
 10 A Yes.
 11 Q Now, the assessment that you performed, I
 12 want to talk to you a little bit about that. That
 13 would be VEN017. With me?
 14 A Yes.
 15 Q Sounds to me like the assessment was
 16 performed roughly 15 to 20 minutes after the fall.
 17 Would that be fair?
 18 A I didn't follow the time stamps exactly.
 19 Q Well, the reason I ask is because when we
 20 talk about VEN018, the next page, it bears the time of
 21 13:26. Do you see that?
 22 A Yes.
 23 Q And that would be -- the fall was reported
 24 to you on 12:39.
 25 A Yes.

1 to the room and then 12:57 on here.
 2 Q So we know that the assessment, then, would
 3 have been performed sometime between the time the fall
 4 was reported to you and 12:57 p.m.?
 5 A Yes.
 6 Q And so that would be roughly within that
 7 18-minute time frame post fall you performed the
 8 assessment?
 9 A Yes.
 10 Q Now, you mentioned in response to
 11 Mr. Royal's questions that you don't usually see the
 12 printouts which we have identified as VEN005 through
 13 009.
 14 Is that right?
 15 A Correct.
 16 Q Okay. So what do you normally see?
 17 A On the computer screen, it's kind of like a
 18 tab system. Like it would be, like, think of like a
 19 web browser with multiple tabs. It's kind of like a
 20 system like that. There's different areas for input
 21 and the area of the screen is just a blank space.
 22 That is just a printout of all the information I put
 23 in there, but what we see is not anything close to
 24 this when we're actually writing the report.
 25 Q So when you're looking at the computer

1 Q Same date?
 2 A Yes.
 3 Q So if I do my math correctly, it looks like
 4 you've got about 45 minutes that elapsed between the
 5 time the fall was reported to you and the time
 6 that you completed VEN018.
 7 A Correct.
 8 Q Would that right?
 9 A That would be correct.
 10 Q And then if we go back to VEN017, you've got
 11 the time there at 12:57. You see that?
 12 A Yes.
 13 Q So if we do the math, the fall was reported
 14 to you at 12:39, you do the assessment at 12:57. By
 15 my math, that's roughly 18 minutes; would that be
 16 fair?
 17 A The time inputted on here would be the time
 18 that I signed.
 19 Q Okay. So did you perform the assessment
 20 before 12:57?
 21 A Yes, the assessment was completed before
 22 12:57.
 23 Q So how long did the assessment take?
 24 A I don't remember the exact time we got to
 25 the room on the time stamps, but whatever time we got

1 screen when you're writing the report, you are
 2 checking boxes?
 3 A Yes.
 4 Q And when you check the boxes, it comes back
 5 in printed form in the report which we previously
 6 discussed; is that correct?
 7 A Yeah. Not all the reports we complete are
 8 printed. It just stays in the system electronically.
 9 For cases like this, we just print it out and it comes
 10 out in this form which is not something I see very
 11 often.
 12 Q Apart from 017 and 018, do you recall if
 13 there was anything that was prepared in handwriting in
 14 connection with this fall event?
 15 A No, it would just be these two forms.
 16 Typically it would be a voluntary statement as well,
 17 but she declined.
 18 Q Now, you have been asked to describe the
 19 nature of the fall. In other words, what happened in
 20 connection with the fall, you are basing your
 21 description upon what Ms. Sekera told you?
 22 A Yes.
 23 Q And you haven't seen the video surveillance
 24 of the fall itself?
 25 A Of the fall; no.

1 Q So you would agree with me that all the
2 questions would be answered by the video surveillance
3 showing the fall?
4 In other words, what hit, what didn't hit,
5 how hard the fall was, the video surveillance would be
6 the best evidence of that?
7 A Yes.
8 Q A couple of other things that weren't
9 mentioned in Mr. Royal's examination of you that I
10 wanted to address.
11 Look at VEN009. The one thing it doesn't
12 mention is -- you said she refused ambulance
13 transport; right?
14 A Yes.
15 Q However, in the same paragraph -- and tell
16 me if I'm reading this correctly. It says, "After
17 some discussion, she," meaning Ms. Sekera, "opted to
18 self transport to Centennial Hills Hospital as it was
19 close to her home."
20 You see that?
21 A Yes.
22 Q That's what she told you she was going to
23 do?
24 A Yes.
25 Q In other words, she was going to go to the

1 Q And that would be the time that you filled
2 this out?
3 A That would be the time I looked at the area.
4 Q All right. So in other words, when you
5 looked at the area and found it to be flat, even and
6 dry, you were roughly, by my calculations, 45 minutes
7 after the fall.
8 A I believe so, yeah.
9 Q Because the fall was reported at 12:39;
10 right?
11 A Yes.
12 Q So 13:26 would be about 45 minutes later?
13 A Yes.
14 Q All right. So VEN018 was completed by you
15 as a result of an inspection of the floor 45 minutes
16 after the fall?
17 A Yes.
18 Q Thank you. That's all I have.
19 MR. ROYAL: Nothing else.
20 THE COURT REPORTER: Mr. Royal, did you want
21 to order a copy of this transcript?
22 MR. ROYAL: Yes, please.
23 (The deposition concluded at 4:05 p.m.)
24
25

1 hospital?
2 A Yes.
3 Q And then let's go with page VEN0007.
4 A Okay.
5 Q Something else that wasn't talked about when
6 we were talking about your assessment of Ms. Sekera.
7 The middle of the page, it says, "Odor of
8 intoxicants," do you see that?
9 A Yes.
10 Q And what did you indicate?
11 A "None."
12 Q So she was not -- did not smell of alcohol
13 or wasn't under the influence of alcohol at the time?
14 A She didn't have the mannerisms of it; no.
15 Q And she didn't smell -- you didn't smell --
16 A No.
17 Q If you had, you would have noted that in the
18 report?
19 A Yeah, yes; absolutely.
20 Q And then we talk about when you inspected
21 the floor area where the fall occurred. And as I read
22 that, looks like -- and I'm referring to VEN018.
23 A Okay.
24 Q And you note the time, 13:26.
25 A Correct; yes.

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, JOSEPH LARSON, commencing on Thursday, October 11, 2018 at the hour of 2:15 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 _____, 2018.

Pauline C. May, CCR 286, RPR

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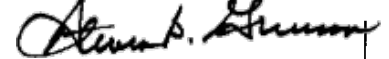
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EXHIBIT 8



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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

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.

///

///

///

1 This Motion 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 1 day of February, 2019.

5 ROYAL & MILES LLP

6
7 By 

8 MICHAEL A. ROYAL, ESQ.

9 Nevada Bar No. 4370

10 1522 W. Warm Springs Rd.

11 Henderson, NV 89014

12 *Attorney for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **NOTICE OF MOTION**

16 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

17 PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing

18 **DEFENDANT'S MOTION FOR PROTECTIVE ORDER**, on for hearing before the Discovery

19 Commissioner on the ___ day of March 8, 2019, at the hour of 9:00 a.m. of said day,

20 or as soon thereafter as counsel can be heard.

21 DATED this 1 day of February, 2019.

22 ROYAL & MILES LLP

23 By 

24 MICHAEL A. ROYAL, ESQ.

25 Nevada Bar No. 4370

26 1522 W. Warm Springs Rd.

27 Henderson, NV 89014

28 *Attorney for Defendants*

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

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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

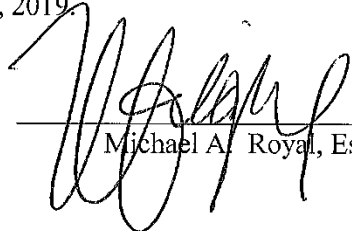
21 10. That my office was subsequently advised by the Discovery Commissioner's office that
22 a phone conference to resolve this dispute could not be arranged, but that a motion would need to be
23 filed.
24

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 **MEMORANDUM OF POINTS AND AUTHORITIES**

11
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.
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II.

ARGUMENT

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

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

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

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

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

The objective of discovery rules is to limit discovery to relevant matters, and to prevent "fishing expeditions" by restricting litigants to discovery that only implicates matters raised by them in the pleadings. (See FED. R. CIV. P. 26(b), Advisory Committee Note, Amendments to Federal Rules

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
21 Plaintiff cannot reasonably articulate how the identity of individuals involved in prior incidents
22 on Venetian's premises, with no relation to Plaintiffs case, could be relevant to any issue of Plaintiff's
23 claim. Plaintiff's personal injury litigation stems from the allegation that Plaintiff slipped and fell on
24 a marble floor. Individuals involved in prior slip-and-fall incidents would be unable to provide any
25 information regarding the alleged hazard which Plaintiff contends caused her fall. Reports of prior slip
26 and fall incidents, which occurred on different circumstances, and on different dates, in different areas
27 of the property have no relevancy to the issue of whether Venetian had notice of any condition
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
26
27 ¹Recall that Venetian contends that Plaintiff's fall had nothing to do with a foreign substance
28 being on the floor; regardless, Venetian provided Plaintiff with sixty-four (64) prior incidents involving
a foreign substance on the floor.

1 Cal. 1995) (*quoting Cook v. Yellow Freight Sys., Inc.*, 132 F.R.D. 548,551 (E.D. Cal. 1990)).
2 Discovery based on mere suspicion or speculation is nothing more than the proverbial "*fishing*
3 *expedition.*" (*See, Mackelprang v. Fid. Nat'l Title Agency of Nev.*, 2007 U.S. Dist. LEXIS 2379, *7
4 (D. Nev. Jan. 9, 2007); *see also, Costella v. Clark*, 2009 U.S. Dist. LEXIS 120566, *5 (N.D. Cal.
5 Dec. 7, 2009).)

6
7 Where privacy concerns are implicated by discovery requests, the party requesting such
8 information "*must show that the value of the information sought would outweigh the privacy interests*
9 *of the affected individuals.*" (*Case v. Platte County*, No. 8:03CV160, 2004 WL 1944777, at *2 (D.
10 Neb. June 11, 2004); *see also, Walters v. Breaux*, 200 F.R.D. 271, 274 (W.D. La. 2001),
11 acknowledging legitimate privacy concerns with respect to social security numbers).)

12 Public policy concerns surrounding the protection of personal medical information are far
13 reaching. Generally, public policy concerns favor the protection of individual health information.
14 Similar privacy concerns surround the protection of other confidential information of non-parties,
15 including individuals' Social Security numbers, unlisted telephone numbers and addresses, and dates
16 of birth. A protective order is warranted where the requested discovery "*contains highly personal*
17 *information.*" (*Knoll v. AT&T, et al.*, 176 F.3d 359 (6th Cir. 1999) (recognizing the need for
18 protection of information from non-parties including an individual's unlisted address and telephone
19 number, marital status, and medical background). In addition, many courts have found that social
20 security numbers are confidential and not reasonably calculated to lead to the discovery of [admissible
21 evidence]. (*See, e.g., Mike v. Dymon*, No. 95-2405-EEO, 1996 WL 674007, at *7 (D. Kan. Nov.
22 14, 1996) ("*The court does not find that requests for social security numbers and dates of birth of all*
23 *individuals who provided information to answer the interrogatories are reasonably calculated to lead*
24 *to the discovery of admissible evidence.*"); *Beasley v. First Amer. Real Estate Info. Serv., Inc.*, No.
25 3-04-CV-1059-B, 2005 WL 1017818, at *2 (N.D. Tex. April 27, 2005) ("*[T]he social security*
26
27
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1 *numbers of employees are confidential and not reasonably calculated to lead to the discovery of*
2 *admissible evidence.").*

3 In this case, the personal identification information withheld is arguably not otherwise relevant
4 to Plaintiff's claim, nor is it likely to lead to the discovery of admissible evidence. As such, the value
5 of the information sought arguably does not outweigh the privacy interests of the affected individuals.
6 **However, Venetian is nevertheless willing to produce unredacted copies with an NRCP 26(c)**
7 **protective order, as the incident reports at issue in this case contain the sensitive, and private**
8 **information of individuals who are not parties to this lawsuit, and who are not believed to have**
9 **any information regarding the facts or circumstances surrounding Plaintiffs allegations.**
10

11 The hundreds of pages of incident reports include home addresses, dates of birth, driver's
12 license numbers, and Social Security Numbers. Venetian has produced these prior reports with all
13 personal identification information redacted, in order to preserve the privacy of the guests. All other
14 information contained in the prior incident reports have been produced. Should unredacted reports be
15 produced without a protective order, the personal identification information, the medical information
16 contained in the reports, including brief medical histories of the guests, as well as other private
17 information, including dates and durations of the guests' stay with the hotel, injuries sustained during
18 the prior incidents, and the perception of consumption of alcohol of the guests at the time of the
19 incidents, could be used for any number of reasons by untold others wholly unrelated to this lawsuit.
20 If this information were so disclosed, without court ordered protection, it would likely lead to the
21 annoyance and aggravation of the individuals involved in prior incidents on Venetian's property;
22 individuals who are not believed to have any personal knowledge or information regarding any of the
23 facts surrounding Plaintiff's alleged incident.
24

25 Disclosure of the guest information as it pertains to this litigation alone creates an issue for
26 Venetian, as it is potentially detrimental to its business interests to protect the confidential information
27
28

1 of its guests. Were Venetian to disclose this information without court ordered protection, subjecting
2 its customers to unrelenting contact by persons uninvolved with the litigation, it would likely diminish
3 the customer/client relationships which Venetian has extended extraordinary effort and resources
4 establishing. There is a recognized interest in protecting the disclosure of personal client information,
5 as unauthorized disclosure would likely be perceived negatively by customers and potential customers.
6 (See e.g., *Gonzales v. Google, Inc.*, 234 FRD 674, 684 (N.D.CA 2006) (disclosing client information
7 "may have an appreciable impact on the way which [the company] is perceived, and consequently the
8 frequency with which customers use [the company]").)

10 Guests who stay at Venetian do so with an expectation that their personal information will not
11 be disclosed or disseminated without their consent. Accordingly, Venetian respectfully requests that
12 the private identification information of its guests involved in prior incidents be protected from
13 disclosure by anyone not involved in this litigation as legal counsel, an expert witness, or otherwise.

15 III.

16 CONCLUSION

17 Based on the foregoing, Venetian respectfully submits that it has presented good cause to this
18 Honorable Court to issue an order protecting the confidential personal identification information of
19 non-parties to this action. Venetian has made every effort to reasonably cooperate with discovery,
20 including the production of three years of prior incident reports, with guest identification information
21 redacted. Plaintiff's request to obtain un-redacted versions of these reports without an NRCP 26(c)
22 protective order is unreasonable. Therefore, Venetian moves this Honorable Court for a protective
23

24 ///

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26 ///

1 order, that the unredacted information sought by Plaintiff not be disclosed for any purpose not directly
2 related to this litigation.

3 DATED this 1 day of February, 2019.

4 ROYAL & MILES LLP

5
6 By 

7 MICHAEL A. ROYAL, ESQ.

8 Nevada Bar No. 4370

1522 W. Warm Springs Rd.

Henderson, NV 89014

9 *Attorney for Defendants*

10 *VENETIAN CASINO RESORT, LLC and*

11 *LAS VEGAS SANDS, LLC*
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 1 day of February, 2019, and pursuant to NRCP 5(b), I
3 caused a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR PROTECTIVE**
4 **ORDER** to be served as follows:

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

7 _____ to be served via facsimile; and/or

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

11 _____ to be hand delivered;

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

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

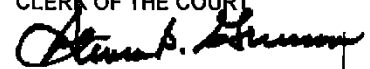
18 Facsimile: 702-735-0204

19 E-Service: kgalliher@galliherlawfirm.com
20 dmooney@galliherlawfirm.com
21 gramos@galliherlawfirm.com
22 sray@galliherlawfirm.com

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An employee of ROYAL & MILES LLP

EXHIBIT 9



ROPP

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

**RESPONSE TO PLAINTIFF'S OBJECTION TO DISCOVERY COMMISSIONER'S
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)**

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

1 COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS
2 SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL &
3 MIILES LLP, and hereby files this RESPONSE TO PLAINTIFF'S OBJECTION TO DISCOVERY
4 COMMISSIONER'S REPORT AND RECOMMENDATIONS DATED APRIL 2, 2019,
5 COUNTERMOTION TO STRIKE FACTS AND ARGUMENTS NOT BRIEFED BEFORE THE
6 DISCOVERY COMMISSIONER, COUNTERMOTION FOR ORDER DIRECTING PLAINTIFF TO
7 COMPLY WITH PROTECTIVE ORDER BY RETRIEVING ALL INFORMATION DISTRIBUTED
8 TO PERSONS OUTSIDE THE LITIGATION, AND COUNTERMOTION FOR APPROPRIATE
9 SANCTIONS UNDER NRCP 37(b)(2). This Response is based on the pleadings and papers on file,
10 the memorandum of points and authorities contained herein, the affidavit of counsel, the attached
11 exhibits and any argument permitted by this Court at the time set for hearing.
12

13 DATED this 22 day of April, 2019.
14

15 ROYAL & MILES LLP

16 By 
17

18 Michael A. Royal, Esq.

19 Nevada Bar No. 4370

20 1522 W. Warm Springs Rd.

21 Henderson, NV 89014

22 Attorney for Defendants

23 VENETIAN CASINO RESORT, LLC and

24 LAS VEGAS SANDS, LLC
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MICHAEL A. ROYAL, ESQ., being first duly sworn, under oath deposes and states:

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

4. Defendants objected to providing information related to any incident reports following the subject incident of November 4, 2016, and produced a total of sixty-four (64) prior incident reports from November 4, 2013 to November 4, 2016.¹

6. Mr. Galliher refused to execute a stipulation to provide NRCP 26(c) protection of information requested, which included the names, addresses, phone numbers, dates of birth, Social

¹Even though Defendants maintain Plaintiff slipped on a dry marble floor, they nevertheless produced prior incidents occurring from guests slipping on a foreign substance on the Venetian casino level common areas for the three preceding years.

1 Security information, and HIPAA protected information related to alleged injuries and first responder
2 care provided to involved guests of the Defendants.

3 7. Despite Mr. Galliher's refusal to stipulate to an NRCP 26(c) order, I sent him a total
4 of sixty-four (64) incident reports from November 4, 2013 through November 4, 2016 in redacted form
5 to protect the identity of involved persons, which Defendants not only deemed irrelevant (*see* footnote
6 1), but that Defendants insist they have an obligation to protect.

7
8 8. Mr. Galliher thereafter contacted me to discuss his objection to Venetian having
9 provided redacted reports, and stated his desire to name sixty-four (64) additional witnesses to testify
10 about their particular incidents and experiences on Defendants' property. During that conversation,
11 Mr. Galliher did not relay his theory that this evidence is relevant to address Defendants' anticipated
12 arguments of comparative fault, as indicated in Plaintiff's Objection, filed with the court. (*See*
13 *Plaintiff's Objection* at 2, ln 6-8.) Further, Mr. Galliher did not then advise that he had been meeting
14 privily with other attorneys handling presently litigated matters against Venetian and producing
15 information to them which he knew Venetian desired to be protected under NRCP 26(c). Mr. Galliher
16 likewise did not advise that he had been receiving information from the same attorneys in other
17 litigated matters which were under NRCP 26(c) protective orders.

18
19 9. Mr. Galliher first set forth his rationale for client's need for unfettered access all persons
20 identified in the prior incident reports during argument at the March 13, 2019 hearing, which is
21 presented as follows in pertinent part:
22

23 *MR. GALLIHER: . . . the comparative negligence issue is a big one because invariably*
24 *juries will come back and apportion the negligence in the case. It's a little --*

25 *DISCOVERY COMMISSIONER: But the comparative negligence of another party*
26 *versus your own party wouldn't be relevant to this action.*

27 *MR. GALLIHER: Well, I disagree, and I'll tell you why. If you've got a situation like*
28 *this where people are slipping on the same floor on liquid -- and all the floors'*
identical, it's not like it's different -- and these people don't see the liquid before they
fall, which is why they fall, why would that not be relevant to the question of

1 comparative negligence? Because if five people didn't see it, or ten people didn't see
2 it, why should my client have seen it? Very relevant. I mean, remember, we're not
3 talking just about admissibility, because that's the call that's going to be made by
4 Judge Delaney. We're talking about discoverability, that's all.

5 (See Exhibit A, Transcript of Hearing Before the Discovery Commissioner (March 13, 2019) at 9, ln
6 4-21, emphasis added)

7 10. In response to Mr. Galliher's never previously articulated commentary regarding use
8 of witnesses involved in unrelated incidents occurring on Defendants' property with entirely dissimilar
9 fact patterns in order to contest comparative fault arguments, I advised the Discovery Commissioner
10 that the facts of this case are unique from each of the sixty-four (64) redacted reports of prior incident
11 provided to Plaintiff, as this incident does not involve a foreign substance on the floor. (See *id.* at 4,
12 ln 12-23; 10, ln 14-20.) Yet, in good faith, Defendants nevertheless produced the redacted reports.
13 As a compromise, I offered to provide Mr. Galliher with unredacted information for specific prior
14 incidents where he can show substantially similar facts, which the Discovery Commissioner agreed
15 to be fair.

16 11. Mr. Galliher advised the Court during the March 13, 2019 hearing that he has been
17 sharing information obtained in this case with attorneys presently representing parties in unrelated
18 litigation against Venetian - despite the fact that he knew from the beginning of Venetian's desire to
19 have it protected. One such attorney is Peter Goldstein, Esq., who I understand to be operating under
20 an NRCP 26(c) Protective Order in the matter of *Carol Smith v. Venetian*, case no. A-17-753362-C.
21 Mr. Galliher acknowledged that he obtained protected information from Mr. Goldstein regarding prior
22 incidents obtained from Venetian in the *Smith* matter and compared it with requested NRCP 26(c)
23 protected information he obtained from Venetian in this matter.² (See *id.* at 7, ln 13-25; 8, ln 1-8.)
24
25

26
27 ²It is my understanding that Mr. Goldstein was operating under an NRCP 26(c) Protective
28 Order, in the *Smith* litigation, which he clearly did not honor by sharing prior incident information with
Mr. Galliher, who then used that information to raise issues which were not addressed in the motion
for protective order or in Plaintiff's opposition thereto.

1 12. During the March 13, 2019 hearing, Mr. Galliher attempted to portray Defendants in
2 an unfair light, raising issues not briefed before the Court or raised in the Opposition regarding his
3 sharing of protected information regarding prior incident reports with Mr. Goldstein in *quid pro quo*
4 fashion. In addition, Mr. Galliher has also been distributing other information obtained in this case
5 (which he knew Venetian had requested to be protected) with George Bochanis, Esq., in the matter of
6 *Cohen v. Venetian Casino Resort, LLC*, case no. A-17-761036-C.³

7
8 13. When I discovered that Mr. Galliher not only wanted unredacted information for the
9 sixty-four (64) prior incident reports identified and produced by Defendants, but that he also intended
10 to both contact them and share their personal information with anyone, any way, and anywhere for
11 whatever purpose he fancied (as he had already accomplished with Attorneys Goldstein and Bochanis),
12 I argued at the March 13, 2019 that any such reports produced must remain in redacted form and
13 likewise be protected pursuant to NRCP 26(c).⁴

14
15 14. The Discovery Commissioner ordered as follows: "*the reports that are to be produced,*
16 *they are to be redacted for the names and the contact information for all witnesses and individuals*
17 *who reported incidents.*" (See *id.* at 12, ln 9-11.) She added: "*there are privacy and HIPAA issues*
18 *that are to be considered, and so my inclination is not to disclose the names and contact information*
19 *for all people on all reports.*" (*Id.* at 12, ln 24-25; 13, ln 1.)

20
21 15. Mr. Galliher did not reveal that he was freely sharing and comparing prior incident
22 reports with Mr. Goldstein, Mr. Bochanis or any other attorney unrelated to this litigation prior to the
23 hearing of March 13, 2019, despite the fact that he was aware of the issue and Defendants' desire for

24
25 ³Mr. Galliher attached a DCRR from the *Cohen* matter as Exhibit 4 to his Opposition to the
26 Motion for Protective Order, and made reference to "*three different defense firms representing The*
Venetian in these three different cases; they're all different." (See Exhibit A at 7, ln 17-21.)

27 ⁴It seems apparent that this private guest information shared by Mr. Galliher with Mr. Goldstein
28 and Mr. Bochanis (perhaps among others), would be used in some kind of depository for access by
others for the purpose not only of identifying prior incidents, but also of making unwanted repeated
contact with these persons. (See Exhibit A at 11, ln 10-25.)

1 NRCP 26(c) protection as of mid-December 2018, and despite the fact that a motion for protection was
2 pending before the Court.⁵ This appears to have been very much by design, so Mr. Galliher could share
3 all information he knew Venetian deemed worthy of protection before the matter could be ruled upon
4 by the Discovery Commissioner.

5 16. The Discovery Commissioner's Report and Recommendation was filed April 2, 2019.
6 (See Exhibit B.)
7

8 17. Following the March 13, 2019 hearing, I sent correspondence to Mr. Galliher advising
9 that I had reconciled an alleged discrepancy in production of prior incident reports, an issue raised for
10 the first time by Mr. Galliher during the March 13, 2019 hearing, which was not an issue before the
11 court, where Mr. Galliher claimed to have compared documents he obtained from Mr. Goldstein in the
12 *Smith* litigation. (See Exhibit C, *Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*,
13 dated March 25, 2019.)
14

15 18. It is Defendants' position that production of certain information provided in prior
16 incident reports is an invasion of privacy, that said information is not necessary for Mr. Galliher to
17 present evidence and make arguments related to notice, comparative fault, etc., and his stated desire
18 to contact any and all such prior patrons personally is the very kind of fishing expedition contemplated
19 by *Schlatter v. Eighth Jud. Dist Court*, 561 P.2d 1342 (Nev. 1977).
20

21 19. **There is no stay in place as to the Discovery Commissioner's Report and**
22 **Recommendation of April 2, 2019**, and to my knowledge Mr. Galliher has not made any effort to
23 comply with the NRCP 26(c) order by retrieving the protected information he has already shared with
24 Mr. Goldstein and Mr. Bochanis regarding the sixty-four (64) prior incidents produced in this matter,
25 which are protected pursuant to NRCP 26(c). To the contrary, Mr. Goldstein and Mr. Bochanis are
26

27
28 ⁵Mr. Galliher did not comply with EDCR 2.34 by discussing this issue with me prior to
presenting it before the Discovery Commissioner at the March 13, 2019 hearing.

1 in fact presently using the NRCp 26(c) protected information provided to them by Mr. Galliher in their
2 respective litigated matters against Venetian without any regard for the Discovery Commissioner's
3 ruling that the protective order is presently in place. (See NRCp 37(b)(2); *Bahena v. Goodyear Tire*
4 *& Rubber Co.*, 235 P.3d 592, 597 (2010).) (See Exhibit D, *Smith v. Venetian Casino Resort, LLC*,
5 Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's Motion for
6 Terminating Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant to NRCp
7 Rule 37 (March 12, 2019), with exhibits.)

9 20. I attended the deposition of former Venetian employee, Gary Shulman, at the office of
10 Plaintiff's counsel on April 17, 2019. While this deposition occurred well after the April 2, 2019
11 DCRR at issue here, events unfolding at the deposition are germane to pending issues before the Court.
12 I first met Mr. Shulman on June 28, 2018, when he was employed as a Table Games Supervisor for
13 Venetian Casino Resort, LLC. On that date, Mr. Shulman and I discussed his recollection of events
14 while he was on a shift break at my client's property. Mr. Shulman's employment was terminated on
15 or about January 23, 2019. I was unaware of Mr. Schulman's termination until a few weeks prior to
16 his deposition. Mr. Shulman refused to meet with me before his April 17, 2019 deposition. At the
17 outset of the deposition, I learned that Mr. Shulman had, in fact, met with Mr. Galliher a few days
18 earlier and related to Mr. Galliher certain facts and communications Mr. Shulman had with me during
19 his employment in my capacity as legal counsel for Venetian in this matter. Over my objection, Mr.
20 Shulman testified about conversations he had with me where the witness made false claims against me,
21 personally, which put me in a very difficult and troubling position. Mr. Galliher was well aware of the
22 ambush he had set for me at the deposition and contended that I had no right to prevent this former
23 employee of revealing what I considered to be privileged communications to Mr. Galliher on the
24 record. I was unprepared to adequately cross Mr. Shulman on issues raised, as Mr. Galliher did not
25 provide any prior warning that a former employee witness would be making salacious allegations
26
27
28

1 against me personally, based on private communications he had with Mr. Galliher. Without question,
2 Mr. Galliher knew what was coming. Mr. Galliher also knew that there was no effective way for me
3 to cross-examine Mr. Shulman without getting into our privileged communications.

4 21. **I fully expect that Mr. Galliher intends to provide a copy of Mr. Shulman's**
5 **deposition transcript with Mr. Goldstein and Mr. Bochanis, among many others, as part of his**
6 **ongoing practice** (as he has already done with the deposition transcript of **Joseph Larson, EMT**,
7 which has been identified under NRCP 16.1 by both Mr. Goldstein in the *Smith* litigation and also by
8 Mr. Bochanis in the *Cohen* litigation). In the case of Mr. Shulman's deposition, Mr. Galliher elicited
9 information he knew was deemed protected by attorney/client privilege from the witness, over
10 objection, knowing that it would essentially turn me into a witness. I will be moving to strike all
11 testimony elicited from Mr. Shulman in this matter based on Mr. Galliher's conduct, and **most**
12 **certainly contend that the NRCP 26(c) order presently in place should preclude Mr. Galliher**
13 **from sharing deposition transcripts, such as that of Mr. Shulman where confidential**
14 **communications with legal counsel have been elicited and shared.**

15 22. Mr. Shulman also testified in his approximate 14 years working on the casino floor of
16 Defendants' property, the subject incident of November 4, 2016 was the only occasion where he was
17 aware of a guest falling on the marble floor.

18 23. I discovered on April 22, 2019 that on April 19, 2019, Mr. Goldstein filed *Plaintiff's*
19 *Supplemental Opposition to Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to*
20 *Strike* in the matter of *Smith* matter. (See Exhibit I.) In that document filed with the court, Mr.
21 Goldstein actually attached a copy of the pending *Plaintiff's Objection to Discovery Commissioner's*
22 *Report and Recommendations Dated April 2, 2019*, along with an affidavit related to the production
23 of all prior incident reports from the instant matter of *Sekera*, which was attached to the March 12,
24 2019 Reply filed by Mr. Goldstein. (See *id.* Compare Exhibit D.)

1 24. The timing of the Goldstein disclosure in the matter of *Smith* is critical. Mr. Goldstein
2 received documents which were the subject of a motion for protective order while the issue was
3 pending before the court, and actually filed them to support a motion one day before the Discovery
4 Commissioner granted the Defendants' motion for protective order. The April 19, 2019 filing by Mr.
5 Goldstein demonstrates that both he and Mr. Galliher are working in concert to defy a Court Order in
6 order to promote their respective causes. The fact that Mr. Goldstein has attached the pending
7 Objection filed by Mr. Galliher as an exhibit to the April 19, 2019 filing by the court in *Smith* is further
8 evidence of that.
9

10 25. Plaintiff testified in deposition on March 14, 2019 that she worked from December 2015
11 to November 2016 for as much as 50-70 hours a week, with no vacations, during which time she made
12 many hundreds of walks through the incident area without incident. (*See Exhibit J, Transcript of Joyce*
13 *Sekera Deposition* (taken March 14, 2019) at 75-79.) Plaintiff further testified that she never saw a
14 foreign substance on the floor of Defendants' property. (*See id.*)
15

16 26. I further declare that the exhibits identified in this response and counter-motion, as
17 outlined below, are true and correct copies of documents produced in or otherwise related to this
18 matter.
19

EXHIBIT	TITLE
A	Recorder's Transcript of Hearing [On] Defendant's Motion for Protective Order (March 13, 2019)
B	Discovery Commissioner's Report and Recommendation (April 2, 2019)
C	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated March 25, 2019
D	<i>Smith v. Venetian Casino Resort, LLC</i> , Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's Motion for Terminating Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant to NRCP Rule 37 (March 12, 2019), with exhibits
E	Surveillance Footage of Subject Incident (VEN 019)
F	Narrative Report (VEN 008-09)

EXHIBIT	TITLE
G	Acknowledgment of First Aid Assistance & Advice to Seek Medical Care (VEN 017)
H	Correspondence from Michael Royal to Keith Galliher, Esq., dated April 19, 2019
I	<i>Smith v. Venetian Casino Resort, LLC</i> , Plaintiff's Supplemental Opposition to Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Strike (April 19, 2019)
J	Transcript of Joyce Sekera Deposition (March 14, 2019), pp 75-79

Executed on 22 day of April, 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, Brand Vegas, LLC, 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.

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. (See Exhibit E.)⁶ Regardless, Venetian produced sixty-four (64) prior incident reports

⁶Mr. Galliher misrepresented what is depicted on the surveillance footage to the Discovery Commissioner in the March 13, 2019 hearing. (See Exhibit A at 5, ln 17-23.) Surveillance footage was offered by Defendants to the Discovery Commissioner at the March 13, 2019 hearing in the event

1 from November 4, 2013 through November 4, 2016, in redacted form, to protect the privacy of its
2 patrons, with the understanding that Plaintiff desired the prior incident reports to argue notice and
3 related theories of liability. Plaintiff refused to protect the privacy of information related to the prior
4 incident reports, and demanded that they be produced in unredacted form so that she can not only use
5 them in the present litigation to contact those involved in prior incidents, but also that she may share
6 their personal information with others outside the litigation in uncontrolled and unfettered fashion,
7 including but not limited to Mr. Goldstein and Mr. Bochanis (which Plaintiff's counsel has already
8 accomplished, despite Defendants' request for a protective order, its motion for a protective order, and
9 a present DCRR providing for an NRCP 26(c) protective order).

11 Following a hearing on March 13, 2019, the Discovery Commissioner ruled that the sixty-four
12 (64) prior incident reports produced by Venetian in this matter must remain in redacted form and that
13 they are protected pursuant to NRCP 26(c). (*See* Exhibit B.) To Venetian's knowledge, **Plaintiff has**
14 **taken no action to honor the Discovery Commissioner's determination by requesting return of**
15 **information her counsel produced to counsel representing parties against Venetian in other**
16 **matters. To the contrary, that protected information is being used by counsel for plaintiffs in**
17 **other ongoing Venetian litigation with impunity and complete disregard for the ruling presently**
18 **in place.**⁷ Since Plaintiff has not moved to stay the Discovery Commissioner's Report and
19
20

21 she wanted to review it to gain perspective regarding the alleged condition of the floor in light of
22 Defendants' very liberal NRCP 34 production to Plaintiffs. (*See id.* at 10, ln 14-20.) The subject
23 incident occurs at 12:36:50 of the video. (*See* Exhibit E.) At 12:33 53, just under three minutes
24 earlier, Venetian PAD employee Maria Cruz walks through the subject area with a broom and dust pan,
25 and testified in deposition on April 17, 2019 that she did not see anything on the floor at that time.
26 (*See id.*) Numerous people walk through the area over the following three minutes with absolutely no
27 indication of any foreign substance on the floor. At 12:39:37, the camera zooms in close to the slip
28 area and there is nothing identified from the video on the floor. Maria Cruz testified in deposition on
29 April 17, 2019 that she did not see anything on the floor when she returned to the area with other PAD
30 personnel at 12:39:54. Plaintiff denies she ever saw anything on the floor before or after the incident,
31 but related that the left side of her pants were wet. (*See* Exhibits F and G.)

32 ⁷As noted in the above Declaration, Paragraphs 20-21, Mr. Galliher has been sharing deposition
33 transcripts with counsel in other cases, despite the fact that a Rule 26(c) protective order is in place.

1 Recommendation, Plaintiff is presently in blatant violation of the Rule 26(c) protective order.
2 (See NRCP 37(b)(2); *Bahena v. Goodyear Tire & Rubber Co.*, 235 P.3d 592, 597 (2010).) Plaintiff
3 rang a bell she knew could not be unring here by both eliciting and sharing protected information.
4 Even as late as April 19, 2019, the documents which are the subject of the Objection to the DCRR now
5 before the Court have been filed with the court hearing the *Smith* matter. (See Exhibits D and I.) There
6 is no stay in place, the documents at issue are under a protection order, and they are now being shared
7 and used by counsel outside this litigation with virtual impunity.⁸

9 II.

10 NATURE OF RESPONSE

11 Defendants have provided Plaintiff with sixty-four (64) prior incident reports over a period of
12 three (3) years. The number of prior incident reports produced by Defendants' to Plaintiff in this
13 matter is not at issue. The only matter brought before the Discovery Commissioner was Defendants'
14 Motion for Protective Order. Defendants moved to have information related to the sixty-four (64) prior
15 incidents protected pursuant to NRCP 26(c), and to keep the information in redacted form. Plaintiff
16 did not raise the issue of what she now refers to as "*Venetian's scheme of hiding evidence and*
17 *disobeying court orders*" (see *Objection* at 4, ln 11-2) until the March 13, 2019 hearing. Now, in the
18 Objection, Plaintiff has added facts and arguments that were neither briefed nor presented to the
19 Discovery Commissioner in oral argument at the March 13, 2019 hearing.

20 Despite having very unclean hands, Plaintiff now comes before This Honorable Court and
21 portrays herself as a victim in need of relief. Accordingly, Defendants not only respectfully submit that
22 the Discovery Commissioner's Report and Recommendation be adopted by the District Court, but
23

24
25
26 See also Exhibit H, *Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*, dated April
27 19, 2019.

28 ⁸Plaintiff has actually allowed documents protected by the pending DCRR to become part of
the public record, and does so without the slightest concern.

1 move to strike Plaintiff's arguments related to actions she has taken "*To verify Venetian's compliance*
2 *with the discovery request*" which included improperly obtaining information from Mr. Goldstein,
3 who was under an NRCP 26(c) protective order in the *Smith* litigation, which issue was not briefed
4 before the Discovery Commissioner below but was merely thrown out by Mr. Galliher during the
5 March 13, 2019 hearing in sandbag fashion, and further moves the Court to issue sanctions against
6 Plaintiff for her continued refusal to comply with the Rule 26(c) order presently in place.
7

8 III.

9 ARGUMENT

10 A. Defendants Appropriately Sought and Obtained an NRCP 26(c) Protective Order

11 Rule 26 (b)(1), Nevada Rules of Civil Procedure, governs the scope of discovery, and provides
12 for protection of both parties and other persons, against annoyance, embarrassment, oppression, or
13 undue burden or expense. Rule 26(c), Nevada Rules of Civil Procedure, reads as follows in pertinent
14 part:
15

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

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

1 The objective of discovery rules is to limit discovery to relevant matters, and to prevent "*fishing*
2 *expeditions*" by restricting litigants to discovery that only implicates matters raised by them in the
3 pleadings. (See FED. R. CIV. P. 26(b), Advisory Committee Note, Amendments to Federal Rules
4 of Civil Procedure, at 388-90). Pursuant to the Nevada Rules of Civil Procedure, the court in which
5 the action is pending may make any order/recommendation which justice requires to protect a party
6 so that certain discovery abuses do not occur. (See NRCP 26). The compulsion of a party to produce
7 irrelevant information is an inherently undue burden. (See *Jimenez v. City of Chicago*, 733 F. Supp.
8 2d 1268, 1273 (W.D. Wash. 2010) (citing, *Compaq Computer Corp. v. Packard Bell Elecs.*, 163
9 F.R.D. 329, 335-336 (N.D. Cal.1995)). Here, the private information Plaintiff desires has no good,
10 relevant purpose other than to harass, vex and annoy Defendants and their guests by not only making
11 direct contact themselves, but sharing the personal information of all such guests with the world.
12 Plaintiff's actions are, in a word, unbelievable. The fact that Plaintiff has obtained NRCP 26(c)
13 protected information from counsel in other ongoing litigated matters and refuses to abide by the
14 pending NRCP 26(c) ruling by the Court is likewise very troubling.

17 B. **This is the kind of circumstance NRCP 26(c) is designed to address**

18 Plaintiff claims entitlement to all unredacted information related to the sixty-four (64) prior
19 incident reports, and to do whatever she pleases with personal information provided on unredacted
20 reports of prior incidents, including freely sharing them with anyone in any forum, in any manner
21 whenever and however she chooses. Plaintiff cares nothing for the rights of those persons identified
22 in the prior incident reports. Here, Plaintiff is seeking the very kind of *carte blanche* information
23 (*fishing expedition*) the Nevada Supreme Court has so objected to in its holding of *Schlatter v. Eighth*
24 *Judicial Dist. Court*, 93 Nev. 189, 192 (1977). Contrary to what she would have this Court believe,
25 Plaintiff is not a victim.
26
27
28

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 exchange with Plaintiff, from her initial complaints to his physical examination. (See Exhibit F,
2 *Narrative Report*, VEN 008-09; Exhibit G, *Acknowledgment of First Aid Assistance & Advice to Seek*
3 *Medical Care*, VEN 017.) Defendants have Plaintiff's personal information for use in this litigation;
4 however, it does not assert *carte blanche* right to freely disseminate Plaintiff's information wherever
5 and however it pleases.

6
7 Plaintiff cannot reasonably articulate how the identity of individuals involved in prior incidents
8 on Venetian's premises, with no relation to Plaintiff's case, without any similar facts or circumstances,
9 could be remotely relevant to any of Plaintiff's claims here. Her personal injury litigation arises from
10 the allegation that Plaintiff slipped and fell on a marble floor. Individuals involved in prior slip-and-
11 fall incidents would be unable to provide any information regarding the alleged hazard which Plaintiff
12 contends caused her fall. Reports of prior slip and fall incidents, which occurred on different
13 circumstances, and on different dates, in different areas of the property have no relevancy to the issue
14 of whether Venetian had notice of any condition contributing to Plaintiff's fall on November 4, 2016.
15 (See *Eldorado Club, Inc. v. Graff*, 78 Nev. 507 (1962); *Southern Pac. Co. v. Harris*, 80 Nev. 426,
16 431 (1964).)

17
18 Venetian has very good reason to request protection for its prior guests - as Plaintiff holds their
19 privacy rights in complete disregard - much like her ongoing disregard for the present NRCP 26(c)
20 order in place. Venetian's concern is that such information can be disseminated to the public in a
21 multitude of ways, and passed onto other persons having nothing to do with this litigation, thereby
22 subjecting the persons identified herein to multiple contacts by persons, who have access to their
23 personal information, including events, injuries, care provided, etc. (Plaintiff has already demonstrated
24 how this process works.) Plaintiff's desire to obtain this information and share it with the world serves
25 absolutely no good purpose and is very bad public policy.
26
27
28

1 C. The policy interests of protecting the confidential personal information outweigh the
2 alleged need for discovery in this case

3 Even where inquiries could reasonably lead to the discovery of admissible evidence, courts
4 must still balance the proponent's interest in discovery of the information against any legitimate interest
5 of the other party. "[T]he initiation of a lawsuit, does not, by itself, grant plaintiffs the right to
6 rummage unnecessarily and unchecked through the private affairs of anyone they choose. A balance
7 must be struck." (*Ragge v. MCA/Universal Studios*, 165 F.R.D. 601, 605 (C.D. Cal. 1995) (quoting
8 *Cook v. Yellow Freight Sys., Inc.*, 132 F.R.D. 548, 551 (E.D. Cal. 1990)). Discovery based on mere
9 suspicion or speculation is nothing more than the proverbial "fishing expedition." (See, *Mackelprang*
10 *v. Fid. Nat'l Title Agency of Nev.*, 2007 U.S. Dist. LEXIS 2379, *7 (D. Nev. Jan. 9, 2007); see
11 also, *Costella v. Clark*, 2009 U.S. Dist. LEXIS 120566, *5 (N.D. Cal. Dec. 7, 2009).)

13 Where privacy concerns are implicated by discovery requests, the party requesting such
14 information "must show that the value of the information sought would outweigh the privacy
15 interests of the affected individuals." (*Case v. Platte County*, No. 8:03CV160, 2004 WL 1944777,
16 at *2 (D. Neb. June 11, 2004) (emphasis added); see also, *Walters v. Breaux*, 200 F.R.D. 271, 274
17 (W.D. La. 2001), acknowledging legitimate privacy concerns with respect to social security
18 numbers).)

20 Public policy concerns surrounding the protection of personal medical information are far
21 reaching. Generally, public policy concerns favor the protection of individual health information.
22 Similar privacy concerns surround the protection of other confidential information of non-parties,
23 including individuals' Social Security numbers, unlisted telephone numbers and addresses, and dates
24 of birth. A protective order is warranted where the requested discovery "contains highly personal
25 information." (*Knoll v. AT&T, et al.*, 176 F.3d 359 (6th Cir. 1999) (recognizing the need for
26 protection of information from non-parties including an individual's unlisted address and telephone
27 number, marital status, and medical background). In addition, many courts have found that social
28

1 security numbers are confidential and not reasonably calculated to lead to the discovery of admissible
2 evidence. (*See, e.g., Mike v. Dymon*, No. 95-2405-EEO, 1996 WL 674007, at *7 (D. Kan. Nov. 14,
3 1996) ("*The court does not find that requests for social security numbers and dates of birth of all*
4 *individuals who provided information to answer the interrogatories are reasonably calculated to lead*
5 *to the discovery of admissible evidence.*"); *Beasley v. First Amer. Real Estate Info. Serv., Inc.*, No.
6 3-04-CV-1059-B, 2005 WL 1017818, at *2 (N.D. Tex. April 27, 2005) ("*[T]he social security*
7 *numbers of employees are confidential and not reasonably calculated to lead to the discovery of*
8 *admissible evidence.*").

10 1. **Plaintiff plans to distribute all information freely as she has previously done**

11 The approximate 650 pages of incident reports include home addresses, dates of birth, driver's
12 license numbers, and Social Security Numbers, in addition to the private health related information.
13 Venetian has produced these prior reports with all personal identification information redacted, in order
14 to preserve the privacy of the guests. All other information contained in the prior incident reports,
15 which include the date, time, place and circumstances related thereto have been produced. Plaintiff's
16 counsel and those within his circle clearly do not honor protective orders. Therefore, anything
17 produced in unredacted form will be circulated whether a protective order is in place or not. That is
18 quite evident here.
19

20 Should unredacted reports be produced without a protective order, the personal identification
21 information, the medical information contained in the reports, including brief medical histories of the
22 guests, as well as other private information, including dates and durations of the guests' stay with the
23 hotel, injuries sustained during the prior incidents, and the perception of consumption of alcohol of the
24 guests at the time of the incidents, could be used for any number of reasons by untold others wholly
25 unrelated to this lawsuit. If this information were so disclosed, without court ordered protection, it
26 would likely lead to the annoyance and aggravation of the individuals involved in prior incidents on
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.

1 (See *Objection* at 10, ln 18-24. Emphasis added.)

2 Plaintiff's explanation of why she *needs* unredacted information to potentially contact hundreds
3 of persons and share their personal information with the world makes absolutely no sense. Further,
4 there is not now, nor has there ever been, an argument by Defendants that Plaintiff *did not see the*
5 *liquid substance on the floor before she fell* in this matter, because Defendants' position has always
6 been that **here was no foreign substance on the floor.** (See Exhibit E.)
7

8 Certainly, if Plaintiff can find a factually similar circumstance among the sixty-four (64) prior
9 redacted incident reports previously provided that truly identify someone with something potentially
10 relevant to provide in that regard, the Defendants will provide it to Plaintiff for the limited purpose of
11 this litigation. If Plaintiff's rationale above is the best she can do to articulate a reason to get the *carte*
12 *blanch* personal information for guests of Defendants to make contact with these people and other
13 persons with them, and to then freely share it with the world, then her objection should fail on its face.
14

15 This is a slip and fall incident. Plaintiff has all the information she needs to argue notice.
16 Plaintiff has an expert witness who has prepared a report and is identified to testify at trial. How can
17 the testimony of someone who had an incident on a different day and time, at a different location
18 within the property, under entirely different circumstances, be used to rebut an argument for
19 comparative fault made by Defendants? We do not know, and Plaintiff apparently cannot explain it.
20 She just *needs* it all.
21

22 Plaintiff's assertion that Venetian is acting to "*safely violate discovery rules, ignore court*
23 *orders and selectively disclose information*" is classic projecting. (See *Objection* at 6, ln 1-3.) If
24 Defendants were guilty of such conduct, certainly there would be some mention of it in the March 13,
25 2019 hearing transcript or within the Discovery Commissioner's Report and Recommendation.
26 Plaintiff's allegation that Defendants have been "*hiding 80-85% of the incident reports of slip and falls*
27 *on its marble floors*" is just more unsubstantiated rubbish tossed out by Plaintiff in the *Objection* that
28

1 | should be stricken and ignored by the Court. (*See Objection* at 8, ln 1.)⁹ Moreover, the issue of how
2 | many incident reports were produced by Defendants in response to Plaintiff's discovery request was
3 | not at issue before the Discovery Commissioner. Plaintiff did not file a motion or countermotion, nor
4 | did she hold a conference as required by EDCR 2.34.

5 | Here is what Plaintiff has demonstrated in the Objection:

6 |
7 | 1. She received sixty-four (64) prior incident reports (consisting of about 650 pages) from
8 | Defendants, with contact information of all non-employees involved redacted;

9 | 2. She obtained the deposition testimony of former security officer/EMT Joseph Larson
10 | who opined that he may have responded to 100 or so slip/fall incidents over a nine year period - or
11 | about eleven (11) per year; and

12 | 3. Plaintiff has a retained expert, Thomas Jennings, prepared to testify that the subject fall
13 | area is slippery when wet, among other things.
14 |

15 | Still, however, Plaintiff claims she cannot quite make her case unless she can identify all those
16 | involved in prior incidents, name them as witnesses, contact them, prepare to bring them to trial to
17 | testify about their unrelated experiences, and then share them freely with others wholly unaffiliated
18 | with the present litigation. That is disingenuous, at best. Plaintiff is playing a game designed to
19 | distract the finder of fact from the real issue here; *to wit*: Plaintiff fell on November 4, 2016 while
20 | walking on a dry marble floor. All the smoke and mirrors she can muster will not change that fact.
21 | Certainly, subjecting hundreds of Venetian guests who may have knowledge of unrelated prior
22 | incidents to being harassed by Plaintiff and other legal offices unaffiliated with this matter will not get
23 | us any closer to the truth. Such an effort would serve no good purpose other than to harass Defendants
24 | and their guests.
25 |
26 |

27 | _____
28 | ⁹Plaintiff's counsel is free to use his creative math skills to invent numbers of prior incidents
occurring on Defendants' property.

**COUNTERMOTION TO STRIKE FACTS, EVIDENCE AND
ARGUMENTS NOT BRIEFED BELOW**

Defendants hereby move this Honorable Court to strike and disregard the following factual assertions and arguments not presented to the Discovery Commissioner in Defendants' Motion for Protective Order.

1. *During his deposition Mr. Larson indicated approximately 300-500 injury slip and fall injuries (sic) occurred on the marble floors at Venetian in the last five (5) years. (See id. at 2, ln 21-23.)* That is a complete misrepresentation of Mr. Larson's sworn testimony. First Mr. Larson has not been employed with Venetian for more than two (2) years; therefore, Plaintiff's representation is false on its face. Second, this fabrication had nothing to do with any issue before the Discovery Commissioner.

2. *Thus, when Venetian disclosed a mere 64 redacted incident reports Plaintiff instantly suspected the vast majority were missing. (See id. at 3, ln 1-2.)* This is simply Plaintiff's post motion justification for colluding with Mr. Goldstein so that Plaintiff's counsel could improperly obtain information protected pursuant to NRCP 26(c) in the *Smith* litigation.

3. Nothing related to Mr. Galliher's collusion with Mr. Goldstein was briefed before the Discovery Commissioner. It should not be considered here other than to demonstrate Plaintiff's unclean hands and complete disregard for Court determinations, by refusing to comply with the NRCP 26(c) protective order presently in place both in this matter and in the *Smith* matter involving Mr. Goldstein.

4. *"By hiding 80-85% of the incident reports of slip and falls on its marble floors, Venetian ensures the public will never determine the magnitude of the problem, will never have the opportunity to deter Venetian from wrongdoing, and will never be able to encourage Venetian to make their premises safer."* (See id. at 8, ln 1-5.) No evidence has ever been produced by Plaintiff to substantiate her claim that Venetian is hiding anything. Again, this issue was not brief before

1 the Discovery Commissioner, there was no EDCR 2.34 conference held by Plaintiff's counsel, and
2 it is unrelated to the DCRR. Therefore, this commentary and any argument related thereto should
3 not be allowed or given consideration here.

4 To the extent such argument is so considered, the Court should be aware that Plaintiff
5 herself testified that while spending approximately 3,000 hours on Defendants property between
6 December 2015 and November 2016, making multiple walks through Venetian property a day, she
7 never saw a foreign substance on the floor, never saw a person fall, and never even heard of such
8 an occurrence. (See Declaration of Michael A. Royal, Esq., paragraph 25; Exhibit J.) Also, former
9 employee Gary Shulman testified that in his fourteen (14) years working on the Venetian casino
10 floor as a Table Games Supervisor, the subject incident was the only occasion in which he can
11 recall having any personal knowledge of a guest slip and fall. (See Declaration of Michael A.
12 Royal, paragraph 22.) That kind of testimony does not agree with the creative accounting
13 promoted by Plaintiff in her presented analysis above. It is just more fabrication by Plaintiff
14 present a false narrative and justify her refusal to comply with the present protective order.
15
16

17 **COUNTERMOTION FOR ORDER DIRECTING RETURN OF ALL NRCP 26(c)**
18 **PROTECTED INFORMATION AND COUNTERMOTION FOR SANCTIONS**

19 1. **An NRCP 26(c) Protective Order is in place, there is no stay, and Plaintiff is in**
20 **blatant violation**

21 Rule 2.34(e), Eighth Judicial District Court Rules, provides the following: "*The*
22 *commissioner may stay any disputed discovery proceeding pending resolution by the judge.*"
23 (Emphasis added.) Plaintiff did not move for a stay of the Court's ruling on Defendants' motion
24 for an NRCP 26(c) protective order. Accordingly, the NRCP 26(c) protective order is the law of
25 the case. Despite that, Plaintiff has done nothing to comply with it. To the contrary, as Plaintiff
26 has demonstrated here, she strategically conspired with counsel in the *Smith* matter to take all
27 protected prior incident reports at issue before the Discovery Commissioner and have them filed
28

1 with the court, becoming public record, on March 12, 2019 - one day before the March 13, 2019
2 hearing before the Discovery Commissioner. (See Exhibits D and I.) Plaintiff should have
3 protected the documents prior to the March 13, 2019 hearing. Most certainly, Plaintiff should have
4 taken action following the March 13, 2019 hearing to comply with the DCRR. To the contrary,
5 Plaintiff has ignored it entirely. She and counsel in the *Smith* and *Cohen* matters have collectively
6 shown complete disregard for the rule of law. Defendants therefore respectfully submit that
7 Plaintiff is now subject to sanctions under NRCP 37(b)(2) for her blatant violation of the DCRR.

9 2. **Plaintiff should be ordered to take every possible step to retrieve information**
10 **protected per the Discovery Commissioner's April 2, 2019 DCRR and ensure it**
11 **is not improperly used by anyone outside this litigation**

12 There is a protective order in place. Plaintiff disregarded it, distributed the information,
13 obtained information from other attorneys in unrelated ongoing litigation, and seeks to benefit from
14 her refusal to comply. That alone should be sufficient to affirm the DCRR. However, Plaintiff
15 quickly distributed information she knew was deemed protected by Defendants before the Court
16 could hear this matter, then did nothing as counsel in other cases swiftly identified it in their
17 respective NRCP 16.1 disclosures. Therefore, Defendants respectively move this Honorable Court
18 to order that Plaintiff retrieve all information distributed in this matter to anyone outside this
19 litigation, with an order directing that such information cannot be used in any other matter, as
20 though there had been no inappropriate distribution by Plaintiff at all.

21 3. **Defendants move for appropriate sanctions**

22 The Nevada Supreme Court has held that "*a district court has the discretion to sanction a*
23 *party for its failure to comply with a discovery order. . . .*" (*Bahena v. Goodyear Tire & Rubber*
24 *Co.*, 235 P.3d 592, 596 (2010).) Therefore, this Honorable Court has discretion to impose
25 appropriate sanctions based on Plaintiff's complete failure to protect information she has shared
26 with persons outside the litigation. (Indeed, Plaintiff's sharing of information she knew Venetian
27
28

1 desired to be kept confidential prior to the issue being heard before the Discovery Commissioner
2 was a very calculated, premeditated end around to head off any potential adverse ruling by the
3 Court.)

4 The options available to the Court are set forth in NRCP 37(b)(2), which include
5 establishing certain disputed facts as true, striking certain claims or defenses, striking pleadings in
6 whole or in part, staying proceedings until the order is obeyed, or dismissal.
7

8 Plaintiff is under a legal obligation to comply with the Discovery Commissioner's Report
9 and Recommendation at issue. She has taken no steps to remedy the matter by retrieving
10 documents exchanged with other counsel in ongoing unrelated litigation against Defendants,
11 despite the Court order. In the meantime, Mr. Goldstein has used the prior incident reports (with
12 Plaintiff's knowledge and blessing) to support a motion for sanctions against Defendants which
13 hearing is set to be heard this week. Obviously, Plaintiff did not comply with the present Court
14 order because it would have impeded Mr. Goldstein's failed efforts against Venetian in the
15 *Smith* litigation. Yet, Plaintiff has the audacity to assert that Venetian is the one abusing discovery
16 and violating Court orders.
17

18 a. **Dismissal**

19 Based on Plaintiff's bad actions, Defendants hereby move for dismissal of the Complaint.
20 Plaintiff clearly fears she cannot win on the merits and has therefore elected to utilize unscrupulous
21 methods of discovery.¹⁰
22

23 b. **Establish a Disputed Fact**

24 Should the Court seek a lesser alternative, Defendants move for a finding that there was no
25 foreign substance on the floor, consistent with the evidence, and that Plaintiff pay Defendants' fees
26
27

28 ¹⁰See *i.e.* Declaration of Michael A. Royal, Paragraphs 20-21. *See also* Exhibit H.

1 and costs associated with having to both bring the Motion for Protective Order, and to respond to
2 the Objection to the Discovery Commissioner's Report and Recommendation.

3 c. **Bass-Davis Like Instruction**

4 Alternatively, the Court could fashion an instruction or finding under *Bass-Davis v. Davis*,
5 122 Nev. 442, 134 P.3d 103 (2006), providing Defendants with a rebuttable presumption
6 instruction that Defendants had no constructive notice of any foreign substance on the floor prior to
7 Plaintiff's fall, and preclude Plaintiff from using evidence obtained from any other pending
8 litigation involving the Venetian property. Defendants would further move for an award of its fees
9 and costs associated with the Motion for Protective Order, and to respond to the present Objection.
10

11 d. **Affirm and Order Document/Information Retrieval, with Fees/Costs**

12 At a minimum, Defendants move for a finding that the DCRR be affirmed, that all
13 information provided to Plaintiff by Defendants in this matter be protected under NRCP 26(c), that
14 Plaintiff be ordered to pay Defendants' fees and costs associated with having to bring the motion
15 for protective order and respond to this Objection, along with any additional monetary sanctions
16 the Court deems appropriate to prevent Plaintiff from so blatantly disregarding a Court order in the
17 future, and that Plaintiff be ordered undertake to reacquire all documents previously distributed to
18 counsel in other litigated matters, with an order stating that these documents were inappropriately
19 shared by Plaintiff. Finally, the order should relate to all discovery exchanged and deposition
20 transcripts. As noted in Paragraphs 20-21 of the Declaration of Michael A. Royal, Plaintiff in this
21 case purposely elicited testimony protected by attorney/client privilege from a witness and will no
22 doubt distribute it wildly to the world when the transcript is received.
23
24

25 **Defendants also move for leave under NRCP 30(a)(2)(A) to retake the deposition of**
26 **Gary Shulman, if deemed necessary.¹¹**
27

28 ¹¹*See id.*

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IV.

CONCLUSION

Based on the foregoing, Defendants respectfully submit that the Discovery Commissioner's Report and Recommendation of April 2, 2019 should be affirmed, and that Defendants' countermotion for sanctions under NRCP 37(b)(2) should be granted based on Plaintiff's refusal to obtain a stay from the DCRR and comply with the protective order now in place, as set forth above.

DATED this 22 day of April, 2019.

ROYAL & MILES LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of April, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSE TO PLAINTIFF'S OBJECTION TO DISCOVERY COMMISSIONER'S 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)** to be served as follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or (with exhibits)
- ☐ to be served via facsimile; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand delivered;

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

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
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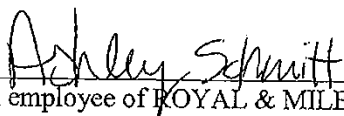

An employee of ROYAL & MILES LLP

EXHIBIT 10

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

1 APPEARANCES:

2 For the Plaintiff: **KEITH E. GALLIHER, JR., ESQ.**
 - And -
 3 **KATHLEEN H. GALLAGHER, ESQ.**
 - And -
 4 **GEORGE J. KUNZ, ESQ.**
 Galliher Law Firm
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 6 Las Vegas, Nevada 89104
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 7

8 For the Defendants: **MICHAEL A. ROYAL, ESQ.**
 Royal & Miles LLP
 9 1522 West Warm Springs Road
 Henderson, Nevada 89014
 10 (702)471-6777
 11
 12
 13
 14

15 * * * * *

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 17
 18 I N D E X
 19

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

23
 24
 25 -oOo-

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?

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?

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

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

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

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?

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.

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?

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.

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.

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?

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

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

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.

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.

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.

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.

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.

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

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.)
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REPORTER'S DECLARATION

STATE OF NEVADA)
)
COUNTY OF CLARK)

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

That I reported the taking of the deposition of the witness, **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



1 **OPPS**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

4 Gregory A. Miles, Esq.

5 Nevada Bar No. 4336

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12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

18 Plaintiff,

19 v.

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

27 Defendants.

Hearing Requested

28 **DEFENDANTS' OPPOSITION TO PLAINTIFF'S OBJECTION TO DISCOVERY
COMMISSIONER'S REPORT AND RECOMMENDATION DATED DECEMBER 2, 2019**

29 Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC
30 (hereinafter collectively "*Venetian*"), by and through their counsel of record, ROYAL & MILES LLP,
31 hereby files DEFENDANTS' OPPOSITION TO PLAINTIFF'S OBJECTION TO DISCOVERY
32 COMMISSIONER'S REPORT AND RECOMMENDATION DATED DECEMBER 2, 2019.

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

1 This Opposition is based upon the Points and Authorities below, the papers and pleadings filed
2 herein, and any oral argument allowed at the hearing on this matter.

3 DATED this 23 day of December, 2019.

4 **ROYAL & MILES LLP**

5
6 By 

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

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I.**

18 **NATURE OF OPPOSITION**

19 Defendants respectfully submit that Plaintiff's position that she is entitled to exponential *carte*
20 *blanche* access to records dating back to 1999 with an expanded scope including the common area of
21 the entire Venetian property based on a punitive damages claim is entirely unfounded. This is a slip
22 and fall incident arising from an alleged foreign substance in an area that Plaintiff walked hundreds
23 of times safely as an employee working daily on the Venetian property for approximately eleven (11)
24 months prior to the subject incident. Of significant note, there is a dispute of whether a foreign
25 substance existed at the time of Plaintiff's fall. Moreover, a Venetian employee assigned to patrol the
26 area of Plaintiff's fall inspected the area within three (3) minutes of the subject incident and found it
27 to be dry. That same employee returned minutes later after the fall, inspected the area and again
28 confirmed there was still no foreign substance on the floor. Further, several hundred patrons are seen
walking through the subject area on surveillance footage previously submitted to the Court without the

1 slightest hint of a spill or foreign substance on the floor. In addition, Plaintiff's experts acknowledge
2 that the subject floor is perfectly safe when dry - and Defendants have an entire department dedicated
3 to maintaining them.

4 Plaintiff is doing everything she can to avoid having to focus on the actual incident facts and
5 is now using the Court's ruling allowing a claim of punitive damages to bury Defendants in discovery
6 involving the entire property over a period of twenty (20) years. For reasons discussed herein below,
7 Defendants contend that the Discovery Commissioner properly limited the scope to the very area where
8 the incident occurred, the area of which Plaintiff was intimately familiar by virtue of her employment,
9 the same area where Plaintiff denied having ever previously seen any kind of foreign substance on the
10 floor or even heard of someone slipping and falling thereon during her preceding eleven (11) months
11 of employment.
12

13 II.

14 DECLARATION OF MICHAEL A. ROYAL

15
16 STATE OF NEVADA)
) ss.
17 COUNTY OF CLARK)

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

19 1. I am an attorney duly licensed to practice law in the State of Nevada and I am counsel
20 for Venetian Casino Resort, LLC, and Las Vegas Sands, LLC, in connection with the above-captioned
21 matter. I have personal knowledge of the following facts and if called upon could competently testify
22 to such facts.
23

24 2. I declare that the exhibits identified herein below are true and correct copies of
25 documents produced in or otherwise related to this matter, and move the Court to take judicial notice
26 of the following cases attached hereto.
27
28

1	EXHIBIT	TITLE
2	A	Transcript of Joyce Sekera Deposition (taken March 14, 2019), selected pages
3	B	Discovery Commissioner's Report and Recommendation, filed April 4, 2019
4	C	Peter Goldstein Declaration (dated February 13, 2019)
5	D	Order Granting Motion to Amend Complaint to Include Claim for Punitive Damages and Denying Defendants' Motion to Strike (filed June 27, 2019)
6	E	Deposition Transcript of Maria Cruz (taken April 17, 2019)
7	F	Surveillance Footage of Incident (VEN 019)
8	G	Defendant's Limited Objection to Discovery Commissioner's Report and Recommendation Dated December 2, 2019 (with selected exhibits)
9	H	Defendant's Objection to Discovery Commissioner's Report and Recommendation Dated August 9, 2019 (with no exhibits)
10	I	Deposition Transcript of Thomas Jennings (taken July 2, 2019) (selected pages)
11	J	Deposition Transcript of David Elliott (taken February 13, 2009) (selected pages)
12		<i>Farina v. Desert Palace, Inc.</i> , Case No. A542232

14 DATED this 23 day of December, 2019.

15 
16 MICHAEL A. ROYAL

17 **III.**

18 **PERTINENT FACTS AND EVIDENCE**

19 This litigation arises from a slip and fall incident from an alleged liquid substance on the
20 Venetian floor in the Grand Lux rotunda on November 4, 2016. The incident involving Plaintiff
21 occurred in the course and scope of her employment with Brand Vegas, LLC, where she had been
22 working at a kiosk located in the Grand Canal Shops within the Venetian property for the preceding
23 eleven (11) months. Plaintiff testified in deposition that she had successfully walked through the
24 Grand Lux rotunda area several hundred times in the course of her employment prior to the subject
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1 incident.¹ Plaintiff further testified that in the eleven (11) preceding months she worked on and within
2 the Venetian property for 50-70 hours per week (without having taken any vacation time), she was not
3 aware of even one occasion when she either saw a spill on the floor, was advised by someone else that
4 a spill existed, came upon the scene of someone who had fallen on the floor or that she had even heard
5 of such an occurrence.² Plaintiff asserts that she slipped and fell on November 4, 2016 due to the
6 alleged presence of a foreign substance on the floor which she did not see before or after her fall.³

7
8 Plaintiff filed a cause of action for negligence. Accordingly, Plaintiff initially requested
9 incident reports from Defendants dating back to November 4, 2013. Defendants produced redacted
10 prior incident reports from November 4, 2013 to November 4, 2016, which Plaintiff improperly shared
11 with counsel outside this litigation while a motion for protective order was pending before the
12 Discovery Commissioner.⁴

13
14 This Honorable Court granted Plaintiff's motion for leave to amend the Complaint and add a
15 cause of action for punitive damages on June 27, 2019.⁵ Consequently, Plaintiff has taken the position
16 that she is now entitled to a much broader, exponential range of discovery - to include documents and
17

18
19 ¹See Exhibit A, *Deposition Transcript of Joyce Sekera* (taken March 14, 2019) at 86:13-25;
20 87:1-8; 87:23-25; 88:1-20.

21 ²See *id.* at 75:5-25; 76:1-25; 77:1-16.

22 ³See *id.* at 90:1-23. See also *Plaintiff's Objection* (filed December 12, 2019) at 2:26-27
(Plaintiff asserting that there was water on the floor).

23 ⁴Defendants filed a Motion for Protective Order regarding production of these prior incident
24 reports on February 2, 2019, Plaintiff shared them with counsel in another matter on February 7, 2019
25 and the documents were attached to a motion filed with the court in another proceeding. (See Exhibit
26 B, *Discovery Commissioner's Report and Recommendation* (filed April 4, 2019); Exhibit C,
27 *Declaration of Peter Goldstein, Esq.* (dated February 13, 2019), providing that the prior incident
reports at issue before the Discovery Commissioner were provided to Mr. Goldstein by Plaintiff's
counsel in this matter on February 7, 2019.)

28 ⁵See Exhibit D, *Order Granting Motion to Amend Complaint to Include Claim for Punitive
Damages and Denying Defendants' Motion to Strike* (filed June 27, 2019).

1 information from 1999 to the present, with a scope that includes the entire common area of the
2 Venetian tower.

3 Once again, this is a slip and fall case arising from an alleged temporary transitory condition
4 which Plaintiff is trying to convert from a negligence action to one of strict liability based on prior
5 incident reports. Missing from Plaintiff's motion is actual evidence that Venetian flooring falls below
6 industry standards for four star hotels, that it does not comply with Clark County building codes, and/or
7 that its flooring is somehow different than comparable properties on the Las Vegas Strip. Plaintiff is
8 simply focused on acquiring more information about prior incidents to build a punitive damages case,
9 without first establishing that there is anything actually wrong with the floor.

11 The fact remains that Defendants dispute there was any foreign substance on the floor.
12 Moreover, Defendants had (and continue to have) an entire department dedicated to cleaning and
13 maintaining the subject flooring, with policies and procedures in place which were followed on the
14 date of the subject incident by former Venetian employee Maria Cruz, who inspected the subject area
15 within three minutes of the fall and testified that she did not see anything on the floor at that time.⁶ Ms.
16 Cruz further testified that she responded to the scene with two coworkers shortly after Plaintiff's fall
17 and confirmed that she did not see any foreign substance on the floor.⁷ Further, surveillance footage
18 of the area in the thirty (30) minutes preceding the subject incident depicts hundreds of patrons walking
19 through successfully without any hint of a spill or foreign substance on the floor.⁸ Plaintiff insists that
20 the Court ignore those facts and instead grant her *carte blanche* access to twenty (20) years of records
21 to satisfy her curiosity and build upon her claim of "reprehensible" conduct by Defendants.
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26 ⁶See Exhibit E, *Deposition Transcript of Maria Cruz* (taken April 17, 2019) at 31:19-25; 32:1-
25; 33:1-14; 34:8-25; 35:21-25; 36:1.)

27 ⁷*Id.*

28 ⁸See Exhibit F, *Surveillance Footage of Incident* (VEN 019).

1 Also missing from Plaintiff's Objection (and most of her filings with the court) is a focus on
2 the actual facts surrounding the incident. Instead, she appears intent on pointing to other slip and fall
3 events which she, as a full-time employee working on the same Venetian property for thousands of
4 hours over an eleven (11) month period of time, claims to have been entirely unaware. By Plaintiff's
5 own experience and testimony, events like the one she had on November 4, 2016 are the rare
6 exception, not the rule - especially where there is no foreign substance involved.
7

8 Something we now see in nearly every Court filing by Plaintiff are out of context, misleading
9 references to the testimony of former Venetian employee, Gary Shulman, in an ongoing attempt to
10 relay an unrelated false premise - *to wit*: that defense counsel met with Mr. Shulman prior to the
11 opening of discovery in this case on June 28, 2018 and told him to lie under oath - before he was ever
12 disclosed as a witness.⁹ Defendants have had to repeatedly respond to these assertions both before this
13 Honorable Court, before the Discovery Commissioner and even in the presently pending matter before
14 the Nevada Court of Appeals.¹⁰ Defendants further note that the issue surrounding Mr. Shulman's
15 testimony is the subject of an Objection filed by Defendants on August 22, 2019, which remains before
16 this Honorable Court.¹¹ Suffice to say that Defendants deny the gross misrepresentations of Mr.
17 Shulman and take issue with Plaintiff constantly wielding them as a sword to mislead the Court.
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25 ⁹See *Plaintiff's Objection* (filed December 12, 2019) at 2:26-27; 3:1-4.

26 ¹⁰See Exhibit G, *Defendants' Limited Objection to Discovery Commissioner's Report and*
27 *Recommendations Dated December 2, 2019* (filed December 16, 2019), Exhibit K at 24-27.

28 ¹¹See Exhibit H, *Defendants' Objection to Discovery Commissioner's Report and*
Recommendations Dated August 9, 2019 (filed August 22, 2019).

1 Plaintiff has represented in the Objection that she will “be undergoing L5-S1 surgery in the near
2 future.”¹² First, to Defendants’ present knowledge, this does not presently appear to be the case, based
3 on the latest medical records produced by Plaintiff. Second, and more importantly, it has nothing to
4 do with the pending issue surrounding Plaintiff’s demand for *carte blanche* discovery for a period of
5 twenty (20) years in a slip and fall case where Plaintiff was intimately familiar with the property and
6 where Defendants employee, Maria Cruz, did her job by patrolling the subject fall area within three
7 (3) minutes of the fall.

9 Regarding the September 18, 2019 hearing before the Discovery Commissioner, the reason
10 given by the Discovery Commissioner for expanding the scope of prior incident reports from the Grand
11 Lux rotunda to the casino level of the Venetian property was based on the determination that because
12 Venetian voluntarily initially produced sixty-four (64) redacted prior incident reports to Plaintiff which
13 extended to the entire casino level of the property (not limited to the Grand Lux rotunda area), that she
14 ordered any other production of incident reports to be like expanded, to which Defendants filed a
15 separate objection with this Court on December 16, 2019.¹³

17 Plaintiff is seeking to pummel Defendants with massive discovery without sufficient
18 consideration of the factors set forth in NRCP 26(b)(1). Plaintiff’s assertion that the marble flooring
19 in the all areas of the property is the same is unfounded. Testimony from Plaintiff’s expert, Thomas
20 Jennings, provides that testing for coefficient of friction on the Venetian marble floors can differ based
21 on a variety of factors.¹⁴ Also, Plaintiff named witness, expert David Elliott, PE, previously testified

24 ¹²See Plaintiff’s Objection to Discovery Commissioner’s Report and Recommendations Dated
25 December 2, 2019 (filed December 16, 2019) at 3:8.

26 ¹³See Exhibit G at Exhibit B (*Transcript of Proceedings Before the Discovery Commissioner*
27 (September 18, 2019) at 22:3-25; 23:1-9; 27:1-8.

28 ¹⁴See Exhibit I, *Deposition Transcript of Thomas Jennings* (taken July 2, 2019) at 16:18-
25; 17:1-3; 70:1-8; 72:8-23; 73:1-8 (noting that testing of an area within 100 feet of the Sekera fall
tested substantially different).

1 in February 2009 that Venetian is an exemplary property on the Las Vegas Strip, stating the following
2 in deposition: "You can go into the Venetian. I do a lot of work for the Venetian and consulting and
3 litigation, and their tile is slip resistant with wet, and it looks good."¹⁵ Plaintiff, previously used this
4 deposition testimony from Mr. Elliott to support her motion for leave to amend to add a claim for
5 punitive damages, now effectively asks the Court to ignore it entirely and provide her with *carte*
6 *blanche* access to twenty (20) years of records simply to satisfy her desire to amass more evidence of
7 incidents she can potentially use to support a punitive damages claim.
8

9 The Discovery Commissioner properly limited discovery to the preceding five (5) years. As
10 noted, Defendants take issue in a separate objection with the recommendation that they produce
11 subsequent incident reports and prior incident reports beyond the area of the Grand Lux rotunda.¹⁶
12

13 III.

14 DISCUSSION

15 A. Standard of Review

16 Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:

17 *Unless otherwise limited by order of the court in accordance with these rules, the scope*
18 *of discovery is as follows: Parties may obtain discovery regarding any nonprivileged*
19 *matter that is **relevant** to any party's claims or defenses and **proportional** to the needs*
20 *of the case, **considering the importance of the issues at stake in the action, the***
21 ***amount in controversy, the parties' relative access to relevant information, the***
22 ***parties' resources, the importance of the discovery in resolving the issues, and***
whether the burden or expense of the proposed discovery outweighs its likely benefit.
Information within this scope of discovery need not be admissible in evidence to be
discoverable. (Emphasis added.)

23 Plaintiff must therefore demonstrate that the desired discovery is **relevant** to her claims here
24 and that it is **proportional** to the needs of the case with five factors: 1) importance of issues at stake;
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27 ¹⁵See Exhibit J, *Deposition Transcript of David Elliott* (taken February 13, 2009), at 34:18-21,
28 *Farina v. Desert Palace, Inc.*, Case No. A542232.

¹⁶See Exhibit G, *generally*.

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

4 1. **Relevancy**

5 Under the first prong of this test, for information to be discoverable, it must be "relevant to any
6 party's claim or defense." (*Id.*) The phrase "reasonably calculated to lead to the discovery of
7 admissible evidence" has been omitted from the previous rule. The word "relevant" has been provided
8 as one of the driving factors in weighing discovery issues.
9

10 Recall that Plaintiff was not a normal guest/patron of the Venetian property at the time of the
11 incident, but was instead a pseudo employee, someone assigned a Venetian employee parking pass and
12 ID badge to gain special access to the property. She worked on property for nearly a year prior to the
13 incident and, as discussed further herein, Plaintiff walked the Grand Lux rotunda area many hundreds
14 of times without incident until November 4, 2016 - the only difference being the alleged existence of
15 a foreign substance reportedly causing her to fall.
16

17 What is "relevant" about incidents occurring anywhere other than the Grand Lux rotunda area
18 where Plaintiff fell? In her incident description presented within the Objection filed by Plaintiff, she
19 writes that Plaintiff "slipped and fell on water on the **black** marble floors."¹⁷ Plaintiff's repeated
20 reference to the floor as "black" suggests that flooring color played a role in her fall (*i.e.* Plaintiff being
21 unable to see something on the floor due to its color). What other areas of the Venetian floor are
22 likewise black in color that may present the same kind of visual issues for pedestrians? The subject
23 incident occurred in a very high traffic area of the property, which Plaintiff's expert Tom Jennings said
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28 ¹⁷See Plaintiff's Objection to Discovery Commissioner's Report and Recommendations Dated
December 2, 2019 (filed December 16, 2019) at 2:25-26 (emphasis added).

1 can itself impact coefficient of friction.¹⁸ Mr. Jennings acknowledged that his test results in two
2 different areas of Venetian marble flooring within 100 feet of one another are significantly different
3 (.90 COF (dry) / .40 COF (wet) v. .70 COF (dry) / .33 COF (wet)), which is precisely why Defendants
4 requested that the Discovery Commissioner limit the scope of discovery to the Grand Lux rotunda
5 area.¹⁹ To draw comparisons of other areas of the floor with less traffic, not surrounded by food and
6 beverage establishments (as the Grand Lux rotunda), with lighter colored flooring (*i.e.* not “black”)
7 without something more than an argument that all stone/marble flooring is the same throughout the
8 property is not enough to open up the kind of *carte blanche* discovery sought by Plaintiff. Further,
9 prior incident information sought by Plaintiff relates to slip/falls from a foreign substance. Here, the
10 most credible evidence (*i.e.* the surveillance footage, in addition to all responding witnesses but for
11 disgruntled former employee Gary Shulman) supports the conclusion that there was no foreign
12 substance on the floor. Thus, Plaintiff’s request for prior incidents involving foreign substances does
13 not reach the level of being substantially similar in area of incident or event.²⁰ Also, keep in mind that
14 Plaintiff was very familiar with the Grand Lux rotunda area, as a full-time employee working on the
15 property. Plaintiff has not established such familiarity of other areas throughout the property by
16 Plaintiff. She has not met the relevancy prong of NRCP 26(b)(1).

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20 ¹⁸See Exhibit J at 71:11-25; 72:1-22; 73:1-8.

21 ¹⁹See *id.*

22 ²⁰Per *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962), “it is error to
23 receive ‘notice evidence’ of the type here [prior incident reports] for the purpose of establishing the
24 defendant’s duty”). However, in order for evidence of any prior incidents to be admissible, Plaintiff
25 must demonstrate that the prior incidents are substantially similar. (*See Galloway v. McDonalds
26 Restaurants of Nevada*, 102 Nev. 534, 536, 728 P.2d 826, 827-28 (1986); *Southern Pacific v. Harris*,
27 83 Nev. 471, 483, 395 P.2d 767 (1964).) In fact, many courts require a high degree of substantial
28 similarity. (*See e.g., In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1191 (10th Cir. 2009); *Pau v.
Yosemite Park and Curry Co.*, 928 F.2d 880, 889 (9th Cir.1991); *Jackson v. Firestone Tire & Rubber
Co.*, 788 F.2d 1070, 1082-83 (5th Cir.1986); *Brooks v. Chrysler Corp.*, 786 F.2d 1191, 1195
(D.C.Cir.1986); *Borden, Inc. v. Florida East Coast Ry. Co.*, 772 F.2d 750, 754 (11th Cir.1985);
Koloda v. General Motors, 716 F.2d 373, 376 (6th Cir. 1983); *Gardner v. Southern Ry. Sys.*, 675 F.2d
949, 952 (7th Cir. 1982); *McKinnon v. Skil Corp.*, 638 F.2d 270, 277 (1st Cir.1981).

1 As also discussed further herein below, Plaintiff has claimed to have reports of 196 prior
2 incidents occurring in the Grand Lux rotunda area; therefore, Defendants respectfully submit that
3 Plaintiff is in possession of more than sufficient "relevant" information she needs to make her case for
4 constructive notice and/or dangerous condition, with that information reportedly confined to the Grand
5 Lux rotunda area. Nevada law does not allow for exponential, boundless discovery just because
6 Plaintiff has received leave to add a claim for punitive damages.
7

8 **2. Proportionality**

9 Even if the Court deems the information "relevant", that alone is insufficient. Under the second
10 part of the NRCP 26(b)(1) test, to be discoverable, information must be "proportional to the needs of
11 the case." The rule provides six factors to consider: 1) "the importance of the issues at stake in action";
12 2) "the amount in controversy"; 3) "the parties' relative access to relevant information"; 4) "the parties'
13 resources; 5) the importance of the discovery in resolving the issues" and 6) "whether the burden or
14 expense of the proposed discovery outweighs its likely benefit."²¹ Defendants have previously
15 produced a total of sixty-eight (68) prior incident reports and Plaintiff claims to have a total of 196.²²
16 Requiring Defendants to produce additional prior incident reports beyond the Grand Lux rotunda area
17 and beyond the date of the subject incident serves no good purpose other than to burden and harass
18 Defendants.
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23 ²¹NRCP 26(b)(2)(C) further limits discovery, requiring the Court to limit the frequency or
24 extent of discovery if the Court determines that the discovery sought is (1) "unreasonably cumulative
25 or duplicative, or can be obtained from some other source that is more convenient, less burdensome,
26 or less expensive"; (2) "the party seeking discovery has had ample opportunity to obtain the
27 information by discovery in the action;" or (3) "the proposed discovery is outside the scope permitted
28 by Rule 26(b)(1)." Courts, thus, have a "duty to pare down overbroad discovery requests under Rule
26(b)(2)." (*See Rowlin v. Alabama Dep't. of Pub. Safety*, 200 F.R.D. 459, 461 (M.D. Ala. 2001)
(referencing application of FRCP 26(b)(2)).)

²²Pursuant to the DCRR, Plaintiff is to produce all of the other incident information she has
collected to Defendants. (*See Exhibit A at 9:26-28.*)

1 The District Court has the discretion to "bar or limit discovery to prevent, among other things,
2 an undue burden" on a party.²³ Plaintiff is seeking expansive, massive discovery over a twenty (20)
3 year period, well beyond February 2009 when Plaintiff witness David Elliott testified that Venetian
4 was an exemplary property on the Las Vegas Strip. Further, Plaintiff has not made a showing to the
5 Court that Venetian has been anything but forthright in responding to discovery responses requesting
6 prior incidents. She has merely offered anecdotal testimony of former non-management level Venetian
7 employees who offered non-binding observations that do not establish anything which would justify
8 allowing for the kind of discovery Plaintiff now seeks.²⁴ The massive discovery Plaintiff is seeking
9 is not proportional to the facts and circumstances here.
10

11
12 ²³*Club Vista Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 224, 229, 276 P.3d 246, 249
13 (2012).

14 ²⁴In *RKF Retail Holdings, LLC v. Tropicana Las Vegas, Inc.*, 2017 U.S. Dist. LEXIS 104850
15 (D. Nev. July 6, 2017) (*19-*22) (quoting *In re Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562,
16 563 (D.Ariz. 2016)), the court related the following in regards to the application of Rule 26(b)(1) to
17 such issues:

18 *Relevancy alone is no longer sufficient-discovery must also be proportional to the*
19 *needs of the case. The Advisory Committee Note makes clear, however, that the*
20 *amendment does not place the burden of proving proportionality on the party seeking*
21 *discovery. The amendment "does not change the existing responsibilities of the court*
22 *and the parties to consider proportionality, and the change does not place on the party*
23 *seeking discovery the burden of addressing all proportionality considerations." Rule*
24 *26, Advis. Comm. Notes for 2015 Amends. Rather, "[t]he parties and the court have*
25 *a collective responsibility to consider the proportionality of all discovery and consider*
26 *it in resolving discovery disputes." Bard, 317 F.R.D. at 564.*

27 *Generally, the party opposing discovery has the burden of showing that it is irrelevant,*
28 *overly broad, or unduly burdensome. Graham v. Casey's General Stores, 206 F.R.D.*
29 *251, 253-4 (S.D.Ind. 2000); Fosbre v. Las Vegas Sands Corp., 2016 U.S. Dist. LEXIS*
30 *1073, 2016 WL 54202, at *4 (D.Nev. Jan. 5, 2016); Izzo v. Wal-Mart Stores, Inc., 2016*
31 *U.S. Dist. LEXIS 17701, 2016 WL 593532, at *2 (D. Nev. Feb. 11, 2016). When a*
32 *request is overly broad on its face or when relevancy is not readily apparent, however,*
33 *the party seeking discovery has the burden to show the relevancy of the request. Desert*
34 *Valley Painting & Drywall, Inc. v. United States, 2012 U.S. Dist. LEXIS 145771, 2012*
35 *WL 4792913, at *2 (D.Nev. Oct. 9, 2012) (citing Marook v. State Farm Mut. Auto. Ins.*
36 *Co. 259 F.R.D. 388, 394-95 (N.D. Iowa 2009)). The 2015 amendments to Rule 26(b)*
37 *have not changed these basic rules, although they must now be applied with a greater*
38 *degree of analysis and emphasis on proportionality. (Emphasis added.)*

1 B. **The Discovery Commissioner Properly Limited Pre-Incident Discovery to Five Years**

2 Defendants have objected to the portion of the Discovery Commissioner's report and
3 recommendation regarding post incident reports and expanding the scope beyond the Grand Lux
4 rotunda area in a separate objection filed December 16, 2019. In Plaintiff's argument for additional
5 information to beef up her punitive damages claim at trial, she fails to provide the Court with even one
6 prior incident in her possession (of the sixty-eight (68) previously produced by Defendants) which is
7 substantially similar to the subject incident. She is merely focused on numbers (as she has always
8 been), without providing the Court with further information and analysis.

10 Plaintiff's reference to former Venetian EMT, Joseph Larson, where he provides an estimation
11 of his responses to incidents over a nine (9) year period with Venetian, fails to note that as for the
12 subject incident he did not find objective evidence of a foreign substance on the floor, that Plaintiff
13 denied a head injury at the scene and that he objectively palpated Plaintiff for a head injury with
14 negative results.²⁵ Mr. Larson further testified that he had responded to slip/falls not involving foreign
15 substances in the past, noting that such events are "usually related to footwear or somebody not being
16 cautious about where they're stepping" which "are pretty common."²⁶

18 Plaintiff's reference to testimony from former Venetian employee, Chris Tonemah, omits
19 testimony she presented that in her seventeen (17) years of experience at the Venetian property, she
20 only witnessed three or four slip and falls on the Venetian marble floor.²⁷ Moreover, in quoting from
21 the deposition of Gary
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26 ²⁵See *Plaintiff's Objection to Discovery Commissioner's Report and Recommendations Dated*
December 2, 2019, Exhibit 7 at 40-44; 82:10-19.

27 ²⁶See *id.* at 81:19-25; 82:1-3.

28 ²⁷See *id.*, Exhibit 10 at 14:18-22.

1 Shulman in her Objection filed with the Court, Plaintiff failed to mention that in his thirteen (13) years
2 working on the Venetian casino floor this was the only time he had ever witnessed a fall.²⁸

3 This is frankly why Plaintiff is so focused on sheer numbers of prior incidents and not actual
4 facts. Plaintiff's testimony that she never even heard of a slip/fall while working daily on the Venetian
5 property for eleven (11) months, coupled with like testimony from Mr. Shulman and Ms. Tonemah,
6 does not support Plaintiff's argument that Defendants have engaged in punitive, reprehensible conduct
7 justifying *carte blanche* discovery back twenty (20) years just to potentially obtain more numbers to
8 be recklessly tossed around to fit her narrative.

10 Plaintiff has not presented credible information that "the marble flooring at the Venetian is
11 dangerous" - much less that Venetian has engaged in deviant punitive conduct.²⁹ The mere fact that
12 a floor may become slippery when wet does not make it "dangerous" nor does it present evidence of
13 punitive conduct. Again, Venetian has marble flooring consistent with other like four star hotels
14 within the hospitality industry, which flooring is compliant with Clark County codes, Venetian has an
15 entire department dedicated to maintaining the subject flooring and, in fact, had an employee so
16 engaged at the incident scene within three (3) minutes of Plaintiff's fall. The known facts do not
17 justify the kind of discovery Plaintiff is seeking. Defendants otherwise reference arguments set forth
18 in Defendants' Limited Objection to Discovery Commissioner's Report and Recommendations Dated
19 December 2, 2019, filed December 16, 2019.
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23 ///

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27 ²⁸See *id.*, Exhibit 1 at 5:24-25; 6:1-5; 14:10-12.

28 ²⁹Quoting from *Plaintiff's Objection to Discovery Commissioner's Report and Recommendations Dated December 2, 2019* at 7:19-20.

V.

CONCLUSION

Based on the foregoing, Defendants respectfully submits that Plaintiff's Objection to Discovery Commissioner's Report and Recommendations Dated December 2, 2019, wherein Plaintiff is requesting an exponentially broader scope than that recommended by the Discovery Commissioner, should be denied. The discovery order should be limited to prior incidents of five (5) years within the Grand Lux rotunda area only, where the subject incident occurred, where the marble is "black" (as Plaintiff has described), which Plaintiff walked frequently in the eleven (11) months preceding the subject incident.

DATED this 23 day of December, 2019.

ROYAL & MILES LLP

By _____

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

1522 W. Warm Springs Rd.

Henderson, NV 89014

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of December, 2019, and pursuant to NRCP 5(b),

I caused a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S
OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION**

DATED DECEMBER 2, 2019 to be served as follows:

☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
(with exhibits on CD)

☐ to be served via facsimile; and/or

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

☐ to be hand delivered;

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

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An employee of ROYAL & MILES LLP

EXHIBIT “A”

Deposition of:

Joyce P. Sekera

Case:

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

Date:

03/14/2019



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Page 5

1 HENDERSON, NEVADA, THURSDAY, MARCH 14, 2019;

2 10:00 A.M.

3 -oOo-

4

5 (Counsel agreed to waive the court

6 reporter requirements under Rule

7 30(b)(4) of the Nevada Rules of Civil

8 Procedure.)

9

10 Thereupon,

11 JOYCE P. SEKERA,

12 was called as a witness, and having been first duly

13 sworn, was examined and testified as follows:

14

15 EXAMINATION

16 BY MR. ROYAL:

17 Q. Would you please state your full name?

18 A. Joyce P. Sekera.

19 Q. What's the middle name?

20 A. Patricia.

21 Q. Okay. And have you gone by any other names?

22 A. Joy. That's it.

23 Q. Okay. But your last name's always been Sekera?

24 A. Yes.

25 Q. My name is Mike Royal. I represent the

Page 6

1 Venetian in litigation that is pending that you brought

2 related to an incident that occurred on November 4th,

3 2016.

4 This deposition is an opportunity for me, as

5 legal counsel for the Venetian, to ask questions of you

6 and receive your responses under oath.

7 Do you understand that?

8 A. Yes, I do.

9 Q. Have you ever done this before, a deposition?

10 A. Years and years and years ago. I kind of

11 forgot.

12 Q. Okay. Just once?

13 A. Just once.

14 Q. What was that in regards to?

15 A. I was a -- it was a witness deposition.

16 Q. What was the nature of the case?

17 A. My mom, she had fallen.

18 Q. She had fallen?

19 A. Uh-huh.

20 Q. Was that in Las Vegas?

21 A. Yes.

22 Q. And was that a casino or a hotel or place --

23 supermarket?

24 A. It was at a casino.

25 Q. What was the name of the casino?

Page 7

1 A. It was at Santa Fe.

2 Q. And can you give me an idea of when that fall

3 occurred?

4 A. I can't remember because it's been so many

5 years ago.

6 Q. Was it in the '90s?

7 A. No. No.

8 Q. The '80s?

9 A. No, no. I want to say 2010. I can't remember.

10 But it wasn't yesterday.

11 Q. I got it.

12 So maybe within the last ten years?

13 A. Yeah. Yes.

14 Q. Okay. And did that -- so it obviously went to

15 litigation because you provided a deposition; is that

16 right? You had an attorney, you were sworn in, and you

17 had attorneys asking questions like this?

18 A. Yeah, but it was just -- it was downtown, I

19 remember, and that was it. I didn't go to court or

20 anything.

21 Q. Okay. But was there a court reporter present?

22 A. Yes.

23 Q. Okay. And were there a couple of attorneys

24 present?

25 A. Just mine and one more.

Page 8

1 Q. Okay. And tell me what happened to your mom in

2 that fall.

3 A. She -- we were in the buffet. That was it, we

4 were in the buffet.

5 Q. Okay. And you're in the buffet and did you see

6 the accident?

7 A. Yeah. I was right there.

8 Q. And what happened?

9 A. She slipped and fell by the salad bar.

10 Q. And what kind of injuries did your mom have?

11 A. I can't remember every -- I just know that she

12 had fallen. I'm not sure what she hit, but it was -- I

13 can't remember exactly.

14 Q. Did she go to the hospital?

15 A. Yes.

16 Q. Did she get treatment after the hospital?

17 A. Yes.

18 Q. Did she have injuries to her back?

19 A. Yes.

20 Q. Did she have injuries to her neck?

21 A. Yes.

22 Q. Did she have injuries to either of her arms

23 that you recall?

24 A. Yes. And her head.

25 Q. And her head. Okay.

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<p>1 Q. Okay. You're not claiming knee injuries in 2 this case; is that right?</p> <p>3 A. No.</p> <p>4 MR. KUNZ: In the case of falling off the bed? 5 I'm sorry. I didn't mean to interrupt.</p> <p>6 BY MR. ROYAL:</p> <p>7 Q. Yeah. You're not claiming in this case that 8 you sustained injuries to either of your knees; is that 9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. So when you say you had an incident where you 12 fell off the bed and you got your knees checked, you're 13 not claiming that's related to anything associated with 14 this litigation?</p> <p>15 A. No. When you asked me another incident, 16 that's --</p> <p>17 Q. Right. No. I'm glad you told me. I just 18 want to make sure. That's why I'm asking the question.</p> <p>19 A. Yes.</p> <p>20 Q. It's a separate unrelated event --</p> <p>21 A. Okay.</p> <p>22 Q. -- is that right?</p> <p>23 When you fell off the bed and you hurt your 24 knee --</p> <p>25 A. Oh, that's something different.</p>	<p>1 Q. Give me an idea of how much you smoke now.</p> <p>2 A. Sometimes three a week.</p> <p>3 Q. Three packs?</p> <p>4 A. No. Three cigarettes.</p> <p>5 Q. How much were you smoking in November 2016?</p> <p>6 A. Oh, I have no idea. Because I was never a 7 chain smoker or smoker, smoker.</p> <p>8 Q. But was it different than three cigarettes a 9 week?</p> <p>10 A. When I was working there?</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. So how often?</p> <p>14 A. I don't remember that.</p> <p>15 Q. Did you typically take smoke breaks when you 16 were working for Brand Vegas?</p> <p>17 A. When we went to the restroom or it could be one 18 or two if it was really slow.</p> <p>19 Q. Okay. So it was something that you did once or 20 twice a day typically?</p> <p>21 A. Yeah, but not every day.</p> <p>22 Q. Okay. I noted that you have a history of 23 arthritis; is that correct?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Yes?</p>
Page 54	Page 56
<p>1 Q. Okay. And that's not -- you're not claiming 2 that rolling off the bed was caused by anything related 3 to this case?</p> <p>4 A. No.</p> <p>5 Q. Is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. You mentioned diabetes. 8 When were you diagnosed with diabetes?</p> <p>9 A. I want to say last year. And it was pre. And 10 then when I went back, he said I didn't have it. And 11 then when I went back for blood work, pre, so that's why 12 I'm taking it.</p> <p>13 Q. Okay. You're not claiming that no doctor -- 14 has any doctor told you that your diabetes diagnosis has 15 anything to do with what happened in this incident?</p> <p>16 A. It has -- no.</p> <p>17 Q. So the answer is no?</p> <p>18 A. Correct.</p> <p>19 Q. Are you a smoker?</p> <p>20 A. Yes.</p> <p>21 Q. How many years have you been a smoker?</p> <p>22 A. On and off. I mean, I'm not a big smoker as 23 far as pack, pack, pack. Once in a while.</p> <p>24 Q. Have you been smoking for more than 25 years?</p> <p>25 A. Not consistent, no.</p>	<p>1 A. Well, I would say it's -- what do you call it? 2 My grandmother had it, my mother --</p> <p>3 Q. Hereditary?</p> <p>4 A. Thank you.</p> <p>5 Q. When were you first diagnosed with arthritis?</p> <p>6 A. I have no idea.</p> <p>7 Q. Are you claiming, if you know -- strike that. 8 Has any doctor indicated to you that any 9 arthritis that you have, any arthritic condition is 10 associated with your fall at the Venetian?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. Were you diagnosed with arthritis before 13 your fall in November 2016?</p> <p>14 A. I don't remember.</p> <p>15 Q. Okay. Where does this arthritis affect you, 16 what part of your body?</p> <p>17 A. I don't know.</p> <p>18 Q. Would it be your hands? your joints? your toes?</p> <p>19 A. Sometimes my hands, they tingle, but I don't 20 know.</p> <p>21 Q. Okay. Do you have sore joints?</p> <p>22 When it says "arthritis," I have a note here 23 that you had preexisting arthritis, so I'm just trying 24 to get an idea of what --</p> <p>25 A. I can't remember the doctor that said, "It's</p>

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<p>1 hereditary and you do have a" -- I don't know. I</p> <p>2 couldn't give you a date or a doctor.</p> <p>3 Q. Okay. I'm going to ask you a few more</p> <p>4 questions about your job.</p> <p>5 So you started with Brand Vegas on I think you</p> <p>6 said December 26, 2015, and you worked full time for</p> <p>7 that employer until the date of the incident,</p> <p>8 November 4, 2016; correct?</p> <p>9 A. Correct.</p> <p>10 Q. And when I say "full time," I mean 40 hours a</p> <p>11 week or more.</p> <p>12 A. Yes.</p> <p>13 Q. I saw -- and I'm going off memory, but I saw --</p> <p>14 what were your general work hours?</p> <p>15 A. 9:00 to 7:00.</p> <p>16 Q. So how many days a week?</p> <p>17 A. In the beginning, seven.</p> <p>18 Q. So you were working more than 40 hours;</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Did you get paid overtime?</p> <p>22 A. You know, I can't remember. I can't say for</p> <p>23 sure.</p> <p>24 Q. Okay. How long did you work seven days a week?</p> <p>25 Because you said in the beginning.</p>	<p>1 I'm not sure, so I'd rather not guess.</p> <p>2 Q. No. That's okay. So you were paid an hourly</p> <p>3 rate --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- somewhere between let's say 7 and \$10?</p> <p>6 A. Yes.</p> <p>7 Q. We can verify the hourly rate. It's not a big</p> <p>8 deal. Okay?</p> <p>9 You were also paid commissions. Tell me how</p> <p>10 the commissions worked.</p> <p>11 A. We never knew that. They would just give us so</p> <p>12 much money.</p> <p>13 Q. Well, I mean --</p> <p>14 A. It was 25 cents a ticket maybe on one, 50 cents</p> <p>15 on another one. That's how it went. It depends on the</p> <p>16 show and what they were paid.</p> <p>17 Q. Okay. So as I understand it, you were working</p> <p>18 at a kiosk for Brand Vegas on one of three different</p> <p>19 kiosk areas in the Grand Canal Shoppes?</p> <p>20 A. Yes.</p> <p>21 Q. And you would go there anywhere from five to</p> <p>22 seven days a week working 9:00 to 7:00 -- 9:00 a.m. to</p> <p>23 7:00 p.m.; correct?</p> <p>24 A. Correct.</p> <p>25 Q. You were paid an hourly rate, plus you got a</p>
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<p>1 A. I don't keep notes. I didn't have a schedule.</p> <p>2 I just knew I had to be there. And I knew in the</p> <p>3 beginning when they were starting they needed the help</p> <p>4 because it was only a couple of us, so...</p> <p>5 Q. So you were willing to work however many days</p> <p>6 they needed you?</p> <p>7 A. Yes.</p> <p>8 Q. And how were you paid by Brand Vegas?</p> <p>9 A. A check.</p> <p>10 Q. That was a bad question.</p> <p>11 Let me ask you: Were you paid hourly?</p> <p>12 A. Yes.</p> <p>13 Q. And what was your hourly pay?</p> <p>14 A. I'm very bad. I didn't even keep those stubs,</p> <p>15 so I don't -- I can't tell you. I don't remember. I</p> <p>16 thought it was \$10, but I can't say for sure so I'm not</p> <p>17 going to.</p> <p>18 Q. Okay. So you were paid hourly.</p> <p>19 And were you paid commissions, like --</p> <p>20 A. Yes.</p> <p>21 Q. So it was hourly plus commissions.</p> <p>22 How were your commissions based?</p> <p>23 A. Oh, it was 7.25, maybe.</p> <p>24 Q. You think your rate might have been 7.25?</p> <p>25 A. It could have been 7.25 now. See, that's why</p>	<p>1 commission based upon tickets sold?</p> <p>2 A. Tickets sold, yeah.</p> <p>3 Q. The commission, as I understand your testimony,</p> <p>4 would be different depending on the show or the event?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Some might be a dollar, some might be 25</p> <p>7 cents, you know, it depends?</p> <p>8 A. Yes.</p> <p>9 Q. Were you encouraged to push certain shows when</p> <p>10 people would stop by?</p> <p>11 A. We just told them about Venetian shows, and</p> <p>12 then the rest of the shows on the Strip, we had a book</p> <p>13 with all of them.</p> <p>14 Q. I see.</p> <p>15 So how many shows did you sell for?</p> <p>16 I mean, strike that. That was a bad question.</p> <p>17 You mentioned there's other -- you mentioned</p> <p>18 Venetian.</p> <p>19 What other properties were you kind of selling</p> <p>20 tickets for when you were working for Brand Vegas?</p> <p>21 A. Almost all of them on the Strip. I don't</p> <p>22 remember exactly each one.</p> <p>23 Q. That's okay.</p> <p>24 If I were to --</p> <p>25 A. David Copperfield I can remember. We didn't</p>

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<p>1 take any escalators or anything after that to get to 2 your kiosk? 3 A. I could, yes, an escalator up, I think. I'm 4 sorry. It's been a while and I do not remember. I just 5 remember we didn't have a designated area for so long; 6 that we could park anywhere. And the employee thing 7 is -- I just can't remember if I got my badge or not 8 because it was right at the end. 9 Q. Okay. What did the badge look like? Do you 10 know? 11 A. (Shakes head.) 12 Q. Did you have a name tag? 13 A. I had a Brand Vegas name tag. 14 Q. Where would you wear it, what part of your 15 clothing? 16 A. Sometimes here, sometimes here (indicating), 17 depending what I wore. 18 Q. But it would be on the front? 19 A. Yes, it would be on the front. 20 Q. On the left or the right up around your 21 shoulder -- or, you know, between your shoulder and your 22 chest? 23 A. (Nods head.) 24 Q. Is that correct? 25 A. Yes.</p>	<p>1 employment? 2 A. No. Only if we had a question which the guest 3 wanted that particular seat and they couldn't have it 4 because it was reserved for the hotel, so... 5 Q. Okay. The time that -- it sounds to me like 6 you were spending anywhere from 40 to 60 hours a week at 7 the Venetian. 8 A. Yes. 9 Q. Does that sound right? 10 A. Yes. 11 Q. And that would be pretty much from December 26, 12 2015, until the date of the incident? 13 A. Yes. 14 Q. Did you take any vacations? 15 A. No, I did not. And I was always there at least 16 an hour or two prior. 17 Q. What does that mean? Prior to what? 18 A. Prior to my shift starting. 19 Q. So if your shift started at 9:00, you would 20 arrive at 7:00? 21 A. Yeah, because I would set up all the computers 22 for everybody. 23 Q. And you're not paid for that time? 24 A. No. 25 Q. So you actually would have been there from,</p>
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<p>1 Q. Okay. 2 A. I could have had an employee badge, but I don't 3 remember. And it was left there. I don't have anything 4 from there. 5 Q. Okay. Did anyone tell you why they wanted you 6 to have an employee badge? 7 A. They wanted to know who was on property and so 8 they did the background checks and stuff. 9 Q. Did they do a background check of you? 10 A. Yes. 11 Q. Who is "they"? 12 A. The Venetian. Whoever they have do that to get 13 this badge because I remember reading it. 14 Q. Did you have to fill out any forms? 15 A. Yes. 16 Q. Do you remember who you filled them out for? 17 Was it something that your employer required or was it 18 something that Venetian required? 19 A. Venetian required. 20 Q. Okay. Do you remember approximately when you 21 filled the form out? 22 A. No. It was very close to my fall, so that's 23 why probably it's -- I don't remember. 24 Q. Okay. Did you interact very often with the 25 Venetian personnel at the box office as part of your</p>	<p>1 like, what, 7:00 to 7:00? 2 A. Pretty much, or at least 8:00 to 7:00. 3 Q. Okay. I'm just doing the math in my head here. 4 That's a lot of hours. So you're talking about -- you 5 could actually be working 80 hours a week. 6 A. Yeah. 7 Q. Does that sound right? 8 A. Yes. 9 Q. Okay. 10 A. And that wasn't every day, but I tried to help 11 people because -- and have it all ready for them when 12 they walked on the shift. 13 Q. So during the time that you work there for 14 sounds like -- I'm going to say 50 to 70 hours a week 15 maybe -- 16 Does that sound about fair? 17 A. Fair. 18 Q. -- were you ever aware of any incidents where 19 guest or employees would slip and fall? 20 A. No. 21 Q. The times that you were working at this booth, 22 you don't recall ever responding to someone who had 23 fallen; is that correct? 24 A. I would say yes. I don't remember helping 25 anybody.</p>

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<p>1 Q. Okay. When you would go to -- let's say on 2 breaks, use the restroom and stuff, do you recall ever 3 seeing security responding to somebody on the floor, 4 anything like that? 5 A. No. 6 Q. Did you ever have any conversations that you 7 can recall prior to your fall with hotel -- Venetian 8 hotel security about incidents occurring on property? 9 A. No. I didn't really know anybody there. 10 Q. Okay. So prior to your incident of November 4, 11 2016, is it fair to say that you were never aware of 12 anyone slipping and falling at the Venetian property? 13 A. Yes. 14 Q. Okay. That was a correct statement; is that 15 right? 16 A. Yes. 17 Q. So for all the time that you were at the 18 Venetian working for Allstate Ticketing and Tours and 19 then for Brand Vegas, the only fall that you're aware of 20 occurring at the Venetian property was your fall? 21 A. That's correct. 22 Q. Okay. Do you recall during the time that you 23 worked at the Venetian property -- now I'm going to 24 expand it from any time that you're working there from 25 1995 until 2016, I'm just going to ask you all of your</p>	<p>1 happened, it was, like, once. 2 Q. Okay. But I'm asking if you have a specific 3 memory -- 4 A. No. 5 Q. -- of something like that. 6 A. Oh, no. 7 Q. Okay. So that's -- that's one of those things 8 where I don't want you to speculate. If you have a 9 specific memory, "Oh, yeah, I remember once or twice" -- 10 A. Okay. 11 Q. Do you have a specific memory? 12 A. No. 13 Q. Okay. All right. Did you -- in all your time 14 working at the Venetian talking with people, selling 15 tickets, people walking by, casual conversation, even 16 people that you were working with in your kiosk with 17 that other company, okay, do you recall speaking with 18 anyone who made any reference to any slip-and-falls that 19 occurred on the company? 20 A. No. 21 Q. This would be a good time to take a break 22 because I'm going to move into something else. 23 Let's go off the record. 24 (A short recess was taken from 11:41 a.m. 25 to 11:48 a.m.)</p>
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<p>1 experience as an employee where you were working at a 2 kiosk at the Venetian property, do you recall ever 3 seeing foreign substances on the floor? 4 A. I have to just say this. When I worked for 5 Allstate Ticketing, they didn't acquire the Venetian 6 kiosk till a few years before, so earlier they weren't 7 there. From '96 to -- I just can't remember the date. 8 You said from '96 to... 9 Q. Okay. Thank you. But what I'm trying to do is 10 you said you were probably at the Venetian 10 to 20 11 times over the 15 years -- 12 A. Yeah, not a lot. 13 Q. Okay. That's when you were at Allstate? 14 A. Right. 15 Q. And then you were there it sounds like almost 16 every day for almost close to a year -- 17 A. Oh, for Brand, yes. 18 Q. -- for Brand Vegas; correct? 19 A. Yes. 20 Q. All right. And during all that time, 21 collectively, you don't recall ever seeing a substance 22 on the floor, like somebody spilled a drink or something 23 like that? 24 A. Oh, sure, I might have and I might have called 25 housekeeping. See, I don't remember that. If that</p>	<p>1 BY MR. ROYAL: 2 Q. So off the record we were talking about this 3 2008 motor vehicle accident. I just wanted to make sure 4 I'm clear on this because I think you did have American 5 Family Insurance -- 6 A. Yes, I did. 7 Q. -- auto insurance; right? 8 A. Yes. 9 Q. Okay. And we think that that may have been 10 some litigation involving an accident your daughter was 11 involved in and you owned the car? 12 A. Correct. 13 Q. Okay. You don't remember specifically, but 14 we're kind of -- that's kind of what we're guessing 15 because you weren't involved in an auto accident? 16 A. Yes. That's right. That's correct. 17 Q. Okay. I wanted to clear that up. 18 So let's go to the day of the incident. 19 What time did you arrive on the Venetian 20 property that day? 21 A. I cannot guess on that. Again, sometimes I'm 22 there at 7:00, 7:30, or 8 o'clock most of the time. 23 Q. Okay. And your normal routine when you get to 24 work is to -- I assume things are locked up? 25 A. Everything's locked up.</p>

1 Q. So when you get there --
 2 A. Or in the cupboard.
 3 Q. Okay. So you had a key?
 4 A. No. They were just doors shut.
 5 Q. So they weren't locked?
 6 A. (Shakes head.)
 7 Q. So you had, like, laptops and stuff there?
 8 A. Yeah, that we would set up. Yes.
 9 Q. And that stuff was kept somewhere without a
 10 lock?
 11 A. With a credit card machine.
 12 Yes.
 13 Q. That's crazy.
 14 Okay. Was it like that at every kiosk?
 15 A. No. The Tao one had one. And they did have a
 16 key, but it didn't always work, the lock.
 17 Q. Okay. Regardless whether you had to unlock
 18 something or not, you would show up at the kiosk?
 19 A. Yes. Set up the phone and the credit card
 20 machine and the computer.
 21 Q. Okay. And how long did that typically take?
 22 A. Just depending. Sometimes it didn't go on
 23 right away. You had to work with it.
 24 Q. So at least by 9 o'clock you're ready to go?
 25 A. Oh, definitely. All booths, yes.

1 Q. And how many tickets would you typically sell
 2 in a day? I know it's going to vary, but...
 3 A. There could be anywheres from two maybe up to
 4 40, 50. It just depended what was going on at the
 5 hotel.
 6 Q. So if it's busy because there's a convention or
 7 something like that --
 8 A. Correct.
 9 Q. -- there's going to be people looking for stuff
 10 to do. More people and more -- more people are going to
 11 come by and ask you for information?
 12 A. Right.
 13 Q. Typically how many people -- just give me an
 14 estimate of -- will just stop and get information and
 15 not buy tickets?
 16 A. Oh, God, that was all day long. That drove us
 17 nuts, but we did it.
 18 Q. With a smile?
 19 A. Yes.
 20 Q. So it was pretty rare to sell tickets
 21 proportionately --
 22 A. You tried to fit it in, yes.
 23 Q. So between 8:00 a.m. and noon on the day of the
 24 incident, do you remember if you sold any tickets?
 25 A. I do not.

1 Q. Okay. On that particular day, do you remember
 2 taking any breaks between the time of your arrival until
 3 the break you took at the time of the incident?
 4 A. No, I don't.
 5 Q. At the time of the incident, as I recall, you
 6 had -- you were carrying a beverage in your left hand.
 7 Do you remember that?
 8 A. Could have been a coffee cup. That's all I can
 9 figure at that time.
 10 Q. So the incident happened around noon, 12:30, I
 11 think, p.m.; right?
 12 A. Yes.
 13 Q. Is that typically when you would take a lunch
 14 break?
 15 A. Yes.
 16 Q. Were you on a lunch break at the time this
 17 incident occurred?
 18 A. Yes.
 19 Q. Now, if you had a cup of coffee in your hand --
 20 I think it might have had a lid on it --
 21 A. Yes.
 22 Q. -- where -- do you know where you bought that?
 23 A. No.
 24 Q. It's not something you would have bought and
 25 brought with you to the property, is it, on your way

1 from home?
 2 A. I don't think so.
 3 Q. You typically would buy something like that at
 4 the property?
 5 A. Or somebody would for us, yes.
 6 Q. Okay. So you had a -- you don't remember if
 7 you got it at -- I don't know. There's a place called
 8 The Coffee Bean or different --
 9 A. Oh, was that upstairs in my area?
 10 Q. Yes.
 11 A. Yeah. Okay.
 12 Q. It's kind of close to the escalator.
 13 A. Yes, it is. Yes.
 14 Q. So you think --
 15 A. I do remember Coffee Bean.
 16 Q. But did you buy coffee that morning at The
 17 Coffee Bean?
 18 A. That, I don't remember.
 19 Q. Okay. So you were taking a break and -- you
 20 were taking a lunch break.
 21 Where were you planning on going for lunch on
 22 the day of the incident?
 23 A. I couldn't tell you. I just always go to the
 24 restroom first and...
 25 Q. Okay. You say you always go to the restroom.

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<p>1 A. Well, when I have to go, yes, but --</p> <p>2 Q. Let me back up.</p> <p>3 As I understand it, you're working at your</p> <p>4 kiosk, you're ready to take a break. You go to the</p> <p>5 escalator that's close to The Coffee Bean.</p> <p>6 A. No. Right around the corner the elevator down</p> <p>7 because then you can just go right to the restroom.</p> <p>8 Q. Okay. So you didn't take --</p> <p>9 A. I didn't take the escalator, no.</p> <p>10 Q. Is there a security guard posted there, do you</p> <p>11 know, at that level?</p> <p>12 A. I do not know that.</p> <p>13 Q. Okay. How close to those elevators -- strike</p> <p>14 that.</p> <p>15 Where the incident happened, the elevators</p> <p>16 you're talking about, where are they located?</p> <p>17 A. If I'm at that booth -- because Coffee Bean is</p> <p>18 right over there -- I go around the corner to these --</p> <p>19 it's a little corner really where the elevators sit.</p> <p>20 There's nothing else there. And I would get out of the</p> <p>21 elevator, turn left, and go straight to the restroom.</p> <p>22 Q. Get out of the elevator, turn left?</p> <p>23 A. Yes, because it's, like, an L-shaped --</p> <p>24 Q. Let me ask you this: Do you know where the</p> <p>25 Grand Cafe --</p>	<p>1 A. At least, yes.</p> <p>2 Q. And so that would be from the time that you</p> <p>3 started at the -- on December 26, 2015, until the</p> <p>4 incident; correct?</p> <p>5 A. Yes.</p> <p>6 Q. So you're used to this path. You always take</p> <p>7 the elevator and you kind of --</p> <p>8 A. Yes, uh-huh.</p> <p>9 Q. Okay. You always --</p> <p>10 A. Oh, sorry.</p> <p>11 Why are you laughing at me?</p> <p>12 Q. No, no. We're laughing just because you're</p> <p>13 interrupting. She knows --</p> <p>14 A. Sorry.</p> <p>15 Q. That's okay. In normal conversation, this is</p> <p>16 how it goes. But when we're on the record, we have to</p> <p>17 be a little more patient. We both have been doing it.</p> <p>18 Let me start over. I can't remember where I</p> <p>19 was.</p> <p>20 MR. KUNZ: It was a path you normally take.</p> <p>21 BY MR. ROYAL:</p> <p>22 Q. Yeah, okay.</p> <p>23 You took the elevator every day. You didn't go</p> <p>24 all the way around to the escalator?</p> <p>25 A. Yes.</p>
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<p>1 A. Oh, yes, yes.</p> <p>2 Q. Okay. Where is the elevator in relation to the</p> <p>3 Grand Cafe?</p> <p>4 A. Well, you have the Grand Cafe, it's right</p> <p>5 across, because the elevator is here. It's in a little</p> <p>6 nook. Then to the right is that and then the restrooms.</p> <p>7 Q. Okay. I think I got it now. It's coming into</p> <p>8 my head here because there's the elevator lobby with all</p> <p>9 the guests. We're not talking about that.</p> <p>10 A. Oh, no, no, no.</p> <p>11 Q. This is a different elevator?</p> <p>12 A. (Nods head.)</p> <p>13 Q. So you come down the elevator. I understand</p> <p>14 where the nook is. And now I get it when you say you</p> <p>15 turn to your left and it's a straight shot --</p> <p>16 A. Exactly, yes.</p> <p>17 Q. -- to the bathrooms; right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So you're walking to the bathroom on</p> <p>20 your break and -- is that the bathroom that you would</p> <p>21 typically use during breaks?</p> <p>22 A. Yes.</p> <p>23 Q. And more than once a day?</p> <p>24 A. Could be.</p> <p>25 Q. But at least once a day?</p>	<p>1 Q. Is that correct?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Yes?</p> <p>4 A. Well, it depended if I went to get a salad or</p> <p>5 something and then go to the restroom. Every day I</p> <p>6 can't tell you or every moment exactly.</p> <p>7 Q. And I understand that, and I'm just trying to</p> <p>8 get your routine. Okay?</p> <p>9 But let's say --</p> <p>10 A. But that bathroom was most convenient.</p> <p>11 Q. So every day you would take a break and you</p> <p>12 would use the bathroom that you were headed to the day</p> <p>13 of the incident?</p> <p>14 A. Yes.</p> <p>15 Q. Was there -- so you had -- you leave your</p> <p>16 kiosk, you take the elevator, you've got a cup of</p> <p>17 coffee, and you're planning to use the restroom and then</p> <p>18 you're going to get some lunch or smoke or -- I don't</p> <p>19 know what your -- what were your plans?</p> <p>20 A. That -- that was it, to go to the restroom.</p> <p>21 Q. And then get something to eat?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Yes?</p> <p>24 A. Yes.</p> <p>25 Q. Were you going to go to the food court?</p>

1 A. Very rarely.
 2 Q. Okay. Where would you go to eat typically?
 3 A. They had that little snack shop to the left. I
 4 can't remember the names.
 5 Q. Snack shop to the left?
 6 A. And then the Bouchon Bakery. Is that upstairs
 7 or down? I don't know.
 8 Q. I think there's one downstairs, but...
 9 A. That's the one I went to. They had good
 10 salads.
 11 Q. Tell me about -- we're at the date of the
 12 incident. You've come down the elevator, you've turned
 13 left, you're walking almost a straight shot to the
 14 women's restroom. Tell me what happened.
 15 A. I walked out, focussing on the people because
 16 it's very crowded there a lot of times because -- during
 17 the convention. And I was going to the restroom and the
 18 next thing I know, my -- that's the one thing I can
 19 remember, is my feet in front of me as I went down hard.
 20 Q. Okay. When you -- as you're approaching this
 21 area, did you notice anything unusual about the floor?
 22 A. No. My eyes were up here looking at the people
 23 trying not to hit somebody.
 24 Q. You weren't scanning the floor --
 25 A. No.

1 Q. -- as you're walking; right?
 2 Is that correct?
 3 A. That's correct.
 4 Q. Were you in a hurry?
 5 A. No.
 6 Q. Do you remember if you had the beverage in your
 7 right or left hand?
 8 A. No.
 9 Q. So you remember your feet going out quickly in
 10 front of you?
 11 A. Yes.
 12 Q. Tell me about as you fell.
 13 What do you remember about the fall itself, how
 14 you landed?
 15 A. I just remember landing hard. Whether it was
 16 my back, my butt, I don't know. I just remember going
 17 backwards and I was dazed. I mean, shocked. I can't --
 18 I don't remember. That's what kills me. I don't
 19 remember --
 20 Q. Okay.
 21 A. -- exactly what was on the floor or...
 22 Q. Right.
 23 A. I know it was liquid because my pants felt wet.
 24 Q. Okay. So let me get back to the fall.
 25 A. Okay.

1 Q. Because your initial complaint was your left
 2 elbow.
 3 Do you remember striking your left elbow?
 4 A. Yes, I do. Hard on the marble, yes.
 5 Q. Do you remember -- other than your left elbow,
 6 do you remember striking your head?
 7 A. My shoulder.
 8 Q. Your left shoulder?
 9 A. Uh-huh, because it was on the left side because
 10 I was trying to -- I just went -- it happened so quick.
 11 Q. Okay. Let's -- I'm trying to take it one frame
 12 at a time here.
 13 So you struck your left shoulder -- I'm sorry.
 14 Strike that.
 15 Your feet go out in front of you, you strike
 16 your left elbow, and you remember striking your left
 17 shoulder -- part of your shoulder; correct?
 18 A. Yes.
 19 Q. Do you remember striking your hip, your left
 20 hip? That's something you remember?
 21 A. I kind of remember just bouncing and I hit so
 22 hard, but I don't know -- I don't remember -- it's hard.
 23 Q. Okay. Do you recall what happened to your
 24 drink that you were carrying?
 25 A. No, I do not.

1 Q. Okay. Do you recall if any -- so you don't
 2 recall if any of part of your drink spilled when you
 3 fell?
 4 A. No.
 5 Q. You said that after the fall you're shocked and
 6 dazed, something you're not expecting; right?
 7 A. Correct.
 8 Q. You felt immediate pain in your left elbow?
 9 A. Yes.
 10 Q. Did you feel immediate pain in your left
 11 shoulder?
 12 A. Yes. My neck, my head, yes.
 13 Q. Okay. You felt immediate pain in your head?
 14 A. Again, I fell on my left side hard. And I'm
 15 not 90 pounds, so when I fell hard, yeah, I felt it, the
 16 pain, the whole side, the left side.
 17 Q. So when you say "the whole side," was it the
 18 left side of your head?
 19 A. It just went down from my neck down.
 20 Q. Okay. Now, so I'm pointing to, like, the back
 21 part of your head.
 22 Do you recall any part of your head striking
 23 anything?
 24 A. Yes. I remember just bouncing.
 25 Q. Okay. So did you have a sore spot on your head

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<p>1 from when you fell?</p> <p>2 A. Yes.</p> <p>3 Q. Was it, like, a bump or just sore when you</p> <p>4 touched it?</p> <p>5 A. Sore when I touched it.</p> <p>6 Q. Okay. And so you have the left side of your</p> <p>7 head, the left -- or then your neck. I'm going to say</p> <p>8 the left side of your neck only because you've been</p> <p>9 pointing to your left side; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And then your left shoulder and your left</p> <p>12 elbow?</p> <p>13 A. Elbow.</p> <p>14 Q. Okay. What do you remember right after the</p> <p>15 incident? What's the next thing you remember? People</p> <p>16 coming to you and seeing if you're okay?</p> <p>17 A. I remember people in my face, "Are you okay?</p> <p>18 Are you okay?" That's all I remember. I just -- I</p> <p>19 don't know what you call it. For me to not remember,</p> <p>20 it's hard.</p> <p>21 Q. Okay. How long were you on the floor?</p> <p>22 A. That, I do not know.</p> <p>23 Q. Do you remember someone from security coming to</p> <p>24 speak with you?</p> <p>25 A. Is that the, like, paramedic?</p>	<p>1 your shirt?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Yes?</p> <p>4 A. Yes.</p> <p>5 Q. Anywhere else?</p> <p>6 A. I didn't -- again, when I hit hard, I do not</p> <p>7 remember a lot from back then, but I do remember being</p> <p>8 wet.</p> <p>9 Q. Okay. And I understand that. And I'm not</p> <p>10 trying to badger you. I'm just trying to get as best</p> <p>11 information I can when you say you felt wet, so I just</p> <p>12 want to know what parts of your body you felt wet.</p> <p>13 So you've indicated the left rear and you think</p> <p>14 maybe --</p> <p>15 A. Back.</p> <p>16 Q. -- the low-back area; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Any other areas where you recall specifically</p> <p>19 that were wet?</p> <p>20 A. I do not recall.</p> <p>21 Q. Okay. So as I understand it, you fell -- you</p> <p>22 didn't see anything on the floor before your fall;</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. You've described your fall. You didn't see</p>
Page 94	Page 96
<p>1 Q. EMT?</p> <p>2 A. The EMT, yes.</p> <p>3 Q. Do you remember --</p> <p>4 A. He was trying to help me up.</p> <p>5 Q. Do you remember anything about your</p> <p>6 conversation with him?</p> <p>7 A. No. I remember him walking me upstairs and</p> <p>8 fixing my arm so that I could drive to the hospital.</p> <p>9 That's all.</p> <p>10 Q. Do you remember -- you said there was liquid on</p> <p>11 your pants?</p> <p>12 A. Yes.</p> <p>13 Q. Where on your pants?</p> <p>14 A. Back side.</p> <p>15 Q. The back left side?</p> <p>16 A. Yes.</p> <p>17 Q. Can you describe -- is it your rear end?</p> <p>18 A. Yes.</p> <p>19 Q. So your left rear end?</p> <p>20 A. Yes.</p> <p>21 Q. Was it --</p> <p>22 A. And my back, so...</p> <p>23 Q. The back of your shirt?</p> <p>24 A. Yes.</p> <p>25 Q. So it was on the left rear end and the back of</p>	<p>1 anything on the floor after your fall? You didn't</p> <p>2 examine the floor and say, "There's something there"?</p> <p>3 A. No, I did not.</p> <p>4 Q. So what I said was correct?</p> <p>5 A. Correct. Yes. The EMT came and walked me</p> <p>6 upstairs.</p> <p>7 Q. Okay. When you stood -- do you remember people</p> <p>8 showing up with mops or anything like that?</p> <p>9 A. I just remember people yelling.</p> <p>10 Q. Okay. When you -- where were you -- or strike</p> <p>11 that.</p> <p>12 I understand that from the fall area you went</p> <p>13 to kind of a back-of-the-house place.</p> <p>14 A. Yeah. I don't even know where they took me.</p> <p>15 Q. That was somewhere in the security office or...</p> <p>16 A. Yes.</p> <p>17 Q. And while you were there, can you just tell us</p> <p>18 what happened?</p> <p>19 A. I remember sitting in a chair and him trying to</p> <p>20 talk to me, and he looked at my arm and then he started</p> <p>21 putting a brace on it or -- I don't know what they call</p> <p>22 it, but -- that's all I remember.</p> <p>23 Q. Okay. Then what happened after he put the</p> <p>24 sling on?</p> <p>25 A. He walked me to the car and I -- it was over</p>

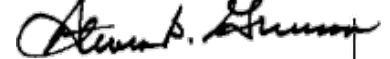
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<p>1 here. And I'm right-handed, so I drove right to</p> <p>2 Centennial Hospital.</p> <p>3 Q. Okay. Before he walked you to your car, did he</p> <p>4 take -- did you go back to your kiosk?</p> <p>5 A. Yes. I remember -- I told him I left my -- no.</p> <p>6 I left -- I left something there. I'm not sure what it</p> <p>7 was, but I left something. I remember him walking me to</p> <p>8 the booth to get it.</p> <p>9 Q. Okay. So you picked up -- the security officer</p> <p>10 walked with you from the medical room, or where he put</p> <p>11 the sling on, to your kiosk where you had last worked?</p> <p>12 A. Correct. Correct.</p> <p>13 Q. You picked up whatever it was --</p> <p>14 A. I don't know what it was, a book. I don't know</p> <p>15 what it was, but I got it.</p> <p>16 Q. And that's the last time that you've ever been</p> <p>17 to your kiosk, a kiosk?</p> <p>18 A. Yes.</p> <p>19 Q. Then he walked you out, and according to his</p> <p>20 report, you went to the eighth floor and then you drove?</p> <p>21 A. Then I must have -- yes, and then I went right</p> <p>22 to the hospital.</p> <p>23 Q. Okay. I'm going to show you what we'll mark as</p> <p>24 Exhibit C.</p> <p>25 ///</p>	<p>1 Q. Do you remember him asking you questions about</p> <p>2 where you worked?</p> <p>3 A. No, but I must have told him upstairs in the</p> <p>4 shops, yeah. I don't know. I don't remember.</p> <p>5 Q. Then the next -- I already asked you about the</p> <p>6 next sentence, but I'll read it. "I noted that a public</p> <p>7 areas department team member was on scene and mopping</p> <p>8 the floor in the area."</p> <p>9 Does that refresh your recollection about</p> <p>10 mopping, people being around mopping?</p> <p>11 A. (Reading document.)</p> <p>12 I'll be honest, I can't remember.</p> <p>13 Q. Okay. The next sentence, "Sekera apologized</p> <p>14 for falling and did not appear to be in any immediate</p> <p>15 distress."</p> <p>16 Do you remember anything like that, apologizing</p> <p>17 for falling?</p> <p>18 A. No.</p> <p>19 Q. Okay. The next paragraph, the second sentence,</p> <p>20 it reads, "She stated she was walking through the area</p> <p>21 when she slipped in what she believed was water on the</p> <p>22 floor." I'll stop there.</p> <p>23 Does that refresh your recollection? Do you</p> <p>24 remember telling anyone you thought there was water on</p> <p>25 the floor?</p>
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<p>1 (Exhibit C was marked.)</p> <p>2 BY MR. ROYAL:</p> <p>3 Q. This is a security report identified as</p> <p>4 VEN 008009. It's called a narrative report and it's two</p> <p>5 pages.</p> <p>6 Have you seen this before?</p> <p>7 A. Never.</p> <p>8 Q. Okay. I'm just going to direct you to a few</p> <p>9 things that are written here and see -- this is one of</p> <p>10 those times where I'm going to show you something and</p> <p>11 see if it helps you remember.</p> <p>12 A. Okay.</p> <p>13 Q. Look at the first paragraph, and it indicates</p> <p>14 in the second sentence, it says, "I arrived on scene and</p> <p>15 met with Las Vegas Tours (business located in Grand</p> <p>16 Canal Shoppes) Employee Sekera, Joyce who was seated on</p> <p>17 the marble flooring."</p> <p>18 A. Right.</p> <p>19 Q. Do you remember being seated on the marble</p> <p>20 flooring after your fall?</p> <p>21 A. I remember after falling -- well, yeah. I</p> <p>22 remember when he -- the EMT came to me, I was like this,</p> <p>23 I remember.</p> <p>24 Q. Being seated?</p> <p>25 A. Yes, on the floor still. I didn't move.</p>	<p>1 A. No, I do not.</p> <p>2 Q. The next sentence. "She reported that she fell</p> <p>3 backwards and put her right hand behind her head to</p> <p>4 protect it."</p> <p>5 Does that refresh your recollection about</p> <p>6 anything?</p> <p>7 A. No. Again, when I hit hard, I -- everything's</p> <p>8 a blur.</p> <p>9 Q. Continuing on, "She landed on the marble floor</p> <p>10 and her left elbow struck the base of the pillar next to</p> <p>11 her."</p> <p>12 Does that refresh your recollection about</p> <p>13 anything?</p> <p>14 A. I just remember falling backwards and hitting.</p> <p>15 That's all.</p> <p>16 Q. Okay. The next sentence, "She denied striking</p> <p>17 her head during the fall and denied losing consciousness</p> <p>18 prior to or after falling."</p> <p>19 Do you recall having that discussion?</p> <p>20 A. No, I do not.</p> <p>21 Q. The next sentence, "She denied any head pain,</p> <p>22 neck pain, back pain, weakness, dizziness, or nausea at</p> <p>23 that time."</p> <p>24 Do you recall having that conversation?</p> <p>25 A. No.</p>

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<p>1 Q. "I noted that she was guarding her left elbow 2 and reported she was only experiencing pain there at the 3 time." 4 Does that refresh your recollection about 5 anything you've testified to? 6 A. I'm sorry? 7 Q. Let me restate it. I'll paraphrase. 8 A. Okay. 9 Q. He says you were guarding your left elbow. 10 That would make sense because your elbow hurt; 11 correct? 12 A. Right. 13 Q. And that probably was the most prominent thing 14 that hurt at the time. 15 Does that sound right? 16 I'm asking you. 17 A. Elbow, neck, yes. All of it. 18 Q. Okay. Head, shoulder, neck, elbow? 19 A. Yes. 20 Q. Do you remember guarding your left elbow, 21 holding your left elbow? 22 A. I don't remember, but it would feel natural to 23 do that if I hit on that side and... 24 Q. "She stated she was embarrassed" -- next 25 sentence. "She stated she was embarrassed, to which I</p>	<p>1 presented with an abrasion." 2 Do you remembering there being an abrasion on 3 your left elbow? 4 A. I just remember being very sore. 5 Q. Do you remember him examining you by maybe -- 6 he says -- he used the word "palpation" where he might 7 be touching certain areas that you say are sore, like 8 your shoulder, your neck, your head, your back, 9 anything? 10 A. No. 11 Q. You don't remember that? 12 A. No. 13 Q. He indicates here that you had limited range of 14 motion in your left elbow due to increase in pain on 15 movement. 16 Do you remember that? 17 A. I just remember I was really sore. I don't 18 remember anything that involved him touching me or... 19 Q. Do you remember having a conversation with this 20 officer about workers' compensation? 21 A. Who? What? 22 Q. Let's go to the next page. 23 A. Okay. 24 Q. And we'll go to the first full paragraph 25 starting with "Sekera."</p>
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<p>1 offered to assist her to a more private area." 2 Do you recall that conversation? 3 A. No. 4 Q. Next sentence, "She agreed and was assisted to 5 a standing position." 6 Do you remember being assisted to a standing 7 position? 8 A. I remember two gentlemen helping me up, yes. 9 Q. From the floor to a standing position? 10 A. Yes. 11 Q. "I asked if she felt any new pain, weakness, 12 dizziness, or nausea, to which she denied at that time." 13 Do you remember that conversation? 14 A. No. 15 Q. "She agreed to be assessed in the medical room 16 and refused wheelchair assistance." 17 Do you remember that? 18 A. I do not. 19 Q. "She was able to ambulate on her own to the 20 medical room and was able to sit without assistance." 21 Do you remember doing that? 22 A. No. I remember him helping me in the room on a 23 chair. 24 Q. Okay. The next paragraph, first sentence on 25 VEN 008, "Sekera's left elbow was exposed which</p>	<p>1 A. Okay. 2 Q. "Sekera agreed to seek further medical 3 attention but refused ambulance transport." 4 Do you remember having that conversation? 5 A. No, but I would do that. I would get my car 6 out of there and go to the hospital if I could drive, 7 and I had my -- you know, I'm right-handed, so I knew I 8 could get there. 9 Q. Okay. Do you remember refusing ambulance 10 transport? 11 A. No. 12 Q. It says, next sentence, "She stated her job did 13 not provide workers' compensation and did not know where 14 she should go." 15 Do you remember that conversation? 16 A. No. 17 Q. Did you have questions at the time about 18 whether you had workers' compensation? 19 A. No. It had nothing to do with that. No. That 20 was not in my mind. I wanted to make sure I was okay. 21 And, no, I definitely don't. 22 Q. The next sentence is, "After some discussion, 23 she opted to self-transport to Centennial Hills 24 Hospital, as it was close to her home." 25 Do you remember that?</p>

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<p>1 A. No, but that would sound right.</p> <p>2 Q. The next sentence, "She refused to complete a</p> <p>3 voluntary statement for the incident and completed a</p> <p>4 medical release."</p> <p>5 Do you remember that at all?</p> <p>6 A. No.</p> <p>7 Q. "She was escorted to her booth in the Grand</p> <p>8 Canal Shoppes, collected her belongings, and was</p> <p>9 escorted to her vehicle in the team member garage on</p> <p>10 Level 8."</p> <p>11 Does that sound correct?</p> <p>12 A. Yes. I did go to the booth with him, yeah.</p> <p>13 Q. Okay. What about the rest of it, that you were</p> <p>14 escorted to the team member garage on Level 8?</p> <p>15 A. Yes. I remember him escorting me, yes.</p> <p>16 Q. To Level 8?</p> <p>17 A. I don't remember the level.</p> <p>18 Q. Okay.</p> <p>19 A. Yeah.</p> <p>20 Q. He refers to this as the team member garage.</p> <p>21 Do you know what that references?</p> <p>22 A. Most likely I had a badge and I just don't</p> <p>23 remember it because it was right at the end and I didn't</p> <p>24 have it -- I don't have it. So I don't know if I got it</p> <p>25 or not or...</p>	<p>1 my understanding is that's a picture of your left elbow.</p> <p>2 A. Okay.</p> <p>3 Q. You haven't seen these pictures before?</p> <p>4 A. Never.</p> <p>5 Q. Okay. You can't say whether that is or isn't</p> <p>6 your left elbow; right?</p> <p>7 A. You're right, but it's a shirt that looks</p> <p>8 familiar.</p> <p>9 Q. Okay. Let's go to the next one.</p> <p>10 VEN 037, I guess it looks like these are a</p> <p>11 picture of your shoes?</p> <p>12 A. Yes.</p> <p>13 Q. Can you identify those as your shoes?</p> <p>14 A. Yes.</p> <p>15 Q. It's like a Wizard of Oz moment. Did you tap</p> <p>16 these shoes with your heel? Sorry. That was</p> <p>17 inappropriate.</p> <p>18 Okay. Let's go to the next one, VEN 038.</p> <p>19 That's another picture of your shoes?</p> <p>20 A. Yeah. I'm sorry. Yes.</p> <p>21 Q. Do you recognize your purse in the photo?</p> <p>22 A. No. And I don't have that one right now, so...</p> <p>23 Q. What do you mean you don't have that one?</p> <p>24 A. I mean I don't know about the purse. I don't</p> <p>25 remember the purse.</p>
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<p>1 It was a parking badge.</p> <p>2 Q. I see. Okay. That's it for that.</p> <p>3 I just have -- oh, I forgot about these. You</p> <p>4 know what, I'm just going to give you a set of photos,</p> <p>5 and we'll mark these as Exhibit D.</p> <p>6 (Exhibit D was marked.)</p> <p>7 BY MR. ROYAL:</p> <p>8 Q. I'm just going to show you these. We're going</p> <p>9 to go through some of these and I'm going to ask you if</p> <p>10 they refresh your recollection about anything you</p> <p>11 testified to.</p> <p>12 MR. KUNZ: He'll be referring to these numbers</p> <p>13 here.</p> <p>14 THE WITNESS: Okay.</p> <p>15 BY MR. ROYAL:</p> <p>16 Q. I don't really like the order of these</p> <p>17 necessarily, but we'll take them in order.</p> <p>18 The first one, VEN 035, do you recognize</p> <p>19 yourself in the photo?</p> <p>20 A. The shirt and the pants, yeah.</p> <p>21 Q. Do you remember somebody taking pictures --</p> <p>22 A. No.</p> <p>23 Q. -- when you were in the medical room?</p> <p>24 A. Definitely not.</p> <p>25 Q. The next page, VEN 036, I'll represent to you</p>	<p>1 Q. Do you recognize the shoes?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Let's go to the next one, VEN 039.</p> <p>4 Do you recognize what's depicted here?</p> <p>5 A. Oh, yeah. The elevator is over here, yes.</p> <p>6 Q. Okay. So you commented that the elevator would</p> <p>7 be to the left of this photo from this particular</p> <p>8 vantage point?</p> <p>9 A. Yes.</p> <p>10 Q. And you were walking in the direction of that</p> <p>11 man in the white shirt and shorts at the time the</p> <p>12 accident occurred?</p> <p>13 MR. KUNZ: There's two of them.</p> <p>14 MR. ROYAL: Oh, you're right, you're right.</p> <p>15 That was bad of me.</p> <p>16 BY MR. ROYAL:</p> <p>17 Q. You see the column there?</p> <p>18 A. Yes.</p> <p>19 Q. There's a man with a white shirt and shorts</p> <p>20 right next to the column and he's facing the bathroom.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Is that sort of the direction that you were</p> <p>24 walking at the time of the incident?</p> <p>25 A. That's correct.</p>

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<p>1 Q. This particular photo, this represents the</p> <p>2 bathroom that you were going to at the time of the</p> <p>3 incident?</p> <p>4 A. Yes.</p> <p>5 Q. And this is the bathroom that you would</p> <p>6 typically use at least once a day when you were working</p> <p>7 at the Venetian?</p> <p>8 A. Yes.</p> <p>9 Q. And typically to get to the bathroom, you would</p> <p>10 either go down the elevator or go down the escalator,</p> <p>11 both of which would be off to the left of the photo in</p> <p>12 this vantage point?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Let's go to the next photo. I'll</p> <p>15 represent to you my understanding is is that you'll see</p> <p>16 the column here and that this VEN 040 represents the</p> <p>17 area where you fell.</p> <p>18 Do you recognize it?</p> <p>19 A. Yes.</p> <p>20 Q. As you look at this photo, does anything about</p> <p>21 this photo refresh your recollection to anything you</p> <p>22 testified to at this point?</p> <p>23 A. I'm looking at the pillar and I know they have</p> <p>24 a pillar. I don't remember the floor per se, but I</p> <p>25 fell --</p>	<p>1 if you can. If you can't do it, I'll move on.</p> <p>2 A. Yeah. I don't think I can because I'm not sure</p> <p>3 how close I was to the pillar. I just know it was</p> <p>4 between the bathroom and in front of the pillar.</p> <p>5 Q. How about if we do this --</p> <p>6 A. Okay.</p> <p>7 Q. How about if I just have you put an "X" on the</p> <p>8 pillar to identify that as the pillar that was closest</p> <p>9 to the area of your fall? Can you do that?</p> <p>10 A. Yes. Thank you.</p> <p>11 Q. Okay. Just put an "X" on the pillar, and as I</p> <p>12 understand it, it's going to be next to that guy in the</p> <p>13 shorts and --</p> <p>14 MR. KUNZ: And this is VEN 039?</p> <p>15 MR. ROYAL: Correct.</p> <p>16 MR. KUNZ: So VEN 039, here's the guy. So</p> <p>17 where do you think it was?</p> <p>18 BY MR. ROYAL:</p> <p>19 Q. Just identify the pillar.</p> <p>20 A. Oh, just of the pillar?</p> <p>21 Q. Just the pillar.</p> <p>22 A. Okay.</p> <p>23 (Complies.)</p> <p>24 Q. Okay. So you've made a circle. That</p> <p>25 identifies the pillar that was closest to you when you</p>
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<p>1 Q. Near a pillar?</p> <p>2 A. If this is the same area.</p> <p>3 Q. So let's go back one to VEN 039.</p> <p>4 A. Oh, that's -- yeah.</p> <p>5 Q. So what I'm going to have you do, I think,</p> <p>6 is -- I am going to pull out a marker, if I can find</p> <p>7 one.</p> <p>8 I'm going to have you circle the pillar and</p> <p>9 kind of the area --</p> <p>10 A. See, I --</p> <p>11 Q. If you can.</p> <p>12 A. I can see a pillar. I know they have a pillar</p> <p>13 before that restroom. As far as the floor exactly</p> <p>14 where, I couldn't tell you.</p> <p>15 Q. I understand. What I'm looking for is for you</p> <p>16 to draw just a circle to represent the general area.</p> <p>17 A. Where I was walking?</p> <p>18 Q. Right, at the time you fell.</p> <p>19 So, for example, we know that you fell</p> <p>20 somewhere within, let's say, five or six feet of this</p> <p>21 pillar, would that be a fair statement?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So if I were to ask you to take this and</p> <p>24 just kind of circle -- you can make it as wide as you</p> <p>25 want -- circle an area on this photo that shows your --</p>	<p>1 fell; correct?</p> <p>2 A. Correct.</p> <p>3 Q. What I want you to do is just on the bottom</p> <p>4 left there, put your initials and today's date.</p> <p>5 A. (Complies.)</p> <p>6 Q. Let's see. Let me just ask you this -- do you</p> <p>7 have a question about what you just marked?</p> <p>8 A. No.</p> <p>9 Q. Okay. Let me ask you this: Let's go to 040,</p> <p>10 and if I were to represent to you that this is the same</p> <p>11 pillar that you marked in VEN 039, are you able to draw</p> <p>12 a circle over the general area where the slip occurred</p> <p>13 in this photo? Either you can or can't.</p> <p>14 A. See, this photo is showing me it could be</p> <p>15 anywhere in the Venetian because it's so big. And if</p> <p>16 you say it's the same pillar --</p> <p>17 Q. Correct.</p> <p>18 A. -- I just don't know the distance on where I --</p> <p>19 Q. So here's my question -- it's a "yes" or</p> <p>20 "no" -- and I'm just asking, as I understand it, looking</p> <p>21 at 0 -- VEN 040, you're not able to -- assuming that the</p> <p>22 pillar that's represented there is the same pillar where</p> <p>23 you fell, you're not able to look at that and say,</p> <p>24 "Okay. This is the general area where I fell," and</p> <p>25 circle it?</p>

EXHIBIT “B”



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*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

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION**

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

Appearance:

Keith E. Galliher, Jr., Esq., for Plaintiff, JOYCE SEKERA

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

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

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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1 II.

2 RECOMMENDATIONS

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

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

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

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

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

23 ///

24 ///

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

2 DATED this 2nd day of April, 2019.

3
4 

DISCOVERY COMMISSIONER

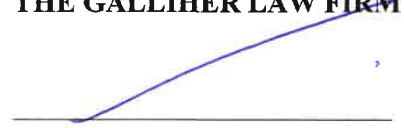
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6 Submitted by:

7 **Royal & Miles LLP**

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

Reviewed by:

7 **THE GALLIHER LAW FIRM**

8 
9 Keith E. Galliher, Jr., Esq.
10 Nevada Bar No. 220
11 1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
12 *Attorney for Plaintiff*

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IT IS FURTHER RECOMMENDED that the motion is otherwise denied.

DATED this _____ day of _____, 2019.

DISCOVERY COMMISSIONER

Submitted by:

Royal & Miles LLP

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

Reviewed by:

THE GALLIHER LAW FIRM

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

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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
10 being served with objections.

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

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

13 _____ Mailed to Plaintiff/Defendant at the following address on the _____ day of
14 _____ 2019:

15 ☒ Electronically filed and served counsel on 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 “C”

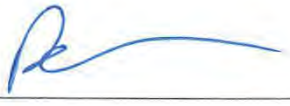
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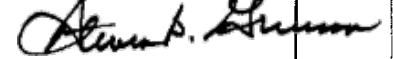
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2 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and
3 correct.

4
5 Dated February 13, 2019 at Las Vegas, Nevada.

6
7
8 Signed:  _____

9 Peter Goldstein, Declarant
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EXHIBIT “D”



1 **ORDER**

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

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

15 JOYCE SEKERA, an Individual,
16
17 Plaintiff,

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

18 v.

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

24 Defendants.

ORDER GRANTING MOTION TO
AMEND COMPLAINT TO INCLUDE
CLAIM FOR PUNITIVE DAMAGES
AND DENYING DEFENDANTS'
MOTION TO STRIKE

26 The above-entitled matter having come on for hearing pursuant to Plaintiff's Motion To
27 Amend Complaint To Include a Claim for Punitive Damages and Defendant's Motion To Strike,
28

JUN 13 2019

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

1 Plaintiff having appeared by and through her attorneys, KEITH E. GALLIHER, JR., ESQ., and
2 KATHLEEN H. GALLAGHER, ESQ., of THE GALLIHER LAW FIRM, and Defendant having
3 appeared by and through it's attorney MICHAEL A. ROYAL, Esq., of ROYAL & MILES LLP, the
4 Court having reviewed the moving papers, opposition thereto, reply to said opposition, and having
5 reviewed the papers prepared in connection with Defendant's Motion to Strike and having further
6 reviewed the papers prepared in connection with Defendant's Motion to Strike and having further
7 heard the oral arguments of counsel and being fully advised in the premises, and good cause
8 appearing therefore;

9 **IT IS HEREBY ORDERED** that Plaintiff's Motion To Amend Complaint To Include A
10 Claim For Punitive Damages be and the same hereby is **GRANTED**, the Court finding that it would
11 be a disservice to the case to not allow discovery that could support punitive damages;


12 **IT IS FURTHER ORDERED** that Plaintiff should promptly serve her Amended Complaint
13 upon counsel for Defendant;

14 **IT IS FURTHER ORDERED** that counsel for Defendant shall have twenty (20) days from
15 the date of service to answer or otherwise respond to said complaint;


16 **IT IS FURTHER ORDERED** that Defendant's Motion to Strike be and the same hereby is
17 **DENIED.**

18
19 Submitted by:

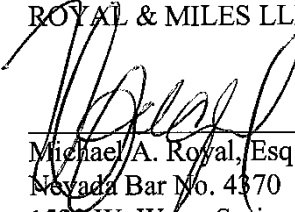
20 THE GALLIHER LAW FIRM

21
22 
23
24
25 Keith E. Galliher, Jr., Esq.
26 Nevada Bar No. 220
27 1850 E. Sahara Avenue, Suite 107
28 Las Vegas, Nevada 89104
Attorney for Plaintiff


KATHLEEN DELANEY
DISTRICT COURT JUDGE

 Approved as to form:

ROYAL & MILES LLP.


Michael A. Royal, Esq.
Nevada Bar No. 4370
1522 W. Warm Springs Road
Henderson, Nevada 89014
Attorney for Defendant

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

1 Plaintiff having appeared by and through her attorneys, KEITH E. GALLIHER, JR., ESQ., and
2 KATHLEEN H. GALLAGHER, ESQ., of THE GALLIHER LAW FIRM, and Defendant having
3 appeared by and through it's attorney MICHAEL A. ROYAL, Esq., of ROYAL & MILES LLP, the
4 Court having reviewed the moving papers, opposition thereto, reply to said opposition, and having
5 reviewed the papers prepared in connection with Defendant's Motion to Strike and having further
6 heard the oral arguments of counsel and being fully advised in the premises, and good cause
7 appearing therefore;

8
9 **IT IS HEREBY ORDERED** that Plaintiff's Motion To Amend Complaint To Include A
10 Claim For Punitive Damages be and the same hereby is **GRANTED**, the Court finding that it would
11 be a disservice to the case to not allow discovery that could support punitive damages;

12 **IT IS FURTHER ORDERED** that Plaintiff should promptly serve her Amended Complaint
13 upon counsel for Defendant;

14
15 **IT IS FURTHER ORDERED** that counsel for Defendant shall have twenty (20) days from
16 the date of service to answer or otherwise respond to said complaint;

17 **IT IS FURTHER ORDERED** that Defendant's Motion to Strike be and the same hereby is
18 **DENIED**.

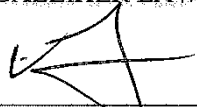
19
20 KATHLEEN DELANEY
21 DISTRICT COURT JUDGE

22 Submitted by:

Approved as to form:

23 THE GALLIHER LAW FIRM

ROYAL & MILES LLP.

24 
25 Keith E. Galliher, Jr., Esq.
26 Nevada Bar No. 220
27 1850 E. Sahara Avenue, Suite 107
28 Las Vegas, Nevada 89104
Attorney for Plaintiff

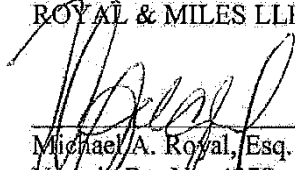

Michael A. Royal, Esq.
Nevada Bar No. 4370
1522 W. Warm Springs Road
Henderson, Nevada 89014
Attorney for Defendant

EXHIBIT “E”

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF MARIA CONSUELO CRUZ

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

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

Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

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

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

15 * * * * *

18 I N D E X

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

25 -o0o-

MARIA CONSUELO CRUZ 4/17/2019

Page 3

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

Page 4

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

Page 5

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

Page 6

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

3 (Pages 3 to 6)

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

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

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

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

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

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

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

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

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

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

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

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