

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

Court of Appeals Case No. 79689-COA
District Court Case No. A-18-772761-C

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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

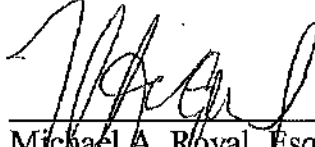
**REPLY TO JOYCE SEKERA'S OPPOSITION TO PETITIONERS'
EMERGENCY UNDER NRAP 27(e)**

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Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel, Royal & Miles LLP, hereby submits the following Reply to Joyce Sekera's Opposition to Petitioners' Emergency Motion for Stay Under NRAP Rules 8 & 27(e). This Reply 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 14 day of October, 2019.

ROYAL & MILES LLP



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VENETIAN CASINO RESORT, LLC,

LAS VEGAS SANDS, LLC

MEMORANDUM AND POINTS OF AUTHORITIES

COMES NOW Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel of record, ROYAL & MILES LLP, and respectfully file this reply to Joyce Sekera's opposition to Petitioners' motion for emergency stay filed on October 8, 2019, pertaining 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").

The basis for Petitioners' motion for emergency stay is that the privacy rights of persons involved in other incidents will be irreparably violated and damaged if the stay is not granted until this Honorable Court can review the issues presently before it. By her own admission, Sekera has made it clear that upon receiving this unredacted information she will share it with multiple attorneys wholly unaffiliated with the present litigation, thereby subjecting these uninvolved individuals to untold intrusions into their privacy.

Sekera failed to explain in the Opposition how she will be harmed by the Court granting the motion to stay the production of unredacted other incident reports until this matter can be fully briefed and adjudicated. Further, Sekera further failed to explain how her alleged need for the unredacted information outweighs the right to privacy by those persons involved in prior incidents. If this

Court were to deny the request for stay, it would irreparably damage the privacy interests of these other guests and would render the issues now before the Court moot; the damage would be done and there would be no unringing of the proverbial bell.

Sekera has not even attempted to weigh her alleged need for the information at issue (much less her right to share it freely with everyone) against the need for Petitioners and/or their guests to be protected from having this personal information released to Sekera without the slightest limitation. Sekera wrongly dismisses some of the cases cited by Petitioners as “California” cases. The case of Izzo v. Wal-Mart Stores, Inc., 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694 is a Nevada case where the U.S. District Court weighed similar issues and applied Nevada law in light of FRCP 26(b)(1). Further, Schlatter v. Eighth Judicial Dist. Court In and For Clark County, 93 Nev. 189 561 P.2d 1342 (1977), is a Nevada case cited in support of Petitioners’ emergency motion to stay. There are other like cases citing to Izzo, *supra*, which will be presented in Petitioners’ Response Brief, providing that the burden of proof in this circumstance is on the party seeking the discovery to demonstrate both relevancy and proportionality based on the needs of the case, with a greater emphasis on proportionality under FRCP 26(b)(1), which is now mirrored by NRCP 26(b)(1). (*See, i.e. RKF Retail Holdings, LLC v. Tropicana Las Vegas, Inc.*, 2017 U.S. Dist. LEXIS 104850 at *19 - *22.)

Sekera has made multiple references to the private data of persons identified in Venetian's other incident reports as "only slightly more revealing or invasive than information contained in a phonebook." (*See, e.g. Opposition at 9.*) This trivializes, demeans and grossly understates the privacy rights at issue here. While a person's contact information may indeed be found in a phone book, that information does not include Social Security Numbers, dates of birth, driver's license information, narratives about a particular incident and potential injuries, information related to an EMT examination, such as blood pressure, pulse, past medical history, current/past medications, etc. The phone book also would not identify other non-employee witnesses connected to a given incident, with their contact information, thereby subjecting them to privacy intrusions by Sekera or anyone with whom she shares the information. The issue is not whether contact information can be found in a phone book, but protecting personal information connecting persons to a specific event where health information and other identifying data can be connected to the personal, private information.

It is no small thing that Sekera has freely acknowledged intent to share unredacted information with the world without the slightest regard for the privacy rights of the persons so identified. Sekera's opposition focuses primarily (if not solely) on her right to obtain and distribute the information as she so desires,

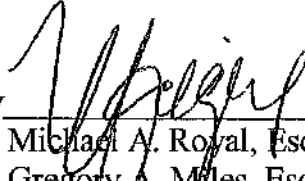
without providing any substantive discussion about how her needs and rights outweigh those of the persons wholly uninvolved with the subject lawsuit.

Sekera has made other representations in the Opposition which are without foundation, such as her assertion that Petitioners do not collect driver's license information and Social Security information, nor does she address her need for unredacted information in light of Eldorado Club, Inc. v. Graff, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962).

In short, Petitioners will address the substance of issues in detail by the October 25, 2019 deadline for filing Petitioners' Answering Brief. The stay should remain in place until this matter has been fully considered; otherwise, irreparable harm will result. Sekera, on the other hand, has not demonstrated that she will suffer any harm with the stay temporarily in place.

DATED this 14 day of October, 2019.

ROYAL & MILES LLP

By 

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CERTIFICATE OF COMPLIANCE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

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

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

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

[X] This reply 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 **827 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 15 day of October, 2019, I served true and correct copy of the foregoing REPLY TO JOYCE SEKERA'S OPPOSITION TO PETITIONERS' EMERGENCY UNDER NRAP 27(e), by delivering the same via the Court's CM/ECF system which will send notification to the following:

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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 17 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING 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 moved for a stay of the district court order pending our consideration of this writ petition. On October 1, 2019, we ordered an answer to the petition and granted a temporary stay pending our receipt and consideration of any opposition to the stay motion. Real party in interest has timely filed an opposition to the stay motion,¹ and petitioners have filed a reply.

¹Real party in interest's motion for leave to file an opposition in excess of the NRAP 27(d)(2) page limit is granted; the 16-page opposition was filed

When considering whether to grant a stay pending writ proceedings, we consider the following factors: whether (1) the object of the writ petition will be defeated absent a stay, (2) petitioners will suffer irreparable or serious harm without a stay, (3) real parties in interest will suffer irreparable or serious harm if a stay is granted, and (4) petitioners are likely to prevail on the merits of the petition. NRAP 8(c); see *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). Having considered the parties' arguments for and against the stay under these factors, we conclude that a stay is warranted pending our consideration of this writ petition. Accordingly, we grant petitioners' motion and stay the July 31 district court order, pending further order of this court.

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

on October 8, 2019. Additionally, the clerk of this court shall detach from the opposition and separately file volume 1 of the appendix to real party in interest's responding brief.

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

Appellate Court No. 79689-COA
District Court Case No. A-18-772761-C

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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

PETITIONERS' REPLY BRIEF

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MEMORANDUM OF POINTS AND AUTHORITIES

I. General Reply to Sekera's Answering Brief

Real-Party-in-Interest Joyce Sekera's Answering Brief is all noise with no signal, "full of sound and fury, signifying nothing" (Macbeth, Act 5, Scene 5, Lines 25-27). Petitioners' position is quite simple: the privacy rights of individuals wholly unaffiliated with the present litigation were not given the proper consideration by the District Court. The majority of the discussion in Sekera's Answering Brief is focused on irrelevant mudslinging; she devotes precious little discussion to explaining how her alleged need for this information outweighs the privacy interests of these unaffiliated individuals. Her only stated reason for desiring the private information of these unaffiliated individuals is to refute any claims of comparative fault. However, on its face this argument fails. Sekera does not provide a cogent rationale to explain why individuals who are not witnesses to the alleged slip-and-fall, or the circumstances leading up to the fall, will have any relevant information regarding any argument that she is comparatively at fault. It appears that the only reason Sekera is seeking the private information of these unaffiliated individuals is to disseminate it to other attorneys pursuing claims against Petitioners. This is not valid reason for violating the privacy rights of these unaffiliated individuals.

Sekera has taken the untenable position that NRCP 1 provides her with absolute rights to both obtain the private information of persons wholly unaffiliated with the present litigation and to share it with anyone of her choosing, whenever and however she pleases, without the slightest limitation or regard for the privacy rights of those persons. In so doing, Sekera has entirely avoided any analysis under NRCP 26(b)(1), determining that critical and fundamental discovery rule to be “irrelevant.” (See RAB at 20.) Sekera is mistaken. Indeed, a fair reading of the applicable rules, related case law, and plain common sense supports Petitioners’ position that the privacy rights of guests involved in other unrelated incidents – having provided Petitioners with information such as names, addresses, phone numbers, driver’s license, dates of birth, medical history and other health related information associated with an EMT examination, etc. – deserve protection and must be given consideration when a plaintiff, such as Sekera, makes a *carte blanche* request for such information.

Sekera’s argument to support her alleged need for the private information of perhaps hundreds of persons entirely unrelated to her November 4, 2016 incident is that it is necessary for her to defend against an affirmative defense of comparative fault – suggesting she needs persons involved in unrelated other incidents to testify that they likewise did not see anything on the floor prior to their alleged events occurring somewhere else on the property of Venetian Resort Hotel Casino

(“Venetian”). This purported need is clearly without merit. The facts of completely different incidents, involving different circumstances, different locations, and different accident mechanisms have no tendency whatsoever to prove or disprove whether Sekera was comparatively negligent at the time of her accident.

Sekera also rightly notes that Petitioners dispute her claim that there was a foreign substance on the floor at all. (*See* RAB at 2.) Indeed, Petitioners are not asserting that Sekera should have seen a foreign substance on the floor; instead, Petitioners deny the existence of a foreign substance. Thus, Sekera’s claim that she needs the other incident reports to defend against an affirmative defense of comparative fault is disingenuous and without merit.¹

As nearly every case cited by both parties herein provides, a proper analysis of Rule 26(b)(1) in discovery disputes similar to the instant matter requires Sekera to demonstrate both the relevance and proportionality of the information sought.

Sekera has not done that in either the District Court or her Answering Brief.

Petitioners posit that this is because it would lead directly to a conclusion that

¹ Sekera also argues she needs other incident information so “the public” will “know the magnitude of the problem of Venetian’s floors.” (*See* RAB at 7.) However, this argument appears to be solely directed to the challenge against Sekera circulating the redacted incident reports. While Petitioners dispute that this is a valid reason to permit discovery, it is clear that the redacted incident reports already produced by Petitioners, and already disseminated by Sekera’s attorney, are sufficient to satisfy this “public notice” argument.

supports Petitioners' request to protect the private information of the unaffiliated individuals.

Instead of addressing the merits of the important privacy issues at hand, Sekera has chosen to provide a misleading and distorted view of the litigation and attack the character of Petitioners and their counsel. As discussed below, these are red herrings designed to mislead this Honorable Court by presenting Petitioners as bad actors unworthy of relief. While Petitioners believe these topics are not relevant to the issue before this Honorable Court, in an abundance of caution Petitioners will address these topics at the end of this brief. Suffice to say that while Sekera has repeatedly made improper reference to other cases presently litigated against Venetian, she has not produced one court order supporting her claim that there has been any kind of discovery abuse by Petitioners or Venetian. As for the assertion related to disgruntled former Venetian employee Gary Shulman, that is a matter presently pending before the District Court. It has nothing to do with any issue at hand. That stated, a full reading of the Shulman deposition transcript attached by Plaintiff, as explained briefly below, demonstrates that the facts are not as presented by Sekera in her Answering Brief.

This writ is not about alleged past discovery issues involving the parties, but the right of privacy by those persons involved in other incidents, which Sekera repeatedly demeans and grossly mischaracterizes as “**phonebook ... plus date of**

birth information.” (*See* RAB 4. Emphasis added.) This misleading characterization completely fails to account for the context of the individual’s private information being included in an accident report. The inclusion of the personally identifiable information in the context of an incident report maintained by the Venetian is clearly not the same as the information found in a “phonebook.” Moreover, there is much more personal information within the subject incident reports than contact information, each of which note on every CR-1 form that they include “Protected Health Information.” (*See* RAB, Appendix Vol. 1, APP129,-35, 37-38.) These documents also contain medical history information which, of course, is not found in a “phonebook.” (*See id.* at APP 136.)²

Accordingly, Petitioners hereby implore this Honorable Court to focus on the privacy issues at hand, and not be distracted by Sekera’s tactics.

II. Response to Sekera’s Given Procedural History

Petitioners brought a motion for protective order under NRCP 26(c) before the Discovery Commissioner which was appropriately granted by way of recommendation. (*See* Petitioners’ Appendix, Vol. 1, Tab 14, VEN 201-06.)

² Sekera enclosed only twelve (12) pages of more than 660 pages produced by Petitioners, which include many more examples of Acknowledge of First Aid Assistance & Advice to Seek Medical Care forms with completed medical history information, along with notes provided by the responding emergency medical technician. (*See* RAB, Appendix Vol. 1, APP127-38.) Also, contrary to Sekera’s representation that driver’s license information is not collected by Venetian, that is inconsistent with documents Sekera produced herein. (*See, i.e., id.* at APP130.)

During the March 13, 2019 hearing, the Discovery Commissioner weighed Sekera's alleged need for the private information of persons involved in other incidents against the privacy rights of these unrelated third parties and recommended protection. (*See* Petitioners' Appendix, Vol. 1, Tab 13, VEN 186-200.)

At the March 13, 2019 hearing, the Discovery Commissioner considered Sekera's argument that she needs the ability to contact persons involved in other incidents to respond to a comparative fault affirmative defense. However, the Discovery Commissioner stated: "... the comparative negligence of another party versus your own party wouldn't be relevant to this action." (*See id.* at VEN 194, ln 9-11.) The Discovery Commissioner further noted: "I do believe there ... are privacy and HIPAA issues that are to be considered, and so my inclination is not to disclose the names and contact information for all people on all reports." (*See id.* at VEN 197, ln 24-25; 198, ln 1.) She further stated: "I am going to issue a protective order that the reports that are disclosed in this case are not to be circulated outside of this case and for use only in this case." (*See id.* at VEN 198, ln 1-5.)

In her answering brief, Sekera's counsel admits that the prior incident reports at issue were provided to another attorney, Peter Goldstein, Esq., who was involved in another case against the Venetian property, on February 7, 2019, after

the motion for protective order was filed with the Discovery Commissioner. (*See* RAB at 6.) To Petitioners' knowledge, this is the first time such an admission has occurred.

At the March 13, 2019 hearing before the Discovery Commissioner, Sekera did not advise the court that the information deemed protected was shared with Mr. Goldstein on February 7, 2019 or that it had already all been filed as an exhibit with the court in another proceeding by Mr. Goldstein. (*See id.* at VEN 186-200; Petitioners' Appendix, Appendix, Vol. 1, Tab 12, VEN 140-85 at VEN 141, ln 15-26, VEN 147, ln 12-13, VEN 173.) When the issue of sharing these documents was before the District Court at a hearing held on May 14, 2019, the following exchange between Sekera's counsel and the court occurred:

MR. GALLIHER: What happened when I got my redacted reports, I exchanged them with him (Attorney Peter Goldstein). He sent them to me -- **and by the way, there was no Protective Order in place. There was no motion practice in place, despite what's being represented.**

THE COURT: I was going to say because I do have a counter motion for you --

MR. GALLIHER: Yeah. I know.

THE COURT: -- to comply with the Court order and a counter motion for sanctions related --

MR. GALLIHER: This was done right upfront. **The minute I got the information, I -- I exchanged it with counsel.** George Bochanis also got a set. He exchanged

a set. (Appendix, Vol. 2, Tab 15 at VEN 218, ln 2-13, emphasis added.)

Accordingly, while Sekera counsel now admits prior incident reports were, in fact, shared with Mr. Goldstein after the motion for protective order was filed and pending before the Discovery Commissioner, no explanation has been given as to why there was a complete failure by Sekera counsel to advise the court below as counsel has here. More importantly, what was the purpose behind Sekera's sharing of the information provided? How did it advance any interests of Sekera in her litigation against Petitioners? The District Judge below, after being advised by Petitioners of the actions taken by Sekera counsel, did not consider the conduct of counsel after determining that the documents at issue are unworthy of any protection whatsoever. (*See id.* at VEN 254, ln 17-23.) In so doing, the judge found that the persons identified in other incident reports have no privacy rights.

At the September 17, 2019 hearing on Petitioners' motion for reconsideration, the District Court judge opened the hearing by stating a belief that some kind of protection was already in place. (*See* Petitioners' Appendix, Vol. 3, Tab 20 at VEN 460, ln 4-25; VEN 461, ln 1-7.) Unfortunately, it was not. The motion for reconsideration was not granted, and this petition followed.

III. Petitioners Demonstrated “Good Cause” for a Protective Order under NRCP 26(c) and the District Court Failed to Consider NRCP 26(b)(1) and Applicable Case Law When It Reversed the Discovery Commissioner’s Report and Recommendation of April 4, 2019

Petitioners respectfully submit that they presented ample evidence that the privacy rights of third parties identified in incident reports regarding other alleged accidents are worthy of protection under NRCP 26(c) below. The District Court overruled the Discovery Commissioner’s granting of a protective order, knowing full well that Sekera had already shared the deemed protected information and that she intends to continue doing so however she chooses, being unable to find any law in support of such protection. However, there is sufficient law in support of the protection recommended by the Discovery Commissioner.

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

Relevancy alone is no longer sufficient—discovery must also be proportional to the needs of the case. The Advisory Committee Note makes clear, however, that the amendment does not place the burden of proving proportionality on the party seeking discovery. The amendment "does not change the existing responsibilities of the court and the parties to consider proportionality, and the change does not place on the party seeking discovery the burden of addressing all proportionality considerations." Rule 26, Advis. Comm. Notes for 2015 Amends. **Rather, "[t]he parties**

and the court have a collective responsibility to consider the proportionality of all discovery and consider it in resolving discovery disputes." Bard, 317 F.R.D. at 564.

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

Petitioners argued below that the requested information is irrelevant, overly broad and unduly burdensome – based in large part on the privacy issues presented. At that point, under Rule 26(b)(1), the burden then shifted and Sekera had to demonstrate relevance and proportionality. Sekera did not do that below, and has not attempted to do that here. She merely dismissed it as “irrelevant.” (See RAB at 20.)

Keep in mind that Sekera's repeated use of "phonebook" to trivialize and marginalize the privacy rights of persons involved in other incidents in favor of her alleged absolute right to obtain the information is not limited to this litigation, but extends to her right to freely share it. Petitioners respectfully submit that Sekera is wrong, and that the district judge abused her discretion by reversing the Discovery Commissioner and ordering the production of unredacted information to be disclosed to Sekera without recognizing any privacy rights or granting any protection.

IV. Nevada Favors the Protection of Private Information of Guests Identified in Other Incident Reports under NRCP 26(c)

Sekera's repeated use of "phonebook" to refer to the information at issue is inappropriate. A phonebook provides a name, address and phone number; however, it does not provide dates of birth, driver's license information, social security information, health history and medical examination information, nor does it connect the name, address and phone information to a specific event to be freely shared, without limitation.

Sekera asserts that Petitioners are mostly concerned with Sekera's unfettered interest in sharing the private information of Venetian guests. (See RAB at 15.) That is an incorrect characterization of the issue. Petitioners are concerned with protecting the privacy rights of Venetian guests involved in other incidents where they have provided information pertaining to injury related events, examination of

their physical condition, documentation of their medical history, etc. These guests have a reasonable expectation of privacy, which rights have not been fairly considered by the lower court.

Sekera asserts that there is no Nevada law protecting the information at issue. (See RAB at 21.) That is not only unfounded, but is belied by many of the cases Sekera relies upon in her Answer Brief.

First, in *Eldorado Club, Inv. v. Graff*, 78 Nev. 507, 377 P.2d 174 (Nev. 1962), the Nevada Supreme Court held that the use of prior incident reports in slip and fall cases such as this are inadmissible as evidence of constructive notice.³ Therefore, the relevance of the information sought is questionable. Second, *Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977), provides that discovery must be carefully tailored to protect privacy interests while meeting the needs of the party requesting the information. That is consistent with the balancing test required under NRCp 26(b)(1).

Sekera suggests that Petitioners did not fairly represent *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694 (D. Nev. February 2,

³See *Lologo v. Wal-Mart Stores, Inc.*, U.S. Dist. LEXIS 100559 (D.Nev. July 29, 2016), the plaintiff (who slipped/fell at a Wal-Mart) sought to introduce evidence of prior incidents. Defendant's motion to exclude the evidence (citing *Eldorado Club, Inc.*, and FRE 402) was granted.

2016), to the Court in the petition. (*See* RAB at 23.) In *Izzo*, the plaintiff sought prior incident reports in slip/fall litigation. The Court, based in part on the defendant's desire to protect the privacy interests of guests, determined that the information previously produced to the plaintiff, which did not identify individuals involved in prior incidents, was sufficient. Similarly, here, Sekera already has the information she seeks. Petitioners argued below and again here that Venetian is likewise unduly burdened by the prospect of having prior guests being contacted not only by Sekera's counsel but by untold others litigating unrelated matters against Venetian. In fact, Plaintiff is now seeking unredacted subsequent incident reports where she likewise plans to contact witnesses and circulate information to other counsel all in the name of NRCP 1.⁴

Sekera also discredits *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620-21 (C.D. Cal. 2007), by suggesting the decision is based on the California Constitution. While that is referenced in the body of the decision, the decision is based on a broader review of privacy under the Rule 26(b)(1) analysis:

Finally, defendant objects that 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 (despite claiming Nevada law applies). *See* Defendant's Supp.

⁴ A Report and Recommendation granting Sekera's motion to compel unredacted subsequent incident reports to Sekera has been issued by the Discovery Commissioner and an objection will be filed once the Report and Recommendation is filed.

Memo. at 4:11-12. However, **privacy is not an absolute right, but a right subject to invasion depending upon the circumstances.** *Heller v. Norcal Mut. Ins. Co.*, 8 Cal. 4th 30, 43-44, 32 Cal. Rptr. 2d 200, 207-08, 876 P.2d 999 (1994), cert. denied, 513 U.S. 1059, 115 S. Ct. 669, 130 L. Ed. 2d 602 (1994). Thus, "the privilege is subject to balancing the needs of the litigation with the sensitivity of the information/records sought." *Davis v. Leal*, 43 F. Supp. 2d 1102, 1110 (E.D. Cal. 1999); see also *Pioneer Elecs. v. Superior Court*, 40 Cal. 4th 360, 371-75, 53 Cal. Rptr. 3d 513, 520-24, 150 P.3d 198 (2007) [****17**] (balancing privacy rights of putative class members with discovery rights of civil litigants). Here, 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. With the limitations set forth herein, the Court grants plaintiff's motion to compel, in part, and denies it, in part. (*Id.* at 620-21. Emphasis added.)

The *Bible* decision, therefore, is on point. It imposed the kind of balancing test under FRCP 26(b)(1) that should have been utilized below under NRCP 26(b)(1).

Sekera likewise dismisses *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502 (S.D. Cal. Aug 11, 2015), as a "rogue decision." (See RAB at 22, note 7.) However, the holding in *Rowland* is consistent with *Izzo* and *Bible* in its application of Nevada law on this issue. The following language is directly on point in support of Petitioners:

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. Defendant is directed to file a supplemental response to Interrogatory No. 5, as limited by the Court. (*See id.* at *7-8. Emphasis added.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

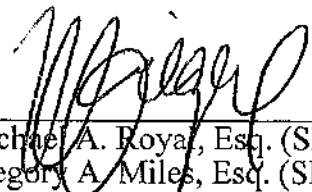
VI. CONCLUSION

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

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

DATED this 28 day of October, 2019.

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Henderson, NV 89014
(702) 471-6777
Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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

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

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

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

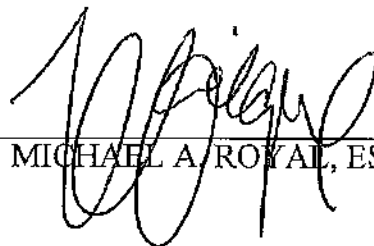
3. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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

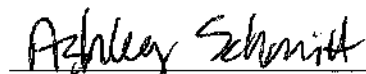
4. Finally, I hereby certify that I have read this Reply, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any

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

Further affiant sayeth naught.


MICHAEL A. ROYAL, ESQ.

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


NOTARY PUBLIC in and for said
County and State



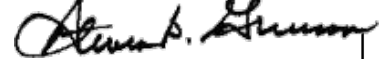
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 28 day of October, 2019, I served true and correct copy of the foregoing PETITIONERS' REPLY BRIEF, by delivering the same via the Court's CM/ECF system which will send notification to the following:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
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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 **MPOR**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

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5 Nevada Bar No. 4336

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12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

18 Plaintiff,

19 v.

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

27 Defendants.

Before the Discovery Commissioner

Hearing Requested

28 **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**

29 COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS
30 SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL &
31 MIILES LLP, and hereby file this OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL

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

1 TESTIMONY AND DOCUMENTS AND COUNTERMOTION FOR PROTECTIVE ORDER AS
2 TO PLAINTIFF'S REQUEST FOR PRODUCTION OF INCIDENT REPORTS FROM MAY 1999
3 TO PRESENT, MOTION TO COMPEL INFORMATION AND DOCUMENTS OF PRIOR
4 INCIDENT REPORTS PROVIDED TO PLAINTIFF EXPERT THOMAS JENNINGS AND
5 IDENTIFIED IN HIS MAY 30, 2019 REBUTTAL REPORT AND FOR LEAVE TO RETAKE THE
6 JENNINGS DEPOSITION TO ADDRESS THE 196 PRIOR CLAIMS REFERENCED IN HIS
7 REPORT AT PLAINTIFF'S EXPENSE.
8

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

12 DATED this 5 day of August, 2019.

13 ROYAL & MILES LLP

14 By 

15 Michael A. Royal, Esq. (SBN: 4370)
16 Gregory A. Miles, Esq. (SBN: 4336)
17 1522 W. Warm Springs Rd.
18 Henderson, NV 89014
19 Attorney for Defendants
20 VENETIAN CASINO RESORT, LLC and
LAS VEGAS SANDS, LLC

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

22 STATE OF NEVADA)
) ss.
23 COUNTY OF CLARK)

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

25 1. I am an attorney duly licensed to practice law in the State of Nevada and I am counsel
26 for Defendants Venetian in connection with the above-captioned matter. I have personal knowledge
27 of the following facts and if called upon could competently testify to such facts.
28

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

3 3. Plaintiff worked as a kiosk employee for Brand Vegas which required her to come upon
4 the Venetian property daily to park and then walk to her work station in the Grand Canal Shops.
5 Plaintiff has presented testimony in this matter that she worked thousands of hours in and around the
6 Venetian property from December 28, 2015 to November 4, 2016, and walked the subject area
7 hundreds of times without ever seeing a spill on the floor, without ever having come upon a scene
8 where someone had fallen, or even heard of such an event occurring prior to the subject incident.

9 4. Of the eleven (11) people identified as present at the scene from the fall until Plaintiff
10 departed, ten (10) have testified they either did not see a foreign substance on the floor, or cannot
11 confirm the same (including Plaintiff). The only person to testify otherwise is former/disgruntled
12 employee Gary Shulman, whose testimony is not remotely credible. Regardless, Plaintiff claims she
13 fell due to a foreign substance (believed to be water) on the floor. Defendants dispute that claim.

14 5. On August 18, 2018, Plaintiff sent her first requests for production to Defendant, which
15 included the following:

16 PRODUCTION REQUEST NO. 7: True and correct copies of any and all claim forms,
17 legal actions, civil complaints, statements, security reports, computer generated lists,
18 investigative documents or other memoranda which have, as its subject matter, slip and
19 fall cases occurring on marble floors within the subject VENETIAN CASINO
20 RESORT within three years prior to the incident described in Plaintiffs Complaint, to
21 the present.

22 (See Exhibit A, *Plaintiff's Request for Production of Documents and Materials to Defendant* (August
23 16, 2018) at 3, Request No. 7.)

24 6. Defendants responded by providing three (3) years of redacted prior incident reports,
25 totaling sixty-four (64), while objecting to producing post incident reports.

26 7. Defendants filed a motion for protective order related to the prior incident reports on
27 February 1, 2019 related to the sixty-four (64) redacted prior incident reports. The Discovery
28

1 Commissioner agreed that the prior incident reports were to remain in redacted form and that they were
2 to be protected pursuant to NRCP 26(c).

3 8. On March 12, 2019, one day before the March 13, 2019 hearing on Defendants' motion
4 for protective order on the prior incident reports, Peter Goldstein, Esq., counsel for the Plaintiff in the
5 matter of *Smith v. Venetian Casino Resort, LLC* ((A-17-753362-C), filed with the court a copy of all
6 sixty-four (64) prior incident reports Venetian had produced to Mr. Galliher in this litigation.
7 (See Exhibit B, *Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's*
8 *Motion for Terminating Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant*
9 *to NRCP Rule 37*, filed March 12, 2019 (without exhibits).) Thus, when the Discovery Commissioner
10 ordered the prior incident reports protected under NRCP 26(c), unbeknownst to either Defendants or
11 the Court, the damage had already been done. (See Exhibit C, *Transcript of Hearing Before Discovery*
12 *Commissioner*, dated 03.13.19, at 7, ln 13-21.)
13
14

15 9. Plaintiff filed an objection to the DCRR regarding the redacted prior incident reports
16 which was heard on May 14, 2019, in which the District Judge reversed the DCRR and ordered
17 production of unredacted reports by Defendants. The order was entered on July 31, 2019. Defendants
18 are preparing to file a motion for reconsideration.

19 10. On November 7, 2018, Plaintiff served a second request for production requesting the
20 following:

21
22 PRODUCTION REQUEST NO. 11: Any and all reports, notes, charts, plats, drawings,
23 videography or photographs of any slip resistance testing of any marble flooring
24 performed at The Venetian Las Vegas and/or The Palazzo Las Vegas within the past
25 three years.

26 (See Exhibit D, *Plaintiff's Second Request for Production of Documents and Materials to Defendant*
(November 7, 2018) at 2, Request No. 11.)

27 11. On March 15, 2019, Plaintiff served a third request for production requesting the
28 following:

1 REQUEST NO. 12: Any and all documents, reports, emails, correspondence, test
2 results, including expert reports generated by Plaintiffs and/or The Venetian Casino
3 Resort, LLC, d/b/a The Venetian Las Vegas with respect to the coefficient of friction,
4 wet and dry, of the marble floors located on the ground floor and Bouchon restaurant
5 floor of The Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas from three
6 years before the fall, November 4, 2013, to the present.

7 REQUEST NO. 13: Any and all documents invoices, work orders or communications
8 with respect to the purchase and/or application of any coating placed on the marble
9 floors located on the ground floor and Bouchon restaurant floor of the Venetian Casino
10 Resort, LLC, d/b/a The Venetian Las Vegas from three years before the fall, November
11 4, 2013, to the present.

12 REQUEST NO. 14: Any and all incident/security reports regarding injury falls on the
13 marble floors located at the Venetian Casino Resort, LLC, d/b/a The Venetian Las
14 Vegas, from three years before the fall, November 4, 2013, to the present.

15 (See Exhibit B, *Plaintiff's Third Request for Production of Documents and Materials to Defendant*
16 (March 15, 2019) at 2.)

17 Defendants objected to these requests insofar as they sought evidence of post incident reports
18 of falls, that the subject incident did not occur on the 10th floor of the property or within the Bouchon
19 restaurant, that it required Defendants to produce matters related to experts that are privileged in
20 nature, and referred Plaintiff to prior incident reports previously produced.

21 12. On May 31, 2019, Plaintiff served her sixth request for production with the following
22 requests:

23 REQUEST NO. 23: True and correct copies of any and all reports, documents,
24 memoranda, or other information describing or referring to slip testing performed on
25 the marble floors at the Venetian Hotel and Casino by any Plaintiff, or the Venetian,
26 from January 1, 2000 to date.

27 REQUEST NO. 24: Any and all communications, including correspondence, emails,
28 internal communication, or other memoranda which refers to the safety of marble floors
located within the Venetian Hotel and Casino from January 1, 2000 to date.

REQUEST NO. 25: Any and all transcripts, minutes, notes, emails, or correspondence
which has as a subject matter, any meetings held by and between Venetian personnel,
including management personnel, where the subject of the safety of the marble floors
at the Venetian was discussed and evaluated from January 1, 2000 to date.

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

4 REQUEST NO. 29: Any and all complaints submitted by guests or other individuals
5 regarding safety of the marble floors.

6 REQUEST NO. 30: Any and all quotes and estimates and correspondence regarding
7 quotes and estimates relating to the modification of the marble floors to increase their
slip resistance.

8 *(See Exhibit F, Plaintiff's Sixth Request for Production of Documents and Materials to Defendant*
9 *(May 31, 2019 at 2-3.)*

10 13. On June 20, 2019, Plaintiff served Plaintiff's First Set of Interrogatories to Defendants
11 with the following request:
12

13 INTERROGATORY NO. 1: Please identify by Plaintiffs name, case number and date
14 of filing all complaints filed against the Venetian Casino Resort, LLC d/b/a The
15 Venetian Las Vegas and/or Las Vegas Sands, LLC d/b/a The Venetian Las Vegas in the
16 Clark County District Court for any and all slip and fall and/or trip and fall incidents
17 occurring on marble flooring anywhere within The Venetian Casino Resort, LCC d/b/a
The Venetian Las Vegas and/or Las Vegas Sands, LLC d/b/a The Venetian Las Vegas
from January 1, 2000 to the present.

18 *(See Exhibit G, Plaintiff's First Set of Interrogatories to Defendants, served June 20, 2019.)*

19 14. On July 17, 2019, Plaintiff served Plaintiff's Ninth Request for Production of
20 Documents and Materials to Defendant with the following request:

21 REQUEST NO. 35: True and correct copies of any and all claim forms, legal actions,
22 civil complaints, statements, security reports, computer generated lists, investigative
23 documents or other memoranda which have, as its subject matter, slip and fall cases
24 occurring on marble floors within the subject VENETIAN CASINO RESORT from the
May 3, 1999 to the present.

25 *(See Exhibit H, Plaintiff's Ninth Request for Production of Documents and Materials to Defendant,*
26 *served July 17, 2019, at 2.)*

27 15. On July 19, 2019, Plaintiff served Plaintiff's Tenth Request for Production of
28 Documents and Materials to Defendant with the following request:

1 REQUEST NO. 36: True and correct copies of any and all entries and information
2 contained in the Venetian's Alliance System regarding injury falls on marble flooring
within the Venetian Las Vegas from January 1, 2000 to present.

3 (*See Exhibit I, Plaintiff's Tenth Request for Production of Documents and Materials to Defendant,*
4 *served July 19, 2019, at 2.*)

5 16. On July 22, 2019, Plaintiff served Plaintiff's Second Set of Interrogatories to
6 Defendants which reads as follows:

7 INTERROGATORY NO. 2: Please identify names, addresses and phone numbers of any and
8 all individuals designated as safety engineers who perform(ed) accident checks at the Venetian
9 from the year 2000 to the present.

10 (*See Exhibit J, Plaintiff's Second Set of Interrogatories to Defendants, served July 22, 2019, at 2.*)

11 17. On July 29, 2019, Plaintiff served Plaintiff's Eleventh Request for Production of
12 Documents and Materials to Defendant with the following request.

13 REQUEST NO. 37: Any and all quotes, estimates, correspondence, emails,
14 memorandums, minutes, file notes and/or other documentation related to Venetian's
15 decision to remove and replace the carpet with marble flooring and Venetian's removal
16 and replacement of carpet with marble flooring as referenced by Christina Tonemah
in her deposition. (25: 9-26; 26; 1-6)

17 (*See Exhibit K, Plaintiff's Eleventh Request for Production of Documents and Materials to Defendant,*
18 *served July 29, 2019, at 2.*)

19 18. On July 30, 2019, Plaintiff served notice of an NRCP 30(b)(6) deposition under NRCP
20 45 issuance of a subpoena with eighteen (18) topics, most of which include previously requested
21 information related to prior/subsequent incidents, customer reports/complaints, technological
22 infrastructure management, intraoffice communications, etc., from opening of the Venetian to the
23 present (spanning twenty (20) years). (*See Exhibit L, Seven Day Notice of Intent to Serve a Subpoena*
24 *Pursuant to NRCP 45(a)(4)(A), served July 30, 2019.*) I spoke with Mr. Galliher about this subpoena
25 during an EDCR 2.34 conference on August 1, 2019 and he advised that it is being vacated; however,
26 he intends to renotice the deposition at a later time to address these same issues.
27
28

1 19. Defendants object to the above discovery generally (among other things) as vague,
2 ambiguous, overly broad in scope, unduly burdensome, they infringe upon attorney/client privilege and
3 work product privilege (*i.e.* seeking information related to use of outside consultants and experts not
4 identified pursuant to NRCP 16.1), and that they do not meet the relevancy and proportionality
5 requirements of NRCP 26(b)(1). This is a simple negligence action arising from a temporary transitory
6 condition where, after deposing all known persons who were at the scene from the time of its
7 occurrence until Plaintiff's departure, the credible objective evidence supports Defendants' contention
8 that Plaintiff's fall was not caused by a foreign substance.
9

10 20. Defendants move this Honorable Court for a protective order to address the vast scope
11 of Plaintiff's discovery. The incident occurred in the Grand Lux rotunda area of the property; yet,
12 Plaintiff is seeking information about removal of carpeting in the casino, prior incidents occurring in
13 areas far from the Grand Lux rotunda - even on other floors of the property where Plaintiff has, to our
14 knowledge, never been. Plaintiff is demanding discovery that would take Defendants months to
15 produce, which evidence is not relevant to whether there was a foreign substance on the floor causing
16 Plaintiff's fall.
17

18 21. On July 23, 2019, the District Court entered an order granting Defendants' motion for
19 partial summary judgment related to the mode of operation theory of liability. (*See Exhibit M,*
20 *Findings of Fact, Conclusions of Law and Order Granting Defendants' Motion for Partial Summary*
21 *Judgment on Mode of Operation Theory of Liability*, filed July 23, 2019.) Therefore, Plaintiff must
22 demonstrate notice through traditional means.
23

24 22. Plaintiff was granted leave to file an amended Complaint to include a claim for punitive
25 damages on June 27, 2019. Defendant has since filed a motion to dismiss, which is presently pending.
26 However, Mr. Galliher advised during our EDCR 2.34 conference held on August 1, 2019 that he
27 believes the punitive damages claim alone opens the door for him to have unfettered discovery access
28

1 in this matter, including a demand for twenty (20) years worth of records. Mr. Galliher further advised
2 that he is in the process of "mining" information from Venetian to use not only in this case but in other
3 future cases. Mr. Galliher has previously shared information obtained in this matter with at least three
4 different attorneys handling three different presently litigated matters against Venetian. It is an
5 ongoing collaboration effort. (See e.g., Exhibit L, Topic 7, where Plaintiff identifies the following
6 cases with whom her counsel is sharing information: *Smith v. Venetian* (A-17-753362-C), *Cohen v.*
7 *Venetian* (A-17-761036-C) and *Boucher v. Venetian* (A-18-773651-C).) Accordingly, it appears that
8 Mr. Galliher is playing long here, seeking discovery that does not directly relate to his client's present
9 claims, but is attempting to "mine" whatever information he can for whatever purpose he has in mind.
10 This raises concerns about relevance and proportionality under NRCP 26(b)(1). If Plaintiff feels
11 entitled to "mine" information through the discovery process, she should first be required to make an
12 offer of proof to establish why this information is relevant to prove that Defendants had actual or
13 constructive notice of a temporary transient condition allegedly causing her to fall on November 4,
14 2019.

17 23. Plaintiff's experts Tom Jennings and John Baker have both been deposed. Both have
18 reviewed the surveillance footage depicting the subject incident. Both acknowledge that the video does
19 not provide direct evidence of a foreign substance on the floor.

21 24. During a May 28, 2019 hearing regarding Plaintiff's motion for leave to amend the
22 Complaint to add a claim for punitive damages, Plaintiff's counsel incorrectly represented to the
23 District Court that he had evidence that expert David Elliott, PE, had provided deposition testimony
24 about ten (10) years ago in the matter of *Farina v. Desert Palace, Inc.*, case no. A542232, in which he
25 made recommendations to Venetian to change its marble flooring to improve guest safety which
26 warning was allegedly ignored. Mr. Galliher referred to this testimony during the May 28, 2019
27 hearing as a "smoking gun."

1 25. A transcript of the David Elliott deposition was obtained subsequent to the May 28,
2 2019 hearing. (Exhibit N, *Transcript of David Elliott (taken February 13, 2009)*, in *Farina v. Desert*
3 *Palace, Inc.*, case no. A542232, attached hereto.) In that deposition testimony from February 13, 2009,
4 Mr. Elliott testified as follows: *You can go into the Venetian. I do a lot of work for the Venetian and*
5 *consulting and litigation, and their tile is slip resistant when wet, and it looks good.* (See *id.* at 34,
6 ln 12-25, emphasis added.) Therefore, we know from Mr. Elliott's testimony that as of February 2009,
7 contrary to what Plaintiff's counsel represented to the Court, he held Venetian flooring in high esteem.
8 Yet, Plaintiff's counsel is not satisfied and is demanding records back to 1999.

10 26. On June 25, 2019, Mr. Galliher sent correspondence wrongly accusing Defendants of
11 not having produced sixty-six (66) prior incident reports over the same three (3) period of time to
12 which they had previously provided in response to her production request no. 7. (See Exhibit O,
13 *Correspondence from Keith Galliher, Esq., to Michael Royal, Esq., dated 06.25.19.*)

15 27. On July 1, 2019, Plaintiff filed *Plaintiff's Motion to Compel Testimony and Documents*
16 in which she accused Defendants of not producing forty-six (46) prior incident reports (as opposed to
17 the sixty-six (66) demanded just six (6) days earlier). (See Exhibit P, *Plaintiff's Motion to Compel*
18 *Testimony and Documents*, filed July 1, 2019 (without exhibits) at 4-8, 11-13.) Plaintiff later withdrew
19 that portion of her motion after Defendants noted that she was grossly mistaken.

21 28. The deposition of Plaintiff expert, Thomas Jennings, was taken on July 2, 2019. Prior
22 to the deposition, Mr. Jennings was served with a subpoena duces tecum, which required him to bring
23 the following documents: "*Your entire file pertaining to Joyce Sekera vs. Venetian Casino Resort,*
24 *LLC.*" (See Exhibit Q, *Second Subpoena Duces Tecum for Tom Jennings*, served 06.10.19.)

25 29. Mr. Jennings had produced a written report dated May 30, 2019, in which he made the
26 following proclamation:
27
28

1 *It should also be noted that the Venetian Hotel-Casino has experienced 196 slip and*
2 *fall events between January 1, 2012 to August 5, 2016 with the majority of those*
3 *events occurring on the marble flooring within the same approximate area as*
4 *plaintiff's slip and fall.*

5 (See Exhibit R, *Rebuttal Report by Thomas Jennings*, dated May 30, 2019) at 3.)

6 30. At the July 2, 2019 deposition, Mr. Jennings appeared with reportedly his entire file in
7 response to the subpoena; however, he did not produce any documents related to the information
8 related to the 196 slip and fall events referenced in his May 30, 2019 report. When asked about this
9 information, Mr. Jennings responded that it was sent to him via email from Mr. Galliher in May, 2019,
10 prior to drafting his rebuttal report. When asked to produce a copy of the same pursuant to the
11 subpoena duces tecum, Mr. Jennings responded that he was no longer in possession of the information,
12 confirming it was not preserved. I asked Mr. Jennings to describe the information provided to him by
13 Mr. Galliher. He was vague and could not recall details, other than he concluded that the 196 prior
14 incidents occurred not just somewhere on Venetian property, but within the Grand Lux rotunda area
15 where the Plaintiff fell in this matter. Plaintiff's counsel present for the deposition did not commit to
16 producing the missing documents.

17
18 31. Mr. Jennings testified in deposition that the alleged 196 prior slip and fall referenced
19 in his May 30, 2019 rebuttal report (which information was not produced to Defendants prior to his
20 deposition or included the entire file he was to produce) **were limited to the Grand Lux rotunda**
21 **area** where Plaintiff fell. Consider the following from Mr. Jennings' deposition:

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

24 A. Yes, sir.

25 Q. It reads, "It should also be noted that the Venetian Hotel Casino has
26 experienced 196 slip-and-fall events between January 1st, 2012, to August 5th, 2016,
27 with the majority of those events occurring on the marble flooring within the same
28 approximate area as plaintiff's slip-and-fall." Did I read that correctly?

 A. You did.

 Q. What information are you drawing from?

1 A. I'm drawing from -- . . . When I prepared this report, I was provided by
2 Mr. Galliher's office a spreadsheet, a run sheet of slip-and-fall events within that
referenced time period at that same approximate area as Plaintiff's slip-and-fall.

3 Q. Did you bring that with you today?

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

5 . . .

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

7 A. Yes, sir.

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

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

10 . . .

11 Q. Okay. So you're saying, then, as I understand it, you received
12 information from Mr. Galliher that there were 196 slip-and-fall events between January
13 1st, 2012, and August 5th, 2016, occurring in the vicinity of the Grand Lux rotunda?

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

15 . . .

16 Q. Did you count them?

17 A. Yes, I did.

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

19 A. Yes, sir.

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

21 A. Mostly that was the case, yes, sir. As I recall, they were all due to liquid
contaminants.

22 (See Exhibit S, *Deposition of Thomas Jennings*, taken July 2, 2019, at 84, ln 7-25; 85, ln 1-5; 86, ln
23 12-19; 87, ln 23-25; 88, ln 1-3; 89, ln 18-25; 90, ln 1. Emphasis added.)

24 32. On or about July 22, 2019, I received the documents reportedly sent by Mr. Galliher to
25 Mr. Jennings related to the May 30, 2019 rebuttal report. (See Exhibit T, *Correspondence from*
26 *Galliher Law Firm to Thomas Jennings*, dated May 31, 2019, PLTF 626-46.)

27 33. The documents provided by Mr. Galliher related to documents he sent to Mr. Jennings
28 reportedly documenting 196 prior incidents in the Grand Lux rotunda area from January 1, 2012 to
August 5, 2015 were not produced to Mr. Jennings prior to his May 30, 2019 report. Accordingly,
based on Mr. Jennings' testimony, where he claims to have reviewed *the details of each recorded*
incident to establish for himself that all 196 reports occurred in the "same approximate area" and that
they all involved a liquid substance. Since Mr. Jennings clearly reviewed prior incident reports before

1 signing his May 30, 2019 rebuttal report, Plaintiff's July 22, 2019 production is insufficient and, in
2 fact, is non-responsive to Defendants' demand for these documents from Mr. Jennings.

3 34. As for the information provided by Plaintiff on July 22, 2019, the same issues
4 Defendants identified in the **46 Undisclosed Prior Incident Reports** which were the subject of
5 Plaintiff's initial motion are found here in the alleged 196 prior incident reports.

6
7 35. Of the 196 reports identified in the spreadsheet prepared by Mr. Galliher and sent to Mr.
8 Jennings one day after the Jennings May 30, 2019 rebuttal report, **only eight (8) refer to the Grand**
9 **Lux area.** (See Exhibit T at PLTF 627 (nos. 1, 4), PLTF 629-30 (no. 31), PLTF 632 (no. 57), PLTF
10 634 (no. 72, 73, 81), PLTF 635 (no. 83).) The remaining 188 incidents identified occurred in other
11 areas, some of which are on different floors or well outside the Venetian casino area. Also, contrary
12 to Mr. Jennings' testimony, some of them relate to trip/falls or events that do not involve foreign
13 substances, contrary to Mr. Jennings' testimony. Also, Plaintiff has the same issues with duplicate
14 entries as she did with the **46 Undisclosed** reports. (See e.g., *id.* at PLTF 635 (nos 85-86), PLTF 635-
15 36 (nos 90-91), PLTF 636 (nos. 95-98), PLTF 637 (nos. 104-06), PLTF 637-38 (nos. 107-18), PLTF
16 639 (nos. 120-29), PLTF 639-40 (nos. 130-38), PLTF 641 (139-50), PLTF 642 (nos. 151-58), PLTF
17 642-43 (nos. 159-70), PLTF 643-44 (nos 171-82), PLTF 645 (183-90), totaling at least fifty-six (56)
18 duplicates/triplicates.) Thus, the actual number of alleged incident reports produced by Plaintiff on
19 July 22, 2019 was 140, as opposed to 196. Further, since only eight (8) of the prior incidents identify
20 the Grand Lux area, this is clearly not the same information provided to Mr. Jennings prior to May 30,
21 2019.

22
23
24 36. Since Mr. Jennings unequivocally testified that he received reports of 196 prior
25 incidents occurring in the Grand Lux rotunda area related to slip falls before preparing his May 30,
26 2019 report, and the documents produced by Plaintiff on July 22, 2019 are clearly not the same
27 documents reviewed by Mr. Jennings. Therefore, Defendants move to compel production of those
28

1 documents. I discussed this with Mr. Galliher on August 1, 2019 and he denies that any other
2 documents exist beyond the clearly unrelated list of prior incidents he sent to me following the
3 Jennings deposition.¹

4 37. Mr. Galliher has not explained how he obtained information related to the alleged 196
5 prior incident reports of events occurring in the Venetian Grand Lux rotunda area referenced by Mr.
6 Jennings in his May 30, 2019 rebuttal report. Mr. Galliher has not revealed what he produced to Mr.
7 Jennings to support his bold factual assertion, whether information included duplicates of previously
8 identified and produced events, such as what Plaintiff has done on pages 5-8 of the pending motion,
9 how he compiled the information June 25, 2019 and the motion of July 1, 2019, or whether he is
10 presently in possession of all of these incident reports.

12 38. Mr. Jennings also testified in his July 2, 2019 deposition that he is also a disclosed
13 expert in the *Smith v. Venetian* litigation, where he tested the marble flooring at a site approximately
14 100 feet away from the subject incident and came up with vastly different numbers for his coefficient
15 of friction testing. (Mr. Jennings tested the subject fall area dry at .70 COF vs. .90 COF in *Smith*, and
16 Mr. Jennings tested the subject fall area wet at .33 COF vs. .40 COF in *Smith*.) **Mr. Jennings**
17 **acknowledged that different areas of the property can test for coefficient of friction differently**
18 **based on a number of factors, including cleaning methods to foot traffic, among others.**
19 (See Exhibit S at 71-73.)

21
22 *From an engineering standpoint, sure, there's possibilities that can explain that.*
23 *Mostly it would be: Is this area more transited by pedestrian traffic than the Sekera*
24 *incident? Was the floor application put on by Venetian at the same level in that case*
as in this case? So, yeah, there's multiple possibilities as to why you would have a
discrepancy between 0.4 and 0.33.

26
27 ¹The summary of 196 reports provided by Mr. Galliher on July 22, 2019 were sent to Mr.
28 Jennings after the May 30, 2019 report was signed and the information is not at all consistent with Mr.
Jennings' testimony. Accordingly, Defendants believe Mr. Jennings reviewed other documents not
produced by Plaintiff.

(See *id.* at 74, in 1-8.) In other words, an incident occurring approximately 100 feet away from the subject incident, revealed much different test results by Mr. Jennings when tested within just a few months apart, which he explained to be due to various factors, including pedestrian traffic, floor applications, etc. This begs the question of how incidents occurring in areas outside the Grand Lux rotunda are relevant to show notice when Mr. Jennings himself admits that his testing of the flooring 100 feet away was much different? Since Mr. Jennings has reviewed of 196 prior incidents occurring exclusively in the Grand Lux rotunda area within the five (5) years preceding the subject incident, then Plaintiff has more than enough evidence to make her notice argument.

39. I have met the requirements of EDCR 2.34 to confer with Plaintiff's counsel about issues surrounding the above related matters.


40. This opposition and countermotion is not brought in bad faith, or for any improper purpose.

41. I declare that true and correct copies of the following exhibits are attached hereto in support of this Opposition.

EXHIBIT	TITLE
A	Plaintiff's Request for Production of Documents and Materials to Defendant, dated August 16, 2018
B	Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's Motion for Terminating Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant to NRCP Rule 37, filed March 12, 2019 (without exhibits)
C	Transcript of Hearing Before Discovery Commissioner, dated March 13, 2019, selected pages
D	Plaintiff's Second Request for Production of Documents and Materials to Defendant, dated November 7, 2018
E	Plaintiff's Third Request for Production of Documents and Materials to Defendant, dated March 15, 2019
F	Plaintiff's Sixth Request for Production of Documents and Materials to Defendant, dated May 31, 2019

EXHIBIT	TITLE
G	Plaintiff's First Set of Interrogatories to Defendants, dated June 20, 2019
H	Plaintiff's Ninth Request for Production of Documents and Materials to Defendant, dated July 17, 2019
I	Plaintiff's Tenth Request for Production of Documents and Materials to Defendant, dated July 19, 2019
J	Plaintiff's Second Set of Interrogatories to Defendants, dated July 22, 2019
K	Plaintiff's Eleventh Request for Production of Documents and Materials to Defendant, dated July 29, 2019
L	Seven Day Notice of Intent to Serve a Subpoena Pursuant to NRCP 45(a)(4)(A), dated July 30, 2019
M	Findings of Fact, Conclusions of Law and Order Granting Defendants' Motion for Partial Summary Judgment on Mode of Operation Theory of Liability, filed July 23, 2019
N	Transcript of David Elliott (taken February 13, 2009), in <i>Farina v. Desert Palace, Inc.</i> , case no. A542232, selected pages
O	Correspondence from Keith Galliher, Esq., to Michael Royal, Esq., dated June 25, 2019
P	Plaintiff's Motion to Compel Testimony and Documents, filed July 1, 2019 (without exhibits)
Q	Second Subpoena Duces Tecum for Tom Jennings, served June 10, 2019
R	Expert Rebuttal Report, Thomas Jennings, dated May 30, 2019
S	Transcript of Thomas Jennings Deposition, taken July 2, 2019, selected pages
T	Correspondence from Galliher Law Firm to Thomas Jennings, dated May 31, 2019
U	Discovery Commissioner's Report and Recommendation (filed July 9, 2019), <i>Boucher v. Venetian Casino Resort, LLC</i> , Case No. A-18-773651-C
V	Minutes from Discovery Commissioner Hearing, dated June 26, 2019

Executed on 5 day of August, 2019.


 MICHAEL A. ROYAL, ESQ.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF RELEVANT FACTS**

4 This litigation arises from a November 4, 2016 incident occurring when Plaintiff fell in a lobby
5 area of the Venetian while taking a break from her work station where she was employed as a
6 salesperson for Brand Vegas, LLC, working pursuant to an agreement between Venetian and her
7 employer to sell tickets to Venetian events. At around 12:37 pm, as Plaintiff was en route to the
8 women's bathroom located on the Venetian casino level near the Grand Lux Café, while carrying a
9 covered beverage in her left hand, Plaintiff stepped with her left foot, then slipped and fell to the floor.
10

11 The cause of Plaintiff's fall is in dispute, as Venetian denies that there was any foreign
12 substance on the floor at the time the incident occurred. Regardless, Venetian produced sixty-six (66)
13 prior incident reports from November 4, 2013 through November 4, 2016 related to incidents occurring
14 in the common area of the Venetian casino level area where the subject incident occurred.
15

16 **II.**

17 **NATURE OF MOTION**

18 Defendants contend that Plaintiff is abusing the discovery process to bury them in requests for
19 the improper purpose of "mining" information. Plaintiff's presently known medical bills are
20 approximately \$80,000, and she is not scheduled for future surgery (nearly three (3) years post
21 incident). There is a dispute over whether there was any foreign substance on the floor at all causing
22 her to fall. Yet, Plaintiff is demanding anything and everything from Defendants as though she is
23 handling a products liability case. She is not. This is a case of alleged negligence from a temporary
24 transitory condition.
25

26 There is no reasonable basis to allow Plaintiff to bury Defendants in overly burdensome
27 discovery requests for information that is not likely to be admissible at trial. Further, Plaintiff's request
28

1 do not meet the letter or spirit of NRCP 16(b)(1) as to relevancy and proportionality. Accordingly,
2 Defendants move for a protective order under NRCP 26(c). Defendants further move to compel
3 Plaintiff to produce the 196 prior incident reports Mr. Jennings claims to have seen solely from the
4 Grand Lux rotunda area, as referenced in his July 2, 2019 deposition. Since these documents were not
5 produced by Mr. Jennings prior to his deposition in response to a subpoena duces tecum, then
6 Defendants move to compel Mr. Jennings to present for a second deposition to address that portion of
7 his testimony at Plaintiff's expense.
8

9 III.

10 LEGAL ANALYSIS

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

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

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

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

- 25 (1) *that the discovery not be had;*
- 26 (2) *that the discovery may be had only on specified terms and conditions, including a*
designation of the time or place;
- 27 (3) *that the discovery may be had only by a method of discovery other than that selected*
28 *by the party seeking discovery;*

- (4) *that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;*
- (5) *that discovery be conducted with no one present except persons designated by the court;*
- (6) *that a deposition after being sealed be opened only by order of the court;*
- (7) *that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way;*
- (8) *that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.*

The objective of discovery rules is to limit discovery to relevant matters, and to prevent "fishing expeditions" by restricting litigants to discovery that only implicates matters raised by them in the pleadings. (See FED. R. CIV. P. 26(b), Advisory Committee Note, Amendments to Federal Rules of Civil Procedure, at 388-90; see also Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189, 192 (1977).)

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

A. **Plaintiff's Discovery Requests Do Not Meet the Relevancy or Proportional Requirements of NRCP 26(b)(1)**

Under NRCP 26(b)(1), Plaintiff must first demonstrate that the desired discovery is **relevant** to her claims here and that it is **proportional** to the needs of the case with 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.

Plaintiff claims to have sustained injuries primarily to her neck and back. Her known treatment is approximately \$80,000, to date, all conservative in nature. Plaintiff's counsel claims to have

1 knowledge of at least 260 prior incidents beyond the sixty-four (64) produced by Defendants, which
2 she has never produced. The prior incident reports under the circumstances are not likely admissible
3 under Eldorado Club v. Graff, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962), where the court held that
4 *"where a slip and fall is caused by the temporary presence of debris or foreign substance on a surface,*
5 *which is not shown to be continuing, it is error to receive "notice evidence" of the type here involved*
6 *for the purpose of establishing the defendant's duty."*

8 In light of the above, Plaintiff's use of the discovery process to "mine information" is
9 improper. Defendants move for protection from Plaintiff's unreasonable, overly broad, unduly
10 burdensome, vexing discovery requests as set forth herein.

11 **B. Plaintiff's Discovery and Depositions Requests are Not Admissible, Overbroad/Non-**
12 **Specific and Subject to Evidentiary Offer of Proof Before Any Claim of "Discoverability"**
13 **Can Be Made; Thus, a Protective Order is Appropriate for These Requests**

14 Defendants request, and are entitled to, a Protective Order precluding production of documents,
15 video, computer data, deponents or other materials regarding unrelated prior incidents and Venetian
16 reports regarding same, including the private and confidential information contained therein. The
17 propriety of this request is self-evident in light of the following:

- 18 • **Prior Similar Incidents Involving a Transient Condition Cannot be Used to Prove**
19 **Constructive Notice**
- 20 • **The Only Exception to the Rule Precluding Prior Similar Incidents Involving a**
21 **Transient Condition Does not Apply To The Facts of This Matter**
- 22 • **The Inadmissibility of Prior Incidents In This Matter Places Them Beyond The**
23 **Scope of Permissible Discovery**

24 **C. Under Nevada Law, Prior Similar Incidents Involving a Transient Condition Cannot be**
25 **Used to Prove Constructive Notice**

26 Plaintiff here claims that she fell due to a foreign substance on the floor causing her to slip,
27 which Defendants dispute. The Discovery Commissioner has already ruled that reports of incidents
28 occurring subsequent to the subject accident need not be produced, in light of the fact that Plaintiff

1 alleges negligence due to the presence of liquid spilled on the walkway at the Venetian and “liquid on
2 a walkway is a transient condition.” (See Exhibit U, *Discovery Commissioners Report and*
3 *Recommendation*, July 5, 2019, in matter of *Boucher v. Venetian Casino Resort, LLC*, Case No. A-18-
4 773651-C, at 3.)

5 To be clear, Plaintiff does not allege that the permanent condition of the Venetian interior tile
6 flooring itself was the cause of her fall (importantly, neither do Plaintiff’s experts). Instead, the
7 allegation is that the Venetian interior tile flooring, itself, is a permanent, static, code compliant
8 condition until acted upon by some other temporary/transient object (such as water that makes the tile
9 “wet” for some limited amount of time). Plaintiff and her *experts* allege that, in this case, the
10 permanent tile condition became dangerous due to the temporary presence of water upon it. Plaintiff
11 now seeks discovery regarding unrelated prior incidents where the static condition of the Venetian
12 flooring was altered by the presence of an additional temporary object, in this case ostensibly water,
13 that then was related to a guest fall. Plaintiff admits she desires this evidence to prove that Venetian
14 was on “notice” of the allegedly dangerous condition. As noted above, the Eldorado Club, Inc. court
15 expressly held that it is reversible error to receive “notice evidence” of prior similar incidents
16 involving transient conditions to prove constructive notice. (See Eldorado Club, Inc., *supra*.) This
17 remains the state of Nevada law today.²

18
19
20
21 **D. The Inadmissibility of Prior Similar Incidents Places Them Beyond The Scope of**
22 **Permissible and Proportional Discovery**

23 As a matter of Nevada law, Plaintiff’s contention that she slipped on a floor that was caused
24 to be made temporarily “wet” inside the Venetian, by its very description, is a temporary or transient
25 condition which renders any prior incidents involving alleged similar “wet” or transient conditions

26
27 ²The only exception to Eldorado Club, Inc. are circumstances which give rise to the self-serve
28 mode of operation theory of liability. (See FGA, Inc. v. Giglio, 128 Nev. 271, 282, 278 P.3d 490, 497
(2012). However, the District Court has already ruled in this case that the mode of operation theory
does not apply in this case. (See Exhibit M.)

1 inadmissible for the purpose of trying to establish constructive notice of circumstances suggesting a
2 dangerous condition. Under this controlling law, the production and/or use of information concerning
3 alleged prior similar incidents cannot lead to the discovery of admissible evidence, and such materials
4 are therefore beyond the scope of discovery. Defendant is entitled to an order protecting the
5 confidentiality such documentation that a floor was temporarily "wet" from production altogether.
6

7 **E. Defendants Are Entitled to Protection From Plaintiff's Broad, Unlimited Requests for**
8 **Computer Data**

9 As noted in Paragraph 24 of the above Declaration, Plaintiff noticed an NRCP 30(b)(6)
deposition with eighteen (18) topics, which include the following:

10 6. The identity of all employees who were responsible for managing
11 and maintaining Venetian's technology infrastructure;

12 8. The identity of all non-employee consultants, consulting firms,
13 contractors or similar entities that were responsible for managing and maintaining
14 Venetian's technology infrastructure;

15 9. Software used, including dates they were in use and any software
16 modifications;

17 10. Identity of, description of and policies and procedures for the use
18 of all internal systems for data management, complaint and report
19 making, note keeping, minute/transcript taking and employee e-mail, messaging
20 and other communication systems and description of all employee accounts for said
21 systems;

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

24 12. Physical location of electronic information and hard files and
25 description of what information is kept in electronic form and what is kept in hard
26 files;

27 13. Description of policies and procedures for performing back-ups;

28 14. Inventory of back-ups and when they were created;

15 15. User permissions for accessing, modifying, and deleting data;

16 16. Utilization of data deletion programs;

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

19 18. Electronic records management policies and procedures. (See Exhibit
20 L.)

21 These topics relate to the Plaintiff's production request No. 36, wherein Plaintiff seeks records
22 from *Venetian's Alliance system regarding injury falls on marble flooring within the Venetian Las*
23 *Vegas from January 1, 2000 to present.* (See Exhibit I at 2.) Plaintiff's request for this vast
24

1 information does not meet the relevance or proportionality requirement of NRC P 26(b)(1), but is akin
2 to a *carte blanche* fishing expedition (which Plaintiff refers to as “*mining information*”) contrary to
3 the court’s holding in *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189, 561 P.2d 1342 (1977).

4 F. **Plaintiff is Not Entitled to Subsequent Incident Reports in a Negligence Action Based On**
5 **a Temporary Transitory Condition**

6 The Discovery Commissioner has previously held that parties similarly situated are not entitled
7 to subsequent incident reports based on a temporary transitory condition. (*See Exhibit U.*) Thus,
8 Plaintiff’s demand for this information from Defendants (as noted above from the Declaration above),
9 Plaintiff is seeking the following:

10 PRODUCTION REQUEST NO. 7: True and correct copies of any and all claim forms,
11 legal actions, civil complaints, statements, security reports, computer generated lists,
12 investigative documents or other memoranda which have, as its subject matter, slip and
13 fall cases occurring on marble floors within the subject VENETIAN CASINO
14 RESORT within three years prior to the incident described in Plaintiffs Complaint, to
the present. (*See Exhibit A at 3.*)

15 REQUEST NO. 14: Any and all incident/security reports regarding injury falls on the
16 marble floors located at the Venetian Casino Resort, LLC, d/b/a The Venetian Las
17 Vegas, from three years before the fall, November 4, 2013, to the present.
(*See Exhibit D at 2.*)

18 PRODUCTION REQUEST NO. 29: **Any and all** complaints submitted by guests or
19 other individuals regarding safety of the marble floors. (*See Exhibit F at 2.*)

20 PRODUCTION REQUEST NO. 36: True and correct copies of any and all entries and
21 information contained in the Venetian’s Alliance System regarding injury falls on
22 marble flooring within the Venetian Las Vegas from January 1, 2000 to present.
(*See Exhibit I at 2-3.*)

23 Plaintiff’s demand for subsequent incident reports is based on a claim for punitive damages
24 which the Plaintiff recently added in an Amended Complaint. A motion to dismiss pursuant to NRC P
25 12(b)(5) or alternative for summary judgment has been filed with the Court and is set for hearing on
26 August 27, 2019. Regardless, the fact that Plaintiff has a claim for punitive damages does not open
27 up discovery allowing her to now obtain discovery of subsequent incidents on property. This is a thinly
28 veiled attempt by Plaintiff’s counsel to “*mine information*” that will potentially allow him to identify

1 potential clients involved in incidents within the preceding two years. The request for this information
2 certainly does not meet the relevancy and proportionality prongs of NRCP 26(b)(1). There is simply
3 no basis for punitive damages in a simple negligence case arising from a temporary transitory
4 condition, and there is no Nevada case law stating otherwise. Plaintiff has previously argued that this
5 case is tantamount to a products defect case; however, that is not how the claim is plead, nor is it
6 remotely consistent with the facts. There is no basis to support Plaintiff's motion to compel the
7 production of subsequent incident reports in a slip and fall case from a temporary transitory condition
8 based on negligence. Accordingly, Defendants seek protection from having to produce this
9 information in the requests set forth above.
10

11 G. **Plaintiff is Not Entitled to Information Related to Defendants' Expert Consultations**
12 **Which is Protected Work Product**

13 Plaintiff has requested information from Defendants related to prior slip testing, expert
14 consultation, etc., regarding the Venetian flooring. The are generally set forth as follows:

15 PRODUCTION REQUEST NO. 11: Any and all reports, notes, charts, plats, drawings,
16 videography or photographs of any slip resistance testing of any marble flooring
17 performed at The Venetian Las Vegas and/or The Palazzo Las Vegas within the past
three years. (See Exhibit D.)

18 PRODUCTION REQUEST NO. 12: Any and all documents, reports, emails,
19 correspondence, test results, including expert reports generated by Plaintiffs and/or The
20 Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas with respect to the
coefficient of friction, wet and dry, of the marble floors located on the ground floor and
21 Bouchon restaurant floor of The Venetian Casino Resort, LLC, d/b/a The Venetian Las
Vegas from three years before the fall, November 4, 2013, to the present.

22 PRODUCTION REQUEST NO. 13: Any and all documents invoices, work orders or
23 communications with respect to the purchase and/or application of any coating placed
24 on the marble floors located on the ground floor and Bouchon restaurant floor of the
Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas from three years before
25 the fall, November 4, 2013, to the present. (See Exhibit E at 2.)

26 PRODUCTION REQUEST NO. 23: True and correct copies of any and all reports,
27 documents, memoranda, or other information describing or referring to slip testing
performed on the marble floors at the Venetian Hotel and Casino by any Plaintiff, or
28 the Venetian, from January 1, 2000 to date.

1 PRODUCTION REQUEST NO. 24: Any and all communications, including
2 correspondence, emails, internal communication, or other memoranda which refers to
3 the safety of marble floors located within the Venetian Hotel and Casino from January
4 1, 2000 to date.

5 PRODUCTION REQUEST NO. 25: Any and all transcripts, minutes, notes, emails, or
6 correspondence which has as a subject matter, any meetings held by and between
7 Venetian personnel, including management personnel, where the subject of the safety
8 of the marble floors at the Venetian was discussed and evaluated from January 1, 2000
9 to date.

10 PRODUCTION REQUEST NO. 26: Any and all correspondence, emails, memoranda,
11 internal office correspondence, or other documents directed to the Venetian from a
12 Contractor, Subcontractor, Flooring Expert, or similar entity which discusses or refers
13 to the safety of marble floors located within the Venetian Hotel and Casino from
14 January 1, 2000 to date.

15 PRODUCTION REQUEST NO. 30: Any and all quotes and estimates and
16 correspondence regarding quotes and estimates relating to the modification of the
17 marble floors to increase their slip resistance. (See Exhibit F at 2-3.)

18 Under NRCP 26(b)(4)(D)(ii) of the Nevada Rules of Civil Procedure, a party may not discover
19 facts known or opinions held by an expert who is not expected to be called as a witness at trial except
20 upon a showing of exceptional circumstances. In fact, under NRCP 26(b)(3), Plaintiff is not entitled
21 to drafts of any reports or disclosures required under NRCP 16., 16.2(d), 16.2(e), 16.205(d), 16.205(e),
22 or NRCP 26(b)(1), "*regardless of the form in which the draft is recorded.*" Further, NRCP 26(b)(3)
23 protects communications between a party's attorney and any retained expert witness, with only a few
24 exceptions. Under NRCP 26(b)(4)(D), "*a party may not, by interrogatories or deposition, discover*
25 *facts known or opinions held by an expert who has been retained or specifically employed by another*
26 *party in anticipation of litigation or to prepare for trial and who is not expected to be called as a*
27 *witness at trial.*" This Court recently ruled that Plaintiff is only entitled to expert reports produced in
28 litigation pursuant to NRCP 16.1 related to the marble flooring. (See Exhibit V, *Minutes from Hearing*
Before Discovery Commissioner, dated June 26, 2019.) With that in mind, Defendants should likewise
be precluded from Plaintiff's broad demand for twenty (20) years of information that does not begin
to meet the relevancy or proportionality requirements of NRCP 26(b)(1).

1 H. **Defendant Should Be Protected From Producing Irrelevant Evidence Related to an**
2 **Alleged 2008 Remodel That Does Not Impact the Grand Lux Rotunda Area**

3 Plaintiff is also seeking the following:

4 PRODUCTION REQUEST NO. 37: Any and all quotes, estimates, correspondence,
5 emails, memorandums, minutes, file notes and/or other documentation related to
6 Venetian's decision to remove and replace the carpet with marble flooring and
7 Venetian's removal and replacement of carpet with marble flooring as referenced by
8 Christina Tonemah in her deposition. (25: 9-26; 26: 1-6) (See Exhibit K at 2.)

9 The information sought by Plaintiff is not where the subject incident occurred - the Grand Lux
10 rotunda area. Further, the information sought by Plaintiff relates to an alleged change occurring eight
11 (8) or so years preceding the subject incident. It does not meet the relevance or proportionality prong
12 of NRCP 26(b)(1). Defendants therefore move for protection from having to produce this information.
13 Indeed as to all of the requests by Plaintiff outlined herein above, the balance of Plaintiff's interests
14 and need for the discovery is greatly outweighed by the burden and expense placed upon Defendants
15 for having to provide it. (See Izzo v. Wal-Mart Stores, Inc., 2016 U.S. Dist. LEXIS 12210; 2016 WL
16 409694, the court denying plaintiff's motion to compel prior incident reports for failing to meet the
17 prongs relevance and proportionality under FRCP 26(b)(1).)

18 I. **Defendants Are Entitled to an Order Compelling Plaintiff to Produce All 196 Prior**
19 **Incident Reports Occurring in the Grand Lux Rotunda from January 1, 2012 to August**
20 **5, 2015 as Related in the Tom Jennings Deposition of July 2, 2019 and, Once Produced,**
21 **Defendants Move for an Order Granting Leave to Retake Mr. Jennings' Deposition at**
22 **Plaintiff's Expense**

23 Defendants have properly requested that Plaintiff produce a copy of the entire file for any
24 experts retained in this matter. (See Exhibit Q, Subpoena duces tecum, at 6, no. 18.) Defendants
25 further requested that Mr. Jennings produce a copy of his entire file at the July 2, 2019 deposition.
26 (See *id.*) Mr. Jennings confirmed in deposition that he received a copy of information from Plaintiff's
27 counsel identifying the 196 prior incident reports set forth in his May 30, 2019 rebuttal. (See Exhibit
28 S at 84, ln 7-25; 85, ln 1-5; 86, ln 12-19; 87, ln 23-25; 88, ln 1-3; 89, ln 18-25; 90, ln 1.) Mr. Jennings
further stated that he is no longer in possession of this information. (See *id.*) Defendants have

1 demanded that this be provided by Plaintiff. The information Plaintiff produced following the Jennings
2 deposition identifies only eight (8) incidents as *Grand Lux*. Mr. Jennings was quite definitive in his
3 deposition that there were 196 in the Grand Lux rotunda area where Plaintiff fell. (*See id.*)
4 Accordingly, Defendants move this Honorable Court for an order compelling Plaintiff to produce all
5 information provided to Mr. Jennings to support his conclusion that there were 196 prior incidents
6 occurring in the Grand Lux rotunda area from January 1, 2012 to August, 5 2016.³

7
8 J. **Defendants Move for an Order Compelling Plaintiff to Produce Copies of All Venetian
Incident Reports in Her Possession**

9 Plaintiff has made representations to the Court that she is in possession of information
10 suggesting that Defendants are withholding prior incident information. While Plaintiff's counsel will
11 claim such information is protected attorney work product, that is no longer the case once it was
12 provided to expert Tom Jennings and Mr. Jennings rendered opinions based on his review both in his
13 May 30, 2019 report and in his July 2, 2019 deposition. Accordingly, Defendants move for an order
14 compelling Plaintiff to produce copies of all information in her possession related to any other
15 incidents occurring at the Venetian which have not been identified by Venetian in this action pursuant
16 to NRCP 16.1 and NRCP 34.

17
18
19 K. **Defendants Are Entitled to an Order Granting Leave to Retake the Deposition of Tom
Jennings**

20 Based on the above, Defendants move for leave under NRCP 30(a)(2)(A)(ii) to retake Mr.
21 Jennings' deposition for the purpose of reviewing this information, which should have been available
22 to Defendants at the July 2, 2019 deposition of Mr. Jennings, and that Plaintiff be responsible for all
23 costs associated with that deposition, to be limited in time to one (1) hour.

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26
27 ³Mr. Jennings could not confirm whether the prior incident reports were in redacted form,
28 whether names of those involved were included, how he knew they were all within the Grand Lux
rotunda area, etc. This is a very critical fact and inexcusable omission by Mr. Jennings and Plaintiff.

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IV.

CONCLUSION

Based on the foregoing, Defendants hereby respectfully move for a protective order under NRCP 26(c) related to the following:

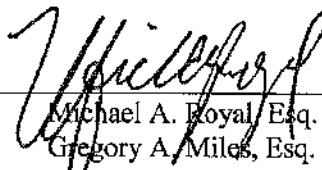
- Plaintiff's demand for information related to incidents from May 1999 to the present;
- Electronic/computer data information related to communications pertaining to the subject flooring with consultants other than experts disclosed pursuant to NRCP 16.1;
- Information related to testing/replacing flooring that is not within the Grand Lux rotunda area where the subject incident occurred;
- Information about casino flooring changes in or about 2008 which did not impact the subject area; and
- **For an order limiting the scope of Plaintiff's discovery to the Grand Lux rotunda area where the subject incident occurred.**

Defendants further move for an order directing Plaintiff to produce all information of prior incidents provided to Tom Jennings, for Plaintiff to provide copies of all prior incident reports in her possession not produced by Defendants, and for leave to retake Mr. Jennings' deposition for one (1) hour with Plaintiff bearing all costs.

DATED this 5 day of August, 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

Attorney for Defendants

LAS VEGAS SANDS, LLC, and

VENETIAN CASINO RESORT, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of August, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **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** to be served as follows:

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

☐ to be served via facsimile; and/or

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

☐ to be hand delivered;

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

Keith E. Galliher, Jr., Esq.

THE GALLIHER LAW FIRM

1850 E. Sahara Avenue, Suite 107

Las Vegas, NV 89104

Attorneys for Plaintiff

Facsimile: 702-735-0204

E-Service: kgalliher@galliherlawfirm.com

dmooney@galliherlawfirm.com

gramos@galliherlawfirm.com

sray@galliherlawfirm.com


An employee of ROYAL & MILES LLP

EXHIBIT “A”

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 jkunz@lvlawguy.com
15 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

12 JOYCE SEKERA, an Individual,
13
14 Plaintiff,

15 v.

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

24 Defendants.

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

PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS AND MATERIALS TO

DEFENDANT

25 TO: VENETIAN CASINO RESORT, LLC., Defendant; and

26 TO: MICHAEL A. ROYAL, ESQ. with ROYAL & MILES LLP., attorney for Defendant

1 Plaintiff, JOYCE SEKERA, by and through her attorneys, THE GALLIHER LAW FIRM,
2 hereby makes the following Request for Production of Documents upon Defendant:

3 REQUEST NO. 1:

4 All written, oral, or recorded statements made by any party, witness, or any other person or
5 persons with knowledge of the incident described in Plaintiff's Complaint.
6

7 REQUEST NO. 2:

8 Any and all accident and investigative reports, films, video tapes, charts, plats, drawings,
9 maps or pictures and/or photographs of any kind which has, as its subject matter, the incident
10 described in Plaintiff's Complaint.
11

12 REQUEST NO. 3:

13 A complete copy of the Defendants insurance carriers and/or risk management pre-litigation
14 claim file.

15 REQUEST NO. 4:

16 The names of all expert witnesses or consultants that Defendant will use at the time of trial
17 along with any reports produced by the same.

18 REQUEST NO. 5:

19 Any and all sweep sheets, sweep logs, or other similar documentation which reflects the
20 maintenance and/or cleaning of the flooring located within the VENETIAN CASINO RESORT
21 described in Plaintiff's Complaint for the day before, day of, and day after the incident described
22 therein.
23

24 REQUEST NO. 6:

25 True and correct copies of any and all manuals, documents, pamphlets, flyers, or other
26 memorandum which has, as its subject matter, the standard operating procedures with respect to the
27
28

1 maintenance, cleaning and sweeping of the floors with respect to the VENETIAN CASINO
2 RESORT in which the fall occurred.

3 REQUEST NO. 7:

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

9 REQUEST NO. 8:

10 Any and all documents, information, memoranda, paperwork, or other material which relates
11 to, establishes, or otherwise pertains to the affirmative defenses alleged by the Defendant herein.

12 REQUEST NO. 9:

13 Any surveillance video showing the Plaintiff's fall at the VENETIAN CASINO RESORT
14 from any other angle, other than the one shown in the video surveillance produced by the
15 Defendants thus far.

16 REQUEST NO. 10:

17 Any other witnesses, documents, or other disclosures required by NRCP 16.1.

18 DATED this 15TH day of August, 2018

19 THE GALLIHER LAW FIRM

20 

21 Keith E. Galliher, Jr., Esq.
22 Nevada Bar Number 220
23 1850 E. Sahara Avenue, Suite 107
24 Las Vegas, Nevada 89104
25 Attorney for Plaintiff

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT** was served on the 16th day of August, 2018, 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 _____, 2018,


acknowledged by, _____

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



An employee of THE GALLIHER LAW FIRM

EXHIBIT “B”



1 **ROPP**

2 Peter Goldstein, Esq. (SBN 6992)

3 **PETER GOLDSTEIN LAW CORPORATION**

4 10785 W Twain Ave, Ste. 230

5 Las Vegas, Nevada 89135

6 Email: peter@petergoldsteinlaw.com

7 Tel: 702.474.6400

8 Fax: 888.400.8799

9 Attorney for Plaintiff

10 **CAROL SMITH**

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 CAROL SMITH, an individual,

14 Plaintiff,

15 vs.

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

18 Defendants.

Case No.: A-17-753362-C

Dept. No.: X

Discovery Commissioner

**PLAINTIFF'S REPLY TO
DEFENDANT VENETIAN CASINO
RESORT, LLC'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
TERMINATING SANCTIONS,
MONETARY SANCTIONS FOR
WILLFUL SUPPRESSION OF
EVIDENCE PURSUANT TO NRCP
RULE 37**

Date of Hearing: March 20, 2019

Time of Hearing: 9:00 a.m.

19 Plaintiff, CAROL SMITH, by and through her attorney of record, PETER GOLDSTEIN, ESQ.,

20 hereby submit Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's

21 Motion for Termination Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant to

22 NRCP Rule 37.

23 Dated: 3.12.19

PETER GOLDSTEIN LAW CORPORATION

BY: 

PETER GOLDSTEIN, ESQ.

Attorney for Plaintiff

1 **I. The Incident Reports In The Sekera Case And The Smith Case All Involve Falls**
2 **On Marble Floors**

3 Defendant argues that the discovery issues involving *Sekera v Venetian*, Case No. A-18-772761-
4 C and *Smith v Venetian* are not identical, but “rather are different”. The discovery requests and
5 responses involve prior falls on marble floors in lobbies of the Venetian Hotel and Casino primarily for
6 2014 to 2016. In request number 7, *Sekera* requested slip and fall incident reports on marble floors in the
7 Venetian Hotel and Casino for three years prior to the date of the *Sekera* incident (November 4, 2016).
8 Venetian provided 64 prior reports and 660 pages of documents in its Responses and Supplemental
9 Responses to Request for Production of Documents No. 7, see Exhibits 7 and 8. It is undisputed that 25
10 reports were produced in Smith for falls reports from 2014 to 2016, no reports were produced for the
11 two year period of time 2011 to 2013 for falls in Lobby One, see Exhibit 9, Defendant’s Ninth
12 Supplemental Disclosure.
13 Plaintiff will bring 660 bate stamped pages of documents produced by Defendant Venetian in
14 *Sekera v. Venetian*, to the hearing as they are responsive to the previous fall incident requests and
15 responses in Smith and directly relate to notice and knowledge of prior falls on wet marble floors (Ex.
16 10 not attached) but Plaintiff also attaches another spreadsheet of the incident reports, Exhibit 11,
17 showing the *Sekera* falls in black and the *Smith* falls in red. The *Sekura* reports were produced in
18 response to a request for prior falls on marble floors for a three-year period before November 14, 2016
19 and 56 involved falling on wet floors. Defendant’s argument that the cases differ in facts, circumstances,
20 allegations, discovery, orders, is more than misleading, it is flat out false. Of the 60 plus incident reports
21 disclosed in the 660 pages of documents, only four do not specifically state that Venetian patrons
22 slipped on a liquid on a marble floor. Of those four, two do not specify the reason for the fall and two
23 state that the individual tripped over their feet. Though, in those two reports, it is noted that the floor was
24 recently cleaned, so a wet floor cannot be ruled out. For example, an incident report, not disclosed in this
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1 case, dated 11/24/2013 the author of the narrative states “impossible to see because of the shiny floor
2 until the liquid was encountered”.

3 This cannot be viewed as an innocent mistake. The Venetian generates and maintains incident
4 reports of injured persons. Venetian failed to provide 36 incident reports involving falls to Plaintiff in
5 this case for the time period requested on marble floors. Additionally, of the 36 non-disclosed incident
6 reports which Defendant argues are not similar situations, 14 reported the impact from their falls
7 resulted in specific complaints of knee injuries, similar to Plaintiff.

9 Defendant’s “understanding” of what it produced is not the question. Defendant cannot hide
10 behind the fact that they produced less than half as many reports, within the same time frame as another
11 case for the same discovery requests. It is simply inexcusable and Defendant implicitly concedes it has
12 no defense by failing to provide any reasonable explanation. In an effort to obfuscate, Defendant
13 conflates whether evidence is admissible or discoverable which is not the point. The sheer number of
14 prior fall reports speaks to their admissibility at trial. As the court stated in *Eldorado v Graff* (1962) 78
15 Nev 507:
16

17 “The admissibility of evidence of prior accidents in this kind of a case, to show notice or
18 knowledge of the danger causing the accident, is generally confined to situations where there are
19 conditions of permanency. See annot. 70 A.L.R.2d 167. Evidence of the type here in question is
20 usually excluded where it relates to a temporary condition which might or might not exist from
21 one day to the other unless, of course, **there is proper showing that the conditions**
22 **surrounding the prior occurrences have continued and persisted.”** Moore v. American
23 Stores Co., 169 Md. 541, 182 A. 436; Boles v. Montgomery Ward & Co., 153 Ohio St. 381, 92
24 N.W.2d 9; Montgomery Ward & Co. v. Wright, 70 Ariz. 319, 220 P.2d 225.

25 Defendant’s motive for not producing the reports and to minimize the number of prior reports is
26 so they can argue that the prior occurrences are less than actually exists so that the prior reports would
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1 not be admissible at trial. This would be consistent with their failure to meet and confer regarding a
2 stipulation on the admissibility of the prior reports even though the Discovery Commissioner required
3 them to do so.

4 Similar to the Defendant's Opposition to Plaintiff's Motion for Disqualification, it rambles
5 between ad hominem attacks without any semblance of organized or cogent points and authorities. For
6 example, Defendant attack on Plaintiff's expert, Fred Hueston has nothing to do with the issues
7 presented in Plaintiff's Motion. Defendant falsely accuses Plaintiff of concealing information from the
8 Court without any basis. Fred Hueston's expert testimony concerns his opinions about the treatment,
9 maintenance and application of polymer to the marble floor in order to increase friction coefficient. He
10 is not testifying as an expert about anything other than his expertise in the area of marble flooring
11 treatment and maintenance. One of his opinions is that the product which Defendant utilizes to clean the
12 marble floors is V2, but after cleaning they fail to apply the V3 polymer which the manufacturer
13 recommends to help traction. This was admitted by defendant in its response to Request for Admissions,
14 set 3.
15

16 Defendant argues that the main line of questioning of Plaintiff's expert was the number of
17 incidents and gratuitously inserted an argument without any evidentiary support that the marble floors
18 were built within building codes which have been approved. This is unsupported hyperbole and lacks
19 evidentiary support.
20

21 Defendant then confuses and conflates the mode of operation theory of liability with the fact that
22 the marble floors are inherently dangerous when wet and are a serious slip hazard. It wasn't until 2012
23 when we heard the term in Nevada, the mode of operations, a legal variation to the traditional approach
24 to premises liability. Customarily, a business will only be held liable for a dangerous condition on its
25 floor (e.g., foreign substance) caused by someone other than an employee when the business had actual
26 or constructive notice of the condition and failed to remedy or warn of it. *See Sprague v. Lucky Store*,
27
28

1 *Inc.*, 109 Nev. 247, 849 P.2d 320 (1993). However, the Nevada Supreme Court first departed from
2 tradition in *Sprague*, based on an approach near identical to the mode of operations. Even in the absence
3 of constructive notice, the court looked at Lucky's "chronic hazard" from its self-service produce area.
4 Continual debris from falling items onto the store's floor required more than sweeping; rather, a jury
5 could continue that further precautions were necessary. In *FGA, Inc. v. Giglio*, 278 P.3d 490, 128 Nev.
6 Adv. Op. 26 (Nev. June 14, 2012), the Nevada Supreme Court stated it had "implicitly adopted the mode
7 of operation approach" with its *Sprague* ruling. *Id.*, 278 P.3d at 497.
8
9

10 Plaintiff's Motion did not misrepresent the fact that Defendant failed to produce video footage in
11 violation of the Court Order. Defendant never responded to the proposed Order contained in the email
12 which Plaintiff's counsel submitted to defense counsel. Regardless, that Order has been signed by the
13 Court, and attached as Exhibit 10.
14

15 This litigation has been ongoing for years and been the subject of two discovery hearings with
16 the Discovery Commissioner and one by the District Court Judge, accordingly there is no requirement to
17 further meet and confer. Plaintiff relied on representations that the reports produced were true and
18 correct, and constituted all prior incidents involving falls on liquids on marble floors of the five lobbies
19 that contain marble tile. The reports disclosed in this Smith case are simply false and this Motion
20 demonstrates that defendants have engaged in flagrant discovery abuse. Plaintiff's Motion does not take
21 issue with the protective order, which was simply for the purpose of allowing redacted names of the
22 persons involved.
23
24

25 **II. The Prior Falls Should Be Admitted As Evidence At Trial To Prove Notice And**
26 **Knowledge Of The Dangerous Condition.**
27
28

1 The court in *Reingold v Wet and Wild* previously held that **evidence** of subsequent, similar
2 accidents involving the same condition may be relevant on the issues of causation and whether there is a
3 defective and dangerous condition. *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 415, 470 P.2d 135, 139
4 (1970).

5 NRS 47.250(3) does provide for a disputable presumption “[t]hat **evidence willfully**
6 **suppressed** would be adverse if produced.” The district court apparently believed that
7 “**willful suppression**” requires more than following the company’s normal records destruction policy.
8 We disagree. There is no dispute that the records were “**willfully**” or intentionally destroyed. Wet ‘N
9 Wild claimed that all records are destroyed at the end of each season. This policy means that the
10 accident records are destroyed even before the statute of limitations has run on any potential litigation
11 for that season. It appears that this records destruction policy was deliberately designed to prevent
12 production of records in any subsequent litigation. Deliberate destruction of records before the statute of
13 limitations has run on the incidents described in those records amounts to **suppression of evidence**. If
14 Wet ‘N Wild chooses such a records destruction policy, it must accept the adverse inferences of the
15 policy.
16
17

18 Additionally, *Ault v. International Harvester Company*, 13 Cal.3d 113, 117 Cal.Rptr. 812, 817,
19 528 P.2d 1148, 1153 (1974), held that the lower court did not err by admitting **evidence** of both prior
20 and *subsequent* accidents to prove a defective condition or cause of the accident. The court noted that
21 the purpose of providing **evidence** of the other accidents was to show that all the accidents, including the
22 one in litigation, occurred due to the dangerous condition. *Id.*

23
24 The United States Supreme Court stated that:

25 [The other accidents] were proved simply as circumstances which, with other **evidence**, tended
26 to show the dangerous character of the sidewalk.... *The frequency of accidents at a particular place*
27 *would seem to be good evidence of its dangerous character*—at least, it is some **evidence** to that effect.
28

1 *District of Columbia v. Arms*, 107 U.S. 519, 524–25, 2 S.Ct. 840, 844–46, 27 L.Ed. 618 (1883).

2
3 Defendant clearly found that it was better to be deceitful and attempt to hide evidence that would
4 harm their case than comply with discovery orders.
5

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10 DATED: 3.12.19

LAW OFFICES OF PETER GOLDSTEIN

11 BY: 
12 PETER GOLDSTEIN, ESQ.
13 Attorney for Plaintiff
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1 DECLARATION OF PETER GOLDSTEIN

2
3 I, Peter Goldstein, declare as follows:

- 4 1. I am an attorney duly licensed to practice law in Nevada and am counsel of record
5 for Plaintiff. I have personal knowledge of all matters stated herein that I know to be true
6 2. Exhibit 7 is Defendant's Response to Request for Production of Documents in
7 *Sekera v. Venetian*.
8 3. Exhibit 8 is Defendant's Supplemental Response to Request for Production of
9 Documents in *Sekera v. Venetian*.
10 4. Exhibit 9 is a true and correct copy of Defendants' Ninth Supplemental
11 Disclosures in *Smith v. Venetian*.
12 5. Exhibit 10 is a CD of 660 bates stamped pages of documents produced by
13 Defendant in *Sekera v. Venetian*.
14 6. Exhibit 11 is a detailed spreadsheet of incident reports disclosed in both the
15 *Sekera v. Venetian* and *Smith v. Venetian* cases.

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

18 Dated March 12, 2019 at Las Vegas, Nevada.

19
20 Signed: 
21 _____

22 Peter Goldstein, Declarant
23
24
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27
28

1
2 **CERTIFICATE OF SERVICE**
3

4 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure and [N.E.F.R. 9(b)] I certify that
5 I am an employee of Peter Goldstein Law Corporation and that on March 12, 2019, I served a true
6 and correct copy of the foregoing document entitled **PLAINTIFF'S REPLY TO DEFENDANT**
7 **VENETIAN CASINO RESORT, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR**
8 **TERMINATING SANCTIONS, MONETARY SANCTIONS FOR WILLFUL SUPPRESSION**
9 **OF EVIDENCE PURSUANT TO NRCP RULE 27.** upon all parties listed below, via the following
10 means:

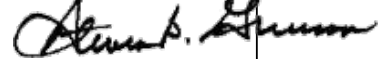
11
12 _____ Via U.S. Mail by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(B)]
13 X Via Electronic Filing [N.E.F.R. 9(b)]
14 X Via Electronic Service [N.E.F.R. 9]
15 _____ Via Facsimile [E.D.C.R. 7.26(a)]
16

17 Michael Edwards
18 Lisa Thayer
19 Lani Maile
20 Ryan Loosvelt
21 MESSNER REEVES LLP
22 8945 W. Russel Road, Suite 300
23 Las Vegas, Nevada 89148
24 Tel: (702) 363-5100
25 Fax: (702) 363-5101
26 Email: medwards@messner.com
27 Email: lthayer@messner.com
28 Email: lmaile@messner.com
Email: RLoosvelt@messner.com
Attorney for Venetian Casino Resort, LLC

26
27 3/12/19
28 Date

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

EXHIBIT “C”



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 JOYCE SEKERA,
8 Plaintiff,

CASE NO.: A-18-772761

DEPT. XXV

9 vs.

10 VENETIAN CASINO RESORT
11 LLC, ET AL.,

12 Defendants.

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

16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **DEFENDANT'S MOTION FOR PROTECTIVE ORDER**

18
19 APPEARANCES:

20 For the Plaintiff: KEITH E. GALLIHER, JR., ESQ.

21
22 For the Defendants: MICHAEL A. ROYAL, ESQ.

23
24 RECORDED BY: FRANCESCA HAAK, COURT RECORDER
25

1 to someone upstairs. While they're talking, one of the women who sees
2 the fall walks over, points to the spill, and the guy, the security officer,
3 looks at it, then summons porters who come to the scene, one of the
4 porters takes out a mop, mops up the spill, another walks on with some
5 towels and wipes up the spill around the very area where my client fell.
6 That's pretty clear, that this was a slip and fall on water.

7 Now, here's the problem. The Venetian has polished marble
8 floors throughout its entire ground floor and also on the Bouchon floor,
9 which I think is floor number 10. They're very pretty, very attractive, and,
10 as the expert report attached to our opposition shows, also very slippery
11 when wet.

12 So when we talk about a transitory condition, not really. This
13 is a marble floor that's been at The Venetian from the get-go.

14 And then we start talking about the number of falls. Well, I
15 deposed their -- one EMT security officer who said that during the nine
16 years that he had been there he had personally investigated 100 --
17 approximately 100 injury falls on the marble floors at The Venetian.

18 Now, there are two EMT security officers per shift, sometimes
19 three, so if we do the math, we've got at least six security officers
20 working the three shifts at The Venetian, up to nine. So if we do that
21 math -- this one's -- this fellow has investigated personally 100 injury
22 falls, and we assume he's average -- then that means that there are
23 somewhere between 600 and 900.

24 DISCOVERY COMMISSIONER: Well, didn't three respond to
25 this one alone, and so that would be a, you know --

1 MR. GALLIHER: Well, no, no. Those weren't the same
2 security people.

3 DISCOVERY COMMISSIONER: Oh.

4 MR. GALLIHER: See, there -- The Venetian, Commissioner,
5 has security officers/EMTs. They are the ones that go to the injury
6 falls -- the other people do not -- because they're trained. Well, that's
7 who I deposed. So he's the one that told me under oath two security
8 officers/EMTs per shift, sometimes three, three shifts, very simple math.

9 Now we go from 100 falls investigated by one, to somewhere
10 around 900, and then we take it and we back out the nine years and
11 make it five -- 'cause that's what I was looking for. We're somewhere
12 between five, six hundred falls at The Venetian.

13 Now, what I received was 62 reports for a five-year period.
14 Well, that doesn't compute with my math, so the other thing that -- and
15 we talk about sharing information. Peter Goldstein has a case against
16 Venetian. In that case The Venetian furnished him 26 reports for the
17 same time frame. Well, how does that happen? Then what we did is we
18 compared the reports that he received with reports that we received. He
19 didn't get 26 of ours, we didn't get four of his; well, how does that
20 happen? Then we find out there's three defense firms representing The
21 Venetian in these three different cases; they're all different.

22 So what we're finding and what I'm alleging in this situation is
23 what The Venetian is doing is they're selectively distributing reports to
24 their defense firm to distribute to the Plaintiffs in individual cases, and
25 they're not giving everybody all the reports. It's very easy to determine

1 when I get a situation like this and I compare and find that Mr. Goldstein,
2 who got 26 has four I don't have for the same time frame. A couple of
3 them were on the same day; I got the one in the afternoon; he got the
4 one in the morning. Well, sorry, it's not Mr. Royal's fault. The
5 Venetian's not a good corporate citizen, that's for sure. They are
6 withholding these reports and selectively giving them to the Plaintiffs'
7 attorneys through the different defense firms that they're hiring. So
8 that's why this information needs to be disclosed.

9 But also, when we talk about the identification of the people
10 who fell -- you have probably tried slip and fall cases, I've tried my
11 share -- what does a defense attorney normally do in these cases?
12 They try to establish comparative negligence, particularly if there's liquid
13 on the floor. Well, weren't you looking where you were walking? Didn't
14 you see the spill on the floor? Why didn't you see it? It was right there.
15 Look at it. Comparative negligence, that's what this is about.

16 So if we have the identity of people who previously fell on
17 these same floors at The Venetian in liquid, we put on five of 'em or ten
18 of 'em to say -- very simple questioning -- what's your name; did you
19 stay at The Venetian; were you walking through The Venetian; did you
20 fall; did you fall on liquid; were you injured; did you see the liquid before
21 you fell; pass the witness.

22 DISCOVERY COMMISSIONER: Don't you already have an
23 expert who's going to testify regarding the coefficient of friction or, as
24 you allege --

25 MR. GALLIHER: Sure.

EXHIBIT “D”

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 Rachel N. Solow, Esq.
7 Nevada Bar Number 9694
8 George J. Kunz, Esq.
9 Nevada Bar No. 12245
10 1850 East Sahara Avenue, Suite 107
11 Las Vegas, Nevada 89104
12 Telephone: (702) 735-0049
13 Facsimile: (702) 735-0204
14 kgalliher@galliherlawfirm.com
15 jgalliher@galliherlawfirm.com
16 rsolow@galliherlawfirm.com
17 gkunz@lvlawguy.com
18 Attorneys for Plaintiffs

DISTRICT COURT

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.)

PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND

MATERIALS TO DEFENDANT

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

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

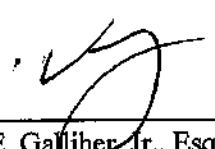
1 TO: MICHAEL A. ROYAL, ESQ. with ROYAL & MILES LLP., attorneys for Defendant
2 Plaintiff, JOYCE SEKERA, by and through her attorneys, THE GALLIHER LAW FIRM,
3 hereby makes the following Request for Production of Documents upon Defendant:

4 REQUEST NO. 11:

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

8 DATED this 3rd day of November, 2018

9
10 THE GALLIHER LAW FIRM

11
12 
13 _____
14 Keith E. Galliher, Jr., Esq.
15 Nevada Bar Number 220
16 1850 E. Sahara Avenue, Suite 107
17 Las Vegas, Nevada 89104
18 Attorney for Plaintiff
19
20
21
22
23
24
25
26
27
28

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that
service of a true and correct copy of the above and foregoing **SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS TO DEFENDANT** was served on the 7th day of
November, 2018, 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 _____, 2018,

acknowledged by, _____

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



An employee of THE GALLIHER LAW FIRM

EXHIBIT “E”

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 gkunz@lvlawguy.com
15 Attorneys for Plaintiffs

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

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

29 **PLAINTIFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS AND**

30 **MATERIALS TO DEFENDANT**

31 TO: VENETIAN CASINO RESORT, LLC. d/b/a THE VENETIAN LAS VEGAS,
32 Defendant; and
33 TO: MICHAEL A. ROYAL, ESQ. with ROYAL & MILES LLP., attorneys for Defendant

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

1 Plaintiff, JOYCE SEKERA, by and through her attorneys, THE GALLIHER LAW FIRM,
2 hereby makes the following Request for Production of Documents upon Defendant:

3 REQUEST NO. 12:

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

9
10 REQUEST NO. 13:


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

15
16 REQUEST NO. 14:

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

20 DATED this 13th day of March, 2019

21
22 THE GALLIHER LAW FIRM

23
24 
25 Keith E. Galliher, Jr., Esq.
26 Nevada Bar Number 220
27 1850 E. Sahara Avenue, Suite 107
28 Las Vegas, Nevada 89104
Attorney for Plaintiff

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **THIRD REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT** was served on the 15th day of March, 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
Attorneys for Defendants



An employee of THE GALLIHER LAW FIRM

EXHIBIT “F”

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 gkunz@lvlawguy.com
15 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

16 JOYCE SEKERA, an Individual,) CASE NO.: A-18-772761-C
17) DEPT. NO.: 25
18 Plaintiff,)
19)
20 v.)
21)
22 VENETIAN CASINO RESORT, LLC,)
23 d/b/a THE VENETIAN LAS VEGAS, a)
24 Nevada Limited Liability Company;)
25 LAS VEGAS SANDS, LLC d/b/a THE)
26 VENETIAN LAS VEGAS, a Nevada)
27 Limited Liability Company; YET)
28 UNKNOWN EMPLOYEE; DOES 1)
through X, inclusive,)
Defendants.)

PLAINTIFF'S SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS AND

MATERIALS TO DEFENDANT

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

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

4 REQUEST NO. 23:

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

8 REQUEST NO. 24:

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

12 REQUEST NO. 25:

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

17 REQUEST NO. 26:

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

22 REQUEST NO. 27:

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

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

2 REQUEST NO. 28:

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

7 REQUEST NO. 29:

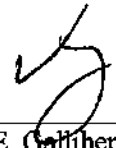
8 Any and all complaints submitted by guests or other individuals regarding the safety of the
9 marble floors.

10 REQUEST NO. 30:

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

13 DATED this 31st day of May, 2019.

14 THE GALLIHER LAW FIRM

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

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

CERTIFICATE OF SERVICE

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

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

_____ Facsimile, pursuant to EDCR 7.26 (as amended)

X _____ Electronic Mail/Electronic Transmission

_____ Hand Delivered to the addressee(s) indicated

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

acknowledged by, _____

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



An Employee of THE GALLIHER LAW FIRM

EXHIBIT “G”

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 jkunz@lvlawguy.com
15 kgallagher@galliherlawfirm.com
16 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

13 JOYCE SEKERA, an Individual,) CASE NO.: A-18-772761-C
14) DEPT. NO.: 25
15 Plaintiff,)
16 v.)
17 VENETIAN CASINO RESORT, LLC,)
18 d/b/a THE VENETIAN LAS VEGAS, a)
19 Nevada Limited Liability Company;)
20 LAS VEGAS SANDS, LLC d/b/a THE)
21 VENETIAN LAS VEGAS, a Nevada)
22 Limited Liability Company; YET)
23 UNKNOWN EMPLOYEE; DOES 1)
24 through X, inclusive,)
25 Defendants.)

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

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

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

1 TO: MICHAEL A. ROYAL, ESQ. with ROYAL & MILES LLP., attorneys for
2 Defendants


3 Plaintiff, JOYCE SEKERA, by and through her attorneys, THE GALLIHER LAW FIRM,
4 hereby makes the following First Set of Interrogatories upon Defendants:
5

6 INTERROGATORY NO. 1:

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

13 DATED this 19th day of June, 2019.
14

15 THE GALLIHER LAW FIRM

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS** was serve on the 20 day of June, 2019, to the following addressed parties by:

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

☐ Facsimile, pursuant to EDCR 7.26 (as amended)

☒ Electronic Mail/Electronic Transmission

☐ Hand Delivered to the addressee(s) indicated

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

acknowledged by, _____

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



An Employee of THE GALLIHER LAW FIRM

EXHIBIT “H”

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 Kathleen H. Gallagher, Esq.
9 Nevada Bar Number 15043
10 1850 East Sahara Avenue, Suite 107
11 Las Vegas, Nevada 89104
12 Telephone: (702) 735-0049
13 Facsimile: (702) 735-0204
14 kgalliher@galliherlawfirm.com
15 jgalliher@galliherlawfirm.com
16 gkunz@lvlawguy.com
17 kgallagher@galliherlawfirm.com
18 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

14 JOYCE SEKERA, an Individual,
15
16 Plaintiff,
17

18 v.

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

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

PLAINTIFF'S NINTH REQUEST FOR
PRODUCTION OF DOCUMENTS AND
MATERIALS TO DEFENDANT

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

PLAINTIFF'S NINTH REQUEST FOR PRODUCTION OF DOCUMENTS AND
MATERIALS TO DEFENDANT

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

TO: MICHAEL A. ROYAL, ESQ. with ROYAL & MILES LLP., attorneys for Defendant
Plaintiff, JOYCE SEKERA, by and through her attorneys, THE GALLIHER LAW FIRM,

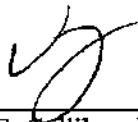
hereby makes the following Ninth Request for Production of Documents upon Defendant:

REQUEST NO. 35:

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

DATED this 16TH day of July, 2019.

THE GALLIHER LAW FIRM



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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **NINTH REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT** was serve on the 17 day of July, 2019, to the following addressed parties by:

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

_____ Facsimile, pursuant to EDCR 7.26 (as amended)

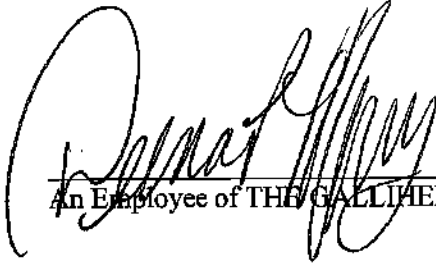
 / Electronic Mail/Electronic Transmission

_____ Hand Delivered to the addressee(s) indicated

_____ Receipt of Copy on this _____ day of 2019,

acknowledged by, _____

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



An Employee of THE GALLIHER LAW FIRM

EXHIBIT “I”

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 Kathleen H. Gallagher, Esq.
9 Nevada Bar Number 15043
10 1850 East Sahara Avenue, Suite 107
11 Las Vegas, Nevada 89104
12 Telephone: (702) 735-0049
13 Facsimile: (702) 735-0204
14 kgalliher@galliherlawfirm.com
15 jgalliher@galliherlawfirm.com
16 ekunz@lvlawguy.com
17 kgallagher@galliherlawfirm.com
18 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

14 JOYCE SEKERA, an Individual,
15
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
27 Defendants.

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

PLAINTIFF'S TENTH REQUEST FOR
PRODUCTION OF DOCUMENTS AND
MATERIALS TO DEFENDANT

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

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

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

TO: MICHAEL A. ROYAL, ESQ. with ROYAL & MILES LLP., attorneys for Defendant
Plaintiff, JOYCE SEKERA, by and through her attorneys, THE GALLIHER LAW FIRM,


hereby makes the following Tenth Request for Production of Documents upon Defendant:

REQUEST NO. 36:

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

DATED this 18th day of July, 2019.

THE GALLIHER LAW FIRM



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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **TENTH REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT** was serve on the 19th day of July, 2019, to the following addressed parties by:

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

☐ Facsimile, pursuant to EDCR 7.26 (as amended)

☒ Electronic Mail/Electronic Transmission

☐ Hand Delivered to the addressee(s) indicated

☐ Receipt of Copy on this _____ day of 2019,

acknowledged by, _____

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



An Employee of THE GALLIHER LAW FIRM

EXHIBIT “J”

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 Kathleen H. Gallagher, Esq.
9 Nevada Bar Number 15043
10 1850 East Sahara Avenue, Suite 107
11 Las Vegas, Nevada 89104
12 Telephone: (702) 735-0049
13 Facsimile: (702) 735-0204
14 kgalliher@galliherlawfirm.com
15 jgalliher@galliherlawfirm.com
16 gkunz@lvlawguy.com
17 kgallagher@galliherlawfirm.com
18 Attorneys for Plaintiff

DISTRICT COURT

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)

PLAINTIFF'S SECOND SET OF INTERROGATORIES TO DEFENDANTS

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

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

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TO: MICHAEL A. ROYAL, ESQ. with ROYAL & MILES LLP., attorneys for
Defendants


Plaintiff, JOYCE SEKERA, by and through her attorneys, THE GALLIHER LAW FIRM,
hereby makes the following Second Set of Interrogatories upon Defendants:

INTERROGATORY NO. 2:

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

DATED this 15th day of July, 2019.

THE GALLIHER LAW FIRM



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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **PLAINTIFF'S SECOND SET OF INTERROGATORIES TO DEFENDANTS** was serve on the 2nd day of July, 2019, to the following addressed parties by:

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

_____ Facsimile, pursuant to EDCR 7.26 (as amended)

☒ Electronic Mail/Electronic Transmission

_____ Hand Delivered to the addressee(s) indicated

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

acknowledged by, _____

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



An Employee of THE GALLIHER LAW FIRM

EXHIBIT “K”

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

14 JOYCE SEKERA, an Individual,
15
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.

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

PLAINTIFF'S ELEVENTH REQUEST
FOR PRODUCTION OF DOCUMENTS
AND MATERIALS TO DEFENDANT

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

PLAINTIFF'S ELEVENTH REQUEST FOR PRODUCTION OF DOCUMENTS AND
MATERIALS TO DEFENDANT

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

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

REQUEST NO. 37:

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

DATED this 26th day of July, 2019.

THE GALLIHER LAW FIRM



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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **ELEVENTH REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT** was serve on the 29th day of July, 2019, to the following addressed parties by:

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

☐ Facsimile, pursuant to EDCR 7.26 (as amended)


☒ Electronic Mail/Electronic Transmission

☐ Hand Delivered to the addressee(s) indicated

☐ Receipt of Copy on this ____ day of 2019,

acknowledged by, _____

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



An Employee of THE GALLIHER LAW FIRM

EXHIBIT “L”

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 Kathleen H. Gallagher, Esq.
9 Nevada Bar Number 15043
10 1850 East Sahara Avenue, Suite 107
11 Las Vegas, Nevada 89104
12 Telephone: (702) 735-0049
13 Facsimile: (702) 735-0204
14 kgalliher@galliherlawfirm.com
15 jgalliher@galliherlawfirm.com
16 jkunz@lvlawguy.com
17 kgallagher@galliherlawfirm.com
18 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

SEVEN DAY NOTICE OF INTENT TO SERVE A SUBPOENA PURSUANT TO NRCP 45
(a)(4)(A)

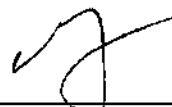
PLEASE TAKE NOTICE that the Plaintiff in this matter intends to serve the attached

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

1 Subpoena Duces Tecum and Deposition Notice upon Person Most Knowledgeable seven days from
2 the date of filing this Notice.

3
4 DATED this 29th day of July, 2019.

5 THE GALLIHER LAW FIRM

6
7 
8 Keith E. Gallihier, Jr., Esq.
9 Nevada Bar No. 220
10 1850 E. Sahara Avenue, Suite 107
11 Las Vegas, Nevada 89104
12 *Attorneys for Plaintiff*
13
14
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THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **NOTICE OF INTENT TO SERVE A SUBPOENA PURSUANT TO NRCP 45 (a)(4)(A)** was served on the 30th day of July, 2019, to the following addressed parties by:

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

☐ Facsimile, pursuant to EDCR 7.26 (as amended)

☒ Electronic Mail/Electronic Transmission

☐ Hand Delivered to the addressee(s) indicated

☐ Receipt of Copy on this _____ day of _____, 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



An employee of THE GALLIHER LAW FIRM

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 Kathleen H. Gallagher, Esq.
9 Nevada Bar Number 15043
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12 Telephone: (702) 735-0049
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14 kgalliher@galliherlawfirm.com
15 jgalliher@galliherlawfirm.com
16 gkunz@lvlawguy.com
17 kgallagher@galliherlawfirm.com
18 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

14 JOYCE SEKERA, an Individual,)
15)
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)

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

SECOND AMENDED SUBPOENA DUCES TECUM

1 THE STATE OF NEVADA SENDS GREETINGS TO:

2 **Person Most Knowledgeable**
3 **Venetian Casino Resort, LLC d/b/a The Venetian Las Vegas**
4 **c/o Royal & Miles LLP**
5 **1522 W. Warm Springs Road**
6 **Henderson, Nevada 89014**

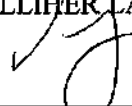
7 WE COMMAND YOU, that all singular business and excuses being set aside, you appear
8 and attend on the 30th of August, 2019 at 2:00 p.m. at THE GALLIHER LAW FIRM 1850 E. Sahara
9 Avenue, Suite 107, Las Vegas, Nevada 89104. You are required to bring with you at the time of
10 your appearance any items set forth herein. If you fail to attend, you will be deemed guilty of
11 contempt of Court and liable to pay all losses and damages caused by your failure to appear and in
12 addition, forfeit the sum of One Hundred Dollars (\$100.00).

13 **ITEMS TO BE PRODUCED**

- 14 1. Any and all documents regarding the topics listed on the attached Notice of Taking
15 Deposition.

16
17 DATED this 29th day of July, 2019

18
19 THE GALLIHER LAW FIRM

20 
21 _____
22 Keith E. Galliher, Jr., Esq.
23 Nevada Bar Number 220
24 1850 E. Sahara Ave., Suite 107
25 Las Vegas, NV 89104
26 Attorney for Plaintiffs
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 **SECOND AMENDED SUBPOENA DUCES TECUM** was served on the _____ day of July, 2019, to the following addressed parties by:

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

_____ Facsimile, pursuant to EDCR 7.26 (as amended)

_____ Electronic Mail/Electronic Transmission

_____ Hand Delivered to the addressee(s) indicated

_____ Receipt of Copy on this _____ day of _____, 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

An employee of THE GALLIHER LAW FIRM

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.
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5 Nevada Bar No. 8078
6 George J. Kunz, Esq.
7 Nevada Bar No. 12245
8 Kathleen H. Gallagher, Esq.
9 Nevada Bar Number 15043
10 1850 East Sahara Avenue, Suite 107
11 Las Vegas, Nevada 89104
12 Telephone: (702) 735-0049
13 Facsimile: (702) 735-0204
14 kgalliher@galliherlawfirm.com
15 jgalliher@galliherlawfirm.com
16 jkunz@lvlawguy.com
17 kgallagher@galliherlawfirm.com
18 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

16 JOYCE SEKERA, an Individual,)
17)
18 Plaintiff,)
19)
20 v.)
21)
22 VENETIAN CASINO RESORT, LLC,)
23 d/b/a THE VENETIAN LAS VEGAS, a)
24 Nevada Limited Liability Company;)
25 LAS VEGAS SANDS, LLC d/b/a THE)
26 VENETIAN LAS VEGAS, a Nevada)
27 Limited Liability Company; YET)
28 UNKNOWN EMPLOYEE; DOES I)
through X, inclusive,)
Defendants.)

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

SECOND AMENDED NOTICE OF TAKING DEPOSITION

1 PLEASE TAKE NOTICE that at 2:00 p.m. on Friday, August 30, 2019, *(previously*
2 *scheduled for August 2, 2019)* at The Galliher Law Firm located at 1850 E. Sahara Avenue, Suite
3 107, Las Vegas, Nevada, the Plaintiff in the above entitled action will take the 30(b)(6) deposition of
4 **PERSON MOST KNOWLEDGEABLE** regarding the following topics:

- 5 1. Total number of injury falls on marble floors located within The Venetian Las Vegas
6 from November 4, 2013 to present.
- 7 2. Actions taken by The Venetian Las Vegas to change the coefficient of friction with
8 respect to the marble floors within The Venetian Las Vegas from November 4, 2013 to
9 present.
- 10 3. Measures taken to locate and produce security/incident injury fall reports by The
11 Venetian Las Vegas as requested by Plaintiff in this Litigation.
- 12 4. Slip testing performed by The Venetian Las Vegas or it's representatives with respect
13 to the marble floors within The Venetian Las Vegas from November 4, 2013 to present.
- 14 5. Any invoices or work orders with respect to the removal of carpet in pedestrian
15 walkways and replaced with marble and/or granite flooring from November 4, 2006 to
16 present.
- 17 6. The identity of all employees who were responsible for managing and maintaining
18 Venetian's technology infrastructure;
- 19 7. The name, address and phone number of the specific employee(s) tasked with
20 retrieving incident reports from Venetian's system for this litigation, the litigation in
21 Smith v. Venetian (A-17-753362-C), Cohen v. Venetian (A-17-761036-C) and Boucher
22 v. Venetian (A-18-773651-C) and the name address and phone number of the individual
23 who assigned them this task.
- 24
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- 1 **8. The identity of all non-employee consultants, consulting firms, contractors or similar**
- 2 **entities that were responsible for managing and maintaining Venetian's technology**
- 3 **infrastructure;**
- 4 **9. Software used, including dates they were in use and any software modifications;**
- 5 **10. Identity of, description of and policies and procedures for the use of all internal**
- 6 **systems for data management, complaint and report making, note keeping,**
- 7 **minute/transcript taking and employee e-mail, messaging and other communication**
- 8 **systems and description of all employee accounts for said systems;**
- 9 **11. Description of all cell phones, PDAs, digital convergence devices or other portable**
- 10 **electronic devices and who they were/are issued to;**
- 11 **12. Physical location of electronic information and hard files and description of what**
- 12 **information is kept in electronic form and what is kept in hard files;**
- 13 **13. Description of policies and procedures for performing back-ups;**
- 14 **14. Inventory of back-ups and when they were created;**
- 15 **15. User permissions for accessing, modifying, and deleting data;**
- 16 **16. Utilization of data deletion programs;**
- 17 **17. A listing of current and former personnel who have or had access to network**
- 18 **resources, technology assets, back-up, and other systems operations;**
- 19 **18. Electronic records management policies and procedures;**
- 20
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- 22


23 upon oral examination, pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, before
24 a Notary Public, or before some other officer authorized by the law to administer oaths. Oral
25 examination will continue from day to day until completed. You are invited to attend and cross
26 examine.
27
28

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

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

11 DATED this 29th day of July, 2019

12 THE GALLIHER LAW FIRM

13
14 
15
16 Keith E. Galliher, Jr., Esq.
17 Nevada Bar Number 220
18 1850 E. Sahara Ave., Suite 107
19 Las Vegas, NV 89104
20 Attorney for Plaintiffs
21
22
23
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25
26
27
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THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

CERTIFICATE OF SERVICE

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

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

_____ Facsimile, pursuant to EDCR 7.26 (as amended)

_____ Electronic Mail/Electronic Transmission

_____ Hand Delivered to the addressee(s) indicated

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

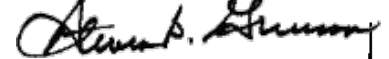
acknowledged by, _____

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

EXHIBIT “M”



1 **ORDR**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

4 Gregory A. Miles, Esq.

5 Nevada Bar No. 4336

6 **ROYAL & MILES LLP**

7 1522 West Warm Springs Road

8 Henderson Nevada 89014

9 Tel: (702) 471-6777

10 Fax: (702) 531-6777

11 Email: mroyal@royalmilesllp.com

12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: 25

18 Plaintiff,

19 v.

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

27 Defendants.

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

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

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

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

3 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

22 ///

23 ///

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13. The mere fact that the Venetian property sells food and beverages to patrons who are then allowed to move about the premises is not enough to apply the mode of operation theory of liability under Nevada law.

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

3 DATED this 19th day of July, 2019

4
5 
6 DISTRICT COURT JUDGE

7 Submitted by:

8 
9 **ROYAL & MILES LLP**

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

Reviewed by:

15 
16 **THE GALLIHER LAW FIRM**

17 Keith E. Galliher, Jr., Esq.
18 Nevada Bar No. 220
19 1850 E. Sahara Avenue, Suite 107
20 Las Vegas, NV 89014
21 Attorneys for Plaintiff
22 JOYCE SEKERA
23
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EXHIBIT “N”

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DISTRICT COURT
CLARK COUNTY, NEVADA

LIVIA FARINA,

Plaintiff,

vs. CASE NO. A542232
DEPT. NO. XII

DESERT PALACE, INC. dba
CAESARS PALACE HOTEL AND
CASINO, and DOES 1 through 20,
inclusive,

Defendants.

DEPOSITION OF DAVID ALLEN ELLIOTT, P.E.

Taken on Friday, February 13, 2009

At 12:16 p.m.

At 2300 West Sahara Avenue
Suite 770
Las Vegas, Nevada

Reported by: John L. Nagle, CCR 211

1 foreseeable conditions are there.

2 Q. How about ANSI? First of all, the 0.6, is
3 that a recommendation in ANSI or a requirement?

4 A. They don't mention .6 at all in ANSI.

5 Q. So they don't even have a measurement, a
6 required measurement, for the friction rating?

7 A. No, sir. It just has to be slip resistant
8 under the foreseeable conditions.

9 Q. And is there anything in ANSI that you
10 believe mandates that the floor pass a wet test at 0.5
11 as opposed to a dry test?

12 MR. ZIMMERMAN: This is the floor in the
13 vestibule?

14 BY MR. McGRATH:

15 Q. Any marble flooring in a public
16 accomodation.

17 A. You know, I think we're just beating a
18 dead horse here. I understand the definition of slip
19 resistance, and what is slip resistant.

20 Being a pedestrian safety professional, I
21 can tell you exactly what number, in my opinion, and
22 the same opinion of everybody else that does this, is
23 slip resistant.

24 It wouldn't do you any good to test a
25 floor dry, because I can already tell you it's going to

1 be slip resistant when it's dry, but it's not going to
2 do you any good, again, to take that same floor and run
3 sprinklers on it all the time and tell people to walk
4 across it, because we tested it dry. It makes no
5 sense.

6 Q. Have you ever tested marble flooring in a
7 casino in the Las Vegas area using the wet test where
8 the marble flooring passed the 0.6 standard?

9 A. Never.

10 Q. How about the 0.5 standard?

11 A. No, sir. Marble is a horrible choice.

12 Q. Essentially if you don't have carpet down,
13 it's slippery when it's wet, right?

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

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

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

22 Q. But it's not marble flooring?

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

24 Q. Is it tile?

25 A. It's a ceramic tile.

1 Q. Any other properties that you can give me
2 a specific example of where they don't use marble?

3 A. Well, no pool deck uses marble, obviously,
4 and sidewalks accessing pool decks are concrete, and
5 they usually have a very rough surface on them.

6 Whenever I've had a client that has had
7 marble in their casino and I'm working for the defense,
8 I've just told them that "Hey, this is slippery when
9 it's wet. You shouldn't be using it. If you want to
10 continue using it, you got to take certain things into
11 account. You have to take other preventive measures to
12 prevent slipping."

13 And sometimes they're receptive to those
14 ideas and sometimes they're not. These are just my
15 opinions as a pedestrian safety consultant.

16 Q. What are you assuming in terms of how far
17 in terms of feet the plaintiff slipped -- withdraw the
18 question.

19 I'm trying to ask you about the location
20 of the slip-and-fall incident. How far into the
21 property past the entrance door are you assuming that
22 it occurred?

23 A. Well, if I remember right, the depth of
24 that vestibule is about 12 feet, and it looks like
25 she's maybe halfway, maybe a hair over halfway, so

EXHIBIT “O”

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

*Of Counsel

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June 25, 2019

Michael A. Royal, Esq.
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Fax: 702-531-6777

SENT VIA E-SERVICE

Re: Sekera v. Venetian

Dear Mike:

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your cooperation.

Very truly yours,

THE GALLIHER LAW FIRM



Keith E. Galliher, Jr., Esq.

KEG/gr

KEITH E. GALLIHER, JR.
GEORGE J. KUNZ*
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May 20, 2019

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

Re: Sekera v. Venetian

Dear Mike:

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

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

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

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

Thank you for your cooperation.

Very truly yours,

THE GALLIHER LAW FIRM


Keith E. Galliher, Jr., Esq.

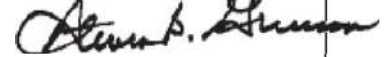
KEG/gr

EXHIBIT “P”

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15 Attorneys for Plaintiff

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



DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,
Plaintiff,

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.: 25

**PLAINTIFF'S MOTION TO COMPEL
TESTIMONY AND DOCUMENTS**

HEARING REQUESTED

Plaintiff hereby submits her Motion to Compel Testimony and Documents.

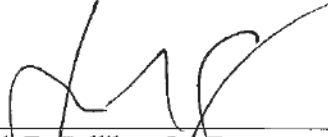
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1 This Motion to Compel Testimony and Documents is based upon and supported by the
2 following memorandum of points and authorities, the pleadings and papers on file, the exhibits
3 attached hereto, and any argument that the Court may allow at the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

4 DATED this 1 day of July, 2019

5 THE GALLIHER LAW FIRM

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

14 **MEMORANDUM AND POINTS OF AUTHORITIES**

15 **I. INTRODUCTION**

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

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

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

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

9 **II. FACTUAL BACKGROUND**

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

11 During discovery Plaintiff requested Venetian provide:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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C. Rule 30(b)(6) Deposition

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

1. Total number of injury falls on marble floors located within The Venetian Las Vegas from November 4, 2013 to present.
2. Actions taken by The Venetian Las Vegas to change the coefficient of friction with respect to marble floors within The Venetian Las Vegas from November 4, 2013 to present.
3. Measures taken to locate and produce security/injury fall reports by The Venetian Las Vegas as requested by Plaintiff in this Litigation.
4. Slip testing performed by The Venetian Las Vegas or its representatives with respect to the marble floors within The Venetian Las Vegas from November 4, 2013 to present.

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

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

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

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

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

3 **III. MOTION TO COMPEL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Because of the Venetian's ongoing refusal to fully and fairly disclose the incident reports
4 plaintiff's counsel researched additional court pleadings and contacted other Plaintiff's lawyers in an
5 effort to identify the true breadth of the problem. These efforts led to the discovery of AN

6 **ADDITIONAL 46 UNDISCLOSED INCIDENT REPORTS FROM NOVEMBER 4, 2013 –**
7 **NOVEMBER 4, 2016!**

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

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

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

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

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

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

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

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

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

Id. (emphasis added)

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

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

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

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

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

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

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

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

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

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

10 **IV. CONCLUSION**

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

13 DATED this 1 day of July, 2019

14 THE GALLIHER LAW FIRM

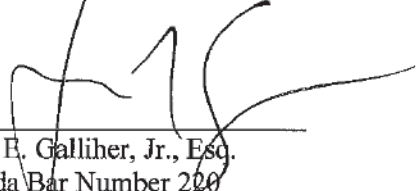
15
16 
17 Keith E. Galliher, Jr., Esq.
18 Nevada Bar Number 220
19 1850 E. Sahara Avenue, Ste. 107
20 Las Vegas, Nevada 89104
21 *Attorney for Plaintiff*
22
23
24
25
26
27
28

EXHIBIT “Q”

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

SUBP

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

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Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

(For Personal Appearance at Deposition)

Date: Tuesday, July 2, 2019

Time: 9:00 a.m.

SECOND SUBPOENA DUCES TECUM FOR TOM JENNINGS

THE STATE OF NEVADA SENDS GREETINGS TO:

Tom Jennings
c/o THE GALLIHER LAW FIRM
1850 E Sahara Ave., Ste 107
Las Vegas, NV 89104

YOU ARE ORDERED TO APPEAR AS A WITNESS and give testimony pursuant to
NRS 50.165 and NRCP 30 and 45, that all and singular, business and excuses set aside, you appear
and attend your deposition on the **2nd day of July, 2019**, at the hour of **9:00 a.m.** at **THE**

8/9/04

1 **GALLIHER LAW FIRM, 1850 E Sahara Ave, Suite 107, Las Vegas, NV 89014.** Your
2 attendance is required to give testimony and/or to produce and permit inspection and copying of
3 designated books, documents or tangible things in your possession, custody or control, or to permit
4 inspection of premises. You are required to bring with you at the time of your appearance any
5 items set forth below. If you fail to attend, you may be deemed guilty of contempt of Court and
6 liable to pay all losses and damages caused by your failure to appear.
7

8 **WITNESS FEES:** You are entitled to witness fees and mileage traveled, as provided by
9 NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and
10 mileage, unless issued on behalf of the State or a State agency. NRCPC 45(b).

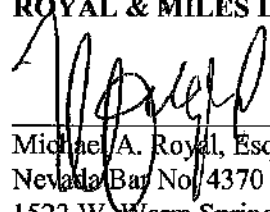
11 **CONTEMPT:** Failure by any person without adequate excuse to obey a subpoena served
12 upon that person may be deemed a contempt of the court, NRCPC 45(e), punishable by a fine not
13 exceeding \$500 and imprisonment not exceeding 25 days, NRS 22.100. Additionally, a witness
14 disobeying a subpoena shall forfeit to the aggrieved party \$100 and all damages sustained as a
15 result of the failure to attend, and a warrant may issue for the witness' arrest. NRS 50.195, 50.205,
16 and 22.100(3).
17

18 Please see the attached Exhibit "A" for information regarding your rights and
19 responsibilities relating to this Subpoena.

20 DATED this 7 day of June, 2019.
21

22 **ROYAL & MILES LLP**

23 By:


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

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SCHEDULE A

ITEMS TO BE PRODUCED

Your entire file pertaining to Joyce Sekera vs Venetian Casino Resort, LLC

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on this 3 day of June, 2019, I served the following
3 document: **SECOND SUBPOENA DUCES TECUM FOR TOM JENNINGS**

4 **BY MAIL:** by placing the document(s) listed above in a sealed envelope, postage
5 prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as set forth below

6 **BY FAX:** by transmitting the documents(s) listed above via telefacsimile to the
7 fax number(s) set forth below. A printed transmission record is attached to the file
8 copy of this document(s).

9 **BY HAND DELIVERY:** by delivery the document(s) listed above to the
10 person(s) at the address(es) set forth below.

11 ☒ **BY ELECTRONIC SERVICE:** by submitting the document(s) listed above to
12 the above-entitled Court for electronic filing and/or service upon the Court's Service
13 List.

14 Keith E. Galliher, Jr., Esq.
15 THE GALLIHER LAW FIRM
16 1850 E. Sahara Avenue, Suite 107
17 Las Vegas, NV 89014
18 *Attorneys for Plaintiff*
19 Facsimile: 702-735-0204
20 E-Service: kgalliher@galliherlawfirm.com
21 dmooney@galliherlawfirm.com
22 gramos@galliherlawfirm.com
23 rray@galliherlawfirm.com
24
25
26
27
28

29 
30 An employee of ROYAL & MILES LLP

AFFIDAVIT/DECLARATION OF SERVICE

STATE OF _____)

COUNTY OF _____)

I, *(insert name of person making service)* _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **SECOND SUBPOENA DUCES TECUM FOR TOM JENNINGS** on *(insert date person making service received Subpoena)* _____; and that I served the same on *(insert date person making service served Subpoena)* _____, by delivering and leaving a copy with *(insert name of witness)* _____ *(insert address where witness was served)* at _____.

Executed on: _____
(Date) (Signature of Person Making Service)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2019.

NOTARY PUBLIC in and for the
County of _____, State of _____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: _____
(Date) (Signature of Person Making Service)

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: _____
(Date) (Signature of Person Making Service)

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT “R”

Jennings Forensic Services, LLC

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

May 30, 2019

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

Re: Sekera v. Venetian

Dear Mr. Galliher,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

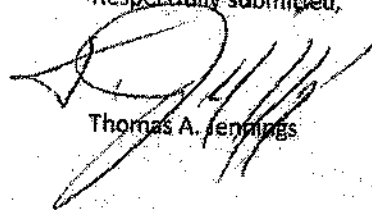
Friction: Definitions, Laboratory and Field measurements and a Comprehensive Bibliography' by James M. Miller, Don B. Chaffin and Robert O. Andres. Within the conclusions of that extensive study is the following:

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

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

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

Respectfully submitted,



Thomas A. Jennings

TAJ/gw

EXHIBIT “S”

Deposition of:

Thomas A. Jennings

Case:

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

Date:

07/02/2019



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

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

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

10 A. Yes, sir.

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

17 Did I read that correctly?

18 A. You did.

19 Q. What information are you drawing from?

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

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

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

4 Q. Did you bring that with you today?

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

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

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

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

13 A. Yes.

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

16 A. Yes.

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

18 A. Yes.

19 Q. This information of 196 slip-and-fall events
20 was not provided in Dr. Hayes' initial report; correct?
21 That's not where you got the information?

22 A. Correct. That is true.

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

25 A. Yes, sir.

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

3 A. Correct.

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

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

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

9 A. Okay.

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

11 A. Sure.

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

14 A. Yes, sir.

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

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

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

22 Tell me what the spreadsheet looks like.

23 A. Well, a spreadsheet is a typical spreadsheet.
24 It starts at a certain date and month, year. It
25 specifies a location. It shows a slip-and-fall and it

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

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

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

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

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

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

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

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

17 A. Yes, sir.

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

22 A. Yes, sir.

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

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

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

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

6 A. To the property, yes, sir.

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

9 A. Yes, sir.

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

13 A. There is, sir.

14 Q. Right?

15 A. Yep.

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

19 Would that be right?

20 A. I believe that's accurate.

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

24 A. I believe --

25 Q. -- number?

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

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

4 A. That would be correct.

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

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

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

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

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

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

18 Q. Did you count them?

19 A. Yes, I did.

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

21 A. Yes, sir.

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

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

1 recall, they were all due to liquid contaminants.

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

5 A. No, sir.

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

8 A. Yes, sir.

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

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

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

14 A. That's fair.

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

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

19 Q. What's it set for?

20 A. Usually 30 days.

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

24 A. No, sir.

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

EXHIBIT “T”

Deena Mooney

From: Deena Mooney
Sent: Friday, May 31, 2019 1:02 PM
To: 'Thomas Jennings'
Subject: RE: Sekera
Attachments: summary of falls ours and peters and georges in date order.docx

Deena P. Mooney, Paralegal to
Keith E. Galliher, Jr., Esq.
The Galliher Law Firm
1850 E. Sahara Avenue, Ste. 107
Las Vegas, Nevada 89104
(T) 702-735-0049
(F) 702-735-0204
E-mail: dmooney@galliherlawfirm.com

From: Thomas Jennings [mailto:calnevsafety@hotmail.com]
Sent: Friday, May 31, 2019 11:20 AM
To: Deena Mooney
Subject: Re: Sekera

Thank you Deena!

From: Deena Mooney <dmooney@galliherlawfirm.com>
Sent: Friday, May 31, 2019 11:18 AM
To: Thomas Jennings
Subject: RE: Sekera

Thanks I will have him call you Thursday at 9:30 a.m.

Deena P. Mooney, Paralegal to
Keith E. Galliher, Jr., Esq.
The Galliher Law Firm
1850 E. Sahara Avenue, Ste. 107
Las Vegas, Nevada 89104
(T) 702-735-0049
(F) 702-735-0204
E-mail: dmooney@galliherlawfirm.com

From: Thomas Jennings [mailto:calnevsafety@hotmail.com]
Sent: Thursday, May 30, 2019 4:12 PM
To: Deena Mooney
Subject: Re: Sekera

That will work

SEKERA FALLS

Our reports are in black

Peters reports are in red

Georges Reports are in Green

Yellow highlighted reports are the ones that our office and peters office has

	DATE	TIME	REPORT	LOCATION	COMMENTS	SECURITY
1.	1-19-12	4:40		Grand Lux Café	Slipped and fell in 2" high heels	
2.	1-19-12	11:58		Main Entrance	PAD cleaning floor. female was walking through marble area, slipped and fell into maple syrup	
3.	1-31-12	9:00		Lobby 1	Slip and fall in unknown liquid	
4.	4-6-12	11:42		Grand Lux Café	Slipped and fell on water	
5.	4-15-12	12:07 a.m.		Main Marble	Slip and fall. Floor was wet and slippery	
6.	4-28-12	5:20		Lobby 1	Flip and fall on unknown liquid	
7.	5-28-12	9:30		Lobby 1	Slip and fall unknown red substance (guest called in tomato sauce)	
8.	6-3-12	4:18		Food court	Slipped and fell. Unknown liquid on ground with glass in the liquid	
9.	6-4-12	8:30		Lobby 1	Slipped and fell on unknown liquid	
10.	6-14-12	6:44		Grand Hall	Slipped and fell on wet spot on marble floor	
11.	6-27-12	3:25		Lobby 1	Large puddle of water in front of Bouchon bakery slip and fall	
12.	7-6-12	6:08		Mall valet	Slipped and fell. Small	

13.	7-7-12	11:28				puddle of liquid on marble	
14.	7-19-12	8:19			Food court	Slip and fall in large amount of water	
15.	7-20-12	11:19			Sports bar	Entering casino from breezeway entrance, slipped and fell on a puddle of liquid on the marble walkway	
16.	7-22-12	2:22			Venetian front office	Walking down Grand hallway and slipped in puddle of fluid	
17.	7-29-12	11:00			Grand Lux escalators	Marble area in front of Grand Lux Café guest seated on floor with a puddle of water on the floor around her	
18.	7-29-12	10:00			Mall Valet	Slipped and fell walking toward the mall valet	
19.	7-30-12	9:48			Pinot restaurant	Slipped and fell on unknown liquid on marble while walking through "restaurant row"	
20.	8-3-12	2:49			Venezia tower 540	Guest was walking to the venetian tower between pool entrance and Bouchon entrance when he slipped on water on the floor	
21.	8-3-12	5:56			Food court	Wet floor signs present and chains posted but floor not wet at that time. Guest stated on incident form that the event was her fault	

						sitting on floor in same area. Second female stated she slipped and fell on a large wet spill	
22.	8-4-12	6:00			Grand Hall	Event occurred the night before. Incident happened in the Grand hallway near DaVinci exhibit. Wet spot on marble floor	
23.	8-5-12	1:39			Lobby 1	Mid-rise guest elevator lobby, large wet spill noted, presumed to be water.	
24.	8-13-12	10:59			Venetian front desk	Slipped and fell on a wet spill on marble	
25.	8-24-12	11:34			Security podium	Fell in liquid in front of Pinot Brasserie	
26.	9-11-12	2:30			Venetian tower	Guest stated she was getting into elevator in the low rise elevator lobby and slipped in water and fell	
27.	9-27-12	3:26			Tao Balcony	Slip and fall. Large amount of liquid on marble floor with no wet floor sign	
28.	10-11-12	9:14			1 breezway	Sip and fall on marble floor. Guest said that there was a caution sign and a carpet in the incident area	
29.	10-13-12	5:56			Front of high limit salon	Slip and fall on clear liquid on marble	
30.	10-16-12	1:32			Breezeway near venetian sports book	Slip and fall puddle of clear liquid	
31.	10-25-12	10:00			Grand Lux	Slip and fall on smeared	

					Café	food on the marble floor	
32.	12-8-12	3:22			Grand Hall	Slip and fall on wet spot	
33.	12-26-12	10:08			Lobby 1	Slipped and fell on wet area of marble floor	
34.	2-26-13	11:11			Grand Hallway	Slipped on large puddle of clear oily fluid	
35.	3-4-13	2:46 a.m.			Breezeway	Fell several times on the wet floor. The marble and asphalt floors near these doors were wet due to being recently power washed by the exterior cleaning team	
36.	3-8-13	10:49 p.m.			Lobby 1	Slipped on a blue liquid on floor and fell	
37.	3-26-13	9:31 p.m.			Main marble	Slipped on liquid but did not fall	
38.	4-13-13	11:43			Casino floor near Bellini Bar	Slipped on liquid on floor and fell	
39.	5-11-13	3:35			Venetian Front Desk	Slipped and fell near the fountain	
40.	5-15-13	6:20			Food court	Slipped and fell in melted ice cream on marble floor in front of the lime ice bar	
41.	5-16-13	1:58			Lobby 1	Slipped and fell in liquid on floor that appeared to be beer	
42.	5-17-13	11:18			South service bar	Slipped and fell in a large puddle of liquid on marble floor	
43.	5-19-13	2:51 a.m.			Grand hall lobby	Slipped and fell in a puddle of water on marble floor	
44.	5-22-13	3:07 p.m.			Fountain in main lobby	Guests reported that earlier at 2:30 a.m. that morning they were	

						taking photos of themselves near the fountain in the main lobby when one of them slipped and fell backwards in a puddle of water	
45.	5-25-13	9:44 p.m.			Elevator lobby	Guest exiting elevator lobby slipped and fell on liquid in the marble floor	
46.	6-20-13	7:51 p.m.			Bottom of escalators which lead from Grand Canal Shoppes to Casino floor	Slipped and fell on some blue liquid near bottom of escalators	
47.	6-21-13	9:40			Main marble	Guest reported that earlier that evening at approximately 7:30 p.m., she had been walking on the main marble near the front entrance Venetian Casino when she slipped and fell on wet area of the marble floor	
48.	6-22-13	4:25 p.m.			Hotel elevator	Slip and fall on liquid on marble floor	
49.	6-23-13	3:26 p.m.			Grand hallway	Slipped and fell on small puddle. Noted that the small puddle was caused by a spilled drink	
50.	6-23-13	3:00 p.m.			Grand hallway	This event is related to above event	
51.	6-24-13	12:29 pm.			Second floor retail shops	Slipped on some water and fall	

52.	6-26-13	4:0 p.m.		Great hall	Security department reached out to a guest regarding a tweet she had posted regarding her slipping on water in the great hall at the venetian. Guest stated she slipped and fell on 6/24/13 and repoted it to front desk. Guest refused because she was in a hurry to get to the airport	
53.	6-30-13	10:49 a.m.		Casino and food court	Slipped and fell on the marble floor. Water on floor	
54.	6-30-13	11:28 a.m.		Pit 10 towardss Grand Lux Café	Slipped and fell in puddle of water	
55.	7-12-13	8:15 p.m.		Pit and pit 4	Slipped and fell on a puddle of liquid on marble walkway	
56.	7-20-13	4:34 p.m.		Entrance to Guggenheim Museum	Slipped and fell on some liquid on the marble floor	
57.	7-27-13	8:10 p.m.		Candy Apple and Brownie stall in front of the Grand Lux Café	Slipped and fell on some water	
58.	7-28-13	8:05 p.m.		North entrance near fountain	Slipped and fell on the wet floor	
59.	8-1-13	11:15 a.m		Grand hall	Slipped and fell in large puddle of water while walking towards the fountain the grand hall	

60.	8-3-13	3:32 p.m.	Lobby 1	Slipped and fell in a puddle of clear liquid on the marble floor	
61.	8-16-13	11:47 p.m.	Front desk globe area	Slipped on wet spot on the marble floor	
62.	8-20-13	3:20	Restaurant row	Slipped and fell on liquid on the marble floor	
63.	8-24-13	1:03 p.m.	Grand Colonnade	Guest reported that earlier that same morning at approximately 11:30 a.m. slipped and fell on some red colored liquid	
64.	8-28-13	9:22 p.m.	Delmonico's Steakhouse	Guest slipped and fell on the wet marble floor in front of Delmonico's Steakhouse	
65.	9-16-13	8:40 p.m.	Venetian Main Entrance	Slipped on the marble tile	
66.	10-6-13	7:30	Rock of Ages Theater	Guest slipped and fell on an unknown substance on the marble floor	
67.	10-6-13	9:27 p.m.	Noddle Asia	Slipped and fell on a wet spot on the marble floor	
68.	10-18-13	10:56 p.m.	Casino floor Food Court	Slipped and fell on clear liquid on the marble floor. Pieces of broken glass in the liquid	
69.	10-19-13	6:33 p.m.	Front desk area	Guest slipped and fell on an unknown liquid on the marble floor	
70.	10-25-13	4:21 p.m.	Near poker room	Slipped and fell on clear liquid on the marble floor	
71.	11-1-13	1:21 a.m.	Main marble	Guested slipped and fell	

					area	on the main marble area. Guest was noted as being intoxicated	
72.	11-7-13	7:54 a.m.			Grand Lux Café	Slipped and fell on the marble floor in the front of Grand Lux Café earlier that morning at approximately 6:00 a.m.	
73.	11-24-13	5:27 a.m.	1311V-5502		Grand Luxe Café	Slip and fall	Mary Ros Eve Gizelbach Ryan Meyer J. Lopez report writer
74.	11-24-13	1:54 p.m.	1311V-5588		Grand Hall	Slipped in apple cider given out by elves who are employees	Devon O'Brien manager Christopher Mosier asst. security manager G. Rescigno report writer David Magnism
75.	12-27-13	3:07 p.m.			WOW fountain feature	Slipped and fell on a wet area on the marble floor next to the WOW fountain feature	
76.	1-26-14	12:28 a.m.	1401V-5339		Lobby 1	Water on marble	Conie Klaver Joe Barrett facilities senior watch L. Sivrais report writer Joe Barrett
77.	5-2-14	4:42 p.m.	1405V-0423		Grand Hall LV	Water on marble	Manny Arguello R. Marquez report writer David Boyko
78.	5-3-14	3:36 p.m.	1405V-0687		Grand Hall	Wet marble	Thomas Harris security officer Gary Rescigno security EMT T. McFate report writer Derek Santillan facilities
79.	5-3-14	4:47 p.m.	1405V-0704		Lobby 1	Water on marble	Christopher Daniels Derek Santillan
80.	5-24-14	9:49 p.m.	1405V-5900		Lobby 1	Wet marble	Karen Sidhoo front desk manager Tim Alvonells security shift manager T. Morgan report writer Sean Pemberton
81.	6-28-14	2:10 p.m.	1406V-66937		Grand Luxe	Wet marble	Connie Kulver

				Café			Nicholas Coronado Andres Florentino J. Lopez report writer John Burnett security officer
82.	7-5-14	6:05 p.m.	1407V-1121	Lobby 1	Liquid stated he had fallen yesterday see report 1407V-0807 (missing this report)		Brittany Peck front desk manager Sean Pemberton engineer L. Sivas report writer
83.	7-10-14	1:25 PM	1407V-2272	Grand Luxe	Water on floor		J. Larson report writer T. Mofate EMT/SO Merrick Anderson Facilities Eng.
84.	7-10-14	12:30 a.m.	1407V-2142	Grand Hall	Drink on floor Prior to victim slipping group of unknown males with "yard" like drink spilled on floor		Sang Han front desk manager E. Gizelback report writer
85.	7-13-14	8:02	1407V-3057	Lobby 1	Liquid		Jacob Johnson Asst. Sec. Mngr. Brittany Peck Front desk mngr. Taylor McFate, EMT S.O. G. Rescigno Report writer
86.	7-13-14	8:02 a.m.	1407V-3057	Lobby 1	liquid marble		Jacob Johnson asst. security manager Brittany Peck front desk manager Tyler McFate EMT security G. Rescigno report writer
87.	7-18-14	7:14 p.m.	1407V-4386	Venetian front desk	Fall happened at 6:00 p.m. victim stated there was a guy there said his buddy dropped his bottle of alcohol and left it there		Tim Avonellos security shift manager Conie Kluever front desk manager kT. Morgan report writer
88.	7-25-14	5:31 p.m.	1407V-6125	Lobby 1	Wet marble		Amy McCaslin front desk manager Kyle Donaldson Asst. security manager T. Morgan report writer
89.	7-25-14	7:59	1407V-6151	Grand Hall	Liquid Victim Luz Gamino (unredacted)		Allen Backman facilities L. Sivas report writer
90.	7-29-14	2:47 p.m.	1407V-7161	Lobby 1	Liquid		Thomas Labert Front Desk Mngr. Christopher Moiser Asst. Sec Mngr.

91.	7-29-14	2:47 p.m.	1407V-7161	Lobby 1	Liquid	Sean Pemberton Eng. G. Rescigno Report writer Chris Malcom S.O.
92.	7-30-14	9:55 a.m.	1407V-7375	Lobby 1	Water fluid was spilled by unknown male at 9:48	Thomas Lambert front desk manager Christopher Mosier asst. security manager Sean Pemberton engineer G. Rescigno Chris Malcom security officer
93.	8-4-14	4:31 a.m.	1408V-0843	Lobby 1	Tripped over own feet	Mary Rosk front desk manager Joseph Florio security officer Joseph Larson EMT security officer T. McFate report writer Abimael Suarez internal maintenance PAD
94.	8-5-14	5:08 a.m.	1408V-1088	Lobby 1	Tripped over own feet Marc Fesel engineer no defects but a wet floor	Mary Ros front desk manager John Ballesteros facilities team member E. Gizelbach report writer
95.	8-28-14	10:30 p.m.	1408V-7104	Venetian Tower	Fall reported next morning. Fall occurred near bathroom by Grand Luxe Water	Mary Ros, Front Desk Monte McAnulty Facilities J. Larson, Report Writer 1/7/15
96.	8-28-14	10:30 p.m.	1408V-7104	11 Venetian Tower 121	Fall reported next morning. Fall occurred near bathrooms by Grand Luxe Water	Mary Ros front desk manager Monte McAnulty facilities J. Larson report writer
97.	8-31-14	2:43 p.m.	1408V-7791	Lobby 1	large water spill	Jacob Johnson Asst. Sec. Mgr. Archie Balon, S.O. G. Rescigno, report writer Derek Santillan, Facilities
98.	8-31-14	2:43 p.m.	1408V-7791	Lobby 1	Large water spill	Jacob Johnson asst. security manager Archie Balon security officer G. Rescigno report writer Derek Santillon facilities
99.	9-13-14	3:17 p.m.	1409V2807	Grand Hall	Slipped due to water or	Jacob Johnson asst. security manager

						drink spill that another guest caused. Tyler Corbely had notified security earlier about his stand by due to this fluid spill	Tyler Corbely field training officer G. Rescigno report writer
100.	9-15-14	5:29 a.m.	1409V-3261	Lobby 1		3 piles of feces slip and fall	Nicholas Coronado Mary Ros Hinkle Z. Hakim report writer Rosa Estela facilities
101.	9-30-14	1:30	1409V-6750	Grand Hall		Slip and fall on marble. "I slipped on something spilled on marble" pictures of liquid looks like milk	George Valley security manager Jonathan Derleth front desk manager John Wells security officer Z. Hakim report writer James Guernick security officer
102.	10-11-14	2:08 a.m.	1410V-2293	Lobby 1		Tripped over feet	Nachely frond desk manager Zachary Hakim EMT security E. Gizelbach report writer Rudy Conception facilities engineer
103.	12-23-14	5:24 p.m.	1412V-4685	Lobby 1		Liquid Ashay Shah minor (not redacted) Jignesh Shah father	Sang Han hotel manager Tim Avonellos security shift manager L. Sivrais report writer Derek Sentillan facilities
104.	1-17-15	11:49 p.m.	1501V-3857	Venetian Front Office		Liquid	Nicholas Coronado, asst. mgr. Jonathan Deruth, Front desk mgr. Jose Lopez, EMT Sec. Z. Hakim Report Writer Theodore Reash, Facilities
105.	1-17-15	11:49 p.m.	1501V-3857	Venetian front office		Liquid	Nicholas Coronado asst. manager Jonathan Deruth front desk manager Jose Lopez EMT security Z. Hakim report writer Theodore Eash facilities
106.	1-17-15	11:49 p.m.		Venetian Front Office		Fell on liquid	
107.	1-31-15	2:53 p.m.	1501V-6887	Lobby 1		Water "there appeared to be water all over	Tim Alvonellos security shift manager Thomas Lambert front desk manager

108.	1-31-15	2:53 p.m.				immediate area"	L. Dozier report writer
109.	2-9-15	1:37 p.m.	1502V-1803	Lobby 1	Lobby 1	Slip and fall on water	Eric Wennerberg security officer Rudy Conception senior watch Eve Gizelbach report writer
110.	2-9-15	1:37 a.m.	1502V-1803	Lobby 1	Lobby 1	Liquid	Eric Wennerberg, S.O. Rady Conception. Seior Watch E. Gizelbach Report writer
111.	2-9-15	1:37		Lobby 1	Lobby 1	Slipped and fell on unknown liquid	
112.	2-20-15	1:28 p.m.	1502V-4322	Lobby 1	Lobby 1	Liquid. Slipped on spilled beverage	Jacob Johnson Asst. Sec. Mngr. Brittany Peck, Front Desk L. Dozier. Report writer
113.	2-20-15	1:28 p.m.	1502V-4322	Lobby 1	Lobby 1	Liquid. Slipped on spilled beverage	Jacob Johnson asst. security manager Brittany Peck front desk manager L. Dozier report writer
114.	2-20-15	1:28 p.m.		Lobby 1	Lobby 1	Slipped but did not fall on liquid	
115.	3-8-15	8:45 a.m.	1503V-1561	Grand Hall	Grand Hall	Slip. "I observed a wet sticky spot on marble floor"	Melissa Perry front desk manager Bryan Greenfield facilities E. Gizelbach report writer
116.	3-8-15	8:45		Grand Hall	Grand Hall	Slipped and fell on wet spot	
117.	3-23-15	3:18 a.m.	1503V-5040	Lobby 1	Lobby 1	Slip. "appeared to have red sauce or grease on marble" previous injury under report #1503V-5119 (we don't have report) stated she had been injured earlier that morning at 3:00 a.m. when she slipped and fell in pasta sauce	Nathan Beyers front desk manager Garry Lee security officer E. Gizelbach report writer James Stoyer facilities engineer
118.	3-23-15	3:18		Lobby 1	Lobby 1	Slipped and fell in front of Juice Farm. Flooring had red sauce and grease	
119.	4-20-15	7:00 p.m.		Lobby 1	Lobby 1	Slipped and fell due to a metal strip that connects	WE DON'T HAVE THIS ONE

						the marble tile surface to the wood surface	
120.	4-24-15	3:25p.m..	1504V-5396	Grand Hall		Slip. Broken bottle of alcohol	Sang Han front desk manager Melissa Perry front desk manager Lynn Sivrais EMT Security G. Rescigno report writer Rodolfo Storino
121.	4-24-15	3:25 p.m.	1504V-5396	Grand Hall		Broken Bottle of Alcohol	Sang Han, Front Desk Mngr. Melissa Perry Front Desk Mngr. Lynn Sivrais, EMT S.O. V-5319G. Rescigno Report writer Rodolfo Stoiono
122.	4-24-15	3:25 p.m.		Grand Hall		Slipped and fell on broken bottle of alcohol	
123.	5-3-15	1:08 p.m.	1505V-0844	Grand Hall		Slip. "small puddles of what appeared to be a clear liquid"	Jacob Johnson asst. security manager Tyler Corbaley field training officer G. Rescigno report writer
124.	5-3-15	1:08 p.m.		Grand Hall		Slipped on marble floor in front of fountain	
125.	5-22-15	4:43 p.m.	1505V-5319	Lobby 1		Water on floor	Thomas Lambert Front Desk Tony Bersano Asst. Sec. Mngr. Crystal Clanton S.O. J. Lopez Report writer Jeffrey Duniho, S.O.
126.	5-22-15	4:43 a.m.	1505V-5319	Lobby 1		Water on floor	Thomas Lamber front desk manager Tony Bersano asst. security manager Crystal Clanton security officer J. Lopez report writer Jeffrey Duniloo security officer
127.	5-22-15	4:43		Lobby 1		Slipped and fell on wet surface	
128.	5-29-15	7:36 a.m.	1505V-7253	Lobby 1		Slip	Christopher Moiler asst. security manager Francesca Comeli front desk manager G. Rescigno report writer Steve Hansen facilities
129.	5-29-15	7:36		Lobby 1		Slipped and fell on spilled coffee	
130.	5-30-15	4:35 p.m.	1505V-7506	Lobby 1		Slip Water	Tony Bersano, Asst. Sec. Mngr.

131.	5-30-15	4:35	1505V-7506	Lobby 1	Slip water	Thomas Lambert, Front Desk Mngr. Michael Perez, S.O. D. Davila Report writer Heather Kaufmann, S.O. Zachary Hakim, EMT S.O. Anthony Bersano asst. security manager Thomas Lambert front desk manager Zachary Hakim security officer EMT Michael Perez security officer Heather Kaufmann security officer S. Davila report writer John Ballesteros facilities
132.	5-30-15	4:35		Lobby 1	Slipped and fell on water	
133.	6-12-15	12:51 p.m.	1506V-7480	Lobby 1	Liquid	Antonio Lopez David Magnuson A. Lopez report writer
134.	6-12-15	12:51 p.m.	1506V-2824	Lobby 1	Wet floor. "so much foot traffic I asked two males to stand by spill" "The spill was mall comprised of droplets of what seemed to be water stretching about a foot and a half in a straight line on the tile"	Antonio Lopez security officer David Magnuson A. Lopez report writer
135.	6-12-15	12:51		Lobby 1	Slipped and fell on liquid on floor	
136.	6-30-15	11:38 a.m.	1506V-7480	Lobby 1	Slip and fall "small pool of clear liquid on marble flooring nearby"	Mary Ros front desk manager Gary Rescigno Security/EMT John Wells Security Officer J. Larson Report writer
137.	6-30-15	11:58 a.m.	1506V-7480	Lobby 1	Slip and fall. "small pool of clear liquid on marble flooring nearby"	Mary Ros front desk manager Gary Rescigno security EMT John Wells security officer J. Larson report writer Bryan Greenfield facilities
138.	6-30-15	11:38		Lobby 1	Slipped and fell on fluid	

139.	7-5-15	12:40 p.m.	1507V-1236	6 Venezia Tower 417 Lobby 4	Slip and fall on water	Jacob Johnson Asst. Security Manager K Ecnanneste facilities G. Rescigno Report writer
140.	7-5-15	12:40 p.m.	1507V-1236	6 Venezia Tower 417 Lobby 4	Slip and fall on water	Jacob Johnson asst. security manager Keenam Meste facilities G. Rescigno report writer
141.	7-5-15	12:40		Lobby 4	Slipped and fell on water	
142.	7-19-15	1:47 a.m.	1507V-5024	Grand Hall	Slip and fall	Nicholas Coronado asst. manager S Tevan security L. Lopez report writer Brian Corpas security officer
143.	7-19-15	1:47		Grand Hall	Slipped and fell on water	
144.	7-19-15	8:18 a.m.	1507V-5121	19 Venetian Tower 129 Lobby 1	Slip and fall. Liquid on floor at approximately 7:05	Melissa Perry Front desk manager Jacob Johnson Asst. Security manager L. Dozier report writer Jeffrey Duniho security officer Richard Heleman
145.	7-19-15	8:18 a.m.	1507V-5121	19 Venetian Tower 129 Lobby 1	Slip and fall. Liquid on floor at approximately 7:05	Melissa Perry Front desk manager Jacob Johnson asst. security manager L. Dozier report writer Jeffrey Duniho security officer Richard Heleman
146.	7-19-15	8:18		Midrise elevator near Lobby 1	Slipped and fell due to liquid	
147.	7-20-15	5:36 a.m.	1507V-5392	Main entrance	Slip and fall. Sofia Lovgren victim (unredacted) Swedish passport	Julianne Edward front desk manager Nicholas Coronado asst. manager James Stoyer facilities J. Burnett report writer Eric Wenneberg security officer
148.	7-20-15	5:36		Main entrance	Slipped and fell	
149.	8-2-15	10:48 a.m.	1508V-0357	Lobby 1	Slip and fall. Puddle of water on floor	Conie Klayer M. Criddle report writer
150.	8-2-15	10:48		Lobby 1	Slip and fall coming out	

						of the Venetian Gift Shop. Security saw puddle of water	
151.	8-8-15	1:30			Grand Hall	slipped and fell unknown liquid	
152.	8-8-15	1:30 p.m.	1508V-1866		Grand Hall	Slip and fall	Jacob Johnson asst. security manager Jonathan Derleth front desk manager L. Dozier report writer Glen Helman facilities
153.	8-8-15	2:00 p.m.	1508V-1869	Lobby 1		Slip and fall. Upon contacting surveillance I was advised an unknown guest had dropped a bucket	Jacob Johnson Asst. Security Manager Brittany Peck Front desk manager Allan Hill security officer G. Rescigno report writer
154.	8-8-15	2:00 p.m.	1508V-1869	Lobby 1		Slip and fall. Upon contacting surveillance I was advised an unknown guest had dropped a bucket	Jacob Johnson asst. security manager Brittany Peck front desk manager Allan Hill security officer G. Rescigno report writer
155.	8-8-15	2:00		Lobby 1		Slip and fall puddle of water. Several warning signs around area of fall. Unknown guest dropped a bucket in area	
156.	8-14-15	1:40 a.m.	1508V2554	17 Palazzo Tower 141		Slip and fall on water Susan hammonds (unredacted)	Michael Perez security officer Eddie Hoang security manager Mathan Byers facilities Marc Fesel facilities
157.	8-14-15	1:40		Hallway by Grand Lobby		Slipped on some water	
158.	8-29-15	11:34 a.m.	1508V-7246	Lobby 1		Slip and fall clear liquid. "significant pool of water"	Tim Alvonellos Security shift manager Thomas Lambert front desk manager D. Cabada report writer Marc Fesel facilities Joseph De Jesus security/EMI
159.	8-29-15	11:34 p.m.	1508V-7246	Lobby 1		Slip and fall clear liquid. "significant pool of"	Tim Alvonellos security shift manager Thomas Lambert front desk manager

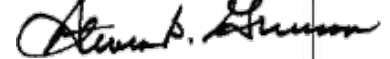
						water"	D. Cabada report writer Marc Fesel facilities Joseph De Jesus security officer EMT
160.	8-29-15	11:34			Lobby 1	Slipped on clear liquid	
161.	9-6-15	6:39 p.m.	1509V-1497		Lobby 1	Slip and fall wet floor. Spilled drink on floor	Tim Alvonellos security shift manager Nachely Martinez front desk manager J. De Jesus report writer Catherine Carlson security officer
162.	9-6-15	6:39 p.m.	1509V-1497		Lobby 1	Slip and fall wet floor. Spilled drink on floor	Tim Alvonellos security shift manager Nachely Martinez front desk manager Joseph De Jesus report writer Catherine Carlson security officer Derek Santillian facilities
163.	9-6-15	6:39			Lobby 1	Slipped and fell while existing the Venetian tower elevator. Spilled drink of floor	
164.	9-13-15	11:26 p.m.	1509V-3312		Grand Hall	Slip and fall red liquid	Matthew Kaufman security manager Thomas Lambert front desk manager D. Cabada report writer Jose Lopez security officer Peter Guagiardo facilities
165.	9-13-15	11:26			Grand Hall	Slipped and fell on red liquid substance	
166.	12-27-15	3:32 p.m.	1512V-5875		Lobby 1	Slip and fall clear liquid	Thomas Lambert front desk manager Tim Alvonellos security shift manager D. Cabada report writer Shane Navara facilities
167.	12-27-15	3:32			Lobby 1	Slipped on clear liquid	
168.	2-20-16	2:56 p.m.	1602V-4290		1 Guest services podium	Liquid fall occurred earlier in day at 11:45 – 12:05 "very wet floor"	Jacob Johnson asstt. Security manager Devon O'Brien G. Rescigno report writer
169.	2-20-16	2:56 p.m.	1602V-4290		Guest service podium	Slip and fall. Fell earlier in the day at 11:45 – 12:05 "very wet floor"	Jacob Johnson asstt. Security manager Devon O'Brien G. Rescigno report writer
170.	2-20-16	2:56			Lobby 1	Guest slipped earlier in day. Liquid on floor	
171.	3-6-16	1:59 p.m.	1603V-1233		Lobby 1	Liquid	Jacob Johnson Asst. security manager

172.	3-6-16	1:59 p.m.	1603V-1233	Lobby 1	Liquid	Kyle Kirchmeyer VIP Services D. Winn report writer Rafael Chavez facilities
173.	3-6-16	1:59		Lobby 1	Slipped on wet spot on floor	Jacob Johnson security manager Kyle Kirchmeyer VIP services D. Winn report writer Raphael Chavez facilities
174.	3-18-16	2:57 p.m.	1603V-3584	5 th floor of the garage elevator lobby	Cup of coffee spilled on floor. Fall occurred earlier in the day 11:45 – 12:00	Seljika Bucalo security officer David Boko facilities D. Wi report writer Devin O'Brien front desk manager Jacob Johnson security manager
175.	3-18-16	2:57		5 th floor of garage elevator lobby	Slipped on coffee spilled on floor	
176.	3-25-16	1:14 p.m.	1603V-5018	Lobby 1	Slip and fall. Puddle of clear liquid	Sharry Kim front desk supervisor Rafael Chavez facilities J. Larson report writer
177.	3-25-16	1:14	1603V-5018	Lobby 1	Slip and fall. Puddle of clear liquid	Sharry Kim front desk supervisor Rafael Chavez facilities J. Larson report writer
178.	3-25-16	1:14		Lobby 1	Slipped on a puddle of liquid near trash cans by Juice Farm	
179.	4-9-16	2:44 p.m.	1604V-1850	Grand Hall	Slip and fall. Puddle of water	Archie Balon security officer Jacob Johnson security manger D. Winn report writer Raphael Chavez facilities
180.	4-9-16	2:44		Grand Hall	Slipped and fell in puddle of water	
181.	4-9-16	7:34 p.m.	1604V-1926	Lobby 1	Male walker between wet floor signs	Matthew Kaufman security manager C. Reanos report writer
182.	4-9-16	7:34 p.m.	1604V-1926	Lobby	Slip and fall. Walked between wet floor signs	Matthew Kaufman security manager C. Reanos report writer
183.	4-10-16	1:51 p.m.	1604V-2136	Grand Hall	Slip and fall	Nicole Floyd

						Jason Palm guest (unredacted)	George Valley security manger D. Winn report writer Shane Navara Facilities Sharry Kim front desk manager
184.	4-10-16	1:51			Grand Hall	Slipped on floor	
185.	4-12-16	3:40 p.m.	1604V-2459		Control 1	Slip and fall. Occurred on 4/10/16 SO "Felix" was attempting to stop foot traffic when he slipped and fell	Matthew Kaufman asst. manager Albert Liu D. Cabda report writer
186.	4-12-16	3:40 p.m.	1604V-2459		1 control	Slip and fall. Occurred on 4/10/16 SO "Felix" was attempting to stop foot traffic when he slipped and fell	Matthew Kaufman asst. manger Albert Liu D. Cabada report writer Felix Escobar security officer
187.	4-12-16	3:40				Slipped and fall security guard named Felix was trying to stop foot traffic at time of fall	
188.	5-5-16	9:12 p.m.	1605V-0952		Lobby 1	Slip and fall. Picture of red solo cup and liquid on floor	Tim Alvonellos security shift manager Royce Phung front desk manager J. Buscemi report writer James Johnson security officer
189.	5-5-16	9:12 p.m.	1605V-0952		Lobby 1	Slip and fall. Picture of red solo cup and liquid on floor	Tim Alvonellos security shift manager Royce Phung front desk manager J. Buschemi report writer James Johnson security officer Shane Navara facilities
190.	5-5-16	9:12			Lobby	Guest slipped and fell on unknown liquid	
191.	5-12-16	12:56 a.m.	1605V-5069		Lobby 1	Liquid	Amy McCaslin front desk manager Nicolas Coronado security manager John Ballesteros facilities J. Dietrich report writer Joseph Barr-Wilson
192.	5-25-16	12:56 a.m.	1605V-5069		Lobby 1	Slip and fall earlier in day approx. 6:49	Ay McCaslinn front desk manager Nicholas Coronado security manager John Bullestoros facilities

193.	7-7-16	12:15 p.m.	1607V-1506	Lobby 1	Slip and fall. Large wet area	J. Dietrich report writer Eve Gizelbach EMT security officer Joseph Barr-Wilson security officer
194.	7-15-16	11:25 p.m.	1607V-3405	Lobby 1	Slip and fall. Ice cream on floor	Jacob Johnson security manager Michael Chrene security officer R. Overfield report writer Raphel Chavez facilities Tim Alvonellos security shift manager Jonathan Derfeth front desk manager J. De Jesus report writer David Cabada EMT security officer Loren Harper security officer Rosa Estela facilities
195.	8-5-16	11:07	1608V-0995	Casino	Slip and fall. Wet spill extended entire length of pit 9 guest walked into wet area and slipped and fell	Anthony Bersano asst. security manager Nathan Beyers front desk manager D. Cabada report writer Joseph De Jesus EMT security officer Dale Keezer field training officer Amber Platt security officer Laterrious Robinson field training officer Eddie Hinton facilities
196.	8-5-16	5:04 p.m.	1608V-0947	Lobby 1	Slip and fall. Large pool of water	Tim Alvonellos security shift manager Monique Heng front desk manager J. De Jesus report writer Justin Vasquez security officer David Cabada EMT security officer Shane Naema facilities

EXHIBIT “U”



DCRR

FARHAN R. NAQVI

Nevada Bar No. 8589

SARAH M. BANDA

Nevada Bar No. 11909

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naqvi@naqvilaw.com

sarah@naqvilaw.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ANGELICA BOUCHER, individually,

Plaintiff,

vs.

VENETIAN CASINO RESORT, LLC d/b/a
VENETIAN RESORT HOTEL CASINO
d/b/a THE VENETIAN d/b/a THE
VENETIAN/THE PALAZZO; LAS VEGAS
SANDS, LLC d/b/a VENETIAN RESORT
HOTEL CASINO / PALAZZO RESORT
HOTEL CASINO d/b/a THE VENETIAN
CASINO d/b/a VENETIAN CASINO
RESORT; LAS VEGAS SANDS CORP.;
DOES 1 through 100 and ROE
CORPORATIONS 1 through 100, inclusive,

Defendants.

Case No.: A-18-773651-C

Dept. No.: X

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION**

HEARING DATE: June 14, 2019

HEARING TIME: 9:30 a.m.

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

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

I.

FINDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II.

RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

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

1 IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce ^{Cap} maintenance and/or
2 training materials and policies and procedures for the employees responsible for inspection the
3 Walking Surface on the day of the incident at issue (Request No. 24).
4

5 IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce
6 citations, warnings, reprimands, and/or code violations Defendant received concerning the
7 subject lobby flooring in the Premises in the five years preceding the subject Incident through
8 the present. If no such documentation exists, the Defendant must state that no such
9 documentation exists (Request No. 25).
10

11 IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce
12 documents and items evidencing any inspection, maintenance and/or cleaning performed on the
13 Walking Surface in the subject lobby during the 24-hour period prior to the Incident through the
14 24-hour period after the subject Incident including but not limited to, any maintenance logs
15 (Request No. 29).
16

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

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

26 ///



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

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

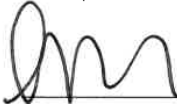
6 DATED this 5th ^{July} day of ~~June~~, 2019.

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9 DISCOVERY COMMISSIONER

10 Respectfully Submitted by:

11 NAQVI INJURY LAW

12 
13

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

Approved as to Form and Content by:

MESSNER REEVES LLP

21 refused to sign
22

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

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NOTICE

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

Objection time will expire on July 23 2019.

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

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

✓ Electronically filed and served counsel on July 9, 2019, Pursuant to N.E.F.C.R. Rule 9.

By: 
COMMISSIONER DESIGNEE

EXHIBIT “V”

REGISTER OF ACTIONS

CASE NO. A-18-772761-C

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

§
§
§
§
§
§

Case Type: **Negligence - Premises
Liability**

Date Filed: **04/12/2018**

Location: **Department 25**

Cross-Reference Case Number: **A772761**

PARTY INFORMATION

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

Lead Attorneys
Michael A Royal
Retained
7024716777(W)

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

Michael A Royal
Retained
7024716777(W)

Plaintiff Sekera, Joyce

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

EVENTS & ORDERS OF THE COURT

06/26/2019 **All Pending Motions** (9:00 AM) (Judicial Officer Truman, Erin)

Minutes

06/26/2019 9:00 AM

- Defendants' Motion to Quash Plaintiff's NRCP 45 Subpoena Duces Tecum Served Upon David Elliot, PE and for Protective Order on an OST Venetian Casino Resort, LLC and Las Vegas Sands, LLC's Motion to Strike Witness Gary Shulman and for Appropriate Sanctions Mr. Royal stated Gary Shulman was a 14 year employee of Venetian as a Table Games Supervisor, and he was near the scene of the slip and fall. Mr. Royal spoke with Mr. Shulman during the course and scope of Mr. Shulman's employment. Mr. Royal was not aware that Mr. Shulman was terminated January 2019, but Plaintiff advised Mr. Royal of the possible change in employment. Mr. Royal addressed Mr. Shulman's conversations with Mr. Royal and then with Mr. Galliher. Because of the circumstances with Mr. Galliher, Mr. Royal must waive the attorney client privilege to cross examine Mr. Shulman. Mr. Royal requested Mr. Galliher be dismissed as legal counsel in this case, or Dismiss the case. Commissioner stated Mr. Galliher's representation is not before the Commissioner today. Upon Commissioner's inquiry, Mr. Galliher argued Mr. Royal stated Gary Shulman was no longer employed by the Venetian, so Mr. Galliher Subpoenaed Mr. Shulman. The conversation between Mr. Royal and Mr. Shulman was not privileged, and Mr. Shulman is a percipient witness. In Commissioner's opinion, in order to proceed under Rule 49.015 regarding an allegation that counsel was supporting perjury, an Evidentiary Hearing before the Judge is needed to determine whether or not that occurred. Colloquy regarding Mr. Han's deposition testimony. Mr. Galliher stated Mr. Han's communication was privileged because he is the Head of Housekeeping, and Mr. Shulman was a Table Games Supervisor in a casino. Argument by Mr. Royal. In this case, Commissioner made it clear to allow someone to testify under Rule 49, there must be an Evidentiary Hearing before the Trial Judge. Commissioner stated Mr. Shulman was testifying as a percipient witness to what he observed being close to the incident. COMMISSIONER RECOMMENDED, Venetian Casino Resort, LLC and Las Vegas Sands, LLC's Motion to

Strike Witness Gary Shulman and for Appropriate Sanctions is DENIED; alternative relief provided, and for the purpose of discovery, Mr. Shulman's deposition testimony is allowed, and Commissioner leaves it to the District Court Judge whether there will be a Motion in Limine on the conversations between counsel. Based on the case law before Commissioner, Commissioner's position was the conversations were not privileged. Mr. Royal requested leave to take Mr. Shulman's second deposition. Argument by Mr. Galliher. COMMISSIONER RECOMMENDED, Mr. Shulman's second deposition can be re-noticed with a certain amount of latitude as discussed. Mr. Royal stated Mr. Elliot is not an expert in this case. Arguments by counsel. COMMISSIONER RECOMMENDED, Defendants' Motion to Quash Plaintiff's NRCP 45 Subpoena Duces Tecum Served Upon David Elliot, PE and for Protective Order is GRANTED IN PART; Mr. Elliot can be Subpoenaed and Deposed to the extent he has ever been disclosed as a testifying expert in any case on behalf of the Venetian, and Mr. Elliot's reports and deposition testimony as an expert for Venetian must be DISCLOSED to Plaintiff's counsel; everything else is PROTECTED; expert disclosures are CLOSED, and Mr. Elliot will not be disclosed. Any knowledge beyond what he's previously done, and disclosed as having done by Venetian goes to the claims and defenses in this case; the Recommendation includes Mr. Elliot's testimony and reports on behalf of Plaintiff. Argument by Mr. Galliher; the information is relevant to the punitive damages claim. COMMISSIONER RECOMMENDED, the Recommendation STANDS. Upon Mr. Royals' inquiry, the Recommendation is LIMITED to marble floors. Mr. Royal to prepare the Report and Recommendations, and Mr. Galliher to approve as to form and content. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.

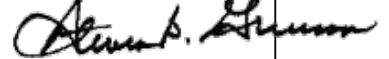
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**DISTRICT COURT
CLARK COUNTY, NEVADA

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8/5/2019 4:14 PM
Steven D. Grierson
CLERK OF THE COURT



Joyce Sekera, Plaintiff(s)

Case No.: A-18-772761-C

vs.

Venetian Casino Resort LLC, Defendant(s)

Department 25

NOTICE OF HEARING

Please be advised that the 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 in the above-entitled matter is set for hearing as follows:

Date: September 06, 2019

Time: 9:00 AM

Location: RJC Level 5 Hearing Room
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Chaunte Pleasant
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Chaunte Pleasant
Deputy Clerk of the Court