

1 And so -- well, we've -- we've reminded the
2 Court of 26(b)(1).

3 They have obligations under 26(b)(1) both relevancy and proportionality and so forth, which I don't
4 believe they've done. I don't believe they've met that.
5

6 We've also provided the Court with -- with cases
7 from the local US District Court as relates to how they have
8 looked at NRCP 26(b)(1), the same issue, and how they've -- and
9 how they ruled.

10 And so one of the things the Court indicated
11 back on May 14th is it just didn't see a way to support the
12 Commissioner's Report and Recommendation.

13 And in addition, Your Honor, we also wanted to
14 point out that Commissioner Bulla also provided discovery -- or
15 rather Protective Orders similar to this in cases with similar
16 circumstances.

17 The Smith case is one that comes to mind, where
18 they also have redacted reports and videos that were produced
19 of other incidents in that case where protected under 26(c).

20 And so it's not as though this -- what
21 Commissioner Truman did on this particular case, it's some sort
22 of an outlier. It's consistent with what the Discovery
23 Commissioner had previously done.

24 We believe it's consistent with the law to
25 protect the privacy of these individuals.

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Elizabeth A. Brown
Clerk of Supreme Court

1 And so that's what we want to point out to the
2 Court.

3 Again, Mr. Galliher, I understand his -- his
4 position. For him to say that there's no case law supporting
5 our position, I think, is just -- is just incorrect.

6 And so with that, Your Honor, we -- we've tried
7 to brief this thoroughly for the Court and we would just ask
8 that -- that the Court reconsider the fact that the entire
9 Discovery Commissioner's Report and Recommendation as it
10 relates to our 26(c) request was reversed by the Court and that
11 if we produce these documents to Mr. Galliher, once we produce
12 them, they will be shared. And there's no limit as to where
13 they will go with all this personal information. That is the
14 problem.

15 THE COURT: Did you want to say something,
16 Mr. Galliher?

17 MR. GALLIHER: I just want to add one thing
18 about personal information. There's no Social Security
19 information, no driver's license information, which is the
20 personal information contained on the Venetian reports. That
21 is information they do not take down. None of the Venetian
22 reports contain that information.

23 THE COURT: There's very specific things that
24 are statutory requirements which would require to be precluded
25 from being in fillings and other things, and those are the type

1 of personal identifiers, as you pointed out, under certain
2 circumstances that could lead to other things. That's just not
3 what we're dealing with here.

4 What we're dealing with here I really think all
5 boils down to Mr. Royal very strongly advocating for his
6 client, and I understand why, if I was in his shoes I would do
7 the same, to say, look, we don't think this information is
8 relevant to the case. We don't think that they should be able
9 to do discovery on these things, that this is strictly going to
10 a notice thing, that the Eldorado case really, you know,
11 controls this, and says the Supreme Court, you know, the
12 Supreme Court has said, you know, you really can't have this,
13 and that the Court has erred in putting forward, you know, or
14 allowing, I should say, the discovery to go forward as the --
15 as it has.

16 And, you know, here's how I weigh it out and how
17 I'm hopefully going to make my decision so you know.

18 I do have a very serious concern that if I don't
19 somewhere, somehow, stop the bleeding, I'm going to continue to
20 get this constantly, month by month, every time I make a
21 decision in this case (indicating).

22 And I feel like in part if I gave the
23 reconsideration motion leave and the stay briefly to allow that
24 to be filed and heard, then I'm going to create the very
25 monster that I think we're already living with, which is just

1 endless arguments over the same things and fighting tooth and
2 nail to not have full discovery in this case, when arguably
3 full discovery is warranted.

4 On the other hand, if we did not create a
5 thorough enough record of our decision making and there are
6 some cases that inform us, we certainly know there's a long
7 history in Nevada to look to federal case law for guidance on
8 the rules that are previously similar and now virtually
9 identical, and that there are some reasons why, you know,
10 perhaps the full scope of arguments that could have been put
11 forward to this Court were not considered and should be to
12 complete the record and insure that it is understood, whatever
13 the Court does in the end of the day, is supported and
14 appropriate in this Court's perspective, obviously because
15 beauty is always in the eyes of beholder in the Appellate
16 Courts, that -- that we should potentially have this one more
17 full scope hearing.

18 I'm torn, because I always lean towards I want
19 -- if my decisions are going to be reviewed, them to be as
20 thoroughly vetted and full of record as they can be.

21 And I've had Supreme Court Justices tell me that
22 they do appreciate that we generally have a full record here.

23 But like I said, otherwise I'm very concerned
24 about creating, you know, or I guess perpetuating precedent
25 where every time there's a ruling we're just not following up

1 on it and we're just not respecting it, maybe is too strong a
2 word, but we're not -- we're not agreeing with it and we're
3 continuing to fight it.

4 My ultimate decision here is: I do believe that
5 the Court's prior decision was sound. I do believe it was
6 supported by the case law. I do believe that the vast majority
7 of what we have here in this Motion For Leave to File Motion
8 For Reconsideration, et cetera, is reargument that has already
9 been heard and decided.

10 And while there may be some what could
11 ostensibly be considered new arguments or more flushed out
12 arguments for NRCP 26(b)(1) changes and other things, that
13 those arguments arguably have been waived and should have been
14 brought earlier.

15 And the Court is going to respectfully decline
16 to continue to perpetuate determinations on this issue at this
17 level.

18 As much as I have indicated a concern that the
19 Appellate Courts would not necessarily look at a writ related
20 to evidentiary rulings, because there is something here that
21 could cause them to take a look at it and make a decision, I
22 certainly believe that this is a viable option for the Venetian
23 to pursue if they so choose.

24 But at the end of the day, I think that there is
25 just not a legitimate legal basis to ask this Court to

1 reconsider what it has already decided. It's reversal of
2 Discovery Commissioner's Report and Recommendation. It's
3 opening up a discovery in these regards.

4 I do agree with Mr. Galliher that if not all the
5 case law, the overwhelming case law does apply to the Court
6 making the correct decision in that regard.

7 And we understand that this information is going
8 to be not only received by the plaintiff, but it's going to
9 potentially be shared with others, but we think that that
10 unbalance is something that is a natural perhaps circumstance
11 or consequence of what we have in these cases, but it is
12 allowed in this case because it is relevant to the actual case
13 that the plaintiffs have brought, and it is calculated to not
14 only be relevant information, but lead to discovery of relevant
15 information.

16 And I just think it would be improper to further
17 limit it. And I don't know what we would gain other than a
18 fuller record by having yet another hearing on this matter.

19 So I'm going to respectfully decline to allow
20 leave to file a Motion For Reconsideration, and I'm going to
21 respectfully decline to stay any determinations on the order
22 pending the hearing on that reconsideration since we're not
23 going to have that.

24 And I'm also going to respectfully decline to
25 stay at this level any proceedings pending a Writ of Mandamus.

1 Certainly En-Rap 8, I believe, subject to
2 whatever changes might have occurred with it, allows you to
3 immediately go to the Appellate Court to ask for a stay, if
4 either you've been denied at this level by motion or if there's
5 been indication given that it would be unnecessary or -- or
6 futile to come to the Court to ask.

7 So I'm basically adding into this Order I'm
8 going to ask Mr. Galliher to prepare, and I should have made
9 that clear earlier, but I think he was anticipating that
10 anyway, that I'm going to respectively decline to stay the
11 proceedings here pending application for the Writ of Mandamus,
12 which will expedite you being able to ask the Appellate Court
13 for that stayed relief.

14 So I'll add that into this order.

15 But if you are going to get relief on this
16 point, Mr. Royal, it is going to have to come from Mandamus
17 relief, because I think we have fully flushed out, fully vetted
18 and fully considered the matters at this level, and that the
19 Court's ruling that was previously made is sound and is going
20 to stand.

21 Mr. Galliher, can you please prepare the order
22 and then we'll look for any other guidance that our Appellate
23 Court my give us?

24 MR. GALLIHER: Yes, Your Honor, I will.
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(Proceedings concluded.)

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ATTEST: Full, true and accurate transcript of proceedings.

/S/Renee Silvaggio
RENEE SILVAGGIO, C.C.R. 122

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REGISTER OF ACTIONS

CASE No. A-18-772761-C

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

§
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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 *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

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

Minutes

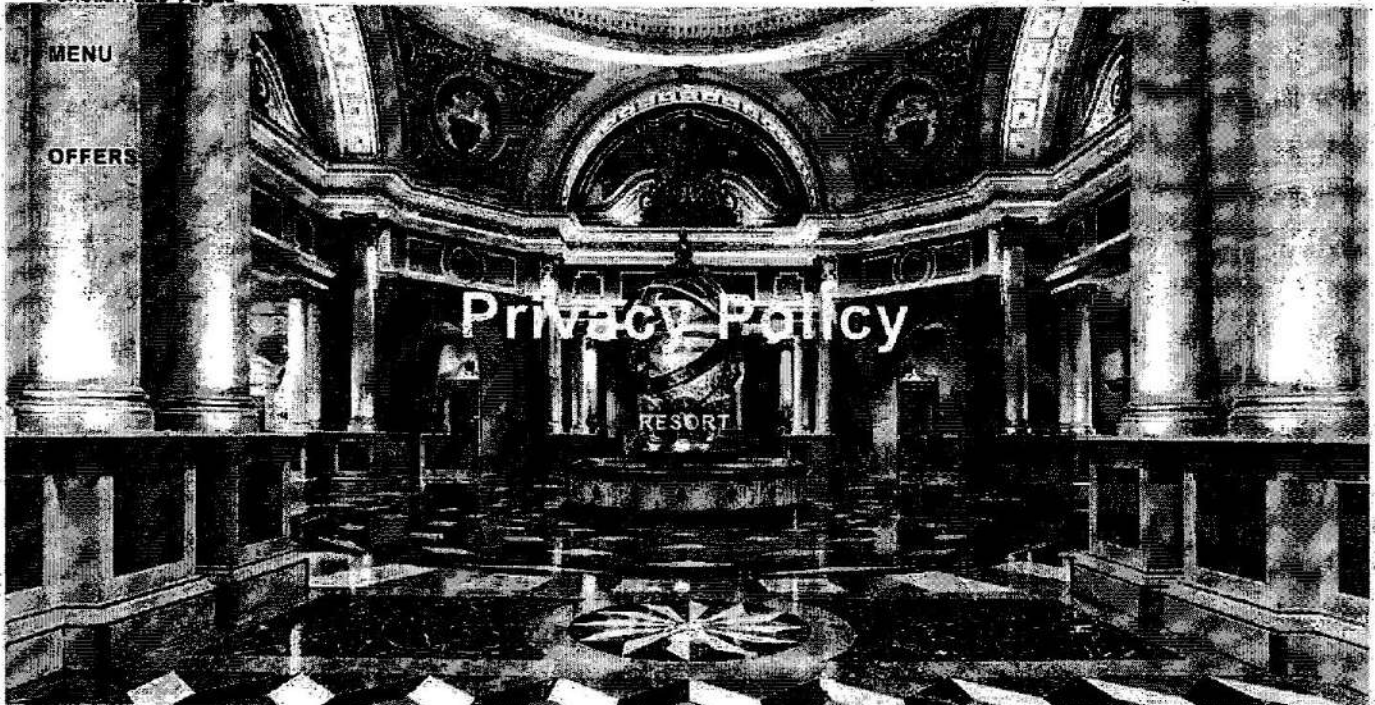
09/18/2019 9:30 AM

(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; 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.

Parties Present
Return to Register of Actions

The Venetian Las Vegas The
Venetian Las Vegas

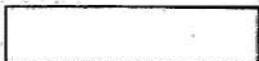


Privacy Policy

Last Updated: May 2018

This is the Data Privacy Policy ("Privacy Policy") of Venetian Casino Resort, LLC and its parent, affiliate and subsidiary entities (collectively, the "Company") located in the United States. In order to provide multiple access points to the services and products we offer, the Company operates many websites, including, but not limited to, www.venetian.com; www.palazzo.com; www.pasands.com; and www.sands.com. Any one of these websites may ask for and collect your personal data in order to provide you with our products and/or services, enhance your experience, and provide you with other relevant information about our offerings. This Privacy Policy applies to activities the Company engages in on its websites and activities that are offline or unrelated to our websites, as applicable. We are providing this notice to explain our information practices and the choices you can make about the way your information is collected and used.

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



CHECK RATES

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

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

Note to EU and non-EU Residents

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

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

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

Personal Data We Collect and Use

General Information

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

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

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

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

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

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

Personal Data

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

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

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

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

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

Information Collected During Your Stay

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

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

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

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

Other Sources of Data

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

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

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

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

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

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

Legal Gaming Age Policy

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

How We May Use Your Information

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

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

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

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

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

How We Share Information

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

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

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

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

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

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

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

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

Your Choices Regarding Your Information

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

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

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

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

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

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

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

How We Protect Your Personal Data

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

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

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

Notice to Residents of the EU, EEA, and Switzerland

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

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

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

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

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

Changes to this Privacy Policy

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

Contact Us

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

Mail

Privacy Office, Legal Department
Las Vegas Sands Corp.

3355 Las Vegas Boulevard South
Las Vegas, Nevada 89109

Email

Privacy@Sands.com

[PRIVACY POLICY](#) [FAQ](#) [CONTACT US](#)

[CAREER](#) [PRESS](#) [EMAIL SIGN-UP](#)

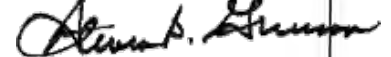
Reservations

866.659.9643

Concierge

866.725.2990

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1 **ORDER**
2 MICHAEL M. EDWARDS
3 Nevada Bar No. 6281
4 RYAN A. LOOSVELT
5 Nevada Bar No. 8550
6 **MESSNER REEVES LLP**
7 8945 W. Russell Road, Suite 300
8 Las Vegas, Nevada 89148
9 Telephone: (702) 363-5100
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11 Email: medwards@messner.com
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13 Attorneys for Defendant
14 Venetian Casino Resort, LLC
15
16
17
18
19

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 CAROL SMITH, an individual,

13 Plaintiff,

15 vs.

16 VENETIAN CASINO RESORT, LLC; and
17 DOES 1 through 50, inclusive,

18 Defendant(s).
19

Case No.: A-17-753362-C
Dept. No.: X

**ORDER REGARDING PLAINTIFF'S
MOTION FOR TERMINATING
SANCTIONS FOR WILLFUL
SUPPRESSION OF EVIDENCE
PURSUANT TO RULE 37; AND
DEFENDANT'S RELATED MOTION(S)
TO STRIKE**

20 On May 8, 2019, the following motions came on for hearing before the Honorable Tierra D.
21 Jones in Department X of the Eighth Judicial District Court, Clark County, Nevada: (1) Plaintiff's
22 Motion for Terminating Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant
23 to Rule 37 ("Plaintiff's Motion for Terminating Sanctions"); (2) Defendant's Motion to Strike
24 Plaintiff's Reply in support of Motion for Terminating Sanctions; (3) Defendant's Motion to Strike
25 Plaintiff's Supplemental Opposition to Defendant's Reply to Plaintiff's Opposition to Defendant's
26 Motion to Strike ("Defendant's Motion to Strike Supplemental Opposition to Defendant's Reply in
27 support of Motion to Strike").
28

1 Peter Goldstein, Esq. of the law firm Peter Goldstein Law Corporation appeared on behalf of
2 Plaintiff Carol Smith ("Plaintiff"), and Michael Edwards, Esq. and Ryan Loosvelt Esq. appeared on
3 behalf of Defendant Venetian Casino Resort, LLC ("Defendant").

4 After full review of the motions, oppositions, replies, briefing and oral argument, the Court
5 hereby finds and rules as follows:

6 **IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT** Defendant's Motion to
7 Strike Plaintiff's Supplemental Opposition to Plaintiff's Reply and Defendant's Motion to Strike
8 Plaintiff's Reply in Support of Motion for Terminating Sanctions are hereby GRANTED IN PART;
9 the Court will not consider the *Sekera v. Venetian* incident reports and related documents that is
10 subject to the *Sekera* Protective Order in ruling on the Motion for Terminating Sanctions ~~Terminating~~
11 ~~Sanctions~~, Monetary Sanctions for Willful Suppression of Evidence Pursuant to Rule 37; Defendant's
12 Motion to Strike Plaintiff's Reply in support of Motion for Terminating Sanctions; and Defendant's
13 Motion to Strike Plaintiff's Supplemental Opposition to Defendant's Reply to Plaintiff's Opposition to
14 Defendant's Motion to Strike.

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IT IS FURTHER HEREBY ORDERED ADJUDGED AND DECREED THAT Plaintiff's
Motion for Terminating Sanctions is DENIED.

IT IS SO ORDERED.

Dated this 25 day of ~~May~~ ^{July}, 2019.


DISTRICT COURT JUDGE

Respectfully Submitted by:
MESSNER REEVES LLP

Approved as to form and content by:
PETER GOLDSTEIN LAW CORP


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ECC

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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.: XXIV

**DEFENDANTS' INITIAL 16.1 LIST OF WITNESSES AND PRODUCTION OF
DOCUMENTS FOR EARLY CASE CONFERENCE**

Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and
through their counsel, Michael A. Royal, Esq., of the law firm of Royal & Miles LLP, pursuant to
N.R.C.P. 16.1, provides their list of witnesses and documents as follows:

Documents

1. Complaint (VEN 001 - 004);
2. Venetian Security CR-1 (1611V-0680) (11/04/16) (VEN 005);

3. Venetian Security Case MO (1611V-0680) (11/04/16) (VEN 006);
4. Venetian Security Person Profile (1611V-0680) (11/04/16) (VEN 007);
5. Venetian Security Narrative Report (1611V-0680) (11/04/16) (VEN 008 - 009);
6. Venetian Security Photographs (VEN 010 - 016);
7. Venetian Acknowledgment of First Aid Assistance & Advice to Seek Medical Care (1611V-0680) (11/04/16) (VEN 017);
8. Venetian Accident Scene Check (1611V-0680) (11/04/16) (VEN 018);
9. Venetian Surveillance Footage (1611V-0680) (11/04/16) (VEN 019);
10. Plaintiff's medical records (produced by Plaintiff, identified herein as PLF 001 - 624), including but not limited to:
 - a. Centennial Hills Hospital
 - b. Shadow Emergency Physicians
 - c. Desert Radiologists
 - d. Core Rehab.
 - e. Las Vegas Radiology
 - f. Southern Nevada Medical Group
 - g. Radar Medical Group
 - h. PayLater/WellCare Pharmacy
 - i. Las Vegas Pharmacy
 - j. Walter M. Kidwell, MD (Pain Inst. Nevada)
 - k. Valley View Surgery Center
 - l. Steinberg Diagnostics
 - m. Desert Institute of Spine Care
11. Plaintiff's employment records (produced by Plaintiff, identified herein as PLF 625), including but not limited to:
 - a. Undated letter from Warren Church, Jr., CEO, Brand Las Vegas, LLC
12. Brand Vegas Ticket Broker Agreement (VEN 020 - 034).

Defendants reserve the right to supplement this document disclosure pursuant NRCP 16.1.

Defendants further reserve the right to use any document or item identified by Plaintiffs at any time in the course of this litigation.

Witnesses

1.
Louie Calleros
2557 Land Rush Dr.
Henderson NV 89002
(702) (702) 414-9956

This witness was a Venetian front desk employee present when the subject incident occurred and is expected to testify as to facts and circumstances surrounding this controversy. *This witness is to be contacted only through defense counsel for the exception of service of a subpoena.*

2.
Rafael Chavez
c/o Royal & Miles LLP
1522 W. Warm Springs Rd.
Henderson, NV 89014
(702) 471-6777

This witness responded to the subject incident as a Venetian facilities employee and is expected to testify of facts and circumstances surrounding this controversy. *This witness is to be contacted only through defense counsel for the exception of service of a subpoena.*

3.
Warren Church, Jr.
Brand Las Vegas, LLC
3130 S Rainbow Blvd Suite 305
Las Vegas, NV 89146
(702) 538-9000

This witness is believed to have been Plaintiff's employer at the time of the subject incident and is expected to testify about Plaintiff's employment, including but not limited to Plaintiff's claim for loss of earnings, and other facts and circumstances surrounding this controversy.

4.
Maria Cruz
911 Melrose Dr.
Las Vegas, NV 89101
(702) 504-1742

This witness was a Venetian PAD employee assigned to patrol the area in question and responded to the scene, and is expected to testify as to facts and circumstances surrounding this controversy. *This witness is to be contacted only through defense counsel for the exception of service of a subpoena.*

5.
Milan Graovae
7660 W. Eldorado Ln. #140
Las Vegas, NV 89113

1 This witness was a Venetian PAD employee assigned to the area in question and responded to
2 the scene, and is expected to testify as to facts and circumstances surrounding this controversy. *This*
3 *witness is to be contacted only through defense counsel for the exception of service of a subpoena.*

4 6. Sang Han
5 9997 Heritage Desert St.
6 Las Vegas, NV 89178
7 (702) 607-2262

8 This witness was a Venetian Housekeeping executive present at the scene shortly after the
9 incident and is expected to testify as to facts and circumstances surrounding this controversy. *This*
10 *witness is to be contacted only through defense counsel for the exception of service of a subpoena.*

11 7. Chris Johnson
12 8445 Las Vegas Blvd. So, #2106
13 Las Vegas, NV 89123
14 (702) 241-2302

15 This witness was a Venetian responding security officer and is expected to testify as to facts
16 and circumstances surrounding this controversy. *This witness is to be contacted only through defense*
17 *counsel for the exception of service of a subpoena.*

18 8. Joe Larson, EMT
19 3339 Horned Lark Court
20 Las Vegas, NV 89117
21 619-961-8167

22 This witness was the responding/reporting Venetian security EMT and is expected to testify
23 as to facts and circumstances surrounding this controversy. *This witness is to be contacted only*
24 *through defense counsel for the exception of service of a subpoena.*

25 9. David Martinez
26 517 North Yale St.
27 Las Vegas, NV 89107
28 (702) 878-2504

This witness was a Venetian PAD employee responding to the incident area in question and
is expected to testify as to facts and circumstances surrounding this controversy. *This witness is to be*
contacted only through defense counsel for the exception of service of a subpoena.

10. Joyce Sekera
c/o THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014

1 This witness is the Plaintiff in this matter and is expected to testify about claims set forth in the
2 Complaint and to other facts and circumstances surrounding this controversy.

3 11. Gary Shulman
4 10263 Jamapa Dr.
5 Las Vegas, NV 89178-4028
6 (702) 487-2207

7 This witness was a Venetian table games supervisor present when the subject incident occurred
8 and is expected to testify as to facts and circumstances surrounding this controversy. *This witness is*
9 *to be contacted only through defense counsel for the exception of service of a subpoena.*

10 12. Brand Las Vegas, LLC, NRCP 30(b)(6)
11 3130 S Rainbow Blvd Suite 305
12 Las Vegas, Nevada 89146.
13 (702) 538-9000

14 This witness is believed to have been Plaintiff's employer at the time of the subject incident
15 and is expected to testify about Plaintiff's employment, including but not limited to Plaintiff's claim
16 for loss of earnings, Plaintiff's workers compensation claim, and issues surrounding the tenancy of
17 Brand Las Vegas, LLC, and other facts and circumstances surrounding this controversy.

18 13. Centennial Hills Hospital, NRCP 30(b)(6)
19 6900 N Durango Dr.
20 Las Vegas, NV 89149
21 (702) 835-9700

22 This witness is expected to testify about examination and treatment of the Plaintiff in this
23 matter following the subject incident and to other facts and circumstances surrounding this controversy.

24 14. Shadow Emergency Physicians, NRCP 30(b)(6)
25 620 Shadow Ln.
26 Las Vegas, NV 89106
27 (800) 355-2470

28 This witness is expected to testify about examination and treatment of the Plaintiff in this
matter following the subject incident and to other facts and circumstances surrounding this controversy.

15. Desert Radiologists, NRCP 30(b)(6)
3920 S Eastern Ave.
Las Vegas, NV 89119
(702) 759-8600

This witness is expected to testify about examination and treatment of the Plaintiff in this
matter following the subject incident and to other facts and circumstances surrounding this controversy.

1 16. Desert Chiro. & Rehab/Core Rehab, NRCP 30(b)(6)
2 7810 W Ann Rd, 110
3 Las Vegas, NV 89149
4 (702) 463-9508

5 This witness is expected to testify about examination and treatment of the Plaintiff in this
6 matter following the subject incident and to other facts and circumstances surrounding this controversy.

7 17. Las Vegas Radiology, NRCP 30(b)(6)
8 7500 Smoke Ranch Rd #100
9 Las Vegas, NV 89128
10 (702) 254-5004

11 This witness is expected to testify about examination and treatment of the Plaintiff in this
12 matter following the subject incident and to other facts and circumstances surrounding this controversy.

13 18. Southern Nevada Medical Group, NRCP 30(b)(6)
14 1485 E Flamingo Rd.
15 Las Vegas, NV 89119
16 (702) 386-0882

17 This witness is expected to testify about examination and treatment of the Plaintiff in this
18 matter following the subject incident and to other facts and circumstances surrounding this controversy.

19 19. Radar Medical Group, NRCP 30(b)(6)
20 2628 W Charleston Blvd.
21 Las Vegas, NV 89102
22 (702) 644-0500

23 This witness is expected to testify about examination and treatment of the Plaintiff in this
24 matter following the subject incident and to other facts and circumstances surrounding this controversy.

25 20. Paylater Pharmacy, NRCP 30(b)(6)
26 552 E Charleston Blvd.
27 Las Vegas, NV 89104
28 (702) 852-6600

This witness is expected to testify about examination and treatment of the Plaintiff in this
matter following the subject incident and to other facts and circumstances surrounding this controversy.

21. Las Vegas Pharmacy, NRCP 30(b)(6)
2600 W Sahara Ave # 120
Las Vegas, NV 89102
(702) 220-3906

This witness is expected to testify about examination and treatment of the Plaintiff in this
matter following the subject incident and to other facts and circumstances surrounding this controversy.

1 22. Pain Institute of Nevada, NRCP 30(b)(6)
2 7435 W Azure Dr #190
3 Las Vegas, NV 89130
4 (702) 878-8252

5 This witness is expected to testify about examination and treatment of the Plaintiff in this
6 matter following the subject incident and to other facts and circumstances surrounding this controversy.

7 23. Valley View Surgery Center, NRCP 30(b)(6)
8 1330 S. Valley View Blvd.
9 Las Vegas, NV 89102
10 (702) 675-3276

11 This witness is expected to testify about examination and treatment of the Plaintiff in this
12 matter following the subject incident and to other facts and circumstances surrounding this controversy.

13 24. Steinberg Diagnostics, NRCP 30(b)(6)
14 800 N Gibson Rd., Suite 110
15 Henderson, NV 89011
16 (702) 732-6000

17 This witness is expected to testify about examination and treatment of the Plaintiff in this
18 matter following the subject incident and to other facts and circumstances surrounding this controversy.

19 25. Desert Institute of Spine Care, NRCP 30(b)(6)
20 56 N Pecos Rd.
21 Henderson, NV 89074
22 (702) 630-3472

23 This witness is expected to testify about examination and treatment of the Plaintiff in this
24 matter following the subject incident and to other facts and circumstances surrounding this controversy.

25 26. Plaintiff's Workers Compensation Insurer, NRCP 30(b)(6)
26 Address Unknown

27 This witness is expected to testify about Plaintiff's course of medical care and benefits provided
28 following the subject incident and to other facts and circumstances surrounding this controversy.

29 27. Venetian Casino Resort, LLC - NRCP 30(b)(6)
30 c/o Royal & Miles LLP
31 1522 W. Warm Springs Rd.
32 Henderson, NV 89014
33 (702) 471-6777

34 This witness is expected to testify regarding employees identified in the surveillance footage
35 (identified as VEN 019), Venetian's security report, PAD cleaning activities, and to other facts and
36 circumstances surrounding this controversy. *This witness is to be contacted only through defense
37 counsel for the exception of service of a subpoena.*

1 Defendants reserve the right to supplement this witness disclosure pursuant NRCP 16.1.
2 Defendants further reserve the right to call any witness identified by Plaintiffs at any time in the course
3 of this litigation.

4 **COMPUTATION OF DAMAGES**

5 Defendant reserves the right to seek reimbursement of any incurred attorneys' fees and costs
6 and permitted under applicable law.

7 **INSURANCE**

8 Defendant is in the process of obtaining a copy of its policy and will supplement accordingly.

9 DATED this 6 day of July, 2018.

10 **ROYAL & MILES LLP**

11 By: 

12 Michael A. Royal, Esq.
13 Nevada Bar No. 4370
14 Gregory A. Miles, Esq.
15 Nevada Bar No. 4336
16 1522 W. Warm Springs Road
17 Henderson, NV 89014
18 *Attorneys for Defendants*
19 *VENETIAN CASINO RESORT, LLC and*
20 *LAS VEGAS SANDS, LLC*

CERTIFICATE OF SERVICE

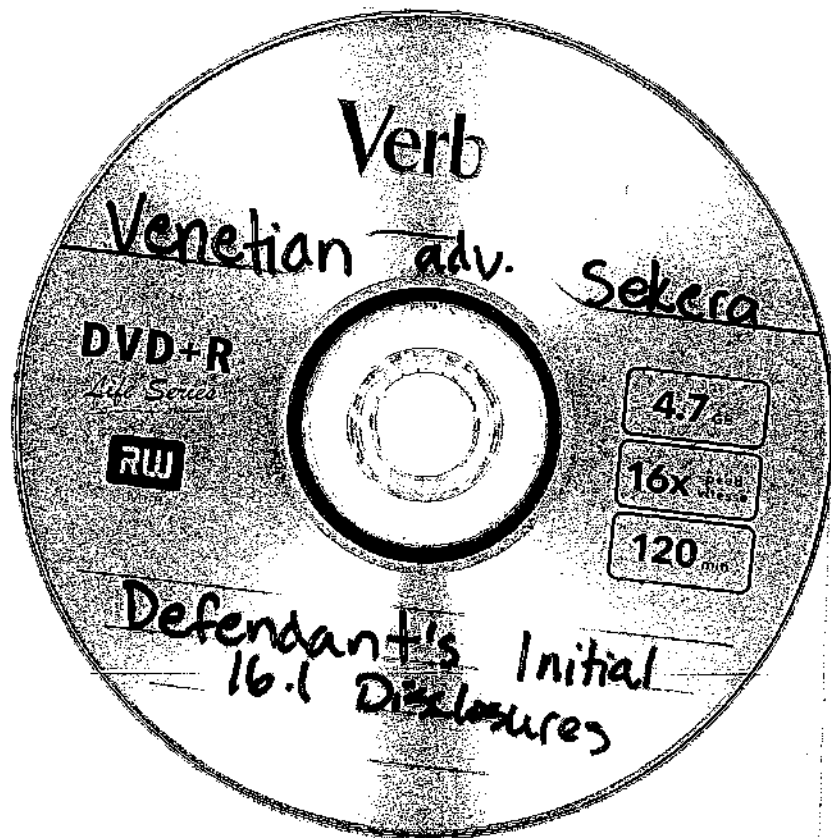
I HEREBY CERTIFY that on the 10 day of July, 2018, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **DEFENDANTS' INITIAL 16.1 LIST OF WITNESSES AND PRODUCTION OF DOCUMENTS FOR EARLY CASE CONFERENCE** to be served as follows:

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

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

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Plaintiff
Facsimile: 702-735-0204
Email: kgalliher@galliherlawfirm.com


An employee of ROYAL & MILES LLP



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Team Member Discipline History

Date	Type of Event	Infraction
11/20/18	SPI	FTCDP – FAILED TO FOLLOW COMPANY DEPARTMENT PROCEDURES.
05/02/18	FWW	PJP - TM FAILED TO VERIFY A \$5,000 CHIP, WHICH ALLOWED AN UNKNOWN PATRON TO PLAY WITH UNVERIFIED CHIPS.
05/02/18	WW	INPRP - WHILE AWAITING FOR FILLS IN PIT 6, GARY SAT DOWN ON A DEAD GAME AND USED HIS CELL PHONE, SUCH DEVICES ARE PROHIBITED ON THE GAMING FLOOR WHEN ON DUTY.
04/13/18	WW	PJP - TM DID NOT CHECK THE TABLE COUNTS IN TABLE MANAGER, TO ENSURE THAT THE HIGH VALUE CHIPS MATCH WHAT IS ACTUALLY IN THE RACK.
09/14/17	COACH	PJP - TM WAS REMINDED HE NEEDS TO CHECK WITH AN AREA SUPERVISOR OR ACM BEFORE GOING HOME.
07/28/17	PIP	PJP - TM ALLOWED A FILL TO BE PUT ON THE WRONG TABLE.
12/15/16	PIP	PJP - TM FAILED TO FOLLOW UP ON A GUEST COMPLAINT.
08/13/15	CDD	PJP - FAILURE TO PROVIDE UNMATCHED GUEST SERVICE STANDARDS.
05/27/15	CDD	PJP - TM APPROVED A COLOR UP THAT WAS INCORRECT WITHOUT VISUALLY VERIFYING THE AMOUNT. IN ADDITION FAILED TO INVESTIGATE AND WHEN GUEST QUESTIONED THE AMOUNT OF THE COLOR UP. GUEST WAS SHORTED \$1,500.
09/13/14	COACH	PJP - CAME OUT TO THE MAIN FLOOR AT THE BEGINNING OF THE SHIFT, AND INSTEAD OF HELPING OPEN GAMES, SENT THE 10:45AM FLOOR SUPERVISOR ON BREAK AT 11:50AM.
04/26/14	COACH	PJP - GARY DID NOT CHECK IF THE COLOR UP WAS CORRECT.
01/08/10	CDD	ATTDN – 10PTS – NCNS DURING PEAK PERIOD.

Team Member:	Gary Shulman	TM#:	17184	DOH:	05/03/06
Department:	Table Games	Position:	Supervisor		
TMR Specialist :	Marnie Pipp				

THE VENETIAN | THE PALAZZO

Performance Improvement Notice

Please type or print clearly.

Team Member Name: Gary Shulman TM#: 17184
 Position/Department: Supervisor / Table Games Date of Issuance: 11/20/2018
 Issued by (Name & TM#): Michael Conery #8240 Date of Incident: 11/17/2018

Level: ☐ Verbal Warning ☐ Written Warning ☐ Final Written Warning

Concern: ☐ Behavior ☐ Job Performance ☐ Attendance

☒ Suspension Pending Investigation - possible discipline up to termination.

HR will contact the TM within 48 hours to schedule a meeting.

To Be Completed by Manager

Description of Performance Problem or Issue: Rules of Conduct: Inappropriate or threatening comments made toward another team member.

Impact on Business: _____

Dates of Previous Performance Improvement Notices: See file.

Expected Performance Improvement: _____

To Be Completed by Team Member

I commit to correcting the above and following through on my written commitment. I understand that if I do not meet the performance standards of The Venetian | The Palazzo, I will be subject to termination of employment.

Team Member's Commitment to Improve: _____

To assist with my performance improvement, I am requesting: ☐ Re-training ☐ HR Support ☐ Other: _____

Team Member's Signature & TM#: _____ Date: _____

Manager's Signature & TM#: Michael Conery 8240 Date: 11/20/18

Human Resources/Witness Signature & TM#: _____ Date: _____

Original to Human Resources: copies to Team Member and Department Manager.

THE VENETIAN® | THE PALAZZO®

January 23, 2019

Hand Delivered

Gary Shulman
10263 Jamapa Dr.
Las Vegas, NV 89178

Re: Termination of Employment

Dear Gary:

This letter is in regard to your position as Table Games Supervisor at The Venetian | The Palazzo. As you know, you were placed on Suspension Pending Investigation (SPI) on November 20, 2018, based on a report we received that you made inappropriate and threatening comments. Shortly after you requested and was approved for a leave of absence; therefore was unable to meet for your due process meeting.

The due process meeting was held on January 8, 2019, with you, Norman Blinder, Assistant Casino Manager and me. During this meeting, you were informed the reason for the SPI was based on a report from Area Supervisor, Barry Goldberg stating that on November 17, 2018, in Pit 1 on the Casino Floor, you said, "She is going to have Hell to pay," referencing Area Supervisor, Rhonda Salinas.

In this meeting, you acknowledged making this comment to Goldberg, and stated that what you were referring to was discipline. You admitted that you were angry with Salinas and had complained about her actions. You further acknowledged that when you made this comment, Goldberg advised you that your comment was inappropriate and could be considered a threat. You stated that you did not think this would be perceived in a negative way.

We reviewed with you that on November 16, 2018, you met with Mike Conery, Casino Manager and Beverly Shields, Director of Human Resources regarding issues you had with Salinas. In our meeting with you, you stated that after that meeting with them, you had wanted to drop your complaints against Salinas. However, on November 20, 2018, you made the comment, "She is going to have hell to pay."

Also in our meeting, you stated that you recognize that there is a lot of violence, and understand that people could look at these comments negatively. However, you added it was just a comment that came out and you didn't mean anything by it."

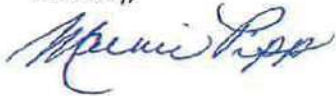
As part of the investigation, we reviewed your discipline record, which reflects the following disciplinary actions issued to you:

- Final Written Warning - May 2, 2018, for failure to verify a \$5,000 chip, allowing an unknown patron to play with unverified chips.
- Written Warning - May 2, 2018, for sitting down on a dead game, in Pit 6 on the Casino Floor, and using your cell phone.
- Written Warning - April 13, 2018, for failure to ensure that the high value chips match what was actually in the rack.

Gary, although you deny any intent of wrongdoing, the comment you made in Pit 1, was inappropriate and was perceived to be threatening in manner.

As a result of our investigation the Company will be terminating your employment effective January 23, 2019, for Violation of the Company's Rules of Conduct and progressive discipline. Please contact me at (702) 414-0484 if you should have any questions.

Sincerely,



Marnie Pipp
Specialist, Team Member Relations – Human Resources

Please sign below to indicate that you have read and understood this letter and that you have had the opportunity to ask any questions to clarify its contents.



Gary Shulman, Table Games Supervisor

1-23-19

Date

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC </div> <div style="text-align: right;"> 487-2019-00532 </div> </div>	
Nevada Equal Rights Commission and EEOC <i>State or local Agency, if any</i>			
Name (Indicate Mr., Ms., Mrs.) Mr. Gary Shulman		Home Phone (702) 487-2207	Year of Birth 1961
Street Address City, State and ZIP Code 10263 Jamapa Dr, LAS Vegas, NV 89178			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name VENETIAN CASINO RESORT (LAS VEGAS SANDS)		No. Employees, Members 501+	Phone No. (702) 414-1617
Street Address City, State and ZIP Code 3355 Las Vegas Blvd S, LAS VEGAS, NV 89109			
Name		No. Employees, Members	Phone No.
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).) <div style="display: flex; flex-wrap: wrap; padding: 5px;"> <div style="margin-right: 10px;"><input type="checkbox"/> RACE</div> <div style="margin-right: 10px;"><input type="checkbox"/> COLOR</div> <div style="margin-right: 10px;"><input type="checkbox"/> SEX</div> <div style="margin-right: 10px;"><input type="checkbox"/> RELIGION</div> <div style="margin-right: 10px;"><input type="checkbox"/> NATIONAL ORIGIN</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> RETALIATION</div> <div style="margin-right: 10px;"><input type="checkbox"/> AGE</div> <div style="margin-right: 10px;"><input type="checkbox"/> DISABILITY</div> <div style="margin-right: 10px;"><input type="checkbox"/> GENETIC INFORMATION</div> <div style="margin-right: 10px;"><input type="checkbox"/> OTHER (Specify)</div> </div>		DATE(S) DISCRIMINATION TOOK PLACE <div style="display: flex; justify-content: space-between;"> <div> Earliest 01-23-2019 </div> <div> Latest 01-23-2019 </div> </div> <div style="text-align: center; margin-top: 10px;"> <input type="checkbox"/> CONTINUING ACTION </div>	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)). <p>I was an employee with the Venetian since on or about May 3, 2006; lastly as a Table Game Supervisor. For in or around 5 years I had been on intermittent FMLA for a medical condition and had been afforded an opportunity to take my leave as needed. I was subjected to negative comments regarding taking my leave by my co-workers; however, they were disciplined for their harassing behavior towards me. In or around November 2018, I filed a complaint with HR regarding the harassing behavior of my Supervisor towards all employees. After filing the complaint, I was accused of making a threatening comment regarding the manager I filed against and was discharged for my alleged threat.</p> <p>I believe I was discriminated against due to my medical condition, and retaliated against for engaging in a protected activity, in violation of the Americans with Disabilities Act of 1990, as amended.</p>			

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY - When necessary for State and Local Agency Requirements
I declare under penalty of perjury that the above is true and correct.	I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT
Digitally signed by Gary Shulman on 02-22-2019 02:03 PM EST	SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

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

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

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

14 JOYCE SEKERA, an Individual,) CASE NO.: A-18-772761-C
15) DEPT. NO.: 25
16 Plaintiff,)
17 v.)
18 VENETIAN CASINO RESORT, LLC,)
19 d/b/a THE VENETIAN LAS VEGAS, a)
20 Nevada Limited Liability Company;)
21 LAS VEGAS SANDS, LLC d/b/a THE)
22 VENETIAN LAS VEGAS, a Nevada)
23 Limited Liability Company; YET)
24 UNKNOWN EMPLOYEE; DOES I)
25 through X, inclusive,)
26 Defendants.)
27)
28)

24 **NOTICE OF TAKING DEPOSITION**

26 PLEASE TAKE NOTICE that at 3:00 p.m. on Wednesday, April 17, 2019, at The Galliher
27 Law Firm located at 1850 E. Sahara Avenue, Suite 107, Las Vegas, Nevada, the Plaintiff in the
28 above entitled action will take the deposition of Gary Shulman, upon oral examination, pursuant to


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

1 Rules 26 and 30 of the Nevada Rules of Civil Procedure, before a Notary Public, or before some
2 other officer authorized by the law to administer oaths. Oral examination will continue from day to
3 day until completed. You are invited to attend and cross examine.

4 PLEASE TAKE FURTHER NOTICE that Plaintiff has not retained the services of a
5 licensed interpreter for this deposition, and hereby requests that deponent's attorney provide
6 immediate notice of the need for a licensed interpreter for this deposition if such a need is
7 required by the deponent. In the event deponent and his/her attorney appear at the deposition
8 without providing at least seventy-two (72) hours' notice prior to the deposition of the need for
9 a licensed interpreter, and the deposition cannot proceed because of this lack of notice and the
10 resulting absence of a licensed interpreter, the deponent and his/her attorney will be held
11 jointly and severally responsible for any and all attorney fees and costs, including court
12 reporter charges, incurred by Plaintiff for this deposition.
13

14 DATED this 15th day of April, 2019
15
16

17 THE GALLIHER LAW FIRM

18 
19 _____
20 Keith E. Galliher, Jr., Esq.
21 Nevada Bar Number 220
22 1850 E. Sahara Ave., Suite 107
23 Las Vegas, NV 89104
24 Attorney for Plaintiffs
25
26
27
28

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **NOTICE OF TAKING DEPOSITION** was served on the 1st day of April, 2019, to the following addressed parties by:

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

☐ Facsimile, pursuant to EDCR 7.26 (as amended)

☒ Electronic Mail/Electronic Transmission

☐ Hand Delivered to the addressee(s) indicated

☐ Receipt of Copy on this _____ day of _____, 2019,

acknowledged by, _____

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

Canyon Court Reporting
Via email only
admin@canyoncr.com



An employee of THE GALLIHER LAW FIRM

#79689-CA

FILED

SEP 27 2019

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
CHIEF DEPUTY CLERK

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

Electronically Filed
Sep 26 2019 02:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

v.

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

**APPENDIX TO PETITIONERS' EMERGENCY PETITION FOR WRIT OF
MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES
21(a)(6) AND 27(e) AND EMERGENCY MOTION UNDER NRAP 8
STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO
DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT
INVOLVED IN UNDERLYING LAWSUIT
Volume 1 of 3 (Exhibits 1-14)**

Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
ROYAL & MILES LLP
1522 W. Warm Springs Rd.
Henderson, Nevada 89014
Telephone: (702) 471-6777
Facsimile: (702) 531-6777
Email: mroyal@royalmilesllp.com
gmiles@royalmilesllp.com

19-40386

Docket 79689 Document 2019-40113

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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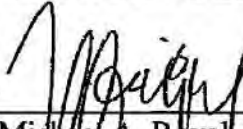
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13	Recorder's Transcript of Hearing [On] Defendant's Motion for Protective Order (March 13, 2019)	VEN 186-200	1
14	Discovery Commissioner's Report and Recommendation (filed April 4, 2019)	VEN 201-206	1
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18	Findings of Fact, Conclusions of Law and Order Granting Petitioners' Motion for Partial Summary Judgment on Mode of Operation Theory of Liability (filed July 23, 2019)	VEN 449-452	2
19	Order Granting in Part and Denying in Part Sekera's Motion to Extend Discovery Deadlines and Continue Trial (Second Request) on Order Shortening Time (filed August 28, 2019)	VEN 453-455	2
20	Transcript of Hearing on Motion for Leave to File Motion for Reconsideration (September 17, 2019)	VEN 456-483	3
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<u>Tab</u>	<u>Document/Exhibit Description</u>	<u>Page No.</u>	<u>Vol.</u>
22	Privacy Policy, The Venetian Resort Las Vegas (July 7, 2019), https://www.venetian.com/policy.html	VEN 486-495	3

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

DATED this 26 day of September, 2019.

ROYAL & MILES LLP

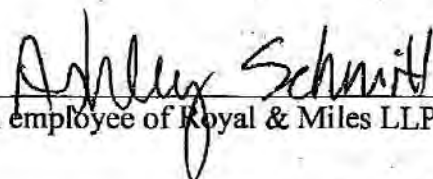
By 
Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
1522 W. Warm Springs Rd.
Henderson, NV 89014
(702) 471-6777
Counsel for Petitioners

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 26 day of September, 2019, 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 EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT Volume 1 of 3 (Exhibits 1-14), by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Real Party in Interest

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


An employee of Royal & Miles LLP

79689-00A

FILED

SEP 27 2019

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

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

Electronically Filed
Sep 26 2019 02:57 p.m.
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Clerk of Supreme Court

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LAS VEGAS SANDS, LLC, a Nevada limited liability company,
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DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT
INVOLVED IN UNDERLYING LAWSUIT**
Volume 2 of 3 (Exhibits 15-19)

Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
ROYAL & MILES LLP
1522 W. Warm Springs Rd.
Henderson, Nevada 89014
Telephone: (702) 471-6777
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Email: mroyal@royalmileslaw.com
gmiles@royalmileslaw.com

19-40388

Docket 79689 Document 2019-40114

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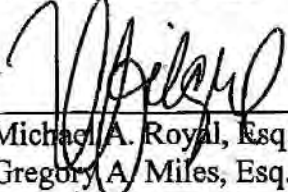
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The Appendix shall be contained in 3 separate volumes in accordance with NRAP 30(c)(2) (2013), each volume containing no more than 250 pages.

DATED this 26 day of September, 2019.

ROYAL & MILES LLP

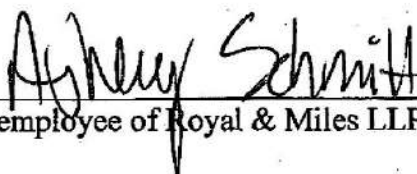
By 
 Michael A. Royal, Esq. (SBN 4370)
 Gregory A. Miles, Esq. (SBN 4336)
 1522 W. Warm Springs Rd.
 Henderson, NV 89014
 (702) 471-6777
Counsel for Petitioners

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 26 day of September, 2019, 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 EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT Volume 2 of 3 (Exhibits 15-19), by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Real Party in Interest

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


An employee of Royal & Miles LLP

TT 79689-00A

FILED

SEP 27 2019

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

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

Electronically Filed
Sep 26 2019 02:57 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

v.

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

**APPENDIX TO PETITIONERS' EMERGENCY PETITION FOR WRIT OF
MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES
21(a)(6) AND 27(e) AND EMERGENCY MOTION UNDER NRAP 8
STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO
DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT
INVOLVED IN UNDERLYING LAWSUIT
Volume 3 of 3 (Exhibits 20-22)**

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19-40389

Decket 79689 Document 2019-40115

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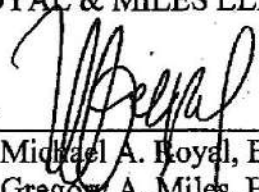
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The Appendix shall be contained in 3 separate volumes in accordance with NRAP 30(c)(2) (2013), each volume containing no more than 250 pages.

DATED this 26 day of September, 2019.

ROYAL & MILES LLP

By

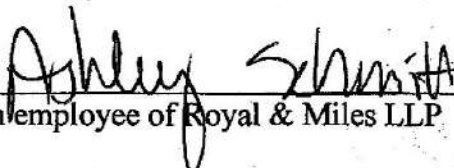

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Gregory A. Miles, Esq. (SBN 4336)
1522 W. Warm Springs Rd.
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Counsel for Petitioners

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 20 day of September, 2019, 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 EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT Volume 3 of 3 (Exhibits 20-22), by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Real Party in Interest

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


An employee of Royal & Miles LLP

1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA
3

4 Supreme Court No. 79689-COA Electronically Filed
5 District Court Case No. A-18-77276-1 Oct 28 2019 11:38 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

9 v.

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

16 **APPENDIX TO PETITIONERS' REPLY BRIEF**
17 **Volume 4 (Exhibits 23-26)**

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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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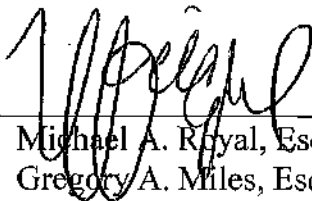
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14 The Appendix shall be contained in 4 separate volumes in accordance with
15 NRAP 30(c)(3) (2013), each volume containing no more than 250 pages.

16 DATED this 28 day of October, 2019.

17
18 ROYAL & MILES LLP

19
20
21 By: 
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11 Keith E. Galliher, Jr., Esq.
12 THE GALLIHER LAW FIRM
13 1850 E. Sahara Avenue, Suite 107
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15 *Attorneys for Real Party in Interest*
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17 Honorable Kathleen Delaney
18 Eighth Jud. District Court, Dept. 25
200 Lewis Avenue
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Respondent

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7989 COA
FILED

SEP 27 2019

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

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

Electronically Filed
Sep 26 2019 02:49 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

v.

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

EMERGENCY PETITION UNDER NRAP 27(e)

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

ACTION IS NEEDED IMMEDIATELY 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

Michael A. Royal, Esq. (SBN 4370)
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gmiles@royalmilesllp.com

19-40385

Docket 79689 Document 2019-40111

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclose. 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 is 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 26 day of September, 2019.

ROYAL & MILES LLP

By 

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

ROUTING STATEMENT

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

**AFFIDAVIT OF MICHAEL A. ROYAL, ESQ. IN SUPPORT OF
PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS
AND/OR WRIT OF PROHIBITION AND 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)(6) AND 27(e).

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

Keith E. Galliber, Jr., Esq.
THE GALLIBER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
(702) 735-0049
Attorneys for Real Party in Interest

3. Counsel for Real Party in Interest was served with this Petition via electronic service as identified on the proof of service in this document. Prior to filing this Petition and Motion my office contacted, by telephone, the clerk of the Supreme Court, the Clerk of the Eight Judicial District Court of the State of Nevada, and Real Party in Interest's attorney to notify them that Petitioners were

filing the instant Petitioners' Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(A)(6) And 27(E).

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

5. This case is set to begin trial on August 3, 2020. Plaintiff has alleged that she sustained injuries in a slip and fall due to the presence of a foreign substance on a marble floor within the Venetian on November 4, 2016.

6. On January 4, 2019, in response to a request for production from Plaintiff, Petitioners produced redacted documents regarding reports of other incidents occurring on property from November 4, 2013 to November 4, 2016. Petitioners had redacted the identity and personal information of the individuals identified in these reports. Plaintiff's attorney objected to the redactions. Accordingly, on February 1, 2019, Petitioners filed a motion for protective order under NRCP 26(c) to protect the identities of Venetian patrons involved in the reports produced to Plaintiff. The motion was granted by the Discovery Commissioner in a Report and Recommendation filed April 4, 2019, providing that

reports produced by Petitioners should be in redacted form and be restricted to use only for purposes of the present litigation.

7. Plaintiff filed an objection with the District Court, which issued an order dated July 31, 2019 reversing the Discovery Commissioner and ordering the production of prior incident reports in unredacted form, without any protection related to the circulation of information obtained by Plaintiff in the instant litigation (such that the documents would divulge the names, addresses, telephone numbers, dates of birth, social security number, and driver's license/identification card numbers of individuals who are not parties or witnesses to the instant tort action and such information could be freely shared with third-parties who are not involved in the instant litigation). Petitioners learned that all the redacted documents produced by Petitioners to Plaintiff have been shared with attorneys and persons outside this litigation, and that Plaintiff's attorney plans to share the unredacted reports as well.

8. Petitioners filed a motion for reconsideration and stay of the District Court's order which was heard on September 17, 2019. The District Court denied the Petitioners' motion. On September 18, 2019, the Discovery Commissioner ruled that Petitioners now have to produce incident reports from November 4, 2011 to the present, representing three years of post-incident guest related reports of slip and fall events occurring on the Venetian marble floor from a foreign substance.

All such reports must be produced in unredacted form, per the Discovery Commissioner, based on the District Court's order of July 31, 2019 and its forthcoming ruling denying reconsideration. Production of this information will result in irreparable harm to the privacy of the individuals identified in the reports, the Venetian, and its guests.

9. The relief sought in this Writ Petition is not available by the District Court. Petitioners made a written Motion for Stay with the District Court on August 12, 2019 and again orally on September 17, 2019. The District Court denied the Motion for Stay and indicated that relief would need to be obtained from the appellate court pursuant to NRAP 8. It is imperative this matter be heard at the Court's earliest possible convenience.

10. 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.

11. 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.

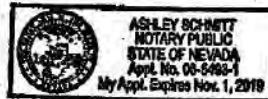
12. I have discussed the PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS with my Client, and have obtained authorization to file this Writ Petition.

Further affiant sayeth naught.



MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before me by Michael A. Royal, Esq., on this 26 day of September, 2019.




NOTARY PUBLIC in and for said
County and State

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 21(a) ordering the Eighth Judicial District Court to vacate the July 31, 2019 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 on an emergency basis pursuant to NRAP 27(e) and NRAP 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 for an emergency stay of the order pursuant to NRAP 8(a) and NRAP 27(e). This motion requests a stay of the July 31, 2019 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 and Motion are 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 26 day of September, 2019.

ROYAL & MILES LLP

By 

Michael A. Royal, Esq. (SBN 4370)

Gregory A. Miles, Esq. (SBN 4336)

1522 W. Warm Springs Rd.

Henderson, NV 89014

(702) 471-6777

Counsel for Petitioners

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

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

In the course of discovery, Sekera requested that Petitioners produce incident reports related to slip and falls from November 4, 2013 to the present. Petitioners responded by producing sixty-four (64) redacted prior incident reports from November 4, 2013 to November 4, 2016. When Sekera objected to the production of redacted reports, Petitioners filed a motion for protective order pursuant to NRCP 26(c) on February 1, 2019 with the Discovery Commissioner. While the motion was pending, Sekera's counsel shared the redacted prior incident information with an attorney representing a plaintiff in unrelated litigation against Petitioners also in the Eighth Judicial District Court. One day prior to the March 13, 2019 hearing on Petitioners' motion for protective order, the subject documents were filed with the district court in a different department on a different matter.

Following the hearing on March 13, 2019, the Discovery Commissioner issued a Report and Recommendation granting Petitioners' motion for protective order noting the need to protect the privacy interests of the uninvolved third-parties and potential HIPAA related information. Sekera filed an objection to the

Discovery Commissioner's Report and Recommendation on April 4, 2019, which was heard by the Honorable Kathleen Delaney in Department XXV of the Eighth Judicial District Court on May 14, 2019. Judge Delaney, having been advised of the circumstances surrounding Sekera's sharing of information, nevertheless 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. Pursuant to the order, Sekera is to receive unredacted incident reports involving other Venetian guests, including those guests' names, addresses, telephone numbers, dates of birth, social security numbers, and driver's license/identification card numbers. Under the current order Sekera has no restrictions whatsoever on how the private information of Venetian guests will be used and shared. Petitioners filed a motion for reconsideration on an order shortening time with a request to stay the order allowing sufficient time to file a writ of mandamus and/or writ of prohibition with the Nevada Supreme Court, which was not heard until September 17, 2019. Judge Delaney denied Petitioners' motion for reconsideration and their request for a stay.

The motion for protective order filed by Petitioners was intended to protect the privacy of Venetian guests. Information related to prior incidents, such as the

date, time, place and circumstances, identifying Venetian employees involved, is already available to Sekera via the initial production. While Judge Delaney expressed some trepidation regarding the potential misuse of the subject private information, she did not provide any protection, concluding that she could not find a legal basis upon which to protect the private information at issue. Yet, when this issue was again before Judge Delaney on September 17, 2019, she expressed a belief that the unredacted incident reports were "for attorney eyes only." The District Judge was mistaken; yet, she still would not revisit the order and provide the requested protection. Petitioners 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 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 July 31, 2019 Order directing Petitioners to produce unredacted other incident reports to Sekera without any protections requested under NRCP 26(c); and

2. Provide clarification on the issue of privacy rights of guests and non-employees identified in other incident reports obtain 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 there 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 July 31, 2019 Order. If this Court grants that motion, then this writ may be considered on a non-emergency basis.

III. ISSUES PRESENTED

ISSUE ONE: Whether the District Court erred, as a matter of law, in denying Petitioners' motion for a protective order under NRCP 26(c) related to the privacy of guest information within other incident reports having nothing to do with the subject incident.

ISSUE TWO: Whether the District Court erred, as a matter of law, in denying Petitioners' motion for reconsideration related to the July 31, 2019 order denying Petitioners' motion for protective order under NRCP 26(c), failing to

weigh the issues of relevance and proportionality required under NRCP 26(b)(1) in refusing to provide protection of personal information of guests involved in other incidents on Venetian property.

IV. STANDARD OF REVIEW

A. Standards for Writ Review and Relief.

The Nevada Supreme Court has original jurisdiction to issue writs of prohibition and mandamus. Nev. Const. Art. 6, § 4. Mandamus is available to compel performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion. *Ivey v. Dist. Ct.*, 299 P.3d 354 (2013). *See also* NRS 34.160. "[W]here an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction, our consideration of a petition for extraordinary relief may be justified." *Mineral County v. State, Dep't of Conserv.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001) (internal citations omitted).

Writ relief is warranted where the Petitioners do not have a plain, speedy, and adequate remedy at law. *Millen v. District Court*, 122 Nev. 1245, 1250-1251 (2006). Special factors favoring writ relief include status of underlying pleadings, types of issues raised by the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented. *D.R. Horton v. District Court*, 123 Nev. 468, 474-75 (2007). An appellate court generally will address

only legal issues presented in a writ petition. *See, Poulos v. Eighth Jud. Dist. Ct.*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). "[T]he standard" in the determination of whether to entertain a writ petition is "[t]he interests of judicial economy." *Smith v. Eighth Jud. Dist. Ct.*, 113 Nev. 1343, 1355, 950 P.2d 280, 281 (1997). When the parties raise only legal issues on appeal from a district court order, the Court reviews the matter de novo. *St. James Village, Inc. v. Cunningham*, 125 Nev. 211, 216 (2009).

Petitioners contend that if they are forced to reveal private information of guests involved in other Venetian incidents without requested protections, "the assertedly [private and confidential] information would irretrievably lose its [private and confidential] quality and petitioners would have no effective remedy, even later by appeal." *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 are 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 is the proper forum to assess whether Petitioners are entitled to the relief being sought. Therefore, Petitioners

seek to protect the privacy rights of Venetian guests wholly unaffiliated with the present litigation.

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

**B. This Petition Presents Extraordinary Circumstances
Calling for Extraordinary Relief**

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

Absent intervention by this Court, Petitioners, and others similarly situated will suffer irreparable harm. In issuing its Order, the District Court created an avenue through which plaintiffs, in all premises liability negligence claims, can obtain reports of other unrelated incidents in unredacted form and not only use

them for purposes of the pending litigation, but to circulate them widely without restriction, thereby subjecting the private information of non-party former guests to abuse.

This case is set to commence trial on August 3, 2020. This Petition for Writ contains an important issue of law that will most certainly reoccur absent immediate direction from the Supreme 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 or suggestive of how a particular judge should handle a similar issue.

A substantial risk exists that Judge Delaney's ruling will be adopted by other judges in the Eighth Judicial District Court, and will result in an increase in cases in which plaintiffs seek unredacted other incident reports in similar cases without any privacy consideration or protection. Moreover, deciding this issue on Writ will promote judicial economy, as it will avert the expenditure of increased time associated with Sekera (and like plaintiffs) repeatedly contacting potentially hundreds of non-parties involved in matters wholly unaffiliated with the subject litigation to engage in a prolonged fishing expedition to obtain information not admissible at trial. The issue is compounded by the fact that Sekera has already shared information provided to her by Petitioners with numerous other litigants in

unrelated matters, which sharing began even while the initial motion for protective order was pending.

Moreover, on September 18, 2019, the Discovery Commissioner ordered that Petitioners must now produce incident reports for slip and falls occurring on Venetian premises following the November 4, 2016 incident. Because of the Court's prior July 31, 2019 order the referee felt compelled to also order that these records be produced in unredacted form, without any requested protections to address privacy. While this latter ruling is not the subject of this Writ, it highlights the scope of privacy issues now presented not only to Petitioners and their guests, but to all similarly positioned business owners and innkeepers.

Accordingly, Petitioners respectfully request that this Court grant the emergency petition vacating the District Court's July 31, 2019 order and issue an order directing the District Court to protect the private information of non litigant individuals.

V. RELEVANT FACTS

This litigation arises from a slip and fall allegedly occurring from a foreign substance on the floor on November 4, 2016. The underlying case was filed on April 12, 2018 by Sekera, who alleged that on November 4, 2016 at approximately 1:00 pm, "Petitioners negligently and carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid on the floor causing the

Sekera to slip and fall.”¹ Sekera related to Venetian security personnel at the scene following the incident that “she was walking through the area when she slipped in what she believed was water on the floor.”²

Sekera worked at a kiosk located in the Grand Canal Shops within the Venetian premises for nearly a year prior to the subject incident and testified in deposition that she walked through the subject fall area (“Grand Lux rotunda”) hundreds of times prior to the subject fall without incident.³ Sekera asserts that the condition which made the marble floors unsafe, causing her to slip and fall, was the presence of a liquid substance.⁴ On June 28, 2019, Sekera filed a First Amended Complaint after receiving leave of court to include a claim for punitive damages.⁵ In the First Amended Complaint, Plaintiff specifically alleged: “On or about November 4, 2016 at approximately 1:00 p.m. Defendants negligently and

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

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

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

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

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

carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid on the floor causing the Plaintiff to slip and fall.”⁶

VI. RELEVANT PROCEDURAL HISTORY

In the course of discovery, Sekera requested that Petitioners produce incident reports related to slip and falls on the Venetian marble floors from November 4, 2013 to the present.⁷ Petitioners responded by producing sixty-four (64) incident reports related to events from November 4, 2013 to November 4, 2016, redacting the names, addresses, phone numbers, dates of birth and other personal information of the individuals identified in the reports.⁸ When Sekera objected to the redactions, Petitioners filed Defendants’ Motion for Protective Order with the Discovery Commissioner, seeking an order protecting the personal information of prior guests.⁹ While the motion for protective order was pending, unbeknownst to Petitioners or the Discovery Commissioner, Sekera provided a copy of the redacted prior incident reports to another attorney involved in a

⁶ *Id.* at VEN 035, ln 4-7.

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

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

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

different lawsuit.¹⁰ Petitioners became aware of this sharing after the motion for protective order was filed and thereafter moved to keep the documents in redacted form for attorney eyes only.¹¹ One day prior to the March 13, 2019 hearing on the motion for protective order, also unbeknownst to Petitioners or the Discovery Commissioner, the redacted prior incident reports were filed in another department of the Eighth Judicial District Court in separate litigation against Venetian.¹²

At the March 13, 2019 hearing on Petitioners' motion for protective order, Sekera did not advise the court or Petitioners' counsel that the redacted prior incident reports had been shared with counsel outside the litigation and then filed

¹⁰ Appendix, Vol. 1, Tab 10, VEN 084-085, *Declaration of Peter Goldstein, Esq.* (date 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.

¹¹ Appendix, Vol. 1, Tab 11, VEN 086-096, *Defendants' Reply to Plaintiff's Opposition to Motion for Protective Order* (filed March 5, 2019). (At this time, Petitioners were unaware that redacted copies of prior incident reports produced on January 4, 2019 in this matter had been provided to Peter Goldstein, Esq., on February 7, 2019, after the motion for protection had been filed with the Court and before it was heard on March 13, 2019, only that some kind of sharing between counsel in other involving Venetian was occurring.)

¹² Appendix, Vol. 1, 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.

with the district court in another department.¹³ The Discovery Commissioner granted Petitioners' motion for protective order.¹⁴

Sekera filed an objection to the April 4, 2019 Discovery Commissioner's Report and Recommendation, which was heard by the district judge on May 14, 2019. The district judge, being apprised of Sekera's past conduct and her intention to freely share unredacted information with others outside the litigation, wholly reversed the Discovery Commissioner's Report and Recommendation.¹⁵ Judge Delaney relayed that she could not identify a legal basis in which to protect the identity of Petitioners' guests in prior incident reports or to grant a protective order preventing Sekera's counsel from distributing them as he desires to persons wholly unaffiliated with the subject litigation.¹⁶ However, Judge Delaney added the following:

I struggle with the decision in all candor because I do think because of the sheer volume of the amount of people involved here, that it could become something that's problematic. It could be viewed as something that would be something, like, a - you know, a marketing list that's out there on the loose that somebody could get their hands on and tie into, but I can't just because of that qualm tie it up.

¹³ Appendix, Vol. 1, Tab 13; VEN 186-200, *Recorder's Transcript of Hearing [On] Defendant's Motion for Protective Order* (March 13, 2019).

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

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

¹⁶ *See id.* at VEN 251, ln 22-25; VEN 252, ln 1-25; VEN 253, ln 1-2.

* * *

... I would caution Mr. Galliher that, you know, how you share this information who gets ahold (sic) of it and who has what information doesn't necessarily protect folks from being upset and coming after and wanting to attack this. . . . but it is potentially problematic to the extent that this information could be shared and could contain personal identifying information. There is -- there is statutory law out there that talks about those who come into possession of large quantities of information that contain personal identifying information and do not handle it carefully and disseminate it or do other things with it.¹⁷

Despite the caution given by the Court to Sekera counsel, the Order of July 31, 2019 does not preclude counsel from freely distributing information obtained in this litigation.¹⁸ The July 31, 2019 Order addressing the prior incident reports merely provides: "the Court strongly cautions Plaintiff to be careful with how she shares and uses this information"; however, no actual protection of the subject guest information was provided.¹⁹

Upon receipt of the Court's order on July 31, 2019, Petitioners filed a motion for leave to file a motion for reconsideration on the issue of the required production of unredacted incident reports on an order shortening time, with a motion to stay pending application of a writ on the issue in the alternative.²⁰ The

¹⁷ See *id.* at VEN 254, ln 10-16, 24-25; VEN 255, ln 1-3, 14-22.

¹⁸ Appendix, Vol. 2, Tab 16, VEN 267-70, *Order* (filed July 31, 2019).

¹⁹ *Id.* at VEN 269, ln 11-14.

²⁰ Appendix, Vol. 2, Tab 17, VEN 271-448, *Motion for Leave to File Motion for Reconsideration on Order Reversing Discovery Commissioner's Report and Recommendation and Motion to Stay Order Until Hearing On Reconsideration or,*

hearing was initially set for August 27, 2019, but was moved to September 17, 2019 at the request of Sekera counsel.²¹

At the September 17, 2019 hearing, Judge Delaney stated at the outset that she was under the mistaken impression that the order related to production of other Venetian incident reports was for attorney eyes only.²² Consider the following exchange from the hearing:

[MR. ROYAL]: I think, Your Honor, that the thing that we want to point out is as it relates to the -- the privacy concerns that my client has, once -- once these documents are produced and in unredacted form, they're out there. There's nothing in the present order that prevents plaintiff's counsel from sharing them with anyone and everyone. Even though the Court has expressed, in the Order, some concerns or at least Your Honor

Alternatively, Motion to Stay All Proceedings Pending Application for Writ of Mandamus On Order Shortening Time (filed August 12, 2019).

²¹ After the requested expedited hearing date was set, Sekera requested an extension of the hearing to accommodate counsel's trial schedule. On July 23, 2019, the district court entered an order granting Petitioners' motion for partial summary judgment on Sekera's claim that the mode of operation doctrine of liability applies under the given set of circumstances. (Appendix, Vol. 2, Tab 18, VEN 449-52, *Findings of Fact, Conclusions of Law and Order Granting Petitioners' Motion for Partial Summary Judgment on Mode of Operation Theory of Liability* (filed July 23, 2019). On August 28, 2019, the district court issued an order granting a continuance of discovery and the trial. (See Appendix, Vol. 2, Tab 19, VEN 453-55, *Order Granting in Part and Denying in Part Sekera's Motion to Extend Discovery Deadlines and Continue Trial (Second Request) on Order Shortening Time* (filed August 28, 2019).) The new discovery cut-off is now April 6, 2020. (*Id.* at VEN 455, ln 9-10.) Accordingly, the hearing on Petitioners' motion for reconsideration was held on September 17, 2019.

²² Appendix, Vol. 3, Tab 20, VEN 456-83, *Transcript of Hearing on Motion for Leave to File Motion for Reconsideration* (September 17, 2019), at VEN 460, ln 4-25; VEN 461, ln 1-7.

kind of admonished them to be a little careful, I mean, there's no teeth in any –

THE COURT: Well, and it's funny, and I don't mean to interrupt you, but I want to share this point with you. It's funny as I was reading the briefings I'm like, we didn't do that? Because it felt to me like when we talked about it, that I made it clear that this was to be for attorneys to have for -- because I felt they were entitled to this evidence, but not necessarily -- and we know coming in that, yes, Mr. Galliher has some of the information he has because someone else in plaintiffs' bar has shared with him things, **but I thought we had a discussion about, you know, while we maybe numbers or circumstances or things, you know, would somehow be public record or known that anything that was private or personal to these individuals really is not -- that would be personal identifiers, but otherwise would need to be redacted out of litigation, maybe, you know, the attorneys would need to see to have some ability to contact or follow up, but it would not be something that could be circulated to others. We didn't clarify any of that?**

MR. ROYAL: We did not, and I appreciate the Court bringing that up. That was our primary concern in the first place when we filed our motion before the Discovery Commissioner. Our concern was that this was -- all this information would be for Attorneys Eyes Only. And, of course, the Discovery Commissioner granted that, and she also granted that we would leave the prior Incident Reports in redacted form.²³

Petitioners argued that Plaintiffs did not meet the requirements of NRCP 26(b)(1) to demonstrate relevance and proportionality in light of the privacy rights of guests involved in unrelated other incidents on Venetian property and *Eldorado*

²³ *Id.* at VEN 460, ln 4-25; VEN 461, ln 1-13 (emphasis added).

*Club, Inc., supra.*²⁴ Judge Delaney agreed that there is merit to looking at case holdings by the United States District Court where it has addressed this issue and ruled under near identical circumstances.²⁵ However, Judge Delaney determined that she would not reconsider the issue, finding the July 31, 2019 order to be in agreement with Nevada law, finding that “the Court’s prior decision was sound [and] ... supported by the case law.”²⁶ Judge Delaney expressly denied Petitioners’ request for a stay pending the filing of this writ.²⁷ In so doing, Judge Delaney added:

And we understand that this information is going to be not only received by the plaintiff, but it’s going to potentially be shared with others, but we think that that unbalance (sic) is something that is a natural perhaps circumstance or consequence of what we have in these cases, but it is allowed in this case because it is relevant to the actual case that the plaintiffs have brought, and it is calculated to not only be relevant information, but lead to discovery of relevant information.²⁸

However, Judge Delaney also stated: “Because there is something here that could cause them [the appellate court] to take a look at it and make a decision, I certainly believe that this [a writ] is a viable option for the Venetian to pursue if they so

²⁴ See Appendix, Vol. 2, Tab 17, VEN 271-448, Appendix, Vol. 3, Tab 20, VEN 456-83, *generally*.

²⁵ See Appendix, Vol. 3, Tab 20, at VEN 474, ln 6-16.

²⁶ *Id.* at VEN 475, ln 4-9.

²⁷ *Id.* at VEN 476, ln 24-25; VEN 477, ln 1-13.

²⁸ *Id.* at VEN 476, ln 7-15 (emphasis added).

choose.”²⁹ In so doing, the district court judge relayed that she welcomes some guidance on this issue.³⁰ That stated, the judge stated: “if you are going to get relief on this point, Mr. Royal, it is going to have to come from Mandamus relief, because I think we have fully flushed out, fully vetted and fully considered the matters at this level, and that the Court's ruling that was previously made is sound and is going to stand.”³¹ Petitioners therefore have no other avenue for seeking relief and, accordingly, this emergency petition for stay is properly before this Honorable Court.

This writ is filed prior to the filing of the order on Petitioners' motion for reconsideration, which was the subject of the September 17, 2019 hearing, since reconsideration was denied and the July 31, 2019 order is the controlling order at issue.

On a related note, on September 18, 2019, the Discovery Commissioner, based on Judge Delaney's prior rulings, ordered that Petitioners to now produce unredacted incident reports from November 4, 2013 to the present (which includes nearly three years of post incident information).³² While this latter ruling is not before the Court, as Petitioners have not yet had the opportunity to bring it before

²⁹ *Id.* at 475, ln 18-23.

³⁰ *Id.* at VEN 458, ln 12-18; VEN 475, ln 18-25; VEN 477, ln 21-23.

³¹ *Id.* at VEN 477, ln 15-20.

³² 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)

Judge Delaney (*i.e.* specifically challenging the production of post incident reports for a slip and fall incident), it highlights the need for Petitioners to have the present issue reviewed by the Nevada Supreme Court and provide relief in an emergency fashion.

VII. LEGAL ARGUMENT

A. **ISSUE ONE: WHETHER THE DISTRICT COURT ERRED IN ORDERING PETITIONERS TO PRODUCE UNREDACTED OTHER INCIDENT REPORTS WITHOUT REQUESTED PROTECTIONS PURSUANT TO NRCP 26(C)**

1. Sekera Did Not Meet Her Burden of Proof Under NRCP 26(b)(1) to Establish the Need for Unredacted Prior Incident Reports

This litigation arises from a slip and fall occurring from a temporary transitory condition on November 4, 2016 in the Venetian Grand Lux rotunda.³³ Although Sekera walked through the Grand Lux rotunda area hundreds of times previously, on the day of the incident Sekera encountered a foreign substance for the first time, which caused her to slip and fall.³⁴

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

³³ See Appendix, Vol. 1, Tabs 1-6, VEN 001-037, *generally*.

³⁴ 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*.

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

Sekera claims to have sustained injuries primarily to her neck and back. Her known treatment is approximately \$80,000, to date, thus far all conservative in nature nearly three (3) years post incident. Petitioners have produced evidence of other slip/fall incidents from a foreign substance occurring at Venetian occurring

prior to Sekera's incident of November 4, 2016. The information for each such report identifies the date of incident, area of the incident, and the facts surrounding the incident. Sekera argued this information was insufficient and she needed the personal information of the guests involved in each incident. Her only purported need for obtaining this private information was to contact these people in the event Petitioners will present arguments at trial related to comparative fault.³⁵ Sekera provided no other reason for needing the non litigant guests' private information. Sekera also argued she has an unqualified right to share the guests' private information with anyone she desires.

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

2. Personal, Private Information of Guests Identified in Prior Incident Reports is Entitled to NRCP 26(c) Protection

Pursuant to the July 31, 2019 Order, the District Court has herein provided Sekera with unfettered access to personal and sensitive information from non

³⁵ 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.

parties to this action, which is not relevant to any claims or defenses in this matter. She has already been provided with redacted prior incident reports to establish issues associated with notice.

The Nevada Supreme Court has found that writ relief is appropriate when a District Court's ruling exceeds the scope of NRCP 26(b)(1) and requires the production of private information. *Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977). While Petitioners have not found Nevada case law applying the rule to protecting the privacy rights of persons involved in other incidents, the United States District Court for the District of Nevada has dealt with this issue and found in favor of protecting the privacy rights of third parties by redacting personal information.

In *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694, the plaintiff, who slipped and fell on a clear liquid within a Las Vegas Wal Mart store on May 18, 2013, filed a motion to compel the defendant to produce evidence of prior claims and incidents for the three (3) years preceding the subject incident. The court evaluated the claim under the federal equivalent of NRCP 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 have granted Petitioner's motion for a protective order.

In *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502, the federal district court applying the federal equivalent of 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 here before the Court (*i.e. Eldorado Club, Inc., supra*), Plaintiff necessarily cannot demonstrate a need outweighing the third party guests' privacy interest. Accordingly, the District Court's July 31, 2019 order denying Petitioner's request for a protective order is clearly in error. (*See also, Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620-21, 2007 U.S. Dist. LEXIS 80017 at *16-17 ("the rights of third parties can be adequately protected by permitting defendant to redact the guest's complaints and staff incident reports to protect the guest's name and

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

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

The incident reports at issue here contain the sensitive, and private information of individuals who are not parties to this lawsuit, and who are not believed to have any information, facts or circumstances surrounding Sekera's allegations. There is a recognized interest in protecting the disclosure of personal client information, as unauthorized disclosure would likely damage the Petitioners' guest relationships.³⁶ Guests who stay at the Venetian do so with an expectation that their personal information will not be disclosed or disseminated without their

³⁶ See *Gonzales v. Google, Inc.*, 234 FRD 674, 684 (N.D. CA 2006) (disclosing client information "may have an appreciable impact on the way which [the company] is perceived, and consequently the frequency with which customers use [the company]").

consent. There is simply no legitimate discovery interest which outweighs these third party privacy concerns in light of *Eldorado Club, Inc., supra*. Moreover, Sekera has not demonstrated a compelling need for this information. Furthermore, as discussed further below, it could subject Petitioners to liability for privacy violations.

3. Petitioners Should Not Be Required to Re-Produce Venetian Incident Reports Without the Existing Redactions of Confidential and Private Information Relating to Defendant's Guests as it Exposes Petitioners to Liability

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

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

As established below, good-cause exists to support an order providing that the personal, private information of Venetian's guests contained in the Incident Reports remain 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.³⁷

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

We only collect personal data that you provide to us, or that we are authorized to obtain by you or by law. For example, we obtain credit information to evaluate applications for credit, and we obtain background check information for employment applications. The type of personal data we collect from you will depend on how you are interacting with us using our website, products, or services. For example, we may collect different information from you when you make reservations, purchase gift certificates or merchandise, participate in a contest, or contact us with requests, feedback, or suggestions. The information we collect may include your name, title, email address, mailing information, phone number, fax number, credit card information, travel details (flight number and details, points of origin and destination), room preferences, and other information you voluntarily provide.³⁸

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:

³⁷ 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).

³⁸ *Id.* at VEN 488.

Access, Correct, Update, Restrict Processing, Erase: You may have the right to access, correct, and update your information. You also may request that we restrict processing of your information or erase it. To ensure that all of your personal data is correct and up to date, or to ask that we restrict processing or erase your information, please contact us using the methods in the Contact Us section below.³⁹

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

Petitioners contend that if the July 31, 2019 order is not vacated and the privacy rights of the innocent individuals protected, then Venetian may face further claims from aggrieved guests. Moreover, it will cause irreparable damage to Petitioners' relations with its guests and prospective guests. Therefore Petitioners respectfully request that this Court issue an order vacating the District Court's July 31, 2019 order and directing the District Court to issue an order protecting the private information on the third party individuals.

**B. ISSUE TWO: WHETHER THE DISTRICT COURT
ERRED IN DENYING PETITIONERS' MOTION FOR
RECONSIDERATION OF THE JULY 31, 2019 ORDER
RELATED TO THE PRODUCTION OF UNREDACTED**

³⁹ *Id.* at VEN 492.

**OTHER INCIDENT REPORTS WITHOUT REQUESTED
PROTECTION PURSUANT TO NRCP 26(C)**

Petitioners moved the District Court for reconsideration of its July 31, 2019 Order on August 12, 2019.⁴⁰ At the hearing on September 18, 2019, the District Court refused to reconsider its Order of July 31, 2019, finding fully in compliance and accordance with Nevada law.⁴¹ Petitioners moved for relief from the July 31, 2019 order by requesting a stay until a writ could be filed, which was denied,⁴² rendering Petitioners without any other means of relief beyond filing this writ and requesting a stay until this important legal issue can be reviewed and determined by this Honorable Court. Respectfully, Petitioners have met the requirements of NRAP Rules 21(a)(6), 27(e) and 8(a) and have set forth the need for an emergency stay under the circumstances, having no other speedy, and adequate remedy at law other than to seek relief from this Honorable Court.⁴³

Finally, as noted earlier, the Discovery Commissioner recently ordered that Petitioners must now produce unredacted subsequent incident reports (*i.e.* from November 4, 2016 to the present) based on Judge Delaney's ruling of July 31, 2019, and Sekera's new claim for punitive damages. While the issue of having to

⁴⁰ See Appendix, Vol. 2, Tab 17, VEN 271-448, *generally*.

⁴¹ Appendix, Vol. 3, Tab 20, at VEN 475, ln 4-6; VEN 476, ln 4-6; VEN 477, ln 15-20.

⁴² *Id.* at VEN 476, ln 19-25; VEN 477, ln 1-20.

⁴³ Petitioners have met the requirements set forth under NRAP 8(a)(1) by requesting a stay in the District Court below, and herein requesting a stay in this emergency request under NRAP 8(a)(2).

produce subsequent incident reports is not presently at issue before this Court, this latest ruling demonstrates the position Petitioners and their guests have now been placed, which highlights the need for requested protections sought herein.⁴⁴

VIII. CONCLUSION

This petition seeks relief from this Court surrounding an important issue of law; *to wit*: whether property owners and innkeepers can be compelled to produce the private information of individuals who are not involved in a slip and fall tort lawsuit when the party seeking this confidential information has failed to make the showing required by NRCP 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 July 31, 2019 order** directing Venetian to provide Sekera with unredacted

⁴⁴ See Appendix, Vol. 3, VEN 484-85.

copies of prior incident reports related to guests involved in other incidents occurring on the Venetian premises.

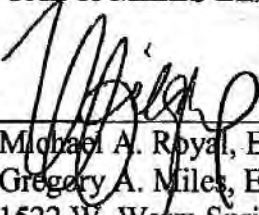
2. That this Court clarify the subject issue of law regarding the protection of private information produced in the course of discovery pursuant to NRCP 26(b)(1) and issue an order directing the District Court to protect the private information of guests contained in the incident reports at issue.

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 26 day of September, 2019.

ROYAL & MILES LLP

By


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

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:

☒ This brief has been prepared in a proportionally spaced typeface using Word Perfect 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:

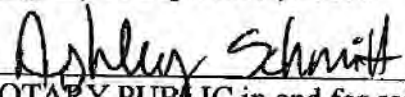
☒ Proportionately spaced, has a typeface of 14 points or more, and contains **7,403 words** in compliance with NRAP 32(a)(1)(A)(ii) (having a word count of less than 14,000 words).

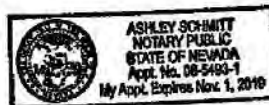
4. Finally, I hereby certify that I have read this Writ, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),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

Further affiant sayeth naught.


MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before
me by Michael A. Royal, Esq., on this
26 day of September, 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 26 day of September, 2019, I served true and correct copy of the foregoing PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e), by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Real Party in Interest

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


An employee of Royal & Miles LLP

Docket Number - 79689-COA



Document Year - 2019



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79689-WA

FILED

SEP 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No. 79689
District Court Case No. A-18-772761-C

Electronically Filed
Sep 26 2019 04:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

v.

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

EMERGENCY MOTION UNDER NRAP 27(e)

**EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF
ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED
INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT**

**ACTION IS NEEDED BY OCTOBER 2, 2019 BEFORE PETITIONER IS
REQUIRED TO DISCLOSE THE CONFIDENTIAL INFORMATION
THIS MOTION IS BEING FILED CONCURRENTLY WITH AN EMERGENCY
PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION**

Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
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1522 W. Warm Springs Rd.
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Telephone: (702) 471-6777
Facsimile: (702) 531-6777
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gmiles@royalmilesllp.com

19-40392

Docket 79689 Document 2019-40190

AFFIDAVIT OF MICHAEL A. ROYAL, ESQ. IN SUPPORT OF
PETITIONERS' EMERGENCY MOTION FOR STAY AND
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)(6) AND 27(e).

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

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
(702) 735-0049
Attorneys for Real Party in Interest

3. The facts showing the existence and nature of Petitioners' emergency are as follows: An order was entered on July 31, 2019 directing Venetian to produce unredacted reports of other incidents involving Venetian guests without providing requested protection under NRCP 26(c). The motion for reconsideration brought on an order shortening time was thereafter denied. Venetian's motion for stay by the district court to allow for filing of a writ of mandamus and/or writ of

A

prohibition was denied. Therefore, immediate action is required to prevent Venetian and its guests from suffering irreparable harm.

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

5. Petitioners will be required to divulge confidential information of non-party litigants immediately, if this Court does not take action. Concurrently with this Motion, Petitioner is filing an Emergency Petition for Writ of Mandate and/or Prohibition. If this Court grants this motion, then the emergency will be abated and the concurrently filed Petition may be considered on a non-emergency basis.

6. The relief sought in the Writ Petition is not available by the District Court. Petitioners made a written Motion for Stay with the District Court on August 12, 2019 and again orally on September 17, 2019. The District Court denied the Motion for Stay and indicated that relief would need to be obtained

from the appellate court pursuant to NRAP 8. It is imperative this matter be heard at the Court's earliest possible convenience.

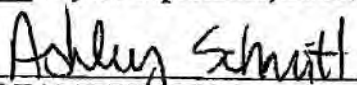
7. I certify that I have read this motion and, to the best of my knowledge, information and belief, this motion complies with the form requirements of Rule 21(d) and is not frivolous or interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost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

8. 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.

Further affiant sayeth naught.


MICHAEL A. ROYAL, ESQ.

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


NOTARY PUBLIC in and for said
County and State

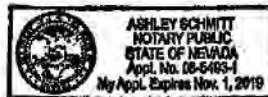


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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT AS TO RELIEF SOUGHT IN DISTRICT COURT

COMES NOW Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel of record, ROYAL & MILES LLP, and respectfully petition this Court for the following immediate relief related to Eighth District Court Case A-18-772761-C ("Case A772761"), JOYCE SEKERA ("Sekera") v. VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC ("Venetian").

Petitioners moved for a stay of execution in district court, which was denied. Due to the exigent circumstances, and the potential violation of privacy rights for hundreds of individuals wholly unconnected to the subject litigation, this Emergency Motion is being filed with this Court. It has been brought in good faith. In addition, 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 of guests ordered produced. Accordingly, once Petitioners comply with the order, there is no reasonable means of repairing the damage.

II. BASIS FOR RELIEF

1. The District Court failed to fairly consider the privacy rights of individual non-parties to the litigation by reversing the April 4, 2019 Discovery

Commissioner's Report and Recommendation granting Petitioners' motion for protective order under NRCP 26(c) .

2. The district court failed to weigh the issues of relevance and proportionality required under NRCP 26(b) (1) in refusing to provide protection of personal information of guests involved in other incidents on Venetian property.

Petitioners will be irreparably harmed without the issuance of a stay of the order directing Venetian to provide unredacted incident reports to Sekera. In discovery, Sekera requested reports of prior slip-and-fall incidents. Petitioners produced such reports with redactions to protect guests' personal private information. The July 31, 2019 District Court order requires Petitioner to produce these reports without redactions. Under the circumstances of the accident at issue in this matter, these prior incident reports have marginal relevance to the case in light of prevailing Nevada law.¹ Therefore, providing this unredacted information to Sekera without any of the requested protection under NRCP 26(c) will cause Petitioners (and the identified guests) irreparable harm. Accordingly, Petitions respectfully request that this Court **grant the emergency motion and issue an immediate order staying the production of unredacted incident reports until such time as the Court can rule on the writ of mandamus and/or prohibition that will be filed in this case.**

¹ *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962).

III. STATEMENT OF FACTS

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

In the course of discovery, Sekera requested that Petitioners produce incident reports related to slip and falls from November 4, 2013 to the present. Petitioners responded by producing sixty-four (64) redacted prior incident reports from November 4, 2013 to November 4, 2016. When Sekera objected to the production of redacted reports, Petitioners filed a motion for protective order pursuant to NRCP 26(c) on February 1, 2019 with the Discovery Commissioner.

Following a hearing on March 13, 2019, the Discovery Commissioner issued a Report and Recommendation granting Petitioners' motion for protective order. (See Appendix, Vol. 1, Tab 14, VEN 201-06, *Discovery Commissioner's Report and Recommendation* (filed April 4, 2019).) Sekera filed an objection to the Discovery Commissioner's Report and Recommendation on April 4, 2019, which was heard by the Honorable Kathleen Delaney in Department XXV of the Eighth Judicial District Court 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. (See Appendix, Vol. 2, Tab 15, VEN 207-66, *Transcript of Hearing on Objection to Discovery Commissioner's Report* (May 14, 2019); Appendix, Vol. 2, Tab 16, VEN 267-70, *Order* (filed July 31, 2019).)

The order reversing the Discovery Commissioner's Report and Recommendation of April 4, 2019 was filed on July 31, 2019. Pursuant to the order, Sekera is to receive unredacted incident reports involving other Venetian guests, including those guests' names, addresses, telephone numbers, dates of birth, social security numbers, and driver's license/identification card numbers. Under the current order Sekera has no restrictions whatsoever on how the private information of Venetian guests will be used and shared. Petitioners filed a motion for reconsideration on an order shortening time with a request to stay the order allowing sufficient time to file a writ of mandamus and/or writ of prohibition with the Nevada Supreme Court, which was not heard until September 17, 2019. Judge Delaney denied Petitioners' motion for reconsideration and their request for a stay. (See Appendix, Vol. 3, Tab 20, VEN 456-83, *Transcript of Hearing on Motion for Reconsideration* (September 17, 2019).) On a related note, on September 18, 2019, the Discovery Commissioner ordered that Petitioners must now produce unredacted copies of incident reports after November 4, 2016 to the present, without redacting personal information or limitations on sharing of the documents to others outside the litigation. (See Appendix, Vol 3, Tab 21, VEN 484-85, *Court*

Minutes, Discovery Commissioner (September 18, 2019.) While the Discovery Commissioner's latest ruling is not directly related to this motion, it highlights the emergent nature of the circumstances.

IV. **LEGAL ARGUMENT**

A. **Sekera Did Not Meet Her Burden of Proof under NRCP 26(b)(1) to Establish the Need for Unredacted Prior Incident Reports**

This litigation arises from a slip and fall occurring from a temporary transitory condition on November 4, 2016 in the Venetian Grand Lux rotunda.² Although Sekera walked through the Grand Lux rotunda area hundreds of times previously, on the day of the incident Sekera encountered a foreign substance for the first time, which caused her to slip and fall.³

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:

... 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

² See Appendix, Vol. 1, Tabs 1-7, VEN 001-41, *generally*.

³ See Appendix, Vol. 1, Tab 5, VEN at VEN 021-025. See also Appendix, Vol. 1, Tab 1, VEN 001-06, Tab 2, VEN 038-41, *generally*.

importance of the discovery in resolving the issues, and whether the **burden or expense of the proposed discovery outweighs its likely benefit**. . . . (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 the above stated five factors. Petitioners have produced evidence of other slip/fall incidents from a foreign substance occurring at Venetian occurring prior to Sekera's incident of November 4, 2016. The information for each such report identifies the date of incident, area of the incident, and the facts surrounding the incident. Sekera argued this information was insufficient and she needed the personal information of the guests involved in each incident. Her only purported need for obtaining this private information was to contact these people in the event Petitioners will present arguments at trial related to comparative fault.⁴ Sekera also argued she has an unqualified right to share the guests' private information with anyone she desires.

Sekera's argument claiming there is no law restricting her use of confidential information is an inaccurate analysis of Nevada laws. Rule 26(b)(1), Nevada Rules of Civil Procedure, places restrictions on her ability to obtain this

⁴ 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, VEN at VEN 469, ln 16-25; VEN 470, ln 1-12.

information. Sekera is required to show 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.

B. Personal, Private Information of Guests Identified in Prior Incident Reports is entitled to NRCP 26(c) Protection

Pursuant to the July 31, 2019 Order, the District Court has herein 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. She has already been provided with redacted prior incident reports to establish issues associated with notice.

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). While Petitioners have not found Nevada case law applying the rule to individuals involved in prior incidents, the United States District Court for the District of Nevada has dealt with this issue and found in favor of protecting the privacy rights of third parties by redacting personal information.

In *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694, the plaintiff, who slipped and fell on a clear liquid within a Las Vegas Wal- Mart store, 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 have granted Petitioner's motion for a protective order.

In *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502, the federal district court applying the federal equivalent of 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. ... "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)).

(*Id.* at *7.)

Based upon the foregoing it is clear that the non-litigant individuals have a protected privacy interest and Sekera has done nothing to demonstrate a "compelling need" to violate that protected interest. Given the Nevada Supreme Court's finding that prior incident information is irrelevant to establish notice in the facts at issue here before the Court (*i.e. Eldorado Club, Inc., supra*), Plaintiff cannot demonstrate a need outweighing the third party guests' privacy interest. Accordingly, the District Court's July 31, 2019 order denying Petitioner's request for a protective order is clearly in error.

C. An Emergency Stay is Necessary to Prevent Irreparable Harm

As set forth in more detail above, Petitioners have met the requirements of NRAP 8(a) and have set forth the need for an emergency stay under the

circumstances, having no other speedy and adequate remedy at law other than to seek relief from this Honorable Court.

V. CONCLUSION

The order by the District Court to compel Petitioners to provide private information of individuals who are not involved in the underlying action shocks the conscience. In a world where privacy of personal information is placed at a premium, it is difficult to comprehend that Nevada would be unwilling to protect this kind of information in a case where it has no relevance. Therefore, Petitioners hereby move for emergency relief as requested herein so that this Court may consider Petitioners' Writ of Mandamus and/or Prohibition on a non-emergency basis. If the requested relief is not granted on an emergency basis then innocent third parties will have their privacy rights irreparably damaged.

DATED this 24 day of September, 2019.

ROYAL & MILES LLP

By 

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

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 Word Perfect 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:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains **2,212 words** in compliance with NRAP 32(a)(1)(A)(ii) (having a word count of less than 14,000 words).

4. Finally, I hereby certify that I have read this motion, 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.

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 26 day of September, 2019, I served true and correct copy of the foregoing EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT, by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Real Party in Interest

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


An employee of Royal & Miles LLP

79689 WA **FILED**

SEP 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No. 79689
District Court Case No. A-18-772761-C

Electronically Filed
Sep 26 2019 04:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

v.

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

EMERGENCY MOTION UNDER NRAP 27(e)

EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF
ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED
INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT

ACTION IS NEEDED BY OCTOBER 2, 2019 BEFORE PETITIONER IS
REQUIRED TO DISCLOSE THE CONFIDENTIAL INFORMATION
THIS MOTION IS BEING FILED CONCURRENTLY WITH AN EMERGENCY
PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION

Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
ROYAL & MILES LLP
1522 W. Warm Springs Rd.
Henderson, Nevada 89014
Telephone: (702) 471-6777
Facsimile: (702) 531-6777
Email: mroyal@royalmilesllp.com
gmiles@royalmilesllp.com

19-40392
Docket 79689 Document 2019-40190

AFFIDAVIT OF MICHAEL A. ROYAL, ESQ. IN SUPPORT OF
PETITIONERS' EMERGENCY MOTION FOR STAY AND
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)(6) AND 27(e).

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

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
(702) 735-0049
Attorneys for Real Party in Interest

3. The facts showing the existence and nature of Petitioners' emergency are as follows: An order was entered on July 31, 2019 directing Venetian to produce unredacted reports of other incidents involving Venetian guests without providing requested protection under NRCP 26(c). The motion for reconsideration brought on an order shortening time was thereafter denied. Venetian's motion for stay by the district court to allow for filing of a writ of mandamus and/or writ of

prohibition was denied. Therefore, immediate action is required to prevent Venetian and its guests from suffering irreparable harm.

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

5. Petitioners will be required to divulge confidential information of non-party litigants immediately, if this Court does not take action. Concurrently with this Motion, Petitioner is filing an Emergency Petition for Writ of Mandate and/or Prohibition. If this Court grants this motion, then the emergency will be abated and the concurrently filed Petition may be considered on a non-emergency basis.

6. The relief sought in the Writ Petition is not available by the District Court. Petitioners made a written Motion for Stay with the District Court on August 12, 2019 and again orally on September 17, 2019. The District Court denied the Motion for Stay and indicated that relief would need to be obtained

from the appellate court pursuant to NRAP 8. It is imperative this matter be heard at the Court's earliest possible convenience.

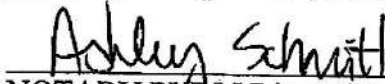
7. I certify that I have read this motion and, to the best of my knowledge, information and belief, this motion complies with the form requirements of Rule 21(d) and is not frivolous or interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost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

8. 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.

Further affiant sayeth naught.


MICHAEL A. ROYAL, ESQ.

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


NOTARY PUBLIC in and for said
County and State

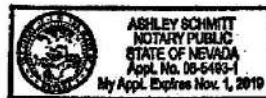


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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT AS TO RELIEF SOUGHT IN DISTRICT COURT

COMES NOW Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel of record, ROYAL & MILES LLP, and respectfully petition this Court for the following immediate relief related to Eighth District Court Case A-18-772761-C ("Case A772761"), JOYCE SEKERA ("Sekera") v. VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC ("Venetian").

Petitioners moved for a stay of execution in district court, which was denied. Due to the exigent circumstances, and the potential violation of privacy rights for hundreds of individuals wholly unconnected to the subject litigation, this Emergency Motion is being filed with this Court. It has been brought in good faith. In addition, 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 of guests ordered produced. Accordingly, once Petitioners comply with the order, there is no reasonable means of repairing the damage.

II. BASIS FOR RELIEF

1. The District Court failed to fairly consider the privacy rights of individual non-parties to the litigation by reversing the April 4, 2019 Discovery

Commissioner's Report and Recommendation granting Petitioners' motion for protective order under NRCP 26(c) .

2. The district court failed to weigh the issues of relevance and proportionality required under NRCP 26(b) (1) in refusing to provide protection of personal information of guests involved in other incidents on Venetian property.

Petitioners will be irreparably harmed without the issuance of a stay of the order directing Venetian to provide unredacted incident reports to Sekera. In discovery, Sekera requested reports of prior slip-and-fall incidents. Petitioners produced such reports with redactions to protect guests' personal private information. The July 31, 2019 District Court order requires Petitioner to produce these reports without redactions. Under the circumstances of the accident at issue in this matter, these prior incident reports have marginal relevance to the case in light of prevailing Nevada law.¹ Therefore, providing this unredacted information to Sekera without any of the requested protection under NRCP 26(c) will cause Petitioners (and the identified guests) irreparable harm. Accordingly, Petitions respectfully request that this Court **grant the emergency motion and issue an immediate order staying the production of unredacted incident reports** until such time as the Court can rule on the writ of mandamus and/or prohibition that will be filed in this case.

¹ *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962).

III. STATEMENT OF FACTS

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

In the course of discovery, Sekera requested that Petitioners produce incident reports related to slip and falls from November 4, 2013 to the present. Petitioners responded by producing sixty-four (64) redacted prior incident reports from November 4, 2013 to November 4, 2016. When Sekera objected to the production of redacted reports, Petitioners filed a motion for protective order pursuant to NRCP 26(c) on February 1, 2019 with the Discovery Commissioner.

Following a hearing on March 13, 2019, the Discovery Commissioner issued a Report and Recommendation granting Petitioners' motion for protective order. (See Appendix, Vol. 1, Tab 14, VEN 201-06, *Discovery Commissioner's Report and Recommendation* (filed April 4, 2019).) Sekera filed an objection to the Discovery Commissioner's Report and Recommendation on April 4, 2019, which was heard by the Honorable Kathleen Delaney in Department XXV of the Eighth Judicial District Court 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. (See Appendix, Vol. 2, Tab 15, VEN 207-66, *Transcript of Hearing on Objection to Discovery Commissioner's Report* (May 14, 2019); Appendix, Vol. 2, Tab 16, VEN 267-70, *Order* (filed July 31, 2019).)

The order reversing the Discovery Commissioner's Report and Recommendation of April 4, 2019 was filed on July 31, 2019. Pursuant to the order, Sekera is to receive unredacted incident reports involving other Venetian guests, including those guests' names, addresses, telephone numbers, dates of birth, social security numbers, and driver's license/identification card numbers. Under the current order Sekera has no restrictions whatsoever on how the private information of Venetian guests will be used and shared. Petitioners filed a motion for reconsideration on an order shortening time with a request to stay the order allowing sufficient time to file a writ of mandamus and/or writ of prohibition with the Nevada Supreme Court, which was not heard until September 17, 2019. Judge Delaney denied Petitioners' motion for reconsideration and their request for a stay. (See Appendix, Vol. 3, Tab 20, VEN 456-83, *Transcript of Hearing on Motion for Reconsideration* (September 17, 2019).) On a related note, on September 18, 2019, the Discovery Commissioner ordered that Petitioners must now produce unredacted copies of incident reports after November 4, 2016 to the present, without redacting personal information or limitations on sharing of the documents to others outside the litigation. (See Appendix, Vol 3, Tab 21, VEN 484-85, *Court*

Minutes, Discovery Commissioner (September 18, 2019.) While the Discovery Commissioner's latest ruling is not directly related to this motion, it highlights the emergent nature of the circumstances.

IV. LEGAL ARGUMENT

A. **Sekera Did Not Meet Her Burden of Proof under NRCP 26(b)(1) to Establish the Need for Unredacted Prior Incident Reports**

This litigation arises from a slip and fall occurring from a temporary transitory condition on November 4, 2016 in the Venetian Grand Lux rotunda.² Although Sekera walked through the Grand Lux rotunda area hundreds of times previously, on the day of the incident Sekera encountered a foreign substance for the first time, which caused her to slip and fall.³

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:

... 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

² See Appendix, Vol. 1, Tabs 1-7, VEN 001-41, *generally*.

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importance of the discovery in resolving the issues, and whether the **burden or expense of the proposed discovery outweighs its likely benefit. . . .** (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 the above stated five factors. Petitioners have produced evidence of other slip/fall incidents from a foreign substance occurring at Venetian occurring prior to Sekera's incident of November 4, 2016. The information for each such report identifies the date of incident, area of the incident, and the facts surrounding the incident. Sekera argued this information was insufficient and she needed the personal information of the guests involved in each incident. Her only purported need for obtaining this private information was to contact these people in the event Petitioners will present arguments at trial related to comparative fault.⁴ Sekera also argued she has an unqualified right to share the guests' private information with anyone she desires.

Sekera's argument claiming there is no law restricting her use of confidential information is an inaccurate analysis of Nevada laws. Rule 26(b)(1), Nevada Rules of Civil Procedure, places restrictions on her ability to obtain this

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information. Sekera is required to show 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.

B. Personal, Private Information of Guests Identified in Prior Incident Reports is entitled to NRCP 26(c) Protection

Pursuant to the July 31, 2019 Order, the District Court has herein 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. She has already been provided with redacted prior incident reports to establish issues associated with notice.

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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, 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 have granted Petitioner's motion for a protective order.

In *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502, the federal district court applying the federal equivalent of 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. ... "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)).

(*Id.* at *7.)

Based upon the foregoing it is clear that the non-litigant individuals have a protected privacy interest and Sekera has done nothing to demonstrate a "compelling need" to violate that protected interest. Given the Nevada Supreme Court's finding that prior incident information is irrelevant to establish notice in the facts at issue here before the Court (*i.e. Eldorado Club, Inc., supra*), Plaintiff cannot demonstrate a need outweighing the third party guests' privacy interest. Accordingly, the District Court's July 31, 2019 order denying Petitioner's request for a protective order is clearly in error.

C. An Emergency Stay is Necessary to Prevent Irreparable Harm

As set forth in more detail above, Petitioners have met the requirements of NRAP 8(a) and have set forth the need for an emergency stay under the

circumstances, having no other speedy and adequate remedy at law other than to seek relief from this Honorable Court.

v. CONCLUSION

The order by the District Court to compel Petitioners to provide private information of individuals who are not involved in the underlying action shocks the conscience. In a world where privacy of personal information is placed at a premium, it is difficult to comprehend that Nevada would be unwilling to protect this kind of information in a case where it has no relevance. Therefore, Petitioners hereby move for emergency relief as requested herein so that this Court may consider Petitioners' Writ of Mandamus and/or Prohibition on a non-emergency basis. If the requested relief is not granted on an emergency basis then innocent third parties will have their privacy rights irreparably damaged.

DATED this 24 day of September, 2019.

ROYAL & MILES LLP

By 

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

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 Word Perfect 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:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains **2,212 words** in compliance with NRAP 32(a)(1)(A)(ii) (having a word count of less than 14,000 words).

4. Finally, I hereby certify that I have read this motion, 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.

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 26 day of September, 2019, I served true and correct copy of the foregoing EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT, by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Real Party in Interest

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


An employee of Royal & Miles LLP

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND LAS VEGAS SANDS,
LLC, A NEVADA LIMITED LIABILITY
COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KATHLEEN E. DELANEY, DISTRICT
JUDGE,

Respondents,

and

JOYCE SEKERA, AN INDIVIDUAL,

Real Party in Interest.

No. 79689-COA

FILED

OCT 01 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

*ORDER DIRECTING ANSWER
AND IMPOSING TEMPORARY STAY*


This original, emergency petition for a writ of mandamus or prohibition challenges a July 31, 2019, district court order directing petitioners to provide in discovery unredacted prior incident reports. Petitioners have also moved for a stay of the district court order pending our consideration of this writ petition.

Having reviewed the petition and supporting documents, we conclude that an answer may assist this court in resolving the petition. Therefore, real party in interest, on behalf of respondents, shall have 28 days from the date of this order within which to file and serve an answer, including authorities, against issuance of the requested writ. NRAP 21(b)(1). Petitioners shall have 14 days from service of the answer to file

and serve any reply. We temporarily stay the district court's July 31, 2019, order pending our receipt and consideration of any opposition to the stay motion and further order of this court. Any opposition to the stay may be filed and served within 7 days from the date of this order.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen E. Delaney, District Judge
Royal & Miles, LLP
The Galliher Law Firm
Eighth District Court Clerk

IN THE COURT OF APPEALS FOR THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC;
LAS VEGAS SANDS, LLC,

Appellants,

v.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA; THE HONORABLE
KATHLEEN DELANEY,

Respondents,

JOYE SEKERA,

Real Party in Interest

Court of Appeals Case No.:

79689-COA

Electronically Filed
Oct 08 2019 03:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No.:

A788379

JOYCE SEKERA'S MOTION FOR EXTENDED BRIEFING

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Attorneys for Real Party in Interest Joyce Sekera

Real Party in Interest, JOYCE SEKERA. ("Ms. Sekera"), by and through her attorneys, The Galliher Law Firm, hereby submits the following Motion for Extended Briefing. This Motion is based upon and supported by the following memorandum of points and authorities, the pleadings and papers on file, the exhibits attached hereto, and any argument that the Court may allow at the time of hearing.

DATED this 8th of October, 2019

THE GALLIHER LAW FIRM



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MEMORANDUM AND POINTS OF AUTHORITIES

I. LEGAL ARGUMENT

Appellants moved for a stay in this case pending the Court's decision on Appellants' Writ. In deciding whether to issue a stay the Court must consider a list of factors including "whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition." NRAP 8(c). Thus, in order to defeat Appellants'

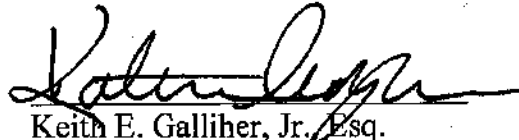
Motion for Stay Ms. Sekera must show that Appellants are not likely to prevail on the merits. In other words, Ms. Sekera must respond to all the arguments in Appellants' 36-page Writ which Ms. Sekera is unable to do in the 10-page limit proscribed in NRAP 27(d)(10).

II. CONCLUSION

Based on the foregoing, Ms. Sekera respectfully requests this Court grant her Motion for Extended briefing for her Opposition to Appellant's Motion for Stay.

DATED this 8th day of October, 2019

THE GALLIHER LAW FIRM



Keith E. Galliher, Jr., Esq.

Nevada Bar Number 220

Kathleen H. Gallagher, Esq.

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1850 E. Sahara Avenue, Ste. 107

Attorneys for Joyce Sekera

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The Galliher Law Firm and that on the 8 day of October, 2019, pursuant to N.E.F.C.R. 8, I electronically filed and served a true and correct copy of the above and foregoing **MOTION FOR EXTENDED BRIEFING** as follows:

☒ [X] by the Court's CM/ECF system which will send notification to the following;
and

☐ [] by US mail at Las Vegas, Nevada, postage prepaid thereon, addressed to the following:

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Honorable Kathleen Delaney
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Respondent



An employee of The Galliher Law Firm

IN THE COURT OF APPEALS FOR THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC;
LAS VEGAS SANDS, LLC,

Appellants,

v.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA; THE HONORABLE
KATHLEEN DELANEY,

Respondents,

JOYE SEKERA,

Real Party in Interest

Court of Appeals Case No.:

79689-COA

District Court Case No.:

A788379

Electronically Filed

Oct 08 2019 05:29 p.m.

Elizabeth A. Brown

Clerk of Supreme Court

JOYCE SEKERA'S OPPOSITION TO APPELLANTS' EMERGENCY

MOTION FOR STAY UNDER NRAP 27(e)

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Attorneys for Real Party in Interest Joyce Sekera

Real Party in Interest, JOYCE SEKERA. ("Ms. Sekera"), by and through her attorneys, The Galliher Law Firm, hereby submits the following Opposition to Appellants' Emergency Motion Under NRAP 27(e). This Opposition is based upon and supported by the following memorandum of points and authorities, the pleadings and papers on file, the exhibits attached hereto, and any argument that the Court may allow at the time of hearing.

DATED this 8th of October, 2019

THE GALLIHER LAW FIRM



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Attorneys for Real Party in Interest

Joyce Sekera

MEMORANDUM AND POINTS OF AUTHORITIES

I. FACTUAL BACKGROUND

This is a case arises out of a slip and fall in the Venetian Casino at 12:30 p.m on November 4, 2016. (VEN005.) Ms. Sekera was walking past the Grand Lux Café Restrooms in the Venetian when she slipped and fell on water on the slick marble floor. (*Id.*) Appellants however, contend “Plaintiff’s fall had nothing to do with a foreign substance being on the floor.” (VEN061:27-28.) On the way down Ms. Sekera struck her skull and left elbow on the pillar and her left hip on the ground. Over the last three years Ms. Sekera treated for her injuries with low back injections, medial branch blocks and two rounds of radio frequency ablations. (APP122-24.) In June, Ms. Sekera’s doctor recommended a fusion back surgery which Ms. Sekera will undergo in the near future. (APP125-26.)

During discovery Ms. Sekera’s requested Appellants produce incident reports from the three years prior to the Ms. Sekera’s fall to present. (VEN040.) In response, Appellants produced 64 redacted incident reports. (VEN056:2-057:2.) These reports redacted phonebook information (name, address and phone) plus dates of birth. (APP127-39.) The redacted incident reports contain spaces for social security numbers and drivers’ licenses, however, Appellants did not redact this information because they do not collect it. (APP127-39.) Guests completing forms also did not fill in this information. (VEN007, APP127, APP128, APP136.)

Ms. Sekera asked Appellants to provide unredacted incident reports so she could identify witnesses to rebut the comparative negligence claim that Ms. Sekera should have seen liquid on the floor before she fell. (VEN057:3-14.) Appellants refused to produce the unredacted reports and filed for a protective order. (*Id.*)

The Discovery Commissioner recommended (“April 4, 2019 DCRR”) granting the Motion for a Protective Order and ordering the unredacted incident reports be withheld. (VEN203.) Ms. Sekera objected to the April 4, 2019 DCRR because she needed the contact information for potential witnesses in her case and because Appellants’ fear of collaborative discovery is not sufficient grounds for a protective order. (APP161:18-27.) The District Court overruled the April 4, 2019 DCRR because there was no legal basis for the protective order. (APP193.)

II. LEGAL ARGUMENT

A. Legal Standard for NRAP 8 Emergency Motion

A party may move for a stay of an order “pending appeal or resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ [.]”

NRAP 8(a)(1)(A). In deciding whether to issue a stay the Court must consider the following factors:

- (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied;
- (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied;
- (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and
- (4) whether

appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

NRAP 8(c). Appellants have the burden to show the factors in favor of a stay. *Aspen Fin. Servs. v. Dist. Ct.*, 128 Nev. 635, 642, 289 P.3d 201, 206 (2012).

In relation to discovery appeals, the Supreme Court held “Absent a clear abuse of discretion, we will not disturb a district court's decision regarding discovery.” *In re Adoption of a Minor Child*, 118 Nev. 962, 968, 60 P.3d 485, 489 (2002) (citing *Diversified Capital v. City N. Las Vegas*, 95 Nev. 15, 23, 590 P.2d 146, 151 (1979)). Thus, to receive a stay, Appellants must show the District Court abused its discretion when it denied Appellants’ Motion for a Protective Order.

B. Appellants Are Not Likely to Prevail on the Merits in the Writ

1. Appellants Fear of Collaborative Sharing of Information is Not Grounds for a Protective Order

Although not explicitly argued by Appellants, the language of the Writ makes clear the largest, if not sole motivation behind this protective order was to prevent the collaborative sharing of information. (See Writ at e, 1, 2, 3, 8, 9, 13, 14, 15, 17, 18, 22, 28 (complaining of collaborative discovery.)) Courts nationwide however uniformly agree that a concern of the risk of public disclosure or collaborative sharing of information does not constitute good cause for a protective order. See, e.g. *Olympic Refining Co. v. Carter*, 332 F.2d 260 (9th Cir. 1964); see also *De La Torre v. Swift Transp. Co.*, No. 2:13-CV-1786 GEB, 2014 WL

3695798, at *3 (E.D. Cal. July 21, 2014).¹ “The risk—or in this case, the certainty—that the party receiving the discovery will share it with others does not alone constitute good cause for a protective order.” *Wauchop*, 138 F.R.D. at 546.

Rule 1 the Federal and Nevada Rules of Civil Procedure require they “be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” See FRCP 1; *see also* NRCP 1. Collaborative discovery fosters the goals of Rule 1 by eliminating the time and expense involved in re-discovery.² “It is particularly appropriate that this principle be applied in... cases in which individual plaintiffs must litigate against large, corporate defendants.” *Baker*, 132 F.R.D. at 126

“Maintaining a suitably high cost of litigation for future adversaries is not a proper

¹ *See also* *Wauchop v. Domino's Pizza*, 138 F.R.D. 539, 546 (N.D. Ind. 1991); *Ericson v. Ford Motor*, 107 F.R.D. 92, 94 (E.D. Ark. 1985); *Baker v. Liggett Group*, 132 F.R.D. 123, 125 (D.Mass 1990); *Garcia v. Peebles*, 734 S.W. 2d 343, 347-348 (Tex. 1987); *Earl v. Gulf & Western Mf.*, 366 N.W.2d 160, 165 (Wis. App. 1985); *Nestle Foods v. Aetna Casualty & Surety*, 129 F.R.D. 483, 484 (D. N.J. 1990); *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 384, 390 (Iowa 1983); *Am. Tel. and Tel. Co. v. Grady*, 594 F.2d 594 (7th Cir. 1979); *Johnson Foils v. Huyck*, 61 F.R.D. 405 (N.D.N.Y.1973); *Williams v. Johnson and Johnson*, 50 F.R.D. 31 (S.D.N.Y. 1970); *Parsons v. Gen. Motors*, 85 F.R.D. 724, 726 (N.D. Ga. 1980); *Deford v. Schmid Prod. Co.*, 120 F.R.D. 648, 654 (D. Md. 1987);

² *Williams*, 50 F.R.D. at 32; *Wauchop*, 138 F.R.D. at 546; *Wilk v. Am. Med. Ass'n*, 635 F.2d 1295, 1299 (7th Cir.1980); *Grady*, 594 F.2d at 597; *Phillips Petroleum v. Pickens*, 105 F.R.D. 545, 551 (N.D.Tex.1985); *Carter-Wallace v. Hartz Mountain Indus.*, 92 F.R.D. 67, 70 (S.D.N.Y.1981); *Parsons*, 85 F.R.D. at 726; *Garcia*, 734 S.W.2d at 347; *Ward v. Ford Motor*, 93 F.R.D. 579, 580 (D.Colo.1982); *Baker*, 132 F.R.D. at 126; *Patterson v. Ford Motor*, 85 F.R.D. 152, 154 (W.D.Tex.1980).

purpose under Rules 1 or 26.” *Wauchop*, 138 F.R.D. at 547; *see also Cipollone v. Liggett Grp., Inc.*, 113 F.R.D. 86, 87 (D.N.J. 1986).

A protective order in this case violates Rule 1 by increasing the time and expense of litigation by forcing plaintiffs to re-discover information. This is especially true here because Appellants are large corporations with teams of skilled lawyers who zealously argue on their behalf. Though there is nothing wrong with this, it increases the costs for individual plaintiffs to bring their claims.

More important than decreasing the costs of litigation “[s]hared discovery is an effective means to insure full and fair disclosure.” *Garcia v. Peebles*, 734 S.W.2d 343, 347 (Tex. 1987). “Parties subject to a number of suits concerning the same subject matter are forced to be consistent in their responses by the knowledge that their opponents can compare those responses.” *Garcia*, 734 S.W.2d at 347; *Buehler v. Whalen*, 70 Ill. 2d 51, 65, 374 N.E.2d 460, 466 (1977). The improper conduct the *Garcia* and *Buehler* courts guarded against is evident here: Appellants refused to fully disclose documents in four pending lawsuits and violated a court order in *Smith v. Venetian*. Appellants’ failure to secure a protective order before disclosing incident reports is the only reason these four plaintiffs discovered Appellants violations. A protective order in this case could only serve the improper purpose of giving Appellants peace of mind future plaintiffs will not catch their discovery violations. This is not a legitimatize purpose for a protective order.

Because the District Court properly determined Appellants could not receive a protective order to prevent Ms. Sekera from sharing discovery, Appellants are unlikely to prevail on the merits on this argument and a stay is thus improper.

2. Appellants Apply the Incorrect Legal Standard for Review of a Motion for a Protective Order

Because Appellants filed this Writ on a motion for protective order, Appellants must show District Court abused its discretion when it determined Appellants did not show good cause for a protective order and therefore denied Appellants request for the same. *See* NRCP 26(c) (“for good cause shown” the Court may “make any order which justice requires to protect a party...”); *see also Beckman Indus., Inc., v. Int’l. Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (to meet the burden of persuasion, “the party seeking the protective order must show good cause by demonstrating a particular need for the protection sought”).

Section VII.A.1. of Appellants’ Writ asks this Court to analyze the wrong legal standard, *to wit*, that the District Court abused its discretion because Ms. Sekera did not meet her burden of proof under NRCP 26(b)(1) to establish the need for the unredacted incident reports. (Wirt at 20.) Ms. Sekera’s proof of discoverability of the incident reports under NRCP 26(b)(1) is not at issue in this Writ because it is not part of the burden of proof for a protective order. Because Appellants’ Writ asks the Court to analyze the wrong standard in reviewing a

motion for a protective order, which the Appellate Court will not do, Appellants are unlikely to prevail on the merits on this argument and a stay is thus improper.

3. The Information in the Incident Reports Is Not Protectable

The incident reports produced by Appellants in this case contain information that is only slightly more revealing or invasive than information contained in a phonebook – phonebook information (name, address, phone) plus date of birth. Appellants agree they only redacted “names, addresses, phone numbers and dates of birth.” (Writ at 12.) Although the CR-1 and Acknowledgement of First Aid Assistance forms leave space for social security and drivers’ licenses’ numbers, Appellants do not collect this information. It is clear Appellants also instruct their guests not to fill out the social security # line on the accident reports because the written responses place “N/A” or “-----” on the social security # line.

This phonebook plus date of birth information contained in Appellants’ incident reports is not protectable under NRCP 26(b). There is no Nevada case law which supports the contention that this information can be protected. (See Writ at 22-27.) Appellants also cannot establish a protectable interest over this information (names, addresses and phone numbers) because it is public and published in the phonebook. See, e.g. *Khalilpour v. CELLCO P'ship*, 2010 WL 1267749, at *2, 2010 U.S. Dist. LEXIS 43885, at *6–*7 (N.D.Cal.2010); *Busse v. Motorola, Inc.*, 351 Ill. App. 3d 67, 72, 813 N.E.2d 1013, 1018 (2004); *Keel v. Quality Med. Sys.*,

Inc., 515 So. 2d 337 (Fla. Dist. Ct. App. 1987); *Brignola v. Home Properties, L.P.*, No. CIV.A. 10-3884, 2013 WL 1795336, at *12 (E.D. Pa. Apr. 26, 2013).

The Writ cites a myriad of California cases, which at first glance appear to support Appellants' position. However, upon closer examination these cases are rogue or do not support Appellants' arguments. For example, the *Izzo* court did not grant a protective order on privacy interests as Appellants claim. *Izzo v. Wal-Mart Stores, Inc.*, No. 215CV01142JADNJK, 2016 WL 409694, at *4 (D. Nev. Feb. 2, 2016); *see also* Writ at 23-24. Rather, the *Izzo* court determined the defendant "provided a particularized showing of undue burden" i.e. "hundreds of hours of personnel time" and that plaintiff's request was "overbroad, unduly burdensome, and not relevant to the claims she asserts." *Id.*

Similarly, the unreported *Rowland v. Paris Las Vegas* case, that ordered a protective order on information phonebook information (name, address and phone number) appears to be a rogue decision resulting from the parties' embarrassing lack of briefing. *See* Joint Motion to Compel, *Rowland v. Paris Las Vegas*, No. 13CV2630-GPC DHB, 2015 WL 4742502 (S.D. Cal. Aug. 11, 2015) (APP368-73); *see also* Writ at 24-25. The parties in *Rowland* submitted a 5-page joint motion to compel on 23 discovery requests summarizing the requests and objections but failed to cite any legal authority, rules or statutes. (APP368-73.)

More importantly, the federal and state California cases which Appellants so eagerly urge the Court to follow support Ms. Sekera position because they hold a plaintiff's need to identify potential witnesses outweighs any privacy concerns a defendant may have about disclosing those witnesses' information. *See, e.g. Henderson v. JPMorgan Chase*, No. CV113428PSGPLAX, 2012 WL 12888829 (C.D. Cal. July 31, 2012); *Tierno v. Rite Aid*, 2008 WL 3287035 (N.D. Cal. July 31, 2008); *McArdle v. AT&T*, No. C 09-1117 CW (MEJ), 2010 WL 1532334 (N.D. Cal. Apr. 16, 2010); *Pioneer Elecs. (USA) v. Superior Court*, 40 Cal. 4th 360, 371, 150 P.3d 198, 205 (2007). The California Court of Appeals even held it was an abuse of discretion to require an opt-in notification system to secure the consent of identified potential witnesses before their contact information could be disclosed to the plaintiff. *Puerto v. Superior Court*, 158 Cal. App. 4th 1242, 1256, 70 Cal. Rptr. 3d 701, 712 (2008). Ms. Sekera sought the contact information of the parties in the incident reports because they are potential witnesses in her case to combat Appellants comparative fault defense. The California courts, which Appellants urge the Court to follow, support Ms. Sekera's position she is entitled to the contact information for these potential witnesses. Because Appellants have provided no case law that states they can withhold contact information for potential witnesses, they are unlikely to prevail on their Writ and a stay is thus improper.

//

4. Appellants Have No Potential Liability under NRS 603A

Appellants' allege dissemination of their guests' private information is the equivalent to a data breach which will exposed to claims under NRS 603A. (Writ at 27.) Based upon the legislative history and the statute itself, there are three major reasons NRS 603A does not apply to the circumstances of this case.

First, NRS 603A was created to address large scale identity theft by criminals. (APP376.) Neither Ms. Sekera nor her counsel are identity thieves, and thus applying this statute under these circumstances would be contrary to the purposes of the statute's creation.

Second, providing unredacted incident reports is not within the meaning of "breach of the security of system data" defined by NRS 603A.020 as "unauthorized acquisition of computerized data that materially compromises the security, confidentiality or integrity of personal information maintained by the data collector." A Court order by definition authorizes conduct and has been understood to authorize conduct for nearly a century.³ Thus, even if the information in the incident reports came within the reach of NRS 603A, disclosure of the incident reports in compliance with the Court's July 31, 2019 Order would be "authorized" acquisition. Because providing Ms. Sekera with the unredacted incident reports is

³ See, e.g. *In re Troyer's Estate*, 48 Nev. 72, 227 P. 1008, 1008 (1924) ("authorized by court order"); *Club Vista Fin. Servs. v. Dist. Ct.*, 128 Nev. 224, 228, 276 P.3d 246, 248 (2012) ("the district court's order authorizing...").

authorized conduct, it does not constitute a “breach of the security of system data” under NRS 603A.020 and therefore cannot subject Appellants to liability for a “breach of the security of system data.”

Third, the incident reports do not contain “personal information” as defined by NRS 603A.040. NRS 603A.040(1) defines “personal information” as a first and last name in combination with a: (a) social security number, (b) driver’s license number, (c) account, credit or debit card number with the pin or access code, (d) a health insurance or medical ID number, (e) a username with a passcode. NRS 603A cannot apply to Appellants unless the incident reports contain one of these categories of information. Appellants’ incident reports are devoid of any account numbers, credit/debit card numbers, medical ID numbers and usernames and passwords. Although the redacted incident reports leave spaces for social security and drivers’ license numbers, Appellants apparently do not collect this information and thus never redacted these lines. Because Appellants do not collect the information necessary to come within the purview of NRS 603A, Appellants are unlikely to prevail on the merits on this argument and a stay is therefore improper.

5. Appellants’ Privacy Policy Can’t Subject Them to Liability

Finally, Appellants are unlike to succeed on the Writ because their Privacy Policy cannot subject them to liability. Appellants’ drafted their Privacy Policy to absolve them of liability related to personal information: your “provision of

information to us is at your own risk.” (VEN493.) As individuals provide their information at their “own risk” Appellants cannot be liable to them under this policy.

The Privacy Policy also lacks basic contract elements. *See May v. Anderson*, 119 P.3d 1254, 1257, 121 Nev. 668, 672 (2005). There was no offer or acceptance because this online only Privacy Policy was not offered to individuals before their information was collected. There was no meeting of the minds because the individuals did not know of the Privacy Policy when Appellants collected their information. Finally, the individuals did not provide return consideration for Appellants’ promise to protect their information. *See Pink v. Busch*, 100 Nev. 684, 691 P.2d 456 (1984). This analysis is consistent with decisions nationwide holding these privacy policies unenforceable against the companies who issue them.⁴

Finally, the Privacy Policy states Appellants may use the information “to comply with applicable laws and regulations” and may share the information to third-parties when Appellants are “required to respond to legal requests.” (VEN490-91.) The Privacy Policy permits Appellants to share the information collected to comply with laws and respond to legal requests. Ms. Sekera’s request

⁴ See, e.g. *In re Google Privacy Policy Litig.*, 58 F. Supp. 3d 968, 986 (N.D. Cal. 2014); *In re Pharmatrak Privacy Litig.*, 329 F.3d 9, 19-20 (1st Cir. 2003); *In re Jetblue Airways Privacy Litig.*, 379 F. Supp. 2d 299 (E.D.N.Y. 2005); *Johnson v. Nat’l Beef Packing*, 220 Kan. 52, 551 P.2d 779 (1976); *In re Am. Airlines Privacy Litig.*, 370 F. Supp. 2d 552 (N.D. Tex. 2005); *In re Northwest Airlines Privacy Litig.*, No. Civ.04-126(PAM/JSM), 2004 WL 1278459 (D. Minn. June 6, 2004).

for production is a “legal request.” Additionally, once the Court signed the Court’s July 31, 2019 directing disclosure, Appellants’ failure to comply constituted contempt. *See* NRS 22.010(3). Thus, providing the unredacted incident reports would be “complying with applicable laws.” As Appellants Privacy Policy (1) absolves them of liability, (2) does not meet contract formation requirements, and (3) excludes privacy to comply with court orders Appellants’ are unlikely to prevail on this argument and a stay is therefore improper.

C. The District Court Properly Denied Appellants’ Motion for Reconsideration

Under established practice, a litigant may not re-argue matters considered in the court’s initial opinion or raise new legal points for the first time on rehearing. *In Re Ross*, 99 Nev. 657, 668 P.2d 1089, 1091 (1983). The failure to make arguments in the first instance constitutes waiver, *Chowdry v. NLVH, Inc.*, 111 Nev. 560, 893 P.2d 385 (1995).

Appellants Motion merely made arguments which Appellants could have presented in their original motion. All the cases cited by Appellants in support of their Motion predated their initial Motion for a Protective Order and these arguments were therefore waived. More significantly, Appellants previously argued many of the cases cited in their Motion for Reconsideration in their Motion for a Protective Order and Response to Ms. Sekera’s Objection to the April 4, 2019 DCRR. Appellants also included a pre-dated Privacy Policy “last updated: May

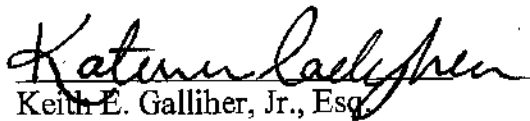
2018” a year before Appellants filed their Motion for a Protective Order. (VEN486.) Nevada law is clear: “points or contentions not raised, or passed over in silence on the original hearing, cannot be maintained or considered” on rehearing. *Chowdhry*, 111 Nev. at 562, 893 P.2d at 387. Appellants’ choice to not include these arguments is not a valid reason for reconsideration. Appellants’ are not likely to prevail on their argument the District Court’s erred when it declined to consider their Motion for Reconsideration because the Motion impermissibly re-argued the same cases and points and raised new arguments which could have been raised in the initial motion, and as such a stay is improper.

III. CONCLUSION

Based on the foregoing, Ms. Sekera respectfully requests that the Court deny Appellants Motion for a Stay.

DATED this 8th day of October, 2019

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CERTIFICATE OF SERVICE

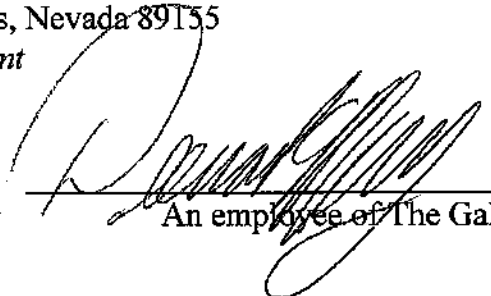
I hereby certify that I am an employee of The Galliher Law Firm and that on the 8 day of October, 2019, pursuant to N.E.F.C.R. 8, I electronically filed and served a true and correct copy of the above and foregoing **JOYCE SEKERA'S OPPOSITION TO APPELLANTS' EMERGENCY MOTION FOR STAY UNDER NRAP 27(e)** as follows:

[X] by the Court's CM/ECF system which will send notification to the following;
and

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In The
Court of Appeals of the State of Nevada

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VENETIAN CASINO RESORT, LLC;
LAS VEGAS SANDS, LLC

Appellants,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA;
THE HONORABLE KATHLEEN DELANEY

Respondent,

JOYCE SEKERA

Real Party in Interest.

On Appeal from The Eighth Judicial District Court, Clark County Nevada
The Honorable Kathleen Delaney
District Court Case No. A-18-772761-C

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STATEMENT OF THE ISSUES

1. Whether the District Court clearly abused its discretion when it denied Appellants' Motion for a Protective Order?
2. Whether the District Court abused its discretion when it denied Appellants' Motion for Reconsideration of the Order Reversing the April 4, 2019 DCRR on the unredacted incident reports?

STANDARD OF REVIEW

As the proponent of the Writ, "Petitioners carry the burden of demonstrating that extraordinary relief is warranted." *Pan v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (citing *Mineral County v. State, Dep't of Conserv.*, 117 Nev. 235, 20 P.3d 800 (2001)).

"Absent a clear abuse of discretion, [an Appellate Court] will not disturb a district court's decision regarding discovery." *In re Adoption of a Minor Child*, 118 Nev. 962, 968, 60 P.3d 485, 489 (2002); see also *McClain v. Foothills Partners*, 127 Nev. 1158, 373 P.3d 940, FN 1 (2011) ("a district court's discovery decision will not be disturbed absent a clear abuse of discretion.")

Additionally, "an order denying a motion for reconsideration is reviewable for abuse of discretion." *Shanks v. First 100, LLC*, No. 72802, 2018 WL 6133885, at *3 (Nev. App. Nov. 23, 2018) (internal quotations omitted) (citing *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010)).

STATEMENT OF THE FACTS

This is a personal injury case arising out of a slip and fall in the Venetian Casino Resort on November 4, 2016 around 12:30 p.m. (VEN005.) On that day, Ms. Sekera was walking past the Grand Lux Café Restrooms in the Venetian when she slipped and fell on water on the slick marble floor. (*Id.*) On the way down Ms. Sekera struck her skull and left elbow on the pillar and her left hip on the ground. (APP012.) The first Venetian employee to come to Ms. Sekera's aid, Gary Shulman, confirmed there was water on the floor where Ms. Sekera fell. (APP029 at 8:6-10; 8:23-9:11; 10:8-17.) It is however, important to note that Appellants contend "Plaintiff's fall had nothing to do with a foreign substance being on the floor." (VEN061:27-28.) Appellants' Counsel has also repeatedly declared under penalty of perjury in affidavits that the floor was dry when Ms. Sekera fell. (*See, e.g.* VEN273:11; APP057:23; APP082:10.)

On April 12, 2018 Ms. Sekera filed a complaint against Venetian Casino Resort, LLC and Las Vegas Sands, LLC ("Appellants") alleging one cause of action for negligence. (VEN001-4.) On April 22, 2019 Ms. Sekera moved to amend her complaint to add a claim for punitive damages on the theory that Appellants knew their marble floors were unreasonably slippery and posed a high risk to guests but nonetheless refused to increase their slip resistance. (APP110-21.) The District Court determined Ms. Sekera presented sufficient evidence and

thus granted her Motion to Amend. (VEN033-37.) Ms. Sekera filed her First Amended Complaint with a claim for punitive damages on June 28, 2019.

(VEN033.) The Amended Complaint alleged:

Defendant knew that the unsafe condition [the marble floors] posed an unreasonable hazard or slip and fall risk to the general public, invitees, patrons and business invitees. Defendant's failure to remedy the situation was knowing, wanton, willful, malicious and/or done with conscious disregard for the safety of Plaintiff and of the public.

(VEN036.)

Over the last three years Ms. Sekera treated for her injuries with low back injections, medial branch blocks and two rounds of radio frequency ablations.

(APP122-24.) In June, after Ms. Sekera's most recent set of radio frequency ablations failed, Dr. Smith opined "I do not see how this woman will be able to avoid surgical treatment" "Rhizotomies in my opinion will give her some temporary relief, but certainty not long-term." (APP125-26.) Ms. Sekera will thus undergo L5-S1 surgery in the near future.

I. Request for Production and Motion for Protective Order

On August 16, 2018 Ms. Sekera sent Appellants her first set of requests for production. (VEN038.) Ms. Sekera's asked Appellants to provide:

True and correct copies of any and all claim forms, legal actions, civil complaints, statements, security reports, computer generated lists, investigative documents or other memoranda which have, as its subject matter, slip and fall cases occurring on marble floors within the subject VENETIAN CASINO RESORT within three years prior

to the incident described in Plaintiff's Complaint [November 4, 2013], to the present.

(VEN040.)

In response to this request, Appellants produced 64 redacted incident reports between November 4, 2013 and November 4, 2016. (VEN056:25 – VEN057:2.)

Appellants produced these reports before moving for a protective order.

(VEN056:25-26.) The reports provided contained phonebook (name, address and phone) plus date of birth information. (Excerpts of Redacted Reports, APP127-39.)

Although the redacted incident reports produced by Appellants contain spaces for social security numbers and drivers' licenses on the CR-1 and Acknowledgement of First Aid Assistance & Advice to Seek Medical Care forms, no redactions were present because Appellants do not collect this information. (APP127-39.)

Appellants apparently instruct guests not to fill in their social security numbers because none of the guest completed forms contain this information either.

(VEN007, APP127, APP128, APP136.) The incident reports provided by Appellants also do not contain any fields to fill in account numbers, credit/debit card numbers, medical ID numbers and usernames and passwords. (APP127-39.)

Appellants ignored the portion of Ms. Sekera's request which asked for subsequent incident reports and subsequently misrepresented to the Court that Ms. Sekera had only requested reports "occurring within three years preceding the subject incident." (VEN056:14-16.)

Ms. Sekera requested Appellants provide the unredacted incident reports so she could identify witnesses to counter Appellants' comparative negligence claim that Ms. Sekera should have seen liquid on the floor before she fell. (VEN057:3-14.) Appellants refused to produce the unredacted incident reports and on February 2, 2019 filed a Motion for a Protective Order on the unredacted incident reports only. (*Id.*) (VEN064:23 – VEN065:2.) (“Venetian moves this Honorable Court for a protective order, that the unredacted information sought by Plaintiff not be disclosed for any purpose not directly related to this litigation.”) Appellants argued under *Eldorado Club* the unredacted incident reports “have no relevancy to the issue of whether Venetian had notice of any condition contributing to Plaintiffs fall on November 4, 2016.” (VEN061:27 – VEN061:2.) Appellants’ further argued the privacy interests of the affected individuals, including not having their names, address and dates of birth disclosed, do not outweigh the need for discovery. (VEN061:13 – VEN064:14.)

Ms. Sekera’s Opposition argued she needed the unredacted incident reports to identify “witnesses to the conditions of the marble floor at The Venetian and the fact that this flooring is very unsafe when topped with water or some other liquid substance”, that no privacy concerns were involved because there are no social security numbers in the incident reports, and that even if there were privacy concerns, Venetian did not have standing to raise them. (APP140-45.)

According to Appellants, Ms. Sekera shared the redacted incident reports another lawyer on February 7, 2019. (VEN280:23.) At the time Ms. Sekera shared the redacted incident reports, Appellants only had a motion pending on the unredacted incident reports. (VEN054.) Appellants only moved for a protective order on the unredacted incident reports in their Addendum to their Reply in Support of Their Motion for a Protective Order filed on March 6, 2019. (APP149:20-23.) Appellants moved for a protective order on the unredacted incident reports in their addendum because Ms. Sekera shared the redacted incident reports with another lawyer. (APP146-51.)¹

Based upon the briefing and oral argument, the Discovery Commissioner issued a Report and Recommendation (“April 4, 2019 DCRR”) recommending

¹ These facts are not particularly helpful for the Court, however, Appellants made numerous misrepresentations in their Writ which Ms. Sekera will correct for the Court in footnotes throughout this brief. Appellants insinuate Ms. Sekera engaged in nefarious conduct because she shared documents that were the subject of a pending motion for protective order. (See Writ at 14 “Petitioners filed a motion for protective order pursuant to NRC 26(c) on February 1, 2019 with the Discovery Commissioner. While the motion was pending, Sekera’s counsel shared the redacted prior incident information...”.) This grossly misrepresents the circumstances: Ms. Sekera shared the redacted incident reports another lawyer on February 7, 2019 when there was only a pending motion on the unredacted reports. (VEN280:23.) Appellants did not request a protective order on the redacted reports until March 6, 2019 – a month after Ms. Sekera shared them. Ms. Sekera’s sharing of these redacted incident reports prompted Appellants to request a protective order on them. (APP149:20-23.) Although this seems like a small misrepresentation Ms. Sekera stresses to the Court this conduct is intentional and part of a pattern of Appellants behavior in this case. This conduct is intentional because Ms. Sekera repeatedly pointed out this misrepresentation to Appellants, even devoting an entire section of an opposition to it. (APP207:20-208:7.)

“the prior incident reports produced by Venetian... remain in redacted form as originally provided” and that the redacted incident reports be subjected to a protective order. (VEN203.)

II. Objection to the April 4, 2019 DCRR

Ms. Sekera objected to the April 4, 2019 DCRR and argued courts nationwide uniformly agree a risk of public disclosure or collaborative sharing of information is not good cause for a protective order, and that sharing discovery amongst lawyers saves costs, expedites litigation and is an effective means of insuring full and fair disclosure from opposing parties. (APP155:13-156:18.) Ms. Sekera further argued that issuing a protective order in this case undermines the civil justice system because it ensures the public will never know the magnitude of the problem of Venetian’s floors and will therefore never be able to encourage Venetian to make their premises safer in the future by holding them accountable. (APP157:19-160:6.) Finally, Ms. Sekera argued she needed the names and contact information on the incident reports because they are potential witnesses in her case (APP161:18-27.) Appellants claimed Ms. Sekera was comparatively negligence, purportedly because she did not see the liquid substance on the floor before she fell. (*Id.*) Ms. Sekera sought the names of other individuals who could counter this claim by testifying “Hey, I walked through the Venetian. The floors are identical, and I didn’t see anything on the floor. I fell and got hurt.” (*Id.*; *see also* VEN215.)

Appellants opposed Ms. Sekera's Objection and argued the incident reports should remain in redacted form with a protective order preventing them from being shared to "protect the privacy of its [Venetian's] patrons" and to protect Appellants' guests from Ms. Sekera who wishes "to harass, vex, and annoy Defendants and their guests by not only making direct contact themselves, but sharing the personal information of all such guests with the world." (APP175:1-2, APP178:11-13.) Finally, Appellants reiterated their argument that under *Eldorado* the prior incident reports were irrelevant to the issue of notice, and that the policy interests of protecting the private information outweighed Ms. Sekera's need for discovery. (APP179:12-17, APP181:1-185:25.)

The Court heard Ms. Sekera's Objection on May 14, 2019. (APP193.) The Court considered the above arguments of counsel and used her 9 years of experience working for the Mirage Casino and Hotel where she was tasked with responding to similar subpoenas. (VEN250:5 – VEN251:17.) Based upon all this information the Court determined "Commissioner Truman made an error here, it is relevant discovery. Court does not see any legal basis upon which this should have been precluded." (APP193.) Thus, the Court overruled the April 4, 2019 DCRR in its entirety. (*Id.*) The District Court was certain in her decision: the Discovery Commissioner was "flat wrong, she got it wrong." (VEN227:4.)

//

III. Appellants' History of Hiding Evidence

Also relevant background information related to the District Court's denial of a protective order on the unredacted incident reports, is Appellants' history of hiding evidence.

To verify Venetian's compliance with the discovery request, in February 2019, the undersigned contacted Mr. Peter Goldstein, Esq., ("Mr. Goldstein") plaintiff's counsel in another pending premise liability action against Venetian. (*Carol Smith v. Venetian Casino Resort, LLC*, Case No. A-17-753362-C.) (APP113:6-9.) From their discussion, the undersigned and Mr. Goldstein realized Venetian provided them each with reports Venetian did not give the other. (APP113:9-12.) After comparing the discovery provided, the undersigned and Mr. Goldstein determined Venetian willfully left out four reports in response to Ms. Sekera's Requests for Production which were disclosed in *Smith v. Venetian*, and willfully left out 35 reports in response to plaintiff's requests for production in *Smith v. Venetian*. (APP113:15-20.)

In April 2019, Ms. Sekera served a second request for the incident reports from three years before the fall to present. (APP195:21-24.) Appellants responded "As to any such [incidents] reports obtained from November 3, 2013 to November 4, 2016 on the main casino floor level where the subject incident occurred,

Appellants have no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1 and all supplements thereto.” (*Id.*)

To verify this response was true, Ms. Sekera pulled a pleading from 5 cases filed against Appellants in the Eighth Judicial District Court and quickly identify additional unproduced responsive incident reports. (APP113:22-114:6.) Of the 5 cases Ms. Sekera’s pulled pleadings from 2 of them had corresponding incident reports responsive to Ms. Sekera’s request for production which Appellants admitted “should have been included by Venetian in its response to the request for prior incident reports” and that the failure to do so was “inadvertent.” (APP067:1-13.)

In July 2019, Ms. Sekera pulled more pleadings from cases filed against Appellants in the Eighth Judicial District Court. (APP204:18-19.) Appellants again admitted they conveniently missed another two incident reports responsive to Ms. Sekera’s request including one in the same rotunda where Ms. Sekera fell. (APP089:25-90:4, APP091:1-8.)

Appellants also did not fully and fairly disclose incident reports in three other cases: *Smith v. Venetian*, *Cohen v. Venetian* and *Boucher v. Venetian*. Significantly in *Smith v. Venetian*, Appellants left out 35 incident reports responsive to Smith’s request for production and in *Boucher v. Venetian*,

Appellants left out 32 incident reports responsive to Boucher's request for production. (APP227:7-10, APP228:5; APP237:19-241:19.)

IV. Other Concerning Conduct During Discovery

The following additional facts are necessary for the Court to understand the circumstances in which the District Court denied Appellants Motion for a Protective Order. The first Venetian employee to come to Joyce's aid, Gary Shulman, confirmed there was water on the floor. Mr. Shulman testified that Mr. Royal met with him and asked him to lie. (APP032 at 21:13-25; APP041 at 56:13-57:1; APP042 at 61:5-6.) Mr. Shulman told Mr. Royal he saw water on the floor. (APP032 at 21:13-25.) "At that time he [Mr. Royal] said "No, it wasn't wet. You didn't see anything wet. You are mistaken." " (APP033 at 23:16-17.) Mr. Shulman insisted "I'm pretty sure it was. I mean, that's why I called PAD to clean it up. In 13 years I've never called PAD to clean up a dry spot." (APP033 at 23:18-20.) "And he [Mr. Royal] says, "But, no, no, there was nothing wet there." " (APP033 at 23:21-22.) "[Y]ou [Mr. Royal] just kept refuting me, basically, "No, you are mistaken. It wasn't wet." " (APP042 at 61:5-6.) Mr. Shulman believed Mr. Royal was "intimidating" him, that Mr. Royal "didn't want me to be truthful" and that Mr. Royal wanted him to lie under oath. (APP041 at 56:13-57:1.)

On May 28, 2019 Ms. Sekera won a Motion to Amend her Complaint to add a claim for punitive damages, based partially upon the testimony of Venetian

employees that management informed them the marble floors are “very dangerous” when wet “even with one drop” of liquid like “a tiny spill of coffee.” (APP267:1-24; APP288 at 7:23-24; APP303 at 7:15-21.) After Ms. Sekera used this testimony in her motion, Venetian’s current employees began testifying the marble floors are not dangerous, and in fact are just as slippery (and thus just as dangerous) as carpet:

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

...

A: It’s the same, basically.

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

A: Yeah.

(APP337:21-338:10.)

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

...

A: I would have to say no.

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

A: No.

(APP352:25-353:9.)

SUMMARY OF THE ARGUMENT

1. The District Court did not abuse its discretion when it determined, based upon the uniform nationwide holdings, that collaborative discovery is consistent with the Federal and Nevada Rules of Civil Procedure 1 because it

encourages the “just, speedy, and inexpensive determination of every action” and the risk Ms. Sekera would share the information disclosed therefore did not constitute good cause for a protective order.

2. The Writ should be denied because Appellants ask the Court to analyze the wrong legal standard in reviewing a decision on a motion for protective order. Instead of arguing the District Court abused its discretion when it determined Appellants did not show good cause for a protective order, Appellants argue Ms. Sekera did not meet her burden of proof under NRCP 26(b)(1). The standard for a motion for protective order is good cause shown by the proponent, as such analysis by the Court as to whether Ms. Sekera met her burden under NRCP 26(b)(1) is improper.

3. The District Court did not abuse its discretion when it determined the phonebook (name, address, phone) plus date of birth information contained in the incident reports is not protectable under NRCP 26(c) because plaintiff's need to identify potential witnesses in her case outweigh the privacy interest, if any, that exist over this information.

4. Appellants have no potential liability under NRS 603A because (1) the statute was designed to address identity thieves, which neither Ms. Sekera nor her counsel are, (2) the providing the unredacted incident reports to Ms. Sekera is “authorized acquisition” under the statute, and (3) the unredacted incident reports

do not contain “personal information” as defined by NRS 603A.020 because they do not contain social security or driver’s license numbers.

5. Appellants have no potential liability under their Privacy Policy because (1) it was drafted to absolve them of liability, (2) it is unenforceable because it lacks the basic elements required for contract formation, and (3) it explicitly informs the public Appellants will use the information collected to comply with laws and court orders.

6. The District Court did not abuse its discretion when it denied Appellants’ Motion for Reconsideration because the Motion impermissibly re-argued points and improperly raised new arguments which could have been raised in the initial opposition in an attempt to gain a second bite at the apple.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DENIED APPELLANT’S MOTION FOR A PROTECTIVE ORDER

A. Appellants Fear of Collaborative Sharing of Information is Not Grounds for a Protective Order

Although not explicitly argued by Appellants, the language of the Writ makes clear the largest, if not sole motivation behind this protective order is to prevent the collaborative sharing of information.² Courts nationwide however

² (Writ at e, 1, 2, 3, 8, 9, 13, 14, 15, 17, 18, 22, 28.) (“documents produced by Petitioners to Plaintiff have been shared with attorneys”; “Sekera’s counsel shared the redacted prior incident information with an attorney”; the information “will be

uniformly agree that Appellants' concern of the risk of public disclosure or collaborative sharing of information does not constitute good cause for a protective order under Rule 26(c). *See, e.g. Olympic Refining Co. v. Carter*, 332 F.2d 260 (9th Cir. 1964); *see also De La Torre v. Swift Transp. Co.*, No. 2:13-CV-1786 GEB, 2014 WL 3695798, at *3 (E.D. Cal. July 21, 2014).³ "The risk—or in this case, the certainty—that the party receiving the discovery will share it with others does not alone constitute good cause for a protective order." *Wauchop*, 138 F.R.D. at 546. Rule 1 of both the Federal Rules and the Nevada Rules of Civil Procedure require they "be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." *See* Fed. R. Civ. Pro. 1; *see also* Nev. R. Civ. Pro 1.

used and shared; the information "will be immediately shared"; "Sekera has acknowledged an intent to share the information"; "Sekera has already shared information provided"; "incident reports had been shared with counsel outside the litigation"; Ms. Sekera intends "to freely share unredacted information"; "Sekera also argued she has an unqualified right to share.")

³ *See also Wauchop v. Domino's Pizza, Inc.*, 138 F.R.D. 539, 546 (N.D. Ind. 1991); *Ericson v. Ford Motor Co.*, 107 F.R.D. 92, 94 (E.D. Ark. 1985); *Baker v. Liggett Group, Inc.*, 132 F.R.D. 123, 125 (D.Mass 1990); *Garcia v. Peebles*, 734 S.W. 2d 343, 347-348 (Tex. 1987); *Earl v. Gulf & Western Mf. Co.*, 366 N.W.2d 160, 165 (Wis. App. 1985); *Nestle Foods Corporation v. Aetna Casualty & Surety*, 129 F.R.D. 483, 484 (D. N.J. 1990); *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 384, 390 (Iowa 1983); *American Telephone and Telegraph Co. v. Grady*, 594 F.2d 594 (7th Cir. 1979); *Johnson Foils, Inc. v. Huyck Corp.*, 61 F.R.D. 405 (N.D.N.Y.1973); *Williams v. Johnson and Johnson*, 50 F.R.D. 31 (S.D.N.Y. 1970); *Parsons v. Gen. Motors Corp.*, 85 F.R.D. 724, 726 (N.D. Ga. 1980); *Deford v. Schmid Prod. Co., a Div. of Schmid Labs.*, 120 F.R.D. 648, 654 (D. Md. 1987).

Collaborative use of discovery material fosters the goals of Rule 1 by eliminating the time and expense involved in “re-discovery.” *Williams*, 50 F.R.D. at 32; *Wauchop*, 138 F.R.D. at 546; *Wilk v. American Medical Ass’n*, 635 F.2d 1295, 1299 (7th Cir.1980); *Grady*, 594 F.2d at 597; *Phillips Petroleum Co. v. Pickens*, 105 F.R.D. 545, 551 (N.D.Tex.1985); *Carter-Wallace v. Hartz Mountain Industries*, 92 F.R.D. 67, 70 (S.D.N.Y.1981); *Parsons*, 85 F.R.D. at 726; *Garcia*, 734 S.W.2d at 347; *Ward v. Ford Motor Co.*, 93 F.R.D. 579, 580 (D.Colo.1982) (“Each plaintiff should not have to undertake to discovery [sic] anew the basic evidence that other plaintiffs have uncovered. To so require would be tantamount to holding that each litigant who wishes to ride a taxi to court must undertake the expense of inventing the wheel.”); *Baker*, 132 F.R.D. at 126 (“[T]o routinely require every plaintiff ... to go through a comparable, prolonged and expensive discovery process would be inappropriate.”); *Patterson v. Ford Motor Co.*, 85 F.R.D. 152, 154 (W.D.Tex.1980) (“The availability of the discovery information may reduce time and money which must be expended in similar proceedings, and may allow for effective, speedy, and efficient representation.”). “It is particularly appropriate that this principle be applied in... cases in which individual plaintiffs must litigate against large, corporate defendants.” *Baker*, 132 F.R.D. at 126

“Maintaining a suitably high cost of litigation for future adversaries is not a proper

purpose under Rules 1 or 26.” *Wauchop*, 138 F.R.D. at 547; *see also Cipollone v. Liggett Grp., Inc.*, 113 F.R.D. 86, 87 (D.N.J. 1986).

Based upon the universal case authority, the District Court properly determined Appellants could not receive a protective order for the incident reports to prevent Ms. Sekera from sharing the incident reports with anyone who was not directly affiliated with the litigation. Ordering a protective order under such circumstances violates Rule 1 by increasing the time and expense of litigation because it forces parties to re-discovery information in each case. This is especially applicable here because Appellants are large corporations with teams of skilled lawyers who zealously argue on their behalf. Though there is nothing wrong with this, it increases the cost for individual plaintiffs to bring their claims. Rule 1 directs the Court to decrease these plaintiffs’ costs of litigation by allowing shared discovery.

More important than decreasing the costs of litigation “[s]hared discovery is an effective means to insure full and fair disclosure.” *Garcia*, 734 S.W.2d at 347. “Parties subject to a number of suits concerning the same subject matter are forced to be consistent in their responses by the knowledge that their opponents can compare those responses.” *Garcia*, 734 S.W.2d at 347; *Buehler v. Whalen*, 70 Ill. 2d 51, 65, 374 N.E.2d 460, 466 (1977). The improper conduct the *Garcia* and *Buehler* courts guarded against is evident here: Appellants refused to fully disclose

documents in three pending lawsuits and violated a court order regarding incident report disclosures in *Smith v. Venetian*. Appellants' failure to secure a protective order before it disclosed the redacted incident reports is the only reason Mr. Galliher, Mr. Goldstein, Mr. Bochanis and Ms. Banda discovered Appellants selectively disclosed incident reports and violated discovery rules and court orders. Appellants request extraordinary relief from this Court to permit them to continue a pattern⁴ of protective orders and prohibit Ms. Sekera from sharing the incident reports so Appellants may have the peace of mind future plaintiffs won't catch their discovery violations. (Writ at e, 1, 2, 3, 8, 9, 13, 14, 15, 17, 18, 22, 28, 29.) This is not a legitimize purpose for a protective order and the District Court thus properly determined a protective order under these circumstances was improper.

The *Garcia* court also noted "the ultimate purpose of discovery is to seek the truth, so that disputes may be decided by what the facts reveal, not by what facts are concealed" and that shared discovery helps make discovery more truthful. *Garcia*, 734 S.W.2d at 347. Ms. Sekera seeks the truth. The same cannot be said

⁴ Appellants have a lengthy history seeking protective orders via motion or stipulation. See *Maria Potts vs Venetian Casino Resort LLC* (08A568029); *Andrew Gold vs. Las Vegas Sands LLC* (A-09-604694-C); *Judy Sorci vs. Venetian Casino Resort LLC* (A-10-612854-C); *Freida Robinson vs. Venetian Casino Resort, LLC* (A-11-638095-C); *Soloman Cogan vs. Venetian Casino Resort LLC* (A-12-663219-C); *Grace Aye vs. Las Vegas Sands Corp* (A-15-716380-C); *Mui Lim vs. Venetian Casino Resort LLC* (A-15-728316-C); *Eric Cohen vs. Venetian Casino Resort, LLC* (A-17-761036-C); *John Kierce vs. Las Vegas Sands Corp* (A-17-757314-C); *Carol Smith vs. Venetian Casino Resort LLC*, (A-17-753362-C).

for Appellants. Appellants hid significant numbers of incident reports in at least four cases which violated at least one court order. One of Appellants' former employees testified Appellants' counsel attempted get him to lie under oath. Finally, Appellants current employees suddenly began testifying that marble is just as slippery as the carpet after Ms. Sekera supported a motion with testimony from Appellants' employees that marble is extremely dangerous when wet. Appellants' conduct highlights the importance of collaborative discovery and serves as a prime example of why courts nationwide universally hold the risk of sharing is not proper grounds for a protective order.

B. Appellants Apply the Incorrect Legal Standard for Review of a Motion for a Protective Order

The instant Writ and motion relates to a Motion for a Protective Order. Because Appellants filed this Writ on a motion for protective order, Appellants must show District Court abused its discretion when it determined Appellants did not show good cause for a protective order and therefore denied Appellants request for the same. *See* NRCP 26(c) ("for good cause shown" the Court may "make any order which justice requires to protect a party..."); *see also Beckman Indus., Inc., v. Int'l. Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (to meet the burden of persuasion, "the party seeking the protective order must show good cause by demonstrating a particular need for the protection sought."); *Cipollone*, 785 F.2d at 1121 (discussing the burdens under the analogous FRCP 26(c)).

Section VII.A.1. of Appellants' Writ asks this Court to analyze the wrong legal standard, *to wit*, that the District Court abused its discretion because Ms. Sekera did not meet her burden of proof under NRCP 26(b)(1) to establish the need for the unredacted incident reports.⁵ (Wirt at 20.) Ms. Sekera's proof of discoverability of the incident reports under NRCP 26(b)(1) is not at issue in this Writ because it is not part of the burden of proof for a protective order. Because Ms. Sekera's proof of discoverability of the incident reports under NRCP 26(b)(1) is irrelevant, Appellants arguments regarding the same should be disregarded in its entirety. (Writ, Sec. VIII.A.1.)

C. The Phonebook Plus Date of Birth Information Contained in the Incident Reports Is Not Protectable

The incident reports produced by Appellants in this case contain information that is only slightly more revealing or invasive than information contained in a phonebook. These incident reports which Appellant files this Writ over contain phonebook information (name, address, phone) plus date of birth. Appellants agree

⁵ Appellants base this argument on their contention this case involves a temporary transitory condition and under *Eldorado Club v. Graff*, 78 Nev. 507, 510, 377 P.2d 174, 176 (1962) evidence of prior incident reports is thus inadmissible. This is inaccurate. Ms. Sekera's alleges the permanent condition (the lack of slip resistance) of Appellant's marble floors is unreasonably dangerous. More importantly, Appellants' Counsel repeatedly declared under penalty of perjury in affidavits that the floor was dry when Ms. Sekera fell. (VEN273:11; APP057:23; APP082:10; *see also* VEN061:27-28 "Plaintiff's fall had nothing to do with a foreign substance being on the floor.") If someone slips and falls on a dry floor then that is a permeant condition. Appellants can't have it both ways.

they only redacted the “names, addresses, phone numbers and dates of birth.” (Writ at 12.) Although, the CR-1 and Acknowledgement of First Aid Assistance & Advice to Seek Medical Care forms leave space for social security numbers and drivers’ licenses’,⁶ Appellants apparently do not collect this information. Appellants also apparently instruct their guests not to fill out the “social security #” line on the accident reports because the hand written responses by guests place an “N/A” or “-----” on the “social security #” line.

This phonebook plus date of birth information contained in Appellants’ incident reports is not protectable under NRCP 26(b). There is no Nevada case law which supports the contention that this information can be protected. (See Writ at 22-27.) More importantly the names, addresses and phone numbers are publicly available information that is published in the phonebook and through online sources, and Appellants therefore cannot establish a protectable interest. *See, e.g. Khalilpour v. CELLCO P’ship*, 2010 WL 1267749, at *2 (N.D.Cal.2010)

⁶ As the proponent of the Writ Appellants have the burden of proof to show the facts necessary for extraordinary relief. The Writ repeatedly represents the incident reports contain social security numbers and driver’s licenses. (Writ at e, 2, 27, Mot. at 4.) Appellants have presented no evidence the incident reports contain such information. **Appellants have not presented this information because the incident reports do not contain social security and driver’s license numbers.** This is why Appellants did not provide the Court with the redacted incident reports. This is also why Appellants left out the CR-1 form from Ms. Sekera’s incident report – which shows they do not collect social security number or driver’s license numbers.

(requiring disclosure of names, addresses and phone numbers because they do not involve revelation of personal secrets, intimate activities, or similar private information); *Busse v. Motorola, Inc.*, 351 Ill. App. 3d 67, 72, 813 N.E.2d 1013, 1018 (2004) (“Matters of public record—name, address, date of birth and fact of marriage—have been held not to be private facts.”); *Keel v. Quality Med. Sys., Inc.*, 515 So. 2d 337 (Fla. Dist. Ct. App. 1987) (information commonly known in the industry and not unique to allegedly injured party not “confidential” and thus not entitled to protection); *Brignola v. Home Properties, L.P.*, No. CIV.A. 10-3884, 2013 WL 1795336, at *12 (E.D. Pa. Apr. 26, 2013) (“name, address, phone number, etc. These are not private facts...”); *Mount Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly*, No. CIV.A. 08-2584 NLH, 2013 WL 3200713, at *4 (D.N.J. June 24, 2013) (defendant must disclose contact information for potential witnesses of the plaintiff; defendant’s concerns about privacy “are overblown.”)

The Writ cites a myriad of California federal case law, which at first glance appear to support Appellants’ position. However, upon closer examination these cases are irrelevant, rogue⁷ or do not support Appellants’ argument at all. For

⁷ *Rowland v. Paris Las Vegas*, No. 13CV2630-GPC DHB, 2015 WL 4742502 (S.D. Cal. Aug. 11, 2015), an unreported decision, is the only case cited that holds information publicly available in a phone book (name, address and phone number) can be subjected to a protective order. (Writ at 24-25.) This is likely a rouge decision resulting from the parties’ embarrassing lack of briefing on the matter.

example, the Writ represents *Izzo v. Wal-Mart Stores*, No. 215CV01142JADNJK, 2016 WL 409694 (D. Nev. Feb. 2, 2016) held “the burden on defendant and privacy interests of the non litigants outweighed the tangential relevance of the information...” (Writ at 23-24.) This is inaccurate. The only mention of “privacy interest” in *Izzo* is a statement that “Defendant also argues that the potential value of other claims evidence is outweighed by... the privacy rights of third parties.” *Id.* at *4. The *Izzo* court did not grant a protective order on privacy interests. *Id.* at *4-5. Rather, the *Izzo* court determined the defendant “provided a particularized showing of undue burden” i.e. “hundreds of hours of personnel time” and that plaintiff’s request was “overbroad, unduly burdensome, and not relevant to the claims she asserts.” *Id.*

Similarly unsupportive of Appellants’ argument is *Shaw v. Experian Info. Sols., Inc.*, 306 F.R.D. 293, 301 (S.D. Cal. 2015). (Writ at 26.) The *Shaw* Court actually required the defendants disclose the “names, addresses, and telephone number” of third-parties without a protective order on the same. *Id.*

Similarly irrelevant to Appellants’ argument is *Bible v. Rio Properties, Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007). (Writ at 25-26.) The *Bible* court at least

Joint Motion to Compel Compliance with Discovery, *Rowland*, No. 13CV2630-GPC DHB, 2015 WL 4742502. (Included in appendix at APP368-73 for the Court’s convenience.). The plaintiff and defendant in *Rowland* submitted a 5-page joint motion to compel on 23 discovery requests which merely summarized the requests and objections. (APP373:19-23.) This motion cited no legal authority, rules or statutes. (APP368-73.)

partially based its privacy determination on the California Constitution: the “responsive documents invade third parties’ privacy rights. In California, the right to privacy is set forth in Article I, Section I of the California Constitution, as defendant cites...” *Id.* However, the California Constitution cannot provide a basis for privacy rights in Nevada.

More important than the fact these cases do not support Appellants’ position, is that the federal and state California cases which Appellants so eagerly urge this Court to follow support Ms. Sekera position because they consistently hold a plaintiff’s need to identify potential witnesses outweighs any privacy concerns a defendant may have about disclosing information about those witnesses. *See, e.g. Henderson v. JPMorgan Chase Bank*, No. CV113428PSGPLAX, 2012 WL 12888829, at *4 (C.D. Cal. July 31, 2012) (“The Court finds that plaintiffs’ interest in identifying potential... witnesses here outweighs defendant’s concern regarding its employees’ privacy interests in their names and personal contact information.”); *Tierno v. Rite Aid Corp.*, 2008 WL 3287035, at *3 (N.D. Cal. July 31, 2008) (plaintiffs’ significant interest in identifying potential witnesses outweighed those individuals’ privacy interests in their identities and contact information); *McArdle v. AT & T Mobility LLC*, No. C 09-1117 CW (MEJ), 2010 WL 1532334, at *4 (N.D. Cal. Apr. 16, 2010) (“Defendants’ complaining customers may be considered percipient witnesses to the relevant” issues and therefore are considered

to be “persons having discoverable knowledge and proper subjects of discovery.”); *Pioneer Elecs. (USA), Inc. v. Superior Court*, 40 Cal. 4th 360, 371, 150 P.3d 198, 205 (2007) (plaintiff sought the “names, addresses and contact information” of persons who submitted complaints because they were percipient witnesses, the court ordered this information disclosed because it “would not be particularly sensitive or intrusive”). The California Appellate Court even held the trial court abused its discretion by requiring an opt-in notification system to secure the consent of identified potential witnesses before the defendant could disclose their contact information to the plaintiff. *Puerto v. Superior Court*, 158 Cal. App. 4th 1242, 1256, 70 Cal. Rptr. 3d 701, 712 (2008). Ms. Sekera sought the contact information of the parties in the incident reports because they are potential witnesses in her case to combat Appellants’ comparative fault defense. Ms. Sekera needs the contact information for these individuals so she can present rebuttal witnesses to testify “Hey, I walked through the Venetian. The floors are identical, and I didn’t see anything on the floor. I fell and got hurt.” The California courts, which Appellants so eagerly urge the Court to follow support Ms. Sekera’s position that she is entitled to the name and contact information for these potential witnesses. As such, if the Court decides to follow the opinions of the California courts, it must hold the District Court properly denied Appellants’ Motion for a

Protective Order because Ms. Sekera's need to identify potential witnesses outweighs any privacy interests at stake.

D. Appellants Have No Potential Liability under NRS 603A⁸

Appellants' allege "mass dissemination of Venetian's guests' private information is the equivalent to a data breach, thereby exposing Venetian to additional third-party claims." (Writ at 27.) NRS 603A was designed "to protect personal information held by certain businesses to address identity theft and to ensure security breaches of business databases containing personal information will be disclosed to the persons affected by the breach." Minutes of the Senate Committee on Commerce and Labor 73rd Leg. (Nev., Apr. 5, 2005). (Included in appendix at APP374-78 for the Court's convenience.) The bill, which later became NRS 603A, was prompted by an incident involving ChoicePoint, Incorporated, a consumer data services company. (APP376.) Criminals posed as legitimate businesses to obtain personal information from ChoicePoint. (*Id.*) The data of 145,000 individuals, including their names, addresses, social security numbers and credit reports, were accessed by criminals who then set up fraudulent accounts. (*Id.*) When this happened, California was the only state which required companies to notify individuals when their personal data was compromised. (*Id.*) ChoicePoint

⁸ This argument was not addressed by the District Court because it was improperly raised for the first time in Appellants' Motion for Reconsideration, which was denied on procedural grounds. (*See* Sec. I.)

thus did not notify the Nevadans affected until the State put substantial pressure on them to do so. (*Id.*) Thus SB 435 (aka NRS 603A) – requiring businesses to notify consumers of security breaches of personal data – was born. (*Id.*) Based upon the legislative history and the act itself, there are three major reasons NRS 603A does not apply to the circumstances of this case.

Frist, NRS 603A was clearly designed to address identity theft by criminals. Neither Ms. Sekera nor her counsel are identity thieves and thus applying this statute under these circumstances would be contrary to the purposes of its creation.

Second, providing unredacted incident reports is not within the meaning of “breach of the security of system data.” NRS 603A specifically deals with “breach of the security of the system data” which is defined as “unauthorized acquisition of computerized data that materially compromises the security, confidentiality or integrity of personal information maintained by the data collector.” NRS 603A.020. A Court order by definition authorizes conduct and has been understood to authorize conduct for nearly a century.⁹ As such, even if the information in the

⁹ See, e.g. *In re Troyer's Estate*, 48 Nev. 72, 227 P. 1008, 1008 (1924) (“the administrator was authorized by court order to compromise, settle, release, and discharge a claim”); *Bean v. State*, 81 Nev. 25, 25, 398 P.2d 251, 253 (1965) (“defense counsel sought a court order authorizing him to employ, at public expense, two psychiatrists”); *Jones v. Free*, 83 Nev. 31, 36, 422 P.2d 551, 553 (1967) (“the trial court’s order authorizing the receiver to enter a compromise agreement”); *Clark Cty. v. Smith*, 96 Nev. 854, 855, 619 P.2d 1217, 1218 (1980) (“Clark County and its Comptroller appeal the district court’s order authorizing payment”); *A 1983 Volkswagen*, *Id. No. IVWC0179V63656*, *License No.*

incident reports places them within the preview of this statute, Appellants disclosure of the incident reports in compliance with the Court's July 31, 2019 Order would constitute "authorized" acquisition. Because providing Ms. Sekera with the unredacted incident reports is authorized conduct, it does not constitute a "breach of the security of system data" under NRS 603A.020 and therefore cannot subject Appellants to liability for a "breach of the security of system data" under NRS 603A.215(3).

Third, the incident reports do not contain "personal information" as defined by NRS 603A.040. NRS 603A.040 defines "personal information" as:

1. "Personal information" means a natural person's first name or first initial and last name **in combination with any one or more of the** following data elements, when the name and data elements are not encrypted:

2AAB574(CA) v. Washoe Cty., Washoe Cty. Sheriff's Dep't Consol. Narcotics Unit, 101 Nev. 222, 223–24, 699 P.2d 108, 109 (1985) ("This is an appeal from the district court's order authorizing forfeiture of a vehicle used in violation of the Uniform Controlled Substances Act."); *Club Vista Fin. Servs. v. Dist. Ct.*, 128 Nev. 224, 228, 276 P.3d 246, 248 (2012) ("the district court's order authorizing the deposition of Morrill"); *City of N. Las Vegas v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark*, No. 66204, 2014 WL 3891680, at *1 (Nev. Aug. 7, 2014) ("challenges a district court order denying a motion for a protective order and authorizing a judgment debtor examination"); *Odin v. State*, No. 66806, 2015 WL 4715074, at *1 (Nev. App. Aug. 5, 2015) ("the deputy would then seek a court order authorizing the test"); *Tower Homes v. Heaton*, 132 Nev. 628, 631, 377 P.3d 118, 120 (2016) ("the bankruptcy court's order authorizing the same resulted in an impermissible assignment"); *Hernandez v. State*, 399 P.3d 333 (Nev. 2017) ("the requesting officer could apply for a court order to authorize the blood draw"); *Matter of Connell*, 422 P.3d 713 (Nev. 2018) ("the district court order appointing the trustee authorizes the trustee to...").

- (a) Social security number.
- (b) Driver's license number, driver authorization card number or identification card number.
- (c) Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.
- (d) A medical identification number or a health insurance identification number.
- (e) A user name, unique identifier or electronic mail address in combination with a password, access code or security question and answer that would permit access to an online account.

These incident reports are completely devoid of any fields to fill in account numbers, credit/debit card numbers, medical ID numbers and usernames and passwords. Although the redacted incident reports produced by Appellants leave spaces for social security and drivers' license numbers, Appellants apparently do not collect this information because there are no redactions over the social security or drivers' license spaces. The incident reports cannot be subject to the statute unless Appellants collect social security and drivers' license numbers. Thus, because Appellants do not collect social security and drivers' license numbers NRS 603A does not apply.

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E. Appellants Have No Potential Liability under their Privacy Policy¹⁰

The Writ argues, Appellants disclose of the unredacted incident reports to Ms. Sekera will result in “claims from aggrieved guests” from the disclosure of their information under Appellants’ Privacy Policy because Appellants must seek guests’ permission to share their information. (Writ at 29-30.) Appellants Privacy Policy cannot subject them to liability for three major reasons.

First and most significantly, Appellants’ Privacy Policy states “your use of our products and services and provision of information to us is at your own risk.” (VEN493.) Appellants drafted this policy to absolve themselves of all liability related to personal information. Anyone who provides personal information to them does so at their “own risk.” Appellants thus cannot be liable guests/visitors under this policy.

Second, even if the Privacy Policy did not absolve Appellants of all liability, the privacy policy is unenforceable because it lacks offer and acceptance, meeting of the minds and consideration. *See May v. Anderson*, 119 P.3d 1254, 1257, 121 Nev. 668, 672 (2005) (a valid and enforceable contract requires “an offer and acceptance, meeting of the minds, and consideration.”) Appellants’ Privacy Policy is online only. Appellants did not offer this policy to guests/visitors before

¹⁰ This argument was not addressed by the District Court because it was improperly raised for the first time in Appellants’ Motion for Reconsideration, which was denied on procedural grounds. (See Sec. I.)

collecting their information to complete an incident report. Under these circumstances there is no offer from Appellants and no acceptance from the individuals. Furthermore, because the individuals listed in the incident reports had no knowledge of Appellants' online Privacy Policy at the time their information was collected there can be no "meeting of the minds." Finally, although Appellants may claim they are passing consideration to the individuals (in the form of a promise to keep their information private) there is no return consideration from the individuals to Appellants. *See Pink v. Busch*, 100 Nev. 684, 691 P.2d 456 (1984) (to constitute consideration, a performance or return promise must be bargained for, and a performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.) This analysis of Appellants' Privacy Policy is consistent with decisions from across the nation holding these privacy policies unenforceable against the companies that issue them. *See, e.g. In re Google, Inc. Privacy Policy Litigation*, 58 F. Supp. 3d 968, 986 (N.D. Cal. 2014) (holding that the plaintiff class adequately stated a claim for breach of contract when Google disclosed user data to third parties in violation of the company's privacy policy); *Trikas v. Universal Card Servs. Corp.*, 351 F. Supp. 2d 37, 46 (E.D.N.Y. 2005) (stating that the court "need not address whether the Privacy Promise constitutes a contract, but broad statements of company policy do not generally give rise to contract claims")

(internal citations and quotations omitted); *Dunn v. First Nat. Bank of Olathe*, 111 P.3d 1076 (Kan. Ct. App. 2005) (rejecting claim for breach of contract based on bank's privacy policy); *In re Jetblue Airways Corp. Privacy Litigation*, 379 F. Supp. 2d 299 (E.D.N.Y. 2005) (denying breach of contract claims under the privacy policy where plaintiffs were unable to prove damages); *In re Yahoo! Inc. Customer Data Sec. Breach Litigation*, No. 16-MD-02752-LHK, 2017 WL 3727318, at *46 (N.D. Cal. Aug. 30, 2017); *Johnson v. Nat'l Beef Packing Co.*, 220 Kan. 52, 551 P.2d 779 (1976); *In re American Airlines, Inc., Privacy Litigation*, 370 F. Supp. 2d 552 (N.D. Tex. 2005); *In re Northwest Airlines Privacy Litigation*, No. Civ.04-126(PAM/JSM), 2004 WL 1278459, at *6 (D. Minn. June 6, 2004); *Kuhn v. Capital One Fin. Corp.*, No. CA015177, 2004 WL 3090707, at *3 (Mass. Super. Nov. 30, 2004); *Crowley v. Cybersource Corp.*, 166 F. Supp. 2d 1263 (N.D. Cal. 2001); *In re Pharmatrak, Inc. Privacy Litigation*, 329 F.3d 9, 19-20 (1st Cir. 2003); *Dyer v. Northwest Airlines Corp.*, 334 F. Supp. 2d 1196 (D.N.D. 2004). As such, even if Appellants Privacy Policy could subject them to liability, individuals could not sue Appellants for breach of the Privacy Policy because essential elements of contract formation are not present.

Third, Appellants are not required to "obtain a waiver" or get "authority to disseminate... personal private information to any other party" because Appellants' Privacy Policy informs readers "we may also use your information in other ways...

including but not limited to the following purposes... to comply with applicable laws and regulations.” (VEN490-91.) The Privacy Policy further states “We may share information about you to the third parties as indicated below” when “required to respond to legal requests for your information” and “to comply with laws that apply to us or other legal obligations.” (VEN491.) Appellants’ Privacy Policy clearly tells readers Appellants may share information collected to comply with the laws and to respond to other legal requests. Ms. Sekera’s request for production is a “legal request” within the meaning of this Privacy Policy. As such, Appellants do not need permission to disclose this information. Moreover, once the Court signed the order directing Appellants’ to turn over the information, their failure to comply with that order constituted contempt in violation of NRS 22.010(3). *See* NRS 22.010(3) (“The following acts or omissions shall be deemed contempts:... 3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.”) Providing the unredacted incident reports would thus be “complying with applicable laws.” Finally, the Privacy Policy states users’ requests regarding privacy will be “accomodat[ed] where your requests meet legal and regulatory requirements.” (VEN492.) Thus, even if the individuals requested Appellants withhold their information from Ms. Sekera, Appellants own policy states they will ignore these requests because complying with requests would force Appellants to violate NRS 22.010(3). As Appellants Privacy Policy (1) absolves

them of liability, (2) does not meet contract formation requirements to be enforceable and (3) specifically excludes privacy of individuals to comply with court orders the Privacy Policy does not constitute good cause for a protective order on the unredacted incident reports.

I. THE DISTRICT COURT PROPERLY DENIED APPELLANTS' MOTION FOR RECONSIDERATION

The District Court properly denied Appellants' Motion for Reconsideration because the Motion improperly attempted to re-argue the same points and gain a second bite at the apple by raising issues which could have been raised in the initial motion. Under established practice, a litigant may not raise new legal points for the first time on rehearing. *In Re Ross*, 99 Nev. 657, 668 P.2d 1089, 1091 (1983). Further, a motion for rehearing may not be utilized as a vehicle to re-argue matters considered and decided in the court's initial opinion. *Id.* Rather, a motion for rehearing should direct attention to some controlling matter which the court has overlooked or misapprehended. *Id.* Rehearings are not granted as a matter of right and are not allowed for the purpose to re-argue, unless there is a reasonable probability the Court may have arrived at an erroneous conclusion. *Geller v. McCown*, 64 Nev. 102, 178 P.2d 380 (1947).

It is well-settled that rehearings are appropriate only where "substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 941 P.2d 486

(1997). In order to gain a second bite at the apple the defendant may not raise points or contentions not raised in its initial motion and oppositions. *Edward J. Achrem, Chartered v. Expressway Plaza, Ltd.*, 112 Nev. 373, 917 P.2d 447 (1996). The failure to make the arguments in the first instance constitutes a waiver. *Chowdry v. NLVH, Inc.*, 111 Nev. 560, 893 P.2d 385 (1995).

The District Court properly denied Appellants' Motion for Reconsideration because the Motion impermissibly re-argued points and improperly raised new arguments which could have been raised in the initial opposition in an attempt to gain a second bite at the apple. Appellants' Motion merely made arguments which Appellants could have presented in their original motion. All the cases cited by Appellants in support of their Motion predated their initial Motion for a Protective Order and these arguments were therefore waived. More significantly, many of the cases cited by Appellants were previously argued in their initial Motion for a Protective Order and Response to Ms. Sekera's Objection to the April 4, 2019 DCRR. (VEN054-66; APP164-192.)

CASE	YEARS DECIDED BEFORE INITIAL MOTION	ARGUED IN MOTION FOR RECONSIDERATION AT:	ARGUED IN INITIAL MOTION AND RESPONSE TO OBJECTION AT
<i>Eldorado</i> , 78 Nev. 507, 377 P.2d 174.	<u>57 years</u>	VEN279:6-7, VEN281:18, VEN281:23,	VEN061:1; APP180:16

		VEN283:11, VEN283:17, VEN283:19, VEN284:24, VEN285:8, VEN286:11, VEN286:28, VEN287:17, VEN287:28, VEN288:15, VEN292:11	
<i>Southern Pac. Co. v. Harris</i> , 80 Nev. 426, 431, 395 P.2d 767, 770 (1964)	<u>55 years</u>	VEN283:11	VEN061:2; App180:16
<i>Schlatter v. Eighth Judicial Dist. Court In & For Clark Cty.</i> , 93 Nev. 189, 192, 561 P.2d 1342, 1344-45 (1977)	<u>42 years</u>	VEN283:24	VEN061:20-22; APP178:24-25
<i>Ragge v. MCA/Universal Studios</i> , 165 F.R.D. 601, 605 (C.D. Cal. 1995)	<u>24 years</u>	VEN283:25	VEN061:22- VEN062:1; APP181:5-7
<i>Cook v. Yellow Freight Sys., Inc.</i> , 132 F.R.D. 548, 551 (E.D. Cal. 1990)	<u>29 years</u>	VEN283:25-26	VEN062:1; APP181:8
<i>Mackelprang v. Fid. Nat. Title Agency of Nevada, Inc.</i> , No. 2:06-CV-00788-JCM, 2007 WL 119149, at *7 (D. Nev. Jan. 9, 2007)	<u>12 years</u>	VEN283:27-28	VEN062:2-4; APP181:9-10
<i>Izzo</i> , 2016 WL 409694 at *4.	<u>13 years</u>	VEN285:3	
<i>Rowland</i> , 2015 WL 4742502.	<u>3 years</u>	VEN285:19, VEN286:17-18	
<i>Bible</i> , 246 F.R.D. 614.	<u>12 years</u>	VEN286:14,	

		VEN286:17-18	
<i>Lologo v. Wal-Mart Stores, Inc.</i> , No. 2:13-CV-1493-GMN-PAL, 2016 WL 4084035 (D. Nev. July 29, 2016)	<u>3 years</u>	VEN286:27	
<i>Caballero v. Bodega Latina Corp.</i> , No. 217CV00236JADVCF, 2017 WL 3174931 (D. Nev. July 25, 2017)	<u>2 years</u>	VEN286:28- VEN287:28	
<i>Dowell v. Griffin</i> , 275 F.R.D. 613, 620 (S.D. Cal. 2011)	<u>8 years</u>	VEN287:1-2	
<i>Shaw</i> , 306 F.R.D. at 299.	<u>4 years</u>	VEN287:10-11	
<i>Gonzales v. Google, Inc.</i> , 234 FRD 674, 684 (N.D. CA 2006)	<u>13 years</u>	VEN288:8-9	VEN064:6-9; APP183:13-16
<i>Beazer Homes, Nev., Inc. v. Dist. Ct.</i> , 120 Nev. 575, 97 P.3d 1132 (2004)	<u>15 years</u>	VEN293:3	

As set forth in the table above, Appellants' Motion merely re-argued the same cases and presented "new" old cases to make arguments which could have been presented in their original motion. Nevada law is clear: "points or contentions not raised, or passed over in silence on the original hearing, cannot be maintained or considered on petition for rehearing." *Chowdry*, 111 Nev. at 562, 893 P.2d at 387. As all of these cases pre-date Appellants' initial Motion for a Protective Order they could have been raised in that motion but were not and were thus improperly included in Appellants' Motion. Appellants also included a pre-dated "privacy

policy” which was “last updated: May 2018” a year before Appellants filed their initial Motion for a Protective Order on the underacted incident reports and arguments under NRS 603A, a law passed in 2005. (VEN486.) Because the NRS 603A and the Privacy Policy existed at the time of Appellants initial Motion they could have been raised in the Motion and the failure to do so constituted waiver of these argument. Appellants’ choice to and later regret of not including these cases and the privacy policy was not a valid reason for reconsideration. Under Nevada law these arguments were an improper attempt a to gain second bite at the apple and the District Court thus properly declined to consider them. *Edward J. Achrem, Chartered*, 112 Nev. 373, 917 P.2d 447.

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CONCLUSION

Based upon the foregoing, the District Court did not abuse its discretion in denying Appellants' Motion for a Protective Order and Motion for Reconsideration. Thus, Ms. Sekera respectfully request this Court deny Appellants' Writ in its entirety.

DATED this 9th day of October, 2019

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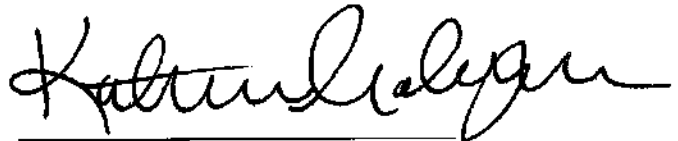
NRAP 26.1 DISCLOSURE STATEMENT

Real Party in interest, Joyce Sekera, by and through her attorneys of record
The Galliher Law Firm hereby submits her Disclosure Statement pursuant to
NRAP 26.1.

The undersigned counsel of record certifies that there are no parent
corporations and/or publicly held company that owns 10% or more of the party's
stock

DATED this 9th day of October, 2019

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CERTIFICATE OF COMPLIANCE

I, Kathleen H. Gallaher, 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 of counsel to The Galliher Law Firm, attorneys for Real Party in Interest, Joyce Sekera.

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

☒ this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New 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 part of the brief exempted by NRAP 32(a)(7)(C), it is:

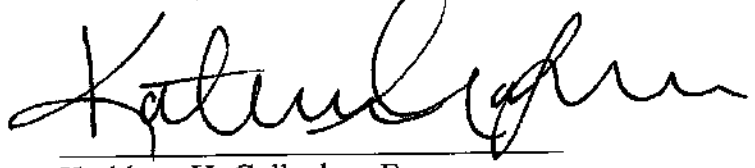
- a. ☒ Proportionately spaced, has a typeface of 14 points or more and contains 11,205 words in compliance with NRAP 32(a)(7)(A)(ii), (having a word count of less than 14,000 words).

4. Finally, I hereby certify that I have read this Opposition, 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 Opposition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript of 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 Opposition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 9th day of October, 2019

Further affiant sayeth naught.



Kathleen H. Gallagher, Esq.

Subscribed and Sworn to before me
this 9 day of October, 2019.



NOTARY PUBLIC



CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the The Galliher Law Firm and that on the 11 day of October 2019, pursuant to N.E.F.C.R 8, I electronically filed and served a true and correct copy of the above and foregoing **JOYCE SEKERA'S ANSWERING BRIEF** as follows:

☒ [X] by the Court's CM/ECF system which will send notification to the following; and

☐ [] by US mail at Las Vegas, Nevada, postage prepaid thereon, with the Appendix on CD, addressed to the following:

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