

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No. \_\_\_\_\_  
District Court Case No. A-18-772761-C

Electronically Filed  
Oct 11 2021 10:38 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

v.

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

EMERGENCY PETITION UNDER NRAP 27(e)

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

ACTION IS NEEDED BY OCTOBER 14, 2021, BEFORE PETITIONER IS  
REQUIRED TO DISCLOSE THE CONFIDENTIAL INFORMATION

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

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### **NRAP 26.1 DISCLOSURE**

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

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

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

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

DATED this 8 day of October 2021.

ROYAL & MILES LLP

By: 

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1522 W. Warm Springs Rd.

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(702) 471-6777

Counsel for Petitioners

## **ROUTING STATEMENT**

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

## **NOTICE OF RELATED PROCEEDING**

The issues raised in this Petition for Writ of Mandamus and/or Writ of Prohibition arise from a September 7, 2021, order issued in District Court Case No. A-18-772761-C. A related issue was previously brought before the Court of Appeals in connection with a July 31, 2019, order (case no. 79689-COA) and a March 13, 2020, order (case no. 80816-COA). As a result of the prior proceedings, the Nevada Court of Appeals issued a published decision identified as *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 467 P.3d 1, 136 Nev. Adv. Op. 26 (May 14, 2020). The issues then presented were remanded to the District Court for further proceedings. This Petition follows the District Court’s latest order related to the same subject matter; *to wit*: the privacy rights of individuals and entities surrounding prior incident reports.

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

STATE OF NEVADA     )  
COUNTY OF CLARK    ) ss:

1. I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(5), 21(a)(6) AND 27(e).

2. I certify that I have read this Petition and, and the facts stated therein are within my knowledge. I further certify that to the best of my knowledge, information and belief, the facts stated in this are true and correct.

3. I further certify that this Petition complies with the form requirements of Rule 21(d) and is not frivolous or interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

4. I further certify that this brief complies with all Nevada Rules of Appellate Procedure, including the requirements of Rule 28(e) every assertion in the brief regarding matters in the record be supported by a reference to the

appendix where the matter relied upon is to be found. I understand I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

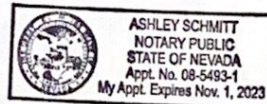
5. I have discussed the PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS with my Client and have obtained authorization to file this Writ Petition.

Further affiant sayeth naught.

  
MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before  
me by Michael A. Royal, Esq., on this  
0 day of October 2021.

  
NOTARY PUBLIC in and for said  
County and State



**NRAP 27(e) CERTIFICATE**

STATE OF NEVADA     )  
COUNTY OF CLARK    } ss:

1. I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(5), 21(a)(6) AND 27(e).

**CONTACT INFORMATION FOR ATTORNEYS FOR THE PARTIES**

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

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### **NOTICE TO THE PARTIES**

3. Counsel for Real Party in Interest, Joyce Sekera (hereinafter “Sekera”), was served with this Petition via electronic service as identified on the proof of service in this document. Prior to filing this Petition and Motion my office contacted, by telephone, the clerk of the Supreme Court, the Clerk of the Eighth Judicial District Court of the State of Nevada, and Real Party in Interest's attorney to notify them that Petitioners were filing the instant Petitioners' Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP, Rules 21(A)(6) And 27(E).

### **FACTS SHOWING EXISTENCE AND NATURE OF EMERGENCY**

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

5. The facts showing the existence and nature of Petitioners' emergency are as follows: A writ on this same issue was previously presented to the Nevada Court of Appeals, identified as case numbers 79689-COA and 80816-COA, addressing orders from the Eighth Judicial District Court of July 31, 2019 and March 13, 2020, which directed Venetian to produce unredacted prior incident

reports from November 4, 2011 to November 4, 2016 to the Plaintiff in the course of discovery without any requested protection under NRCP, Rule 26(c). In both of those cases, the Nevada Court of Appeals entered orders granting a stay of proceedings (an order granting stay in case No. 79689-COA was filed on October 17, 2019, and an order granting stay in case no. 80816-COA was filed on March 27, 2020).

6. On May 14, 2020, the Nevada Court of Appeals published an opinion granting the writ and remanding the case to the District Court with instructions for further proceedings.<sup>1</sup> The higher court instructed the District Court to determine whether “good cause” exists for protection under NRCP 26(c) and to demonstrate consideration of both relevance and proportionality under NRCP 26(b)(1).<sup>2</sup>

7. On June 15, 2020, Sekera petitioned for rehearing from the Nevada Court of Appeals, which was denied in an order filed on June 19, 2020.

8. On August 4, 2020, Sekera filed a petition with the Nevada Supreme Court for review. On October 23, 2020, the Nevada Supreme Court filed orders denying Sekera’s petition for review either of the matters addressed by the Nevada Court of Appeals (nos. 79689-COA and 80816-COA). A Notice in Lieu of Remittitur was filed by the Nevada Supreme Court on October 23, 2020.

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<sup>1</sup> *See, Venetian Casino Resort, LLC v. Eighth Judicial District Court, et al*, 136 Nev. Adv. Op. 26, 467 P.3d 1.

<sup>2</sup> *Id.*



9. On April 20, 2021, Sekera filed Plaintiff's Motion to Place on Calendar with the District Court. The issue of protection of private information of guests involved in prior incident reports under NRCP 26(c) was considered by the District Court after the parties provided additional briefing.

10. Following a June 1, 2021, hearing, the District Court ordered that Petitioners must now produce prior incident reports from November 4, 2011, to November 4, 2016, with contact information for all involved guests. The District Court Judge modified her previous order of July 31, 2019, to allow for redaction of protected health information related to any prior claims. Unfortunately, Sekera is already in possession of prior incident reports from November 4, 2013, to November 4, 2016, with unredacted protected health information (only guest contact information was redacted), and has freely distributed them to other persons for purposes having nothing to do with the subject litigation (and will likely continue publishing them). Therefore, unredacting contact information for those reports has the effect of having produced them in wholly unredacted form. The District Court did not offer a solution to that issue.

11. With respect to the November 4, 2011, to November 4, 2013, prior incident reports (which have not yet been produced) addressed in the March 13, 2020, order, releasing guest contact information even with redacted protected health information is an unreasonable invasion of privacy. This is especially the

case where Sekera remains able to share the information freely outside the litigation as she has previously done. Sekera has not established that prior guests involved in other incidents on Venetian property would have anything relevant to offer in relation to her litigation and that her right to have the information outweighs the privacy interests of those guests.

12. The District Court granted Petitioners' motion for a stay of proceedings to allow for this writ to be filed with the higher court.

13. The District Court entered its Order of Clarification on September 7, 2021, which was entered on September 14, 2021, providing Petitioners with a 30-day stay. The stay provided by the District Court will therefore expire on October 14, 2021.

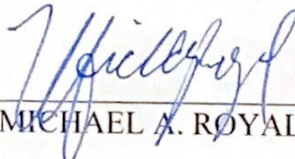
14. Petitioners assert that once this information is produced in unredacted form, it will be distributed outside the litigation by Sekera as it has in the past and that the harm will be irreparable. Accordingly, circumstances necessitate the filing of Petitioners' writ and the accompanying motion for stay of all proceedings.

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

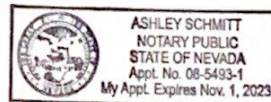
16. I further certify that this brief complies with all Nevada Rules of Appellate Procedure, including the requirements of Rule 28(e) every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand I may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

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

Further affiant sayeth naught.

  
MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before  
me by Michael A. Royal, Esq., on this  
8 day of October 2021.



  
NOTARY PUBLIC in and for said  
County and State

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## **PETITION**

COMES NOW, Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC (“Petitioners”), by and through their counsel of record, ROYAL & MILES LLP, and hereby petition this Court for a Writ of Prohibition and/or Mandamus under NRAP Rule 21(a) ordering the Eighth Judicial District Court to vacate the September 7, 2021 order compelling Petitioners to produce unredacted reports of other incidents occurring on the property of the Venetian Resort Hotel Casino (“Venetian”).

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

Alternatively, Petitioners are filing concurrently with this Petition, a motion to stay the underlying proceedings pursuant to NRAP Rules 8(a) and 27(e). This motion requests a stay of the September 7, 2021 order. If this Court grants that motion, then this writ petition may be considered on a non-emergency basis.

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

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

DATED this 8 day of October 2021.

ROYAL & MILES LLP

By: 

Michael A. Royal, Esq. (SBN 4370)  
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Counsel for Petitioners

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. STATEMENT OF CASE**

#### **A. SUMMARY**

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

During discovery, Sekera requested that Petitioners produce incident reports related to other slip and falls at the Venetian. The first such request sought reports from November 4, 2013, to November 4, 2016. Petitioners produced reports responsive to this request with the private information of other customers redacted as a courtesy with the understanding that a motion for protective order would follow. The Discovery Commissioner issued a Report and Recommendation on April 4, 2019, in which Venetian’s motion for protection under NRCP 26(c) was recommended to be granted. The Discovery Commissioner’s Report and Recommendation was challenged by Sekera in an objection filed with the District Court and resulted in a July 31, 2019, order requiring Petitioners to disclose the confidential information of these customers, with no protections under NRCP 26(c). Petitioners filed a writ challenging that Order in the Nevada Court of Appeals (Case No. 79689-COA). While this writ was pending, the District Court entered a second order on March 13, 2020, which directed Venetian to produce

unredacted prior incident reports from November 4, 2011, to November 4, 2016, without any requested protection under NRCP, Rule 26(c). Petitioner filed a writ challenging that order as well (Case no. 80816-COA).

The Nevada Court of Appeals granted both writs filed by Petitioners and entered an opinion on May 14, 2020, in which it referred the issue back to the District Court to determine whether Petitioners presented “good cause” for protection under NRCP 26(c) and whether the requirements of relevance and proportionality under NRCP 26(b)(1) had been fully considered by the District Court.

The only difference between the September 7, 2021, order at issue in the instant petition and the orders of July 31, 2019 and March 13, 2020 challenged in the prior writ petitions is that the District Court has recognized a privacy right related to personal health information of prior guests and ordered that such information be redacted (along with Social Security numbers, dates of birth and driver’s license numbers).

## **B. PROCEDURAL HISTORY**

The discovery at issue was previously reviewed by the Nevada Court of Appeals in case nos. 79689-COA and 80816-COA and addressed in *Venetian Casino Resort, LLC v. Eighth Judicial District Court, et al*, 136 Nev. Ad. Op. 26, 467 P.3d 1.

Sekera requested that Petitioners produce certain incident reports from November 3, 2013, to the present on August 16, 2018. Petitioners responded by producing sixty-four (64) redacted prior incident reports from November 4, 2013, to November 4, 2016. Sekera objected to the production of redacted reports; accordingly, on February 1, 2019, Petitioners filed a motion for protective order with the Discovery Commissioner pursuant to NRCP, Rule 26(c). Following a hearing on March 13, 2019, the Discovery Commissioner issued a Report and Recommendation on April 4, 2019, granting Petitioners' motion for protective order noting the need to protect the privacy interests of the uninvolved third parties and potential HIPAA related information. Sekera filed an objection to the Discovery Commissioner's Report and Recommendation, which was heard by the Honorable Kathleen Delaney on May 14, 2019. Judge Delaney reversed the Discovery Commissioner and ordered Petitioners to produce prior incident reports in unredacted form without any restrictions related to dissemination of private guest information. The order reversing the Discovery Commissioner's Report and Recommendation of April 4, 2019, was filed on July 31, 2019.

Petitioners filed a petition for writ of mandamus and/or writ of prohibition with the Nevada Supreme Court on September 26, 2019, and a motion to stay the July 31, 2019, order on September 27, 2019 (Case No. 79689-COA).

While that writ proceeding was pending before the Court of Appeals of the State of Nevada, the District Court issued another order on March 13, 2020, requiring production of unredacted prior incident reports from November 4, 2011, to November 4, 2013. Petitioners filed a petition for writ of mandamus and/or writ of prohibition with the Nevada Supreme Court and a motion to stay the March 13, 2020, order on March 20, 2020 (Case No. 80816-COA).

On October 17, 2019, the Court of Appeals issued an order staying, the July 31, 2019, District Court order until the issue could be fully adjudicated. On March 27, 2020, the Court of Appeals entered an order granting Petitioners' motion to stay the March 13, 2020, order.

On May 14, 2020, the Court of Appeals entered an order granting Petitioners' writ and remitted the issue back to the District Court to specifically address the issue of "good cause" under NRCP 26(c) and the requirements of relevance and proportionality under NRCP 26(b)(1). *See Venetian Casino Resort, LLC v. Eighth Judicial District Court, et al*, 136 Nev. Ad. Op. 26, 467 P.3d 1 (March 14, 2020).

In the September 7, 2021, order, Judge Delaney determined that her orders of July 31, 2019, and March 13, 2020, would be modified as follows: Petitioners are to produce prior incident reports with unredacted contact information for all guests, allowing redactions only for personal health information, date of birth,

Social Security numbers and driver's license numbers. Since Sekera has in her possession at least seventy-three (73) prior incident reports from November 4, 2013, to November 4, 2016, with redacted guest personal contact information and unredacted personal health information, this latest order would have the original effect of Petitioners producing unredacted reports to Sekera. Further, the District Court determined that beyond the aforementioned redactions, Sekera remains free to do as she desires with the personal guest information – including, but not limited to, sharing it with anyone, any time, in any manner, for any reason.

Judge Delany's order of September 7, 2021, will again require that Petitioners produce unredacted incident reports involving other Venetian guests, including those guests' names, addresses, telephone numbers, etc., without requested protection under NRCP 26(c) to prevent Sekera from sharing private information as she has previously done with the District Court's approval.

Petitioners once again hereby assert that once this information is produced in unredacted form, it will be immediately shared with others outside the litigation and the harm will be irreparable. Accordingly, circumstances necessitate the filing of this writ in order to clarify important issues of law and right the injustice to Petitioners as well as any other property owners or innkeepers concerned with the protection of patron privacy.

## **II. RELIEF SOUGHT**

Pursuant to Nev. Const. Art. 6, § 4, NRS § 34.320 or NRS § 34.160 and NRAP, Rule 21, Petitioners request that this Court issue a Writ of Mandamus and/or Writ of Prohibition instructing Respondent, the Eighth Judicial District Court of the State of Nevada, and the Honorable Judge Delaney to:

1. Vacate the September 7, 2021, order directing Petitioners to produce prior incident reports to Sekera without necessary protections requested under NRCP, Rule 26(c); and
2. Provide clarification on the issue of privacy rights of guests and non-employees identified in other incident reports obtained and retained by Petitioners and other like property owners and innkeepers.

Petitioner is requesting this relief on an emergency basis as irreparable harm will be caused to individuals who are not involved in this litigation if their private personal information is released before this Court rules on this writ petition.

Concurrently with this writ petition Petitioner is filing an emergency motion to stay the September 7, 2021, order. If this Court grants that motion, then this writ may be considered on a non-emergency basis.

## **III. ISSUES PRESENTED**

Whether the District Court erred, as a matter of law, in ordering Petitioners to produce prior incident reports from November 4, 2011 to November 4, 2016



with contact information for all involved guests, who have nothing to do with the subject incident, failing to appropriately weigh the issues of relevance and proportionality required under NRCP, Rule 26(b)(1) in refusing to provide protection of personal information of guests involved in other incidents on Venetian property, and failing to account for prior production of incident reports containing unredacted health information.

#### **IV. STANDARD OF REVIEW**

##### **A. STANDARDS FOR WRIT REVIEW AND RELIEF**

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

"[W]here an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction, our consideration of a petition for extraordinary relief may be justified." (*Mineral County v. State, Dep't of Conserv.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001) (internal citations omitted).)

Writ relief is warranted where the Petitioners do not have a plain, speedy, and adequate remedy at law. (*Millen v. District Court*, 122 Nev. 1245, 1250-1251 (2006).) Special factors favoring writ relief include status of underlying pleadings,

types of issues raised by the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented. (*D.R. Horton v. District Court*, 123 Nev. 468, 474-75 (2007).) An appellate court generally will address only legal issues presented in a writ petition. (See *Poulos v. Eighth Jud. Dist. Ct.*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).) "[T]he standard" in the determination of whether to entertain a writ petition is "[t]he interests of judicial economy." (*Smith v. Eighth Jud. Dist. Ct.*, 113 Nev. 1343, 1355, 950 P.2d 280, 281 (1997).) When the parties raise only legal issues on appeal from a district court order, the Court reviews the matter de novo. (*St. James Village, Inc. v. Cunningham*, 125 Nev. 211, 216 (2009).)

Petitioners contend that if they are forced to reveal private information of guests involved in other Venetian incidents without requested protections, "the assertedly [private and confidential] information would irretrievably lose its [private and confidential] quality and petitioners would have no effective remedy, even later by appeal." (See, *Wardleigh v. Second Judicial Dist. Court*, 111 Nev. 345, 350, 891 P.2d 1180, 1183-84 (1995).) Guests involved in other incidents, who are adversely impacted by the present district court order, are not parties to the district court proceedings, and are themselves not aggrieved parties within the meaning of NRAP 3A(a) rendering this the only forum for which relief can be granted. (*Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 358 P.3d 228, 231

(Nev. 2015).) In addition, the Supreme Court of Nevada and/or the Court of Appeals of Nevada are the proper forum to assess whether Petitioners are entitled to the relief being sought. Therefore, Petitioners seek to protect the privacy rights of Venetian guests wholly unaffiliated with the present litigation.

Petitioners moved for a stay of execution in district court, which was granted. But said stay will expire on October 14, 2021. Due to the exigent circumstances, and the potential violation of NRS § 34.320, where privacy rights for hundreds of individuals wholly unconnected to the subject litigation are at issue, this Emergency Petition is being filed with this Court pursuant to NRAP Rules 21(a)(6) and 27(e) asking this Court to grant the relief requested in less than 14 days. Alternatively, Petitioners herein move for an immediate stay pursuant to NRAP 8(a) so that the ordered discovery can be withheld until this Court can review the legal issues at hand in a non-emergency writ proceeding. Petitioners have no other available avenue for relief. This is a matter of great importance to Petitioners not only as to this litigation, but as to all future litigation, as there are presently no restrictions placed on Sekera regarding what she is allowed to do with the personal information ordered produced. Accordingly, without immediate relief or a stay, once Petitioners comply with the order by providing unredacted incident reports of unrelated matters to Sekera without any

restrictions, there is no reasonable means of repairing the damage associated with Sekera's stated intent to distribute the information.

**B. THIS PETITION PRESENTS EXTRAORDINARY CIRCUMSTANCES CALLING FOR EXTRAORDINARY RELIEF**

The subject litigation arises from a slip and fall incident allegedly occurring due to a foreign substance on the Venetian marble floor on November 4, 2016. Petitioners argue that these generally inadmissible prior incident reports are not relevant to the case considering prevailing Nevada law. (*See, Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962) ["where a slip and fall is caused by the temporary presence of debris or foreign substance on a surface, which is not shown to be continuing, it is error to receive "notice evidence" of the type here involved for the purpose of establishing the defendant's duty"])). Given the questionable relevance of this discovery, Petitioners contend there is no need for the discovery to include personal information on non-litigants. On the other hand, the irreparable damages of providing this unredacted information to Sekera without any of the requested protections under NRCP 26(c), where Sekera has previously shared the information with persons outside the litigation and may continue to do so with the District Court's blessing, will cause irreparable harm to the identified individuals and Petitioner. Therefore, Petitioners argue that it is clearly erroneous to require the production of this private guest information.

Absent intervention by this Court, Petitioners, and others similarly situated will suffer irreparable harm. In issuing its order of September 7, 2021, the District Court created an avenue through which plaintiffs, in all premises liability negligence claims, can obtain reports of other unrelated incidents in unredacted form and not only use them for purposes of the pending litigation, but to circulate them widely without restriction, thereby subjecting the private information of non-party former guests to abuse.

This case is set to commence trial on January 3, 2022. This Petition for Writ contains an important issue of law that will repeatedly reoccur absent immediate direction from this Court. While Judge Delaney's rulings in this case are not controlling authority in other cases, it is common practice within the Eighth Judicial District Court for an attorney to attach rulings from other judges to motions as persuasive authority.

A substantial risk exists that Judge Delaney's ruling will be adopted by other judges in the Eighth Judicial District Court and will result in an increase in cases in which plaintiffs seek unredacted other incident reports in similar cases without any privacy consideration or protection. Moreover, deciding this issue on Writ will promote judicial economy, as it will avert the expenditure of increased time associated with Sekera (and like plaintiffs) repeatedly contacting potentially hundreds of non-parties involved in matters wholly unaffiliated with the subject

litigation to engage in a prolonged fishing expedition to obtain irrelevant information not admissible at trial.

This Honorable Court has previously determined that the privacy issue presently before it regarding the production of prior incident reports is worthy of a stay. (*See* Court of Appeals of the State of Nevada, case no. 79689-COA, Order of October 17, 2019, case no. 80816-COA, Order of March 27, 2020.) It has also recognized a privacy right worthy of protection under NRCP 26(c). Nevertheless, Petitioners remain in the identical position of having to produce prior incident reports in unredacted form without requested protection under NRCP, Rule 26(c). Petitioners respectfully submit that an immediate ruling overturning the September 7, 2021, order is necessary as they and their guests will suffer irreparable harm once this information is disclosed to Sekera.

Alternatively, Petitioners have concurrently filed a Motion for Stay of the September 7, 2021, order. If this honorable Court grants that motion for a stay, then this petition may be considered on a non-emergency basis.

## **V. RELEVANT FACTS**

This litigation arises from a slip and fall allegedly occurring from a foreign substance on the floor on November 4, 2016. The underlying case was filed on April 12, 2018 by Sekera, who alleged that on November 4, 2016 at approximately 12:36 pm, “Petitioners negligently and carelessly permitted a pedestrian walkway

to be unreasonably dangerous in that they allowed liquid on the floor causing the Sekera to slip and fall.”<sup>3</sup> Sekera related to Venetian security personnel at the scene following the incident that “she was walking through the area when she slipped in what she believed was water on the floor.”<sup>4</sup>

Sekera worked at a kiosk located in the Grand Canal Shops within the Venetian premises for nearly a year prior to the subject incident and testified in deposition that she walked through the subject fall area (“Grand Lux rotunda dome”) hundreds of times prior to the subject fall without incident.<sup>5</sup> Sekera asserts that the condition which caused her to slip and fall was the presence of a liquid substance.<sup>6</sup> On June 28, 2019, Sekera filed a First Amended Complaint after receiving leave of court to include a claim for punitive damages.<sup>7</sup> In the First Amended Complaint, Plaintiff specifically alleged: “On or about November 4, 2016 at approximately 1:00 p.m. Defendants negligently and carelessly permitted a

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<sup>3</sup> Appendix, Vol. 1, Tab 1, VEN 001-04, *Complaint* (filed April 12, 2018) at VEN 002, ln 25-28.

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

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

<sup>6</sup> *Id.* at VEN 018, ln 13-25; VEN 019, ln 1-4; VEN 026, ln 23; VEN 030, ln 10-25; VEN 031, ln 1-20.

<sup>7</sup> Appendix, Vol. 1, Tab 6, VEN 033-037, *First Amended Complaint* (filed June 28, 2019).

pedestrian walkway to be unreasonably dangerous in that they allowed liquid on the floor causing the Plaintiff to slip and fall.”<sup>8</sup>

## **VI. RELEVANT PROCEDURAL HISTORY**

As set forth in Petitioners’ prior petitions filed in case numbers 79689-COA and 80816-COA, Sekera requested that Petitioners produce incident reports related to slip and falls on the Venetian marble floors from November 4, 2013 to the present.<sup>9</sup> Petitioners responded by producing sixty-four (64) incident reports related to events from November 4, 2013 to November 4, 2016, redacting the names, addresses, phone numbers, dates of birth and other personal information of the individuals identified in the reports.<sup>10</sup> When Sekera objected to the redactions, Petitioners filed Defendants’ Motion for Protective Order with the Discovery Commissioner, seeking an order protecting the personal information of prior guests. In an April 4, 2019, Report and Recommendation the Discovery Commissioner granted Petitioners’ motion for protective order.<sup>11</sup>

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<sup>8</sup> *Id.* at VEN 035, ln 4-7.

<sup>9</sup> Appendix, Vol. 1, Tab 7, VEN 038-041, *Plaintiff’s Request for Production of Documents and Materials to Defendant* (served August 16, 2018) at VEN 040, Request No. 7

<sup>10</sup> Appendix, Vol. 1, Tab 8, VEN 042-053, *Fifth Supplement to Defendants’ 16.1 List of Witnesses and Production of Documents for Early Case Conference* (served January 4, 2019) at VEN 045, ln 9. Sekera now has in her possession seventy-three (73) prior incident reports redacted to protect Venetian guest identity. (*See* Appendix, Vol. 14, Tab 87 at VEN 3176:10-15.)

<sup>11</sup> Appendix, Vol. 1, Tab 14, VEN 201-06, *Discovery Commissioner’s Report and Recommendation* (filed April 4, 2019), VEN 201-206.



Sekera filed an objection to the Discovery Commissioner's Report and Recommendation, which was heard by the District Court Judge on May 14, 2019. The District Court Judge reversed the Discovery Commissioner.<sup>12</sup> In a July 31, 2019, order Judge Delany ordered Petitioners to produce the subject reports unredacted.<sup>13</sup>

Petitioners filed a petition for writ of mandamus and/or writ of prohibition with the Nevada Supreme Court on September 26, 2019, and it was assigned for adjudication by the Nevada Court of Appeals.<sup>14</sup> A stay was ordered by the Nevada Court of Appeals on October 17, 2019.<sup>15</sup>

Following the July 31, 2019, order, and before Petitioners filed the first writ on this matter identified as case number 79689-COA, Sekera served Petitioners with a further request for production seeking incident reports from 1999 to the present. Petitioners filed a motion for protective order that was heard on September 18, 2019. During a hearing on September 18, 2019, the Discovery Commissioner, based on Judge Delaney's prior rulings, ordered that Petitioners produce unredacted

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<sup>12</sup> Appendix, Vol. 2, Tab 15, VEN 207-66, *Transcript of Hearing on Objection to Discovery Commissioner's Report* (May 14, 2019).

<sup>13</sup> Appendix, Vol. 2, Tab 16, VEN 267-70, *Order* (filed July 31, 2019).

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

<sup>15</sup> Appendix, Vol 5, Tab 29, VEN 538-606; Tab 31, VEN 626-27; Tab 34, VEN 649-701; Tab 35, VEN 702-10; Tab 36, VEN 711-12. *See also* Court of Appeals of the State of Nevada, case no. 79689-COA.

incident reports from November 4, 2011, to the present.<sup>16</sup> Both parties timely filed Objections to the Discovery Commissioner's Report and Recommendation of December 2, 2019, and responses thereto, with a hearing set for January 21, 2020, before the District Court.<sup>17</sup>

At the January 21, 2020 hearing, Judge Delaney again ordered that Petitioners must produce unredacted copies of prior incident reports – this time for the time period of November 4, 2011 to November 4, 2016.<sup>18</sup> Petitioners then filed a second petition for writ relief on March 17, 2020 and a stay was granted on March 27, 2020.<sup>19</sup> On May 14, 2020, the Nevada Court of Appeals filed an

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<sup>16</sup> See Appendix, Vol. 3, Tab 21, VEN 484-85 (*Court Minutes, Discovery Commissioner* (September 18, 2019), indicating production of unredacted incident reports for the five years preceding and the three years after the subject incident); *see also* Appendix, Vol 6, Tab 38, VEN 750-936; Tab 39, VEN 937; Tab 40, VEN 938-88; Vol 7, Tab 40, VEN 989-1005; Tab 41, VEN 1006; Tab 42, VEN 1007-1228; Vol 8, Tab 42, VEN 1229-1476; Vol 9, Tab 42, VEN 1477-86; Tab 43, VEN 1487-1719; Vol 10, Tab 44, VEN 1720-1896; Tab 45, VEN 1897-1917; Tab 46, VEN 1918-21; Tab 47, VEN 1922-64.; Vol 11, Tab 48, VEN 1965-75.

<sup>17</sup> Appendix, Vol 11, Tab 49, VEN 1976-2204; Vol 12, Tab 49, VEN 2205-22; Tab 50, VEN 2223-2391; Tab 51, VEN 2392-2444; Vol 13, Tab 51, VEN 2445-2595; Tab 52, VEN 2596-2602; Tab 53, Vol 2603-15.

<sup>18</sup> Appendix, Vol. 13, Tab 54, *Reporter's Transcript of Proceedings on Hearing of January 21, 2020*, VEN 2617-60, Tab 55 at VEN 2646:1-17; 2649:22-25; 2650:1-4,14-25; 2651:1-25; 2652:1-3; Tab 56, *Order on Objections to the Discovery Commissioner's Report and Recommendation Dated December 2, 2019* (filed March 13, 2020), VEN 2661-64. (Note that the issue of case no. 79689-COA, Nevada Court of Appeals, relates to the production of prior incident reports for the time period of November 4, 2013, to November 4, 2016.)

<sup>19</sup> Appendix, Vol. 13, Tabs 66-67, 69 at VEN 2855-2925, VEN 2946-47.

opinion granting Petitioners' writ with direction to the District Court to conduct further proceedings consistent with its opinion responsive to the initial writ.<sup>20</sup>

On June 15, 2020, Sekera petitioned for rehearing from the Nevada Court of Appeals, which was denied in an order filed on June 19, 2020.<sup>21</sup> Concurrently, Petitioners' writ of mandamus was granted by the Nevada Court of Appeals in case no. 80816-COA on June 19, 2020.<sup>22</sup> On August 4, 2020, Sekera filed a petition with the Nevada Supreme Court for review.<sup>23</sup> The Nevada Supreme Court directed Petitioners to respond, which answer was filed on October 9, 2020.<sup>24</sup> On October 23, 2020, the Nevada Supreme Court filed orders denying Sekera's petition for review in both matters (Nos. 79689 and 80816). A Notice in Lieu of Remittitur was filed by the Nevada Supreme Court on October 23, 2020.<sup>25</sup>

On April 30, 2021, Sekera filed Plaintiff's Motion to Place on Calendar.<sup>26</sup> The issue of privacy and protection requested under NRCP 26(c) was again considered by the District Court after the parties provided additional briefing.<sup>27</sup>

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<sup>20</sup> Appendix, Vol. 13, Tab 73 at VEN 3012-25.

<sup>21</sup> Appendix, Vol. 13, Tab 75 at VEN 3029-58.

<sup>22</sup> Appendix, Vol. 14, Tab 77 at VEN 3060-63.

<sup>23</sup> Appendix, Vol. 14, Tab 79 at VEN 3068-97.

<sup>24</sup> Appendix, Vol. 14, Tabs 80-82 at VEN 3098-3155.

<sup>25</sup> Appendix, Vol. 14, Tab 83 at VEN 3156-57.

<sup>26</sup> Appendix, Vol. 14, Tab 87 at VEN 3162-89. Petitioners intentionally excluded Sekera's Exhibit 4 of her motion as it contained approximately 658 pages of prior incident reports, the vast majority of which occurred outside the Grand Lux rotunda dome where the subject incident occurred and are entirely irrelevant considering the District Court's order of March 13, 2020, limiting prior incident

During the June 1, 2021 hearing, the District Court ordered that Petitioners must now produce prior incident reports from November 4, 2011 to November 4, 2016 with contact information for all involved guests.<sup>28</sup> Judge Delaney modified her previous order of July 31, 2019 to allow for redaction of protected health information related to any prior claims.<sup>29</sup> Unfortunately, Sekera is in possession of prior incident reports from November 4, 2013 to November 4, 2016 with unredacted protected health information (redacting only guest contact information) and has freely distributed them for purposes having nothing to do with the subject litigation and continues to freely publish them.<sup>30</sup> Therefore, unredacting contact information for those reports has the effect of having produced them wholly unredacted from the outset.<sup>31</sup> The Court did not offer a solution to that issue.<sup>32</sup>

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reports to a restricted area of the Venetian property. (*See* APPENDIX, Vol. 13, Tab 56, VEN 2661-64.) Sekera's publishing of hundreds of pages of prior incident reports which she knows have absolutely no bearing on this litigation is yet another example of how she continues to abuse this private information whenever she believes it will in some way advance her interests.

<sup>27</sup> Appendix, Vol. 14, Tab 87 at VEN 3162-89.

<sup>28</sup> Appendix, Vol. 15-16, Tabs 92-93 at VEN 3499-3547; Vol. 16, Tabs 94-95 at VEN 3548-72.

<sup>29</sup> Appendix, Vol. 16, Tab 94 at VEN 3548-57; *compare* Appendix, Vol. 2, Tab 16 at VEN 267-70.

<sup>30</sup> *Id.* Note that the July 31, 2019, order fully absolved Sekera of any wrongdoing by sharing the prior incident reports even as a motion for protection was pending.

<sup>31</sup> *See* note 3.

<sup>32</sup> Appendix, Vol. 16, Tab 94 at VEN 3548-57; *compare* Appendix, Vol. 2, Tab 16 at VEN 267-70.

With respect to the November 4, 2011, to November 4, 2013, prior incident reports (which have not yet been produced to Sekera), releasing guest contact information even with redacted protected health information is an unreasonable invasion of privacy. This is especially the case where Sekera remains able to share the information freely outside the litigation as she has previously done. Sekera has not established that prior guests involved in other incidents on Venetian property would have information reasonably relevant to the subject litigation and that her right to have the information outweighs the privacy interests of those guests.

Petitioners respectfully submit that they have presented sufficient cause for requested relief from the September 7, 2021, order as set forth herein.

## **VII. LEGAL ARGUMENT**

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

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

This litigation arises from a slip and fall occurring from a temporary transitory condition on November 4, 2016, within the Venetian Grand Lux rotunda dome.<sup>33</sup> Although Sekera walked safely through the subject area thousands of

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<sup>33</sup> See Appendix, Vol. 1, Tabs 1-6, VEN 001-037, *generally*.

times previously, on the day of the incident Sekera claims to have encountered a foreign substance for the first time, which she asserts caused her to slip and fall.<sup>34</sup>

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

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

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

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<sup>34</sup> See Appendix, Vol. 1, Tab 5, at VEN 021-025. See also Appendix, Vol. 1, Tabs 1-4, VEN 001-014, Tab 6, VEN 033-037, *generally*.

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

Sekera claims to have sustained injuries primarily to her neck and back. Her known treatment is approximately \$120,000, to date, thus far all conservative in nature nearly five (5) years post incident. Petitioners have produced evidence of other slip/fall incidents from a foreign substance occurring at Venetian occurring prior to Sekera's November 4, 2016, incident. The information for each such report identifies the date of incident, area of the incident, and the facts surrounding the incident. Sekera argued that this was insufficient, and she needed the personal contact information of the guests involved in each incident. Her only purported need for obtaining this private information is to contact these people in the event Petitioners will present arguments at trial related to comparative fault.<sup>35</sup> Sekera provided no other reason for needing the non-litigant guests' private information.

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<sup>35</sup> See Appendix, Vol. 2, Tab 15, at VEN 214, ln 12-25; VEN 215, ln 1-14; VEN 222, ln 14-25; VEN 223, ln 1-11; VEN 234, ln 3-25; VEN 235, ln 1-18; Appendix, Vol. 3, Tab 20, at VEN 469, ln 16-25; VEN 470, ln 1-12. Appendix, Vol. 14, Tab 87 at VEN 3166; Vol. 15, Tab 92 at VEN 3508:22-25 (Sekera contends her case "is going to resolve in a multi-million-dollar verdict"; VEN 3509:5-6 ("Plaintiff has the burden of proof for lack of comparative negligence"); VEN 3509:5-20 (other patrons can tell Sekera what kind of shoes they were wearing in their respective incidents).

Sekera also argued she has an unqualified right to share the guests' private information with anyone she desires – Judge Delaney agreed.<sup>36</sup>

Sekera's claim that there is no law restricting her use of confidential information is an inaccurate analysis of Nevada law. Rule 26(b)(1), Nevada Rules of Civil Procedure, places restrictions on her ability to obtain this information. Sekera is required to show this information is relevant and that her need for this information outweighs the guests' need to protect their private information. Sekera failed to make this showing in the District Court.<sup>37</sup>

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<sup>36</sup> Appendix, Vol. 1, Tab 10, VEN 084-085, *Declaration of Peter Goldstein, Esq.* (dated February 13, 2019) at VEN 084, ln 21-25, indicating that the subject prior incident reports were produced to Mr. Goldstein by Sekera counsel on February 7, 2019; Tab 12, VEN 140-85, *Sekera's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Sekera's Motion for Terminating Sanctions, in the matter of Smith v. Venetian, case no. A-17-753362-C* (filed March 12, 2019), at VEN 141, ln 15-26, VEN 147, ln 12-13, VEN 173. Tab 16, VEN 269 (the District Court finding that **“there is no legal basis to preclude Plaintiff from knowing the identity of the individuals contained in the incident reports”** and that **“[t]here is also no legal basis to preclude Plaintiff from sharing the unredacted incident reports with persons not involved in this litigation”**) (emphasis added).

<sup>37</sup> At the June 1, 2021, hearing, counsel for Sekera stated that the sharing of prior incident reports by Keith Galliher, Esq., of the Galliher Law Firm, is a non-issue because the Claggett & Sykes Law Firm is presently handling the litigation. (See Appendix, Vol. 16, Tab 93 at VEN 3538:19-25.) However, Keith Galliher, Esq., and other members of his firm are still attorneys of record on this case. (See Appendix, Vol. 14, Tab 87 at VEN 3162; Appendix, Vol. 16, Tab 95 at VEN 3558.)



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

Pursuant to the September 7, 2021, order, the District Court recognized that Petitioners have demonstrated “good cause” for a protective order under NRCP 26(c).<sup>38</sup> However, Judge Delaney’s latest order does not offer the desired protection. Certainly, as to the more than 600 pages of prior incident reports in Sekera’s possession, identifying the individuals now ties each individual to the private health information the Court deems worthy of protection. The District Court noted in its prior July 31, 2019 order that none of the information in these prior incident reports are worthy of protection and that nothing should be done to constrain Sekera from sharing the information as she pleases.<sup>39</sup> Now that Sekera has the information and has freely shared them with the District Court’s blessing, it is impossible to put the proverbial genie back in the bottle or to otherwise un-ring the bell.

So, while now recognizing a privacy right exists, the District Court has nevertheless provided Sekera with unfettered access to personal and sensitive information from non-parties to this action, which is not relevant to any claims or defenses in this matter. Sekera has already been provided with redacted prior incident reports for November 4, 2013, to November 4, 2016, to establish issues

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<sup>38</sup> Appendix, Vol. 16, Tab 93 at VEN 3531:10-17; Appendix, 16, Tab 95 at VEN 3567-69.

<sup>39</sup> Appendix, Vol. 2, Tab 16, VEN 267-70, *Order* (filed July 31, 2019).

associated with notice. The District Court's order that Petitioners reproduce them with unredacted names and redacted protected health information does not remedy the issue – especially since these reports have already been widely published by Sekera. Production of incident reports from November 4, 2011, to November 4, 2013 (not previously produced to Sekera) with contact information and redacted health information still remains an unnecessary and unreasonable invasion of privacy (and there are still no restrictions upon Sekera related to the sharing of these reports outside the litigation as she has previously done with the District Court's approval).

The Nevada Supreme Court has recognized that individuals have privacy interests that are protected from disclosure in discovery under NRCP 26(b)(1). (*Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977)) More recently, the Nevada Supreme Court recognized that information found within reports not falling squarely within the HIPPA categories may yet present “a nontrivial privacy interest” related to Venetian guests. (See *Clark Cty. Office of the Coroner v. Las Vegas Review-Journal*, 458 P.3d 1048, 1058-59 (2020); see also, *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 467 P.3d 1, 7, note 12.)

While Petitioners have not found Nevada case law applying the rule to individuals involved in prior incidents, the *Clark Cty. Office of the Coroner*

decision provides some insight. There, the Clark County Coroner's Office denied a newspaper's public records request for juvenile autopsy reports from January 2012 through April 2017 based on NRS § 432B.407(6), a confidentiality provision that applies to the child death review team as a whole. Overruling the Coroner's Office, the District Court ordered the production of unredacted juvenile autopsy reports. The Nevada Supreme Court reversed the lower court's decision accepting the Coroner's Office argument that **although the HIPAA definitions of "providers of health care" does not specifically include coroners or forensic pathologists, there was nevertheless a privacy interest worthy of protection.** (*Id.* at 1056-57 [emphasis added].) The court used a previously adopted two-part test from *Cameranesi v. United States Department of Defense*, 856 F.3d 626, 637 (9th Cir. 2017). Although this applies to disclosures by governmental entities, it is pertinent here by analogy.

The *Cameranesi* test first "requires the government to establish that disclosure implicates a personal privacy interest that is nontrivial or more than de minimis." (See *Clark Cty. Office of the Coroner*, supra, 458 P.3d at 1057.) If that burden is met, "the requester must then show that **the public interest sought to be advanced is a significant one and the information sought is likely to advance that interest.**" If the second prong is not met, the information should be redacted." (*Id.* [Emphasis added].) The court explained: "This balancing test

approach ‘ensures that the district courts are adequately weighing the competing interests of privacy and government accountability.’” (*Id.* [citations omitted.]) The *Clark Cty. Office of the Coroner* court held that “the Coroner's Office has demonstrated that a nontrivial privacy interest is at stake in the potential disclosure of juvenile autopsy reports” based on the sensitive medical information found within the requested reports. The court held that “the authorities the Coroner’s Office invokes to withhold the autopsy reports reflect a clear public policy favoring the protection of private medical and health-related information.” (*Id.* at 1058.)

The United States District Court has dealt with this issue and found in favor of protecting the privacy rights of third parties by redacting personal information. In *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694, the plaintiff, who slipped and fell on a clear liquid within a Las Vegas Wal- Mart store on May 18, 2013, filed a motion to compel the defendant to produce evidence of prior claims and incidents for the three (3) years preceding the subject incident. The court evaluated the claim under the federal equivalent of NRCP 26(b)(1) and Nevada law as set forth in *Eldorado Club, Inc., supra* at 511, 377 P.2d at 176. In *Izzo*, the defense had previously produced a list of prior reported slip and falls. The plaintiff sought the incident reports including personal information of the other Wal-Mart customers. The federal district court found that the burden on defendant

and the privacy interests of the non-litigants outweighed the tangential relevance of the information to the issues in the lawsuit. (*Id.* at 4, 2016 U.S. Dist. LEXIS at \*11.) Similarly, in the instant matter, Sekera has shown no compelling reason under NRCP 26(b)(1) for the production of non-litigant individual's private information. Accordingly, the District Court should not have ordered Petitioners to produce the prior incident reports.

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

Further, the Court finds that requiring disclosure of the addresses and telephone numbers of prior hotel guests would violate the privacy rights of third parties. "Federal courts ordinarily recognize a constitutionally-based right of privacy that can be raised in response to discovery requests." *Zuniga v. Western Apartments*, 2014 U.S. Dist. LEXIS 83135, at \*8 (C.D. Cal. Mar. 25, 2014) (citing *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 191 (C.D. Cal. 2006)). However, this right is not absolute; rather, it is subject to a balancing test. *Stallworth v.*

*Brollini*, 288 F.R.D. 439, 444 (N.D. Cal. 2012). "When the constitutional right of privacy is involved, 'the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced.'" *Artis v. Deere & Co.*, 276 F.R.D. 348, 352 (N.D. Cal. 2011) (quoting *Wiegele v. Fedex Ground Package Sys.*, 2007 U.S. Dist. LEXIS 9444, at \*2 (S.D. Cal. Feb. 8, 2007)). "Compelled discovery within the realm of the right of privacy 'cannot be justified solely on the ground that it may lead to relevant information.'" *Id.* Here, Plaintiff has not addressed these privacy concerns, much less demonstrated that her need for the information outweighs the third-party privacy interests. Therefore, the Court will not require Defendant to produce addresses or telephone numbers in response to Interrogatory No. 5.

(*Id.* at \*7. [Emphasis added.] )

Based upon the foregoing it is clear that the non-litigant individuals have a protected privacy interest and Sekera has done nothing to demonstrate a "compelling need" to violate that protected interest. Given the Nevada Supreme Court's finding that prior incident information is irrelevant to establish notice in the facts at issue in this matter (*i.e.*, *Eldorado Club, Inc.*, supra), Plaintiff necessarily cannot demonstrate a need outweighing the third-party guests' privacy interest. Accordingly, the District Court's September 7, 2021, order requiring Petitioners to produce Venetian guest personal information is clearly in error. (See also, *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620-21 (C.D. Cal. 2007) ["the rights of third parties can be adequately protected by permitting defendant to redact the guest's

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

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

The incident reports at issue here contain the sensitive and private information of individuals who are not parties to this lawsuit, and who are not believed to have any information about the facts or circumstances surrounding Sekera's allegations. There is a recognized interest in protecting the disclosure of personal client information, as unauthorized disclosure would damage the Petitioners' guest relationships.<sup>40</sup> Guests who stay at the Venetian do so with an

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<sup>40</sup>See, *Gonzales v. Google, Inc.*, 234 FRD 674, 684 (N.D. CA 2006) [disclosing client information "may have an appreciable impact on the way which [the

expectation that their personal information will not be disclosed or disseminated without their consent.

As noted by the Nevada Court of Appeals in the prior opinion issued in this matter, the Discovery Commissioner made the following very reasonable determination in recommending that Petitioners' motion for protective order be granted:

The discovery commissioner found **that there was a legitimate privacy issue and recommended that the court grant the protective order**, such that the reports remain redacted, and prevented Sekera from sharing the reports outside of the current litigation. The commissioner further recommended, however, that **after Sekera reviewed the 64 redacted reports and identified substantially similar accidents that occurred in the same location as her fall, the parties could have a dispute resolution conference** pursuant to EDCR 2.34. At that conference, the parties would have the opportunity to reach an agreement to allow disclosure of the persons involved in the previous similar accidents. If the parties failed to reach an agreement, Sekera could file an appropriate motion.

*Venetian Casino Resort, LLC*, supra at 3 (emphasis added).<sup>41</sup>

Notably, at no time has Sekera ever presented a single prior incident report to identify one that is “substantially similar ... that occurred in the same location as her fall” that might merit obtaining information to contact persons involved.

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company] is perceived, and consequently the frequency with which customers use [the company]”.]

<sup>41</sup> See also APPENDIX Vol. 1, Tab 14 at VEN 203, Discovery Commissioner's Report and Recommendation, filed April 4, 2019.



Instead, she has used a shotgun approach demanding the identity of all persons whether there are similar circumstances or not. Sekera's desire is to obtain the personal private information and not only use it in this litigation, but to share it freely as she has previously done. This was further demonstrated in the latest hearing below when Sekera attached a total of seventy-three (73) prior incident reports from November 4, 2013 to November 4, 2016 without any regard for where these incidents occurred within the Venetian property and whether they complied with the District Court's order of March 13, 2020, which limited discovery to the Grand Lux Rotunda Dome where Sekera's incident occurred.<sup>42</sup>

With the latest order of September 7, 2021, the District Court found that "good cause" exists for a protective order under NRCP 26(c), which is why Judge Delaney ruled that health-related information was to be redacted. However, that order does not go far enough. There is simply no legitimate discovery interest

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<sup>42</sup> APPENDIX, Vol. 14, Tab 87 at VEN 3176:1-18. Sekera has caused prior incident reports from November 4, 2013, to November 4, 2016, to be published in multiple proceedings in the Eighth Judicial District Court. Producing them to Sekera with personal contact information in unredacted form, while redacting protected health information at this point (as per the September 7, 2021, Order), would be tantamount to producing the entire reports in unredacted form. See Appendix, Vol. 1, Tab 10, VEN 084-085, *Declaration of Peter Goldstein, Esq.* (dated February 13, 2019) at VEN 084, ln 21-25, indicating that the subject prior incident reports were produced to Mr. Goldstein by Sekera counsel on February 7, 2019; Tab 12, VEN 140-85, *Sekera's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Sekera's Motion for Terminating Sanctions, in the matter of Smith v. Venetian, case no. A-17-753362-C* (filed March 12, 2019), at VEN 141, ln 15-26, VEN 147, ln 12-13, VEN 173. Tab 16, VEN 269.

which outweighs these third-party privacy concerns considering *Eldorado Club, Inc.*, supra, and other cases cited herein above. Moreover, Sekera has not demonstrated a compelling need for this information. Redacted incident reports, protecting the private information of Venetian guests, with NRCP 26(c) protections limiting use within the litigation, are sufficient to establish issues associated with notice and address the nebulous issue of Sekera's own comparative fault. Furthermore, as discussed further below, it could subject Petitioners to liability for privacy violations.

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

The Nevada Legislature has demonstrated a desire to protect the personal data in the possession of business entities in NRS § 603A.010, *et seq.*, which relates to the Venetian's duty to securely maintain and protect the information collected from its guests and customers. By disclosing personal information of potentially hundreds of guests, Petitioners may be required under NRS § 603A.220 to contact each non-employee identified within every prior incident report to advise of the disclosure. The information contained within the incident reports at issue includes names, phone numbers, addresses, dates of birth, Social Security numbers, health information (*i.e.*, handwritten notes from EMT evaluations, and typewritten summaries of alleged injuries, prior health related conditions, etc.)

The mass dissemination of Venetian’s guests’ private information is the equivalent to a data breach, thereby exposing Venetian to additional third-party claims arising from the leaking of this information. There is simply no good reason to provide this information to Sekera, much less to allow her to provide it to anyone else she desires outside the litigation. Even with the District Court Judge’s modifications of the July 31, 2019, order as provided in the order of September 7, 2021, the fact remains that all this information will not only be in the possession of Sekera but in the public domain. Nothing prevents Sekera from using it and sharing it however it suits her fancy.

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

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

This is the Data Privacy Policy (“Privacy Policy”) of Venetian Casino Resort, LLC and its parent, affiliate and subsidiary entities (collectively, the “Company”) located in the United States. ... This Privacy Policy applies to activities the Company engages in on its websites **and activities that are offline or unrelated to our websites**, as applicable. We are providing this notice to explain our

information practices and the choices you can make about the way your information is collected and used.

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

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

This Privacy Policy applies to all personal data in any format or medium, relating to all guests, prospective guests, patrons, employees, suppliers and others who do business with the Company.<sup>43</sup>

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

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

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<sup>43</sup> Appendix, Vol. 3, Tab 22, VEN 486-95, *Privacy Policy, The Venetian Resort Las Vegas* (July 7, 2019), <https://www.venetian.com/policy.html> at VEN 486-87 (emphasis added).

travel details (flight number and details, points of origin and destination), room preferences, and other information you voluntarily provide.<sup>44</sup>

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

**Access, Correct, Update, Restrict Processing, Erase:**  
You may have the right to access, correct, and update your information. You also may request that we restrict processing of your information or erase it. To ensure that all of your personal data is correct and up to date, or to ask that we restrict processing or erase your information, please contact us using the methods in the Contact Us section below.<sup>45</sup>

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

Petitioners contend that if the September 7, 2021, order is not vacated and the privacy rights of the innocent individuals protected, then Venetian may face further claims from aggrieved guests. Moreover, it will cause irreparable damage

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<sup>44</sup> *Id.* at VEN 488.

<sup>45</sup> *Id.* at VEN 492.

to Petitioners' relations with its guests and prospective guests. Therefore, Petitioners respectfully request that this Court issue an order vacating the District Court's September 7, 2021, order and directing the District Court to issue an order protecting the private information on the third-party individuals.

4. THE SEPTEMBER 7, 2021, ORDER FAILS TO PROVIDE THE PROTECTION THE DISTRICT COURT APPEARS TO HAVE INTENDED

The District Judge determined the following in the September 7, 2021, order: “Venetian’s incident reports, as well as the names and contact information of the slip and fall victims, are relevant to the claims and defenses of this case.”<sup>46</sup>

To support this conclusion, the District Court provides the following:

First, the incident reports, and the information contained therein, are **relevant to show notice and foreseeability of any unsafe or dangerous condition**. Similarly, the incident reports are **relevant to Plaintiff’s claim for punitive damages**. Next, the incident reports are **relevant to Venetian’s affirmative defense of comparative negligence**. Finally, as to the redacted contact information for injured guests, that information is relevant as well, **as those individuals are witnesses who have information regarding: (1) the facts and circumstances surrounding their slip and fall; and (2) the condition of Venetian’s flooring at the time and location of their slip and fall.**<sup>47</sup>

These are conclusory assertions devoid of substantive discussion or explanation.

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<sup>46</sup> APPENDIX, Vol. 16, Tab 95 at VEN 3564.

<sup>47</sup> *Id.* Emphasis added.

As to the first conclusion by the District Court, the Nevada Supreme Court has previously held in *Eldorado Club, Inc.*, supra, that evidence of prior incidents related to slip and fall accidents from a temporary transitory condition (*i.e.*, clear liquid on the floor, which is what Sekera is asserting here) is not admissible to demonstrate “notice”, much less “foreseeability **of any unsafe or dangerous condition.**” How would the production of unredacted prior incident reports, the respective details of which have never been presented to the District Court for consideration (only collectively by Sekera) be relevant to the present dispute of whether there was any liquid on the Venetian floor when the subject incident occurred? Sekera has the November 2013-2016 reports in redacted form, which means the facts of each such prior incident are available to her. If one report presents facts which are substantially similar to Sekera’s case, then Sekera may be able to present a case as to why she should be allowed to contact persons associated with any such case. However, Sekera’s shotgun approach, adopted by the District Court, is not reasonable, relevant nor proportional to the needs of the case as contemplated by NRCP 26(b)(1). To the contrary, it clears the way for Sekera to engage in a massive *fishing expedition* for information obtained from persons wholly unrelated to the subject litigation.

As to the next conclusion by the District Court - that “the incident reports are relevant to Plaintiff’s claim for punitive damages” - there is no explanation as

to how they are relevant. Again, Sekera has the redacted reports, so she is already in possession of information about prior incidents to address punitive damages. What the District Court failed to address is how producing the private information of Venetian guests involved in prior incidents is “relevant to Plaintiff’s claim for punitive damages.” It is yet another conclusory statement unsupported by the record.

Regarding the next conclusion by the District Court - that “the incident reports are relevant to Venetian’s affirmative defense of comparative negligence” – Venetian is once again left without any substantive explanation or discussion. Again, Sekera already possesses redacted prior incident reports to address issues regarding assertions that she was comparatively at fault for causing her accident on November 4, 2016. How would providing the private contact information for hundreds of persons having no knowledge of the subject incident help Sekera prove she was not comparatively at fault? Venetian does not know, because the District Court does not provide an explanation. It is yet another unfounded conclusion.

As to the final conclusion by the District Court - that “the redacted contact information for injured guests” of Venetian is relevant because those persons “are witnesses” regarding “the facts and circumstances surrounding their slip and fall ...” This again is a conclusory, unsupported statement devoid of substance



because Sekera never provided the District Court with any specifics. The District Court merely adopted Sekera's broad assertion of relevance.

In its opinion related to Venetian's previous writ on this subject, the Nevada Court of Appeals noted the following from the relevant procedural history dating back to the Discovery Commissioner's Report and Recommendation of April 4, 2019:

The commissioner further recommended, however, that after Sekera reviewed the 64 redacted reports and identified substantively similar accidents that occurred in the same location as her fall, the parties could have a dispute resolution conference pursuant to EDCR 2.34. **At that conference the parties would have the opportunity to reach an agreement to allow disclosure of the persons involved in the previous similar accidents.** If the parties failed to reach an agreement, Sekera could file an appropriate motion.<sup>48</sup>

Sekera has not identified a single prior incident report in her possession that she deems to be factually similar to the subject incident. Her strategy from the beginning was to simply demand it all in unredacted form and the District Court has essentially acquiesced. The District Court did not require Sekera to demonstrate how her desire to obtain the private information of Venetian guests supersedes their respective rights to privacy.

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<sup>48</sup> See *Venetian Casino Resort, LLC*, supra, 467 P.3d at 8, APPENDIX, Vol. 14, Tab 73 at VEN 3014, emphasis added.

The District Court’s September 7, 2021, order also omits discussion addressing how the production of private contact information for Venetian guests may adversely impact non-parties to the litigation and their respective business relationships with Venetian. The District Court merely determined that “the primary burden is producing unredacted reports ... is nominal.”<sup>49</sup> This is yet another unfounded conclusion. The District Court’s failure to consider the adverse impact on Venetian and its guests when private contact information of Venetian guests is provided – to be used however Sekera chooses – demonstrates a complete failure to adequately address the proportional prong of NRCP 26(b)(1).

The District Court’s September 7, 2021 order of what information is to be redacted is also vague and ambiguous. For example, the District Court ordered that Venetian may only redact prior incident reports as follows:

Social Security numbers, dates of birth, driver’s license numbers, and private health information, **such as that provided to responding EMTs.** All other information, including but not limited to names and contact information, the facts and circumstances of the particular incidents, whether an ambulance was called to the scene, whether the individual was transported from the scene to a hospital, **injuries observed or noted by Venetian’s employees, and any self-reported injuries resulting from the incident** shall be produced without redactions.<sup>50</sup>

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<sup>49</sup> See APPENDIX, Vol. 16, Tab 95 at VEN 3567.

<sup>50</sup> See APPENDIX, Vol. 16, Tab 95 at VEN 3569, emphasis added.

Venetian’s security incident reports for guest incidents involving alleged injuries are prepared by emergency medical technicians. For example, Joseph Larson, who prepared the report on Sekera, was an emergency medical technician; therefore, everything in his report was based on his examination of Sekera and collection of evidence.<sup>51</sup> Therefore, any information related to a guest’s related injuries and treatment provided should fall within the umbrella of protected health information.<sup>52</sup> However, the District Court is unclear in the September 7, 2021, order. The Court acknowledges the privacy interest, then it orders the production of that information.

The District Court’s conclusion that Venetian guests had “no expectation of privacy in this information [provided in Venetian security reports] and it was voluntarily disclosed by these individuals to a third-party” is erroneous on its face and contradicts the District Court’s finding that there is, in fact, private/protected information within these prior incident reports.<sup>53</sup> Therefore, the District Court concedes that despite Venetian guests “voluntarily” providing information to responding emergency medical technician, there remains an expectation of privacy.

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<sup>51</sup> See APPENDIX, Vol 1, Tab. 2 at VEN 005-06; Tab 3 at VEN 007; Tab 11 at VEN 103-27 (*see* VEN 107-08, Mr. Larson stating he responded to the Sekera incident as an EMT).

<sup>52</sup> See APPENDIX, Vol. 1, Tab 1 at VEN 005-06 (top left page of the Narrative Report provides that what follows is “Protected Health Information”).

<sup>53</sup> See APPENDIX, Vol. 16, Tab 95 at VEN 3568-69.

Most importantly, the District Court's order completely ignores the fact that Sekera has previously received seventy-three (73) prior incident reports which she has shared with others outside the litigation. In those reports, the information the District Judge deems to be private is not only in Sekera's possession but has been distributed to others outside the litigation by Sekera. In fact, all these reports were attached as an exhibit to Plaintiff's Motion to Place on Calendar filed on April 30, 2021.<sup>54</sup> The September 7, 2021, order entirely ignores that issue and circumstance, which occurred initially because the District Court deemed all information within the Venetian security reports to be unworthy of any NRCP 26(c) protection. Now, once Venetian complies with the September 7, 2021, order, there is no protection at all for the prior incident reports presently in Sekera's unrestricted possession.

In summary, the September 7, 2021, order, which acknowledges Venetian's right to protection under NRCP 26(c) and even a limited right to privacy by Venetian guests, falls short of providing the kind of protection required under Nevada law.

## **VIII. CONCLUSION**

This petition seeks relief from this Court surrounding an important issue of law; *to wit*: whether property owners and innkeepers can be compelled to produce the private information of individuals who are not involved in a slip and fall tort

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<sup>54</sup> See APPENDIX, Vol. 14, Tabs 87-89 (Exhibit 4, omitted here by Venetian).

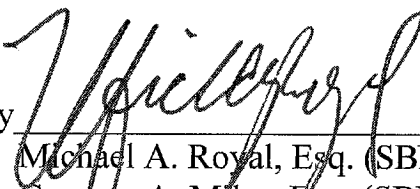
lawsuit when the party seeking this confidential information has failed to make the showing required by NRCP, Rule 26(b)(1). This matter requires resolution on an emergency basis because once the confidential information is provided to plaintiff's attorney it will be freely distributed with impunity to third parties that are not involved in the instant litigation. This will effectively result in the Court sanctioning a widespread violation of individual's confidential information. If the requested relief is not granted on an emergency basis, or alternatively a stay ordered, then innocent third parties will have their privacy rights irreparably damaged. Petitioners herein respectfully move for the following:

1. That this Court issue an **immediate order vacating the District Court's September 7, 2021, order** directing Venetian to provide Sekera with copies of prior incident reports related to guests involved in other incidents occurring on the Venetian premises with private contact information.
2. That this Court clarify the issue of law regarding the protection of private information produced in the course of discovery pursuant to NRCP, Rule 26(b)(1) and issue an order directing the District Court to protect the private information of guests contained in the incident reports at issue.

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

DATED this 8 day of October 2021.

ROYAL & MILES LLP

By   
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## CERTIFICATE OF COMPLIANCE

STATE OF NEVADA     )  
COUNTY OF CLARK    ) ss:

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.

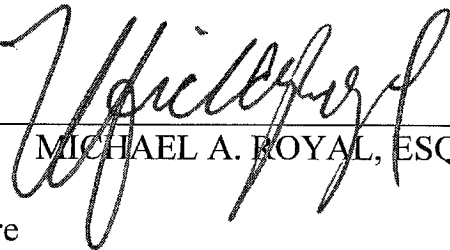
3. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains **10,891 words** in compliance with NRAP 32(a)(7)(A)(ii) (having a word count of less than 14,000 words).

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

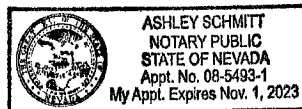
improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions if 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  
8 day of October 2021.

  
NOTARY PUBLIC in and for said  
County and State





## **PROOF OF SERVICE**

The undersigned does hereby declare that I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by Royal & Miles LLP, 1522 W. Warm Springs Rd., Henderson, NV 89014. I am readily familiar with Royal & Miles LLP's practice for collection and processing of documents for delivery by way of the service indicated below. On October 8, 2021, I served the following document(s): PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e) on the interested party in this action as follows:

Keith E. Galliher, Jr., Esq.  
THE GALLIHER LAW FIRM  
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(702) 735-0049

Honorable Kathleen Delaney  
Eighth Jud. District Court, Dept. 25  
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Sean K. Claggett, Esq.  
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Geordan G. Logan, Esq.  
CLAGGETT & SYKES LAW FIRM  
4101 Meadows Lane, Suite 100  
Las Vegas, NV 89107  
(702) 333-7777

*Attorneys for Real Party in Interest*

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

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

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

Executed on October, 8, 2021, at Las Vegas, Nevada.

  
An employee of Royal & Miles LLP