

1 foreseeable conditions are there.

2 Q. How about ANSI? First of all, the  
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

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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

1 she's probably six, seven, eight feet into the  
2 vestibule at the time it occurred.

3 Q. What is your recommendation in terms of  
4 any areas similar to the vestibule area, how far should  
5 the carpet extend that you think the casino should be  
6 putting down if they don't have someone right there to  
7 immediately clean up any spills?

8 MR. ZIMMERMAN: That mischaracterizes his  
9 testimony because he hasn't said that it's only carpet  
10 that needs to be there.

11 BY MR. McGRATH:

12 Q. You know what, I understand that --  
13 If I use the term "mat," would you be more  
14 comfortable with that? Is that more all-encompassing  
15 in terms of putting something down, other than  
16 something --

17 I understand ceramic tile is a different  
18 flooring material than marble, but if you're going to  
19 use marble -- I know Mr. Moffott said this, and I think  
20 it's your opinion, that it's okay to use marble as long  
21 as you put mats, carpet or something, the equivalent of  
22 that type of a mat down, right?

23 A. If you're going to insist on using marble  
24 in the vestibule, you have to do something, and the  
25 easiest thing to do would be to put down mats and



1 runners.

2 Q. But is it your opinion that you have to  
3 put down mats and runners over every section of marble  
4 flooring in the property or just near the entrances?

5 A. That's up to the discretion of the hotel.  
6 I mean, whatever they're comfortable with, if they  
7 think they can police that area.

8 I would think that a spill would be more  
9 recognized if it happened in the actual foyer beyond  
10 the vestibule because we've got people that work for  
11 the hotel right there.

12 But that's still no guarantee because,  
13 again, in this case we had someone break her hip and  
14 laying on the floor for 10 to 15 minutes before anybody  
15 even came to help her, and that's an emergency  
16 situation.

17 A little spill on the ground, I don't  
18 think anybody would really take that seriously until  
19 someone breaks their hip.

20 Q. You don't have any information about how  
21 long the vomit was on the surface before the plaintiff  
22 slipped on it, correct?

23 A. I do.

24 Q. Oh, you do?

25 A. Yeah.

1 Q. What is that information?

2 A. It's about -- from the videotape, I saw  
3 the woman vomit in the video.

4 Q. Okay. How much time elapsed -- based on  
5 what you reviewed in the videotape, how much time  
6 elapsed between the time the woman got sick and Ms.  
7 Farina came along and slipped?

8 A. It was a short amount of time. It was a  
9 little less than a minute.

10 Q. Your October 13 report indicates that you  
11 came back to the property on April 1, 2008. What was  
12 the purpose of that second visit?

13 A. When I went back out there the second  
14 time -- and it is April 1 -- was just to look at it at  
15 night in the conditions that were present supposedly at  
16 the time, and just to get an idea of that.

17 I took some pictures, tried to get  
18 pictures that looked like that, but you really can't  
19 take photographs at night, particularly color  
20 photographs, and say at all that they represent what a  
21 person may or may not see because film and digital  
22 cameras are all color adjusted for sunlight, which is a  
23 broad spectrum. It has all sorts of different colors.

24 If your area is, say, lit by sodium  
25 lights, the film will look different.

1 Q. What time in the evening did you visit the  
2 property on April 1?

3 A. It was -- I don't remember specifically,  
4 but it was dark. It was fully nighttime.

5 Q. Assuming you could tell who was an  
6 employee of Caesars Palace, did you see anything that  
7 indicated to you that there was an employee stationed  
8 at that vestibule entrance that you visited on April 1?

9 A. No. There was no employee there that I  
10 saw.

11 Q. And when you reviewed the DVD of the  
12 incident -- now I understand that you reviewed the  
13 video at least a minute before her slip and fall -- how  
14 much total time on the video did you review?

15 A. Well, I reviewed it all at once just to  
16 make sure I got everything, but I focused primarily on  
17 the time of the vomit and the time when Ms. Farina was  
18 walking up to the entry vestibule, entering the entry  
19 vestibule and falling. That was the area I  
20 concentrated on.

21 Q. Did you observe depicted in the videotape  
22 someone who you believed to be an employee or who you  
23 assumed to be an employee of Caesars Palace in the area  
24 anytime before Mrs. Farina's slip-and-fall incident?

25 A. I didn't look for it with that -- in that

1 respect, but I didn't see anybody that clearly looked  
2 like a casino employee to me.

3 Q. And am I correct in assuming that you  
4 didn't attempt to review the video to the extent it  
5 depicts time anytime five minutes or further back  
6 before the incident occurred?

7 MR. ZIMMERMAN: It assumes that that was  
8 provided.

9 MR. McGRATH: I understand.

10 THE WITNESS: I don't remember how much  
11 was provided beforehand, but I know that I didn't have  
12 to go very far to the point where the lady threw up.

13 BY MR. McGRATH:

14 Q. Okay. The 88 photographs that you  
15 reference on page 2 of your October 13 report, Bullet  
16 Point Item No. 4 regarding your surveys of the other  
17 casinos -- I don't want to look through all 88 of them  
18 right now -- I just want to know, when you took a  
19 photo, was it to document whether there was or wasn't  
20 some type of slip-resistant material?

21 A. Yes. It was to show the entryway, and as  
22 you can see, my notes are somewhat chicken scratch  
23 because they're just notes to remind me of what's going  
24 on, but the real proof is in the pictures.

25 Q. And you took a picture of every area you

1 visited on the casinos that are listed in Exhibit 41?

2 A. Yes, sir.

3 Q. I think we already discussed this, but you  
4 reviewed provided specifications and bid forms prepared  
5 by Allard & Conversano Design. That's the specs we've  
6 already discussed that are in your folder, correct?

7 A. Yes, sir.

8 Q. And you haven't reviewed anything that's  
9 not in the folder that came from Allard & Conversano  
10 Design?

11 A. No, sir.

12 MR. ZIMMERMAN: Can we go back one second?  
13 You had asked questions about what standards he had  
14 reviewed, and he started to give testimony about that,  
15 and then you've gone now to a different subject.

16 I just wanted to make sure whether you had  
17 finished your answer on that, because I know he  
18 interrupted you. Were there any other standards that  
19 you had in your book?

20 THE WITNESS: Well, yes. I have quite a  
21 few standards that I've copied.

22 MR. ZIMMERMAN: Okay. So he can, if he  
23 chooses to, ask you questions about that.

24 BY MR. McGRATH:

25 Q. And these are standards that apply to a

1 wet test?

2 A. Yes.

3 Q. I will get to that.

4 A. Okay.

5 MR. ZIMMERMAN: I just wanted to make sure  
6 that you didn't then ask him, "Well, have you told me  
7 everything," because I think that's what you tend to  
8 do.

9 BY MR. McGRATH:

10 Q. You indicated that you reviewed a  
11 transcript of the deposition of Donald Trujillo. First  
12 of all, was that important to you in any respect in  
13 terms of the opinions you're going to offer at trial?

14 A. Let me take a look at my notes for a  
15 minute and make sure.

16 It's not essential to my opinions. It's  
17 just basically he's the director of public areas, and  
18 he indicated that the site would be dust mopped three  
19 times a day.

20 He's been there since the Augustus Tower  
21 opened. He's aware of other slip-and-fall incidents  
22 that have occurred in the vicinity of the subject  
23 incident. Things of that nature.

24 But as far as anything of the meat of my  
25 opinions, no.

1 Q. Is the same true in terms of you've  
2 indicated you reviewed the deposition of Richard  
3 Duclos, D-u-c-l-o-s.

4 A. I understand that he's a surveillance guy,  
5 and he just basically said that he had footage on  
6 Camera 2102, that he couldn't say if any other camera  
7 was checked by someone other than himself.

8 He says that he saw Caesars employees put  
9 down mats when it rains outside, along with wet floor  
10 signs.

11 He says unfortunately guests frequently  
12 spill liquid on the flooring surfaces throughout the  
13 premises. Vomit is not as common.

14 Just basically -- nothing that's really  
15 substantial to my opinions, but as I said, the people  
16 are aware that slip and falls occur and that people  
17 spill drinks. It doesn't take a genius to know that  
18 that's going to happen in this environment.

19 Q. Let's turn to page 3 of your October 13  
20 report, under the section with the heading  
21 "Discussion." Would it be easier if I gave you this  
22 copy, instead of turning that thing around?

23 A. Sure.

24 Q. I'm going to read the very first sentence.  
25 "The three described test areas proved to not provide

1 slip resistance consistent with the industry accepted  
2 minimum required value of 0.50 when contaminated with  
3 tap water."

4 I think we've kind of discussed this  
5 already, but I want to make sure I understand if  
6 there's any additional reason why you're using the word  
7 "required" as opposed to "recommended."

8 A. Because I know what's required to keep  
9 people from slipping.

10 Q. Okay. As an engineer, in other words, you  
11 know that if there's water or any liquid on marble  
12 flooring, it's going to be slippery. Is that what you  
13 mean by that?

14 A. Well, I didn't go in there with that  
15 immediate assumption. I did the testing to prove it,  
16 but yeah, I would say that any marble that's not  
17 treated in a manner that I've described in my report  
18 will not be slip resistant when wet.

19 Q. What written or codified industry accepted  
20 minimum required value requires 0.50?

21 A. Well, there's OSHA standards that require  
22 0.50 when wet. There's -- and, you know, it sort of  
23 falls under the blanket because you don't want to --  
24 you don't want to limit it.

25 You have to have the foreseeable



1 conditions, and it's got to be slip resistant. The  
2 definition of "slip resistant" is clearly defined. I  
3 understand it completely.

4 Q. Let me ask a better question.

5 What written or codified standards  
6 expressly state that marble flooring must meet a 0.50  
7 slip-resistant standard?

8 A. There is nothing that says that marble  
9 flooring has to meet specifically 0.5, but that's the  
10 number, as I said, that's been accepted by the U.S.  
11 court systems for over 50 years. No one has ever  
12 challenged it.

13 It's the number that's been accepted by  
14 professionals in the pedestrian safety industry, and  
15 it's not based -- it's not a number that's just grabbed  
16 out of nowhere. It's a scientific number.

17 Q. Well, when you say it's been accepted by  
18 the U.S. court systems, what do you mean by that? On  
19 the cases you've testified at trial, the juries decided  
20 that that's the standard or the judges decided?

21 A. No. It's the number that's always been  
22 accepted. If you -- just like primary perception and  
23 reaction for an automobile accident is accepted at 1.5.  
24 Nobody challenges that.

25 Q. We're not going to do this very long, but

1 in law school I learned that you either get laws out of  
2 statutes or cases or there's things called standard of  
3 care.

4 There's no case law that you're relying on  
5 that says 0.50 is the accepted standard, right?

6 A. Well, there is things, but not  
7 specifically marble floors. That's what you asked  
8 about.

9 So if you want -- if you're looking for a  
10 statement that says "Marble floors, 0.5, wet," you're  
11 not going to find that.

12 Q. On the second paragraph of your report,  
13 you write, "Because the depth between the inner and  
14 outer doors of the vestibule was only approximately  
15 12.5" --

16 Is that --

17 A. Feet.

18 Q. -- "feet, Ms. Farina would have had little  
19 chance to visually notice the vomit, as it would have  
20 been well beneath her Frankfort plane as she focused  
21 upon the inner door, which would have been her next  
22 visual target as she entered and began to transverse  
23 the vestibule."

24 As I read this sentence, the first thing  
25 that comes to mind is that it seems that you were

1 offering opinions that are outside the scope of your  
2 expertise, and what I mean specifically is you're  
3 assuming where she would be looking.

4 MR. ZIMMERMAN: That's argumentative.  
5 He's a human factors biomechanical expert.

6 BY MR. McGRATH:

7 Q. That's what I want you to explain to me.  
8 Does part of the field of biomechanics include how  
9 people walk?

10 A. Absolutely.

11 Q. Where their eyes are directed when they're  
12 walking?

13 A. Absolutely.

14 Q. Other than looking at the video, what  
15 other information are you relying upon to form the  
16 opinion that her field of vision would not have been  
17 directed at the spill area when she entered the  
18 vestibule area?

19 A. Well, you could find that in any book on  
20 human factors that deals with the way people take  
21 information with their eyes, and it's simply that you  
22 have what's called a cone of vision.

23 And people always think of peripheral  
24 vision as just being far left and far right, but you  
25 also have peripheral vision high and low, and in order

1 to see something in your peripheral vision, it has to  
2 have great contrast.

3 And people, when they walk, they look out.  
4 They don't -- especially if they have a new target, the  
5 handle at the next door they're going to grab. They  
6 don't walk looking at their feet.

7 So you have what's called the Frankfort  
8 plane that sort of defines your lower peripheral  
9 vision, and it's basically a line that goes from your  
10 ear hole to the bottom of your orbit, and anything  
11 that's below that is going to be in your peripheral  
12 vision. It's going to require very high contrast,  
13 usually motion, for you to detect it.

14 When you walk in the door, that door is  
15 tinted, and you can't really see anything through that  
16 door when you open it.

17 Now you've opened it and you've got 12  
18 feet before the next door. If you're walking normally,  
19 you're going to focus out in the distance. You're not  
20 going to look at your feet. Or you're going to focus  
21 right where you're going to grab.

22 And you can figure out where a person's  
23 peripheral vision starts and where their central vision  
24 starts based on how tall they are and the Frankfort  
25 plane and how far that Frankfort plane will extend.

1                   Anything that's below that, a person is  
2 not likely to perceive unless it is in high contrast.

3           Q.     When you reviewed the video surveillance  
4 DVD, were you able to discern the color of the marble  
5 flooring where the spill area was?

6           A.     I don't recall that I could discern one  
7 way or the other. I wasn't looking to see if I could  
8 discern that.

9           Q.     Were you able to discern where the spill  
10 was?

11          A.     No, I couldn't see where the spill was.

12          Q.     Is that part of the reason you're assuming  
13 there was no -- I think your word was there was no  
14 contrast between the vomit and the marble flooring?

15          A.     Well, no, that's not my reasoning. I  
16 mean, I know what color the flooring was, and I'm  
17 assuming that this, being vomit, was probably from a  
18 lot of alcoholic drinks, so it was probably pretty much  
19 alcohol.

20                   But liquids don't show up that well on  
21 floors. A lot of times I'll do testing, and during the  
22 test, I'll take pictures of the test I'm doing, and  
23 it's very hard to see the water on the floor in my  
24 photographs.

25                   You'd have to have great contrast, like

1 stark white on top of the black, green on top of red,  
2 where everything is red and all of a sudden you've got  
3 a green spot, or something that's moving. Moving is  
4 the best contrast.

5 Q. This isn't water, though. We're talking  
6 about vomit. So you're not assuming it was colorless?

7 A. No, but I think it would be very hard to  
8 pick up. And the other thing is that it would never be  
9 in her central vision.

10 It -- she would never have the opportunity  
11 to look right at that and say, "Hey, that's vomit on  
12 the floor. I better watch out."

13 Q. Just so I understand, once she opens the  
14 door -- this is a hypothetical. Once she opens the  
15 door, where is her field of direction at that point?  
16 What I mean by that is, how many feet off in the  
17 distance is her field of vision?

18 A. Well, you can -- your eye is taking  
19 information for everything that you can see, but  
20 whether it actually perceives that and sends  
21 information to your brain on what it is depends on the  
22 strength of the signal.

23 In this case it's going to be the strength  
24 of the contrast. When she walks through that door, as  
25 I said, when that spill would be maybe within her

1 central vision, she's probably too far away for it to  
2 be in contrast.

3 And we know that the doors are tinted, and  
4 she comes into the door, and now with the next door,  
5 she will be focusing on where she's going to place her  
6 hand.

7 And if she wasn't doing that, she's still  
8 going to be looking off in the distance, and the spill  
9 is below that. Is it within her visual plane? Sure.  
10 But it's in her peripherals.

11 Q. When you say she's going to be looking off  
12 in the distance, how many feet off in the distance are  
13 you assuming most people in that situation would be  
14 looking?

15 A. They look quite a ways down, and it  
16 depends on their height.

17 Q. Twenty feet? She's only 4'11", correct?

18 A. Well, if we were to do the calculation --

19 Q. You're going to do a calculation for a  
20 4'11" person?

21 A. Yeah.

22 Q. Okay. Thank you.

23 (Discussion off the record.)

24 THE WITNESS: If you have a person that's  
25 4'11", their central vision is going to extend -- or

1 their peripheral vision will extend out about 17 to 25  
2 feet from where they're currently standing.

3 BY MR. McGRATH:

4 Q. Okay.

5 A. So anything that's less than 17 feet, you  
6 could be pretty sure that they won't pick it up unless  
7 it's in high contrast.

8 Q. Unless it's in their central vision?

9 A. Well, in order for it to be in their  
10 central vision, they would have to look down on the  
11 ground.

12 Q. If it was 12 feet in front of them, they  
13 wouldn't have to look right down at the ground.

14 I understand what you've been saying about  
15 the Frank -- is it the Frankfurt field of vision?

16 A. Frankfurt plane.

17 Q. Another way of asking these questions is  
18 to try to find out how far off in the distance that  
19 begins.

20 A. Right. And it could begin as close as --  
21 for a 4'11" person, it could begin as close as 17 feet.

22 Q. If you go down to the last paragraph of  
23 page 3 of your October 13 report -- and we've talked  
24 about these already, the specs and bid forms in your  
25 file from Allard & Conversano Design. In your report,



1 you say that those documents indicate that the flooring  
2 must be tested to meet a 0.6 wet coefficient of  
3 friction.

4 MR. ZIMMERMAN: You misstated it. It said  
5 must be treated. You said tested.

6 BY MR. McGRATH:

7 Q. I'm sorry. Must be treated. I agree.

8 Can you find for me the exact  
9 specifications that you're relying on to support your  
10 opinion that the project specifications required the  
11 marble flooring to meet a 0.6 wet coefficient of  
12 friction?

13 A. Well, it's exactly what it says. It's the  
14 documents that I reviewed from Allard & Conversano  
15 Design. I have to take all these pictures out.

16 Q. What I'm really trying to get at is, is  
17 there just one spec or is there more than one that says  
18 that?

19 A. Well, they all basically say it. It just  
20 says -- under "Notes," it says, "Stone flooring must be  
21 treated to meet .6 wet coefficient of friction ADA.  
22 Finish may require adjustment and/or slip-resistant  
23 topical post-installation procedure.

24 Q. And you don't know if that was actually a  
25 part of the approved set of plans and specifications?

1 You're assuming that, correct?

2 A. Well, I'm just reading what it says.

3 Q. No, I understand that, but what you're  
4 reading, you don't know if that was a part of the  
5 approved plans and specifications for the project?

6 A. No, I don't know, but --

7 MR. ZIMMERMAN: If you had produced those,  
8 then he may.

9 MR. McGRATH: It's a speaking objection.

10 THE WITNESS: That's what I was going to  
11 say, is just that this is what these documents said,  
12 and if there's other documents that have greater weight  
13 than these, they probably should have been provided  
14 with the disclosure of documents.

15 This is what I'm relying on. I didn't use  
16 it for any of my opinions whether the floor was safe or  
17 not. I'm just saying that the person who made out this  
18 form was aware of what the ADA recommendation is, and  
19 they understand that those areas could become wet, and  
20 those are foreseeable conditions, so, therefore, they  
21 would have to be in a wet condition.

22 BY MR. McGRATH:

23 Q. Well, you believe that the marble flooring  
24 can't pass that standard, correct?

25 A. That's not what I said. I said you'd have

1 to etch it. You'd have to do something. The marble  
2 the way it is, it will never pass unless you do  
3 something to it.

4 Q. When you etch it, what does it typically  
5 look like after you're done etching it?

6 A. It's dull, a matte finish. It's not as  
7 aesthetically pleasing, but are we talking about  
8 aesthetics or safety?

9 Q. Well, is it your opinion that if this is,  
10 in fact, what Allard & Conversano was requiring, that  
11 it was negligent on their part to do so because marble  
12 flooring can't pass that criteria unless you etch it,  
13 as you've described?

14 A. I mean, what they're saying is that finish  
15 may require adjustment and/or slip-resistant topical  
16 post-installation procedure, so they're recognizing  
17 that -- well, they're saying it may not meet this, but  
18 I think they probably know it's not going to.

19 Q. If you wrote that, you wouldn't use the  
20 word "may," would you? You'd say "definitely will  
21 require"?

22 A. I wouldn't have written this thing in the  
23 first place. I wouldn't have recommended marble.

24 Q. That's where I'm going. You think it's  
25 negligent for a designer to recommend marble in a

1 public accomodation building like this one unless they  
2 say you've got to put carpets and mats down?

3 A. No. I think you have to consider the  
4 area, and in this case we have an entry vestibule that  
5 has no surveillance within it. You can't see through  
6 it.

7 The only way that hotel management is  
8 going to find out about a spill that's in there is if  
9 the person that created the spill told them or somebody  
10 else walked in and noticed it.

11 And I wouldn't think anybody is going to  
12 notice it walking through there except for the person  
13 that vomited, until somebody falls on it, and in that  
14 area you're going to have falls when spills occur.

15 You know, you look at all those documents  
16 that I was provided for other instant reports involving  
17 falls, and almost every one of them, it says  
18 specifically occurred on a wet surface. There's some  
19 that doesn't say one way or the other, but --

20 Q. It doesn't surprise you, does it?

21 A. What's that?

22 Q. That it occurs on a wet surface.

23 A. No. That's my whole philosophy, that dry  
24 surfaces are not slippery. Wet surfaces can be,  
25 depending on their surface disparities.

1 Q. But most people know wet marble is going  
2 to be slippery?

3 A. If it's shiny, smooth marble, yeah, it's  
4 going to be slippery, but you'd have to have the  
5 foreknowledge that it's wet.

6 Q. You didn't review any documents that  
7 indicated one way or the other whether the marble  
8 flooring was tested by the flooring contractor after it  
9 was installed, to meet the Allard specification?

10 A. No, I didn't see that, but if there's  
11 somebody out there that says that it did, I will say  
12 they're a liar.

13 Q. Let's assume hypothetically that somebody  
14 tested it and it did pass the test. Would the owner  
15 have to do anything in terms of maintenance to maintain  
16 the slip resistance of the original installation?

17 I guess it's not a fair hypothetical  
18 because you already assume there's no way it's going to  
19 pass the test, but assuming it did immediately after  
20 it's constructed, would you expect the slip resistance  
21 to fade or wear away?

22 A. Again, it depends. There's a lot of  
23 factors. If -- for example, limestone could start  
24 off -- this isn't limestone, obviously, but it could  
25 start off smooth, and as people walk on it and water

1 gets on it, it becomes actually more rough.

2           There might be some things that may become  
3 more polished and you actually wear away the surface  
4 disparities with your feet almost like you're honing  
5 it.

6           Q.     Would you recommend to any architect that  
7 was going to specify marble flooring in a public  
8 accomodation that it not only be tested after  
9 installation, but every six months, every three months,  
10 to ensure that it has maintained its slip resistance?

11          A.     Well, I think you have to start at the  
12 beginning. I would never recommend marble for this  
13 area.

14                 But if -- and if my clients -- if I was a  
15 marble installer or a floor installer, which I'm not,  
16 and a client said, "I want marble in this entry  
17 vestibule," I'd say, "It's against my conscience. I  
18 can't put it in there, unless we totally dull it down  
19 and make it look kind of ugly, or I could recommend  
20 other things you could put in there, but I would not  
21 install marble in that specific area."

22          Q.     You don't know one way or another whether  
23 the owner asked for marble or it was proposed by a  
24 designer or contractor?

25          A.     It's of no issue to me.

1 Q. But in your mind, any of the designers  
2 that are involved in either suggesting marble flooring  
3 or approving the suggestion by somebody else are doing  
4 something you wouldn't recommend?

5 A. Well, for that area, yeah, but I think  
6 that the person that wrote this out had some knowledge  
7 of pedestrian safety, and I think that they were  
8 covering their butt by saying that the finish may have  
9 to be treated and taken care of.

10 Because I think anybody that cares about  
11 pedestrian safety is going to know that shiny marble is  
12 not going to be slip resistant under contaminated  
13 conditions.

14 Q. Have you reviewed the report by the  
15 defense experts, S.C. Wright Construction, regarding  
16 their dry testing --

17 A. I have.

18 Q. -- of the vestibule area?

19 A. I have.

20 Q. Do you recall their conclusions or  
21 opinions as to why wet testing should not be the  
22 applicable standard?

23 A. Because they don't know what they're  
24 talking about.

25 Q. I understand.

1                   What I want you to do is tell me why you  
2 disagree with their opinions and conclusions in that  
3 regard.

4           A.     Let me get down here to the report.

5           Q.     Do you have that in there? Because I  
6 don't have an extra copy. I think what we're focusing  
7 on is the last paragraph of the first page continuing  
8 on to the second.

9           A.     I'd like to start off by saying if they  
10 think they're going to argue with me about this stuff,  
11 they're barking up the wrong tree because, number one,  
12 I was taught directly by William English how to use the  
13 English XL. I am certified. They're not. They were  
14 not taught by William English. They're not a member of  
15 F13.

16          Q.     What is F13?

17          A.     It's Pedestrian Walkway Safety and  
18 Traction. It's a division of ASTM. And the guy is a  
19 member of ASTM, but he's in construction, not  
20 pedestrian safety.

21                   Also, I've been the chairman of the  
22 standard that governs the English XL. I've written  
23 standards for pedestrian safety for ASTM.

24                   We'll just get down here to --

25          Q.     That's something different than what I'm



1 looking at. Why don't I give you my copy. What I want  
2 you to do is review the beginning of this last  
3 paragraph on page 1 of their December 3, 2008, report,  
4 which I see you have a December 31. So this is a  
5 preliminary that I'm looking at.

6 MR. ZIMMERMAN: I'd like to see the one  
7 that wasn't produced that you have.

8 BY MR. McGRATH:

9 Q. Take a look at it. You guys can make  
10 copies afterwards.

11 A. Okay. What was your question?

12 Q. My question is, they're saying that you  
13 cannot use the wet test because you're -- they're  
14 explaining that it is William English, inventor of the  
15 English 40 and author of the book "Pedestrian Slip  
16 Resistance, How To Measure It and How To Improve It,"  
17 defines SCOF as "The force required to initiate  
18 relative motion between an object and a surface it is  
19 in intimate contact with. It is inherent that the two  
20 surfaces must be in direct contact with each other. If  
21 there is anything on the interface, you are not  
22 measuring SCOF. One cannot take an SCOF reading on a  
23 wet floor. It is for this reason that recent ASTM  
24 standards for SCOF measurements specify dry conditions  
25 only."

1           The way I understand that is they're  
2 saying if there's liquid between your measuring device  
3 and the floor, you're putting something in between and  
4 then you're not getting a true measurement.

5           A.     What they've done is -- they're either  
6 intentionally trying to mislead the reader or they  
7 don't know what they're talking about, because they  
8 just took a small snippet that kind of meets what  
9 they're trying to say.

10           I agree with that. I agree that if you  
11 are measuring a dry surface with the English XL, that  
12 you're measuring SCOF.

13           I agree that if you have anything in  
14 between preventing intimate contact between the two  
15 surfaces, you're not testing SCOF.

16           That's why in the beginning I said we're  
17 testing slip resistance. SCOF is for pacts. It's for  
18 people that aren't educated in this business.

19           We all know that SCOF has nothing to do  
20 with pedestrian safety because in order to measure  
21 SCOF, like you pointed out, the surface has to be dry.  
22 And dry surfaces are not slippery, so it's not even  
23 interesting to a person that's involved in pedestrian  
24 safety.

25           He goes on to say that -- he starts

1 talking about that when you measure it wet, that you're  
2 measuring DCOF. You're not.

3 Q. What is DCOF?

4 A. Dynamic coefficient of friction, and that  
5 has nothing to do with pedestrian safety either,  
6 because dynamic coefficient of friction is the measure  
7 of the force required to keep an object in sliding  
8 motion at a given acceleration or velocity once sliding  
9 has occurred.

10 Q. My question is not meant to be  
11 argumentative, but I'm asking it because you've  
12 testified that you have been involved in writing  
13 pedestrian safety standards for the ASTM.

14 A. That's correct.

15 Q. How come the ASTM standards, then, don't  
16 expressly state that the wet testing is the applicable  
17 standard for measuring the coefficient of friction?

18 A. There is nothing that says that that's  
19 what you're supposed to do except for the equipment  
20 that cannot measure anything wet.

21 Q. My question is, why not?

22 A. Well, there's a lot of reasons. I mean,  
23 if you want to get all into it -- there's equipment out  
24 there that's manufactured by people that want to  
25 continue manufacturing it, and it's only good for

1 testing dry surfaces, because in order to accurately  
2 meter a wet surface, you have to apply the vertical  
3 forces and the horizontal forces at exactly the same  
4 moment in time.

5           If you take and you set a test block down  
6 on a wet surface and then you test it, it's invalid  
7 because there's a phenomenon called stiction where  
8 there's a cohesion, and it gives you false high  
9 numbers.

10           That's why William English and  
11 Mr. Brungraber invented their machines, which do apply  
12 the forces, and those are the only two machines that  
13 are approved for wet testing.

14           I mean, it says specifically, "Do not use  
15 the HPS for wet testing. Do not use the Model 80.  
16 Don't use the Tortus," but what it does say is you can  
17 use the English XL or the Brungraber Mark III or II. I  
18 use the English XL.

19           Q. I want to make sure I understand  
20 something. So arriving at your opinions regarding the  
21 application of the wet testing to the marble flooring,  
22 I think we've already discussed, you're relying on the  
23 ADAAG manual?

24           A. Right.

25           Q. You're relying on ANSI?

1 A. Right.

2 Q. And ASTM?

3 A. Right.

4 Q. Anything else?

5 A. OSHA.

6 Q. What OSHA standard specifically?

7 A. OSHA 1926.754, Section C, paragraph 3.

8 And it says specifically that "You have to achieve a  
9 minimum average slip resistance of .5 when measured  
10 with an English XL tribometer or equivalent tester on a  
11 wetted surface."

12 Q. Why is that applicable to this case here?  
13 When I hear OSHA, I think of worker safety standards.

14 A. Well, it's another standard that's talking  
15 about pedestrian safety. I mean, you think that a  
16 person at a job has a greater right to safety than a  
17 guest at a hotel?

18 Q. It probably was a poor question. I mean,  
19 why do you believe OSHA applies to an owner building a  
20 casino -- well, not building a casino, but after the  
21 construction is complete, why is OSHA applicable to  
22 anything?

23 A. It's not directly applicable. It's a  
24 standard for occupational safety and health, but it's a  
25 standard that's out there that says specifically --

1 where your expert says there is no standard, that says  
2 wet testing or .5. It says exactly that. He's not  
3 aware of what standards are out there.

4           You know, we can stick our heads in the  
5 sand all we want and we can argue over .5. We can  
6 argue over .6. We can argue over slip resistance.

7           I use the definition for slip resistant  
8 that's accepted by ADA, by ANSI, by ASTM. And I know  
9 as a pedestrian safety expert, who is thoroughly  
10 involved in gait analysis, what is required to make a  
11 safe walking surface.

12           It does us no good to measure a surface  
13 dry and say this is a great surface when it's going to  
14 be wet sometimes and it's not so great then.

15           Q.    I understand your opinion and I understand  
16 your testimony. The only thing -- you keep saying  
17 "required," and I think we've established that those  
18 are all accepted standards that are recommended by ANSI  
19 and ADA.

20           A.    When I say "required," it's what I know to  
21 be the requirement to prevent people from slipping.

22           Q.    I understand.

23                    Okay. If you give me a moment, I just  
24 want to look through the file.

25                    And you said that your billings are not

1 included in here, correct?

2 A. No. I can provide those to you, though.

3 Q. What's your hourly rate for your work on  
4 this case?

5 A. It's the same as every case. It's 250 an  
6 hour and 350 an hour for testimony.

7 Q. Okay. And trial time?

8 A. It's 350 an hour.

9 Q. It's 350 also?

10 A. Well, the 350 an hour is specifically for  
11 the amount of time I'm sitting on the stand. All the  
12 rest, if I'm sitting in the hallway, it's 250.

13 Q. First of all, did you notice the plaintiff  
14 to have any discernible gait as she opened the door and  
15 before she actually slipped and fell?

16 A. Yeah. I read your medical doctor's  
17 report, and I noticed something there.

18 Q. Did you factor that in in terms of  
19 arriving at your opinions as to why she slipped and  
20 fell?

21 A. No, because if you have a Trendelenberg  
22 gait, you could likely have a greater traction demand,  
23 and that's why the ADA standard wants to pump it up a  
24 little bit. I'm not holding them to that. I'm only  
25 holding them to .5.

1 Q. Did you observe what looked like to you to  
2 be a Trendelen gait?

3 A. Trendelenberg?

4 Q. Yeah, sorry.

5 A. Maybe ever so slightly. What we have  
6 is -- there's two types of gait analysis you can do.  
7 There's observational gait analysis, and there's  
8 scientific gait analysis.

9 Scientific gait analysis involves kinetics  
10 and kinematics that are determined from a force plate  
11 and motion capture systems, whereas observational gait  
12 analysis is where you do nothing more than watch a  
13 person walk.

14 Q. That's all you could do here, right?

15 A. Right. And we're kind of at a little bit  
16 of a disadvantage in that observational gait analysis  
17 should be done from directly behind a person, and  
18 obviously you wouldn't want that person to be carrying  
19 anything. She's got a bag in her -- or something in  
20 her right hand.

21 But what I can see there is that if there  
22 is a slight waddling, it's on the right side, and what  
23 would that indicate is that when she's walking, when  
24 she's in stance phase with her right leg, it looks like  
25 her body leans ever so slightly to the right, and then



1 when she's in stance with the left, it returns to  
2 vertical.

3 And what that would indicate is that she  
4 has a deficiency in her hip abductors on her right  
5 side.

6 Now, it's ever so slight because it's  
7 almost imperceivable, and it could be caused by her  
8 carrying that bag on the right side.

9 But in this case she fractured her left  
10 hip. The left hip is the dominant hip, if you look at  
11 the video. Her left hip is the good hip, prior to the  
12 accident.

13 Q. What you observed relating to her right  
14 hip or maybe related to the slight gait you observed,  
15 was that a factor that caused her to slip?

16 A. It may have been. I don't know.

17 Q. You don't know. How about the fact that  
18 she's holding -- I believe she's holding a drink, but  
19 she's holding an item other than just having the purse  
20 or the bag around her right shoulder. She's also got  
21 an item in her right hand.

22 A. Well --

23 Q. Correct?

24 A. She's got a -- she had a drink in her left  
25 hand.

1 Q. I apologize.

2 So you observe her to be holding a drink  
3 in her left hand, and then she had a bag around her  
4 right shoulder?

5 A. Okay. Just to straighten this up, I can  
6 observe the bag on her right shoulder. I can't observe  
7 anything in her left hand, but her deposition testimony  
8 was such that she said she had a drink in her left  
9 hand.

10 Q. Would the fact that someone was carrying a  
11 drink in a hand contribute to or increase the  
12 likelihood that they would slip and fall?

13 A. To my knowledge, there's been no studies  
14 done that indicate whether carrying a drink has any  
15 effect one way or another. I would think not.

16 The bag, it would depend on how heavy it  
17 is and a lot of other factors.

18 Q. So there's been no studies done on whether  
19 someone holding a drink is more or less likely to lose  
20 their balance?

21 A. Yeah, I would say that it would make no  
22 difference.

23 Q. Tell me, because you're an expert and I'm  
24 just as a layperson, it seems to me sometimes people  
25 try to avoid spilling a drink, and they might slip and

1 fall because they try to avoid spilling a drink. Is  
2 that something that's completely an unreasonable  
3 assumption?

4 MR. ZIMMERMAN: And might slip and fall on  
5 vomit? Incomplete hypothetical.

6 THE WITNESS: In this case we know that  
7 she slipped on vomit. I don't think a person would be  
8 too concerned about their drink unless they're on  
9 unsure footing.

10 I think if you have good traction  
11 underneath and you're walking in a normal manner, I  
12 think that your drink is probably pretty safe and so  
13 are you.

14 BY MR. McGRATH:

15 Q. But for someone who steps on a floor  
16 surface that's wet if they're holding a drink in one  
17 hand, in your opinion, does that make it more or less  
18 likely that they're going to fall?

19 A. It would be my opinion, just based on the  
20 things I know, that it probably wouldn't make any  
21 difference because you're most likely going to drop  
22 that drink once you begin to slip and fall.

23 Q. And we at least have established that you  
24 think or believe that her left hip was her good hip  
25 before the incident.

1 A. Oh, clearly.

2 Q. Did she slip on her right foot or her left  
3 foot, if you could tell?

4 A. Her left foot slipped.

5 Q. And you didn't observe her right foot to  
6 slip on anything?

7 A. No. It was during stance phase with her  
8 left foot that the slip occurred.

9 Q. And describe for me how she fell in terms  
10 of the mechanics, what you observed.

11 A. It's very hard to see exactly what  
12 happened, but from watching her walk and when she began  
13 to fall, it is evident to me that it occurred when the  
14 left foot was in stance, and it looked as if she fell  
15 to her left onto her left hip.

16 Q. When you say left foot was in stance, does  
17 that mean her left leg is extended straight?

18 A. No. It's on the ground and her right foot  
19 is in swing, was in the swing phase.

20 Q. I think that's all I have. I want to  
21 thank you for coming here today.

22 A. Okay.

23 Q. It looks like we went an hour and 35  
24 minutes, so could you give me, so we have it on the  
25 record, your tax ID number, if you have it handy?

1 A. Sure. I know it. It's 86-0884947.

2 Q. Thank you again. It's Dr. Elliot?

3 A. It's just David.

4 Q. Thank you for being here today.

5 MR. GOLDMAN: The plaintiff reserves the  
6 right to have Mr. Elliot review his deposition  
7 transcript and make any changes he desires to make.

8 BY MR. McGRATH:

9 Q. I'd just ask before we go off the record  
10 again that you maintain this file and that if you add  
11 anything to it, you indicate to counsel so that we know  
12 if there's anything else put into the file.

13 A. Okay.

14 MR. ZIMMERMAN: Are you going to give us a  
15 copy of that --

16 MR. GOLDMAN: Are we off the record? Are  
17 you done?

18 MR. McGRATH: Yes.

19 THE COURT REPORTER: Do you want a copy?

20 MR. GOLDMAN: No.

21 (Deposition Exhibit 41 marked.)

22 (Whereupon the deposition  
23 was concluded at 1:35 p.m.)

24

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DEPOSITION CORRECTION SHEET

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DEPONENT'S SIGNATURE:

STATE OF COUNTY OF

Subscribed and sworn to before me this day  
of , 2009.

NOTARY PUBLIC



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CERTIFICATE OF DEPONENT

I, DAVID ALLEN ELLIOTT, P.E., deponent herein,  
do hereby certify and declare the within and foregoing  
transcription to be my deposition in said action; that  
I have read, corrected, and do hereby affix my  
signature to said deposition.

DAVID ALLEN ELLIOTT, P.E.

Subscribed and sworn to before me this  
day of , 2009.

Notary Public

REPORTER'S CERTIFICATE

STATE OF NEVADA     )  
                              ) ss.  
COUNTY OF CLARK    )

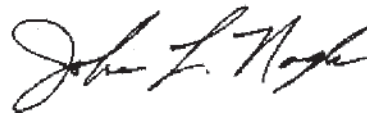
I, John L. Nagle, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify:

That I reported the taking of the deposition of DAVID ALLEN ELLIOTT, P.E., on Friday, February 13, 2009, commencing at the hour of 12:16 p.m. That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of my said shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in my office in the County of Clark, State of Nevada, this 21st day of February, 2009.



John L. Nagle, CCR 211



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# EXHIBIT “J”

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June 25, 2019

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**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 <sup>th</sup> 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 <sup>th</sup> 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

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May 20, 2019

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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 “K”



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15 Attorneys for Plaintiff

11 DISTRICT COURT  
12 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; LAS  
21 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 MOTION TO COMPEL  
TESTIMONY AND DOCUMENTS**

**HEARING REQUESTED**

26 Plaintiff hereby submits her Motion to Compel Testimony and Documents.

27 //

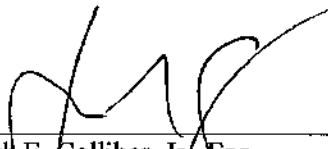
28 //



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  
28

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  
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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 Molser 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	Rucker v. Venetian Casino Resort (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 Ecnarneste 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 Alvanellos 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 Alvanellos 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 <sup>th</sup> 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	Rowan v. Venetian Casino Resort, LLC (A-17-751293-C).
46.	6-11-16		1606V-2353	Venetian Front Office	Puddle of water	Boucher v. Venetian Casino Resort, LLC (A-18-773651-C)

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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.")<sup>1</sup> It has

25  
26 <sup>1</sup> 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 "provide 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. Moseley*, 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



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

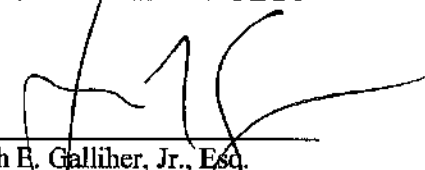
3 Because Venetian repeatedly violated the rules and court orders in numerous cases Plaintiff  
4 and the Court can no longer trust its promise that it has fully and fairly responded to discovery in  
5 "good faith" and abided by all Court orders. (Exhibit "14" at 5:12.) Venetian *chose* to engage in 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.

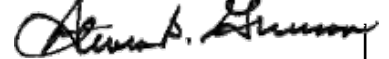
13 DATED this 1 day of July, 2019

THE GALLIHER LAW FIRM

  
\_\_\_\_\_  
Keith E. Galliher, Jr., Esq.  
Nevada Bar Number 220  
1850 E. Sahara Avenue, Ste. 107  
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# EXHIBIT “L”



1 **OPPS**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

4 Gregory A. Miles, Esq.

5 Nevada Bar No. 4336

6 **ROYAL & MILES LLP**

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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;

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.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

*Before the Discovery Commissioner*

Hearing Date: August 2, 2019

Hearing Time: 9:00 am

28 **OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL TESTIMONY AND  
DOCUMENTS AND COUNTERMOTION FOR PROTECTIVE ORDER AS TO  
PLAINTIFF'S REQUEST FOR PRODUCTION OF INCIDENT REPORTS FROM  
JANUARY 1, 2000 TO PRESENT, COUNTERMOTION TO COMPEL INFORMATION  
AND DOCUMENTS OF PRIOR INCIDENT REPORTS PROVIDED TO PLAINTIFF  
EXPERT THOMAS JENNINGS AND IDENTIFIED IN HIS MAY 30, 2019 REBUTTAL  
REPORT AND FOR LEAVE TO RETAKE THE JENNINGS DEPOSITION TO ADDRESS  
THE 196 PRIOR CLAIMS REFERENCED IN HIS REPORT**

ROYAL & MILES LLP  
1522 W Warm Springs Road  
Henderson NV 89014  
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1 COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS  
2 SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL &  
3 MILES LLP, and hereby file this OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL  
4 TESTIMONY AND DOCUMENTS AND COUNTERMOTION FOR PROTECTIVE ORDER AS  
5 TO PLAINTIFF'S REQUEST FOR PRODUCTION OF INCIDENT REPORTS FROM JANUARY  
6 1, 2000 TO PRESENT, COUNTERMOTION TO COMPEL INFORMATION AND DOCUMENTS  
7 OF PRIOR INCIDENT REPORTS PROVIDED TO PLAINTIFF EXPERT THOMAS JENNINGS  
8 AND IDENTIFIED IN HIS MAY 30, 2019 REBUTTAL REPORT AND FOR LEAVE TO RETAKE  
9 THE JENNINGS DEPOSITION TO ADDRESS THE 196 PRIOR CLAIMS REFERENCED IN HIS  
10 REPORT.  
11

12 This Opposition and Countermotion is based on the pleadings and papers on file, the  
13 memorandum of points and authorities contained herein, the affidavit of counsel, the attached exhibits  
14 and any argument permitted by this Court at the time set for hearing.  
15

16 DATED this 12 day of July, 2019.

17 **ROYAL & MILES LLP**

18  
19 By 

Michael A. Royal, Esq. (SBN: 4370)

Gregory A. Miles, Esq. (SBN: 4336)

1522 W. Warm Springs Rd.

Henderson, NV 89014

*Attorney for Defendants*

*VENETIAN CASINO RESORT, LLC and*

*LAS VEGAS SANDS, LLC*

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

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

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

5. Plaintiff admits that she never saw any foreign substance on the floor at any time on the date of the subject incident. (See Exhibit B, *Transcript of Joyce Sekera Deposition* at 19, ln 23-25; 20, ln 1-25; 21, ln 1-21.)

1           6.       The area where Plaintiff slipped as depicted on the surveillance footage is identified at  
2       **12:36:50**. (See Exhibit C, *Surveillance Footage*, VEN 019; see also Exhibit D, marked Venetian  
3 security scene photo (VEN 043), for demonstrative purposes.)

4           6.       Surveillance footage of the subject incident (attached hereto as Exhibit C), reveals that  
5 there was absolutely nothing on the floor in the thirty (30) minutes preceding the subject incident, as  
6 more than 400 people walk through the area from 12:06:49 to the incident of 12:36:50. The video  
7 depicts multiple Venetian personnel patrolling the subject area, including former employee porter  
8 Maria Cruz, who is seen walking over the subject area at 12:33:53, less than three (3) minutes prior  
9 to Plaintiff's fall.  
10

11           7.       Multiple persons responding to the scene after Plaintiff's fall, including Ms. Cruz,  
12 testified that they did not observe any liquid substance on the floor where Plaintiff slipped. (See  
13 Exhibit E, *Transcript of Maria Cruz Deposition* (taken 04.17.19) at 33, ln 8-17; 34, ln 20-22; 39, ln  
14 21-25; 40, ln 1-9; 41, ln 11-17; 42, ln 10-25. See also Exhibit F, *Transcript of Milan Graovac*  
15 *Deposition* (taken 04.22.19) at 15-17, 23-25; 31, ln 14-22; Exhibit G, *Transcript of Louie Calleros*  
16 *Deposition* (taken 04.22.19) at 14-15; 18-19, 22, ln 16-20; 24, ln 16-25; 25, ln 1-11; 27, ln 1-19; 29,  
17 ln 21-25; 30, ln 1; Exhibit H, *Transcript of Sang Han Deposition* (taken 05.06.19) at 15, ln 6-14; 16,  
18 ln 11-25; 17, ln 1-7; 18, ln 25; 19, ln 1-18; 23, ln 6-25; 24, ln 1-2; 25, ln 18-21; Exhibit I, *Transcript*  
19 *of Christopher Johnson Deposition* (taken 05.06.19) at 17, ln 6-10; 18, ln 9-23.)  
20  
21

22           8.       A careful review of the post scene surveillance footage further demonstrates the absence  
23 of any liquid substance on the floor. (See Exhibit C.)

24           9.       In his deposition of July 2, 2019, Plaintiff's expert Thomas Jennings testified that after  
25 having been retained by Plaintiff in October 2018 and been provided a copy of the security report,  
26 scene photos, and surveillance footage, he was unable to objectively identify any evidence of a foreign  
27  
28

1 substance on the floor beyond the fact that Plaintiff fell and told security she believed she slipped in  
2 water.

3       10. On January 4, 2019, Defendants provided Supplemental Responses to Plaintiff's  
4 Requests for Production of Documents and Materials to Defendant related to Plaintiff's request for  
5 prior incident reports from November 4, 2013 to present. (See Exhibit J, Response No. 7.) Defendants  
6 objected to the vast overreaching scope of Plaintiff's request, which was not limited to any factually  
7 similar event in or around the same area prior and subsequently to the subject incident, and was  
8 therefore not reasonably calculated to lead to the discovery of admissible evidence. (See *id.*)  
9 Nevertheless, Defendants provided Plaintiff with sixty-four (64) prior incident reports in redacted form.  
10

11       11. Defendants filed a motion for protective order related to the prior incident reports on  
12 February 1, 2019 related to the sixty-four (64) redacted prior incident reports. The Discovery  
13 Commissioner agreed that the prior incident reports were to remain in redacted form and that they were  
14 not to be shared by Plaintiff. However, while the motion was pending, Plaintiff shared them all with  
15 attorneys representing clients in other presently pending cases against Defendants. In fact, the day  
16 preceding the March 13, 2019 hearing before the Discovery Commissioner, all sixty-four (64) redacted  
17 prior incident reports were filed by Peter Goldstein, Esq., plaintiff's counsel in another case to support  
18 a motion against Venetian in the matter of *Carol Smith v. Venetian Casino Resort, LLC*, case no. A-17-  
19 753362-C. Plaintiff's counsel did not advise Defendants or the Discovery Commissioner of the  
20 disclosure and public filing of the very same documents the Court then determined to be afforded  
21 production under NRCP 26(c).  
22

23       12. At the March 13, 2019 hearing, Mr. Galliher advised the Discovery Commissioner that  
24 when comparing Venetian's prior incident reports with those received by Peter Goldstein, Esq., in the  
25 *Smith* matter, there were only four (4) additional reports he felt should have been part of the sixty-four  
26  
27  
28



1 (64) prior incident reports disclosed by Defendants in this matter. (See Exhibit K, *Transcript of*  
2 *Hearing Before Discovery Commissioner*, dated 03.13.19, at 7, ln 13-21.)

3 13. On March 25, 2019, I sent correspondence to Mr. Galliher responsive to his  
4 representation at the March 13, 2019 hearing related to the alleged four (4) undisclosed prior incident  
5 reports. (See Exhibit L.)

6 14. Plaintiff's objection to the DCRR regarding the redacted prior incident reports was  
7 heard on May 14, 2019, in which the District Judge reversed the DCRR and ordered production of  
8 unredacted reports by Defendants. However, the parties submitted competing proposed orders to the  
9 Court and, at present, no order has been filed. Defendants reserve their right to bring this matter again  
10 before the District Court as provided for under local rules.

11 15. During a May 28, 2019 hearing regarding Plaintiff's motion for leave to amend the  
12 Complaint to add a claim for punitive damages, Plaintiff's counsel represented to the Court that he had  
13 evidence that expert David Elliott, PE, had provided deposition testimony about ten (10) years ago in  
14 the matter of *Farina v. Desert Palace, Inc.*, case no. A542232, in which he made recommendations  
15 to Venetian about its flooring which were ignored. More specifically, Plaintiff's counsel asserted the  
16 following:  
17  
18

19 *And that is the Venetian in the mid-2000s -- 2005, 2006, 2007 -- hired David*  
20 *Elliott . . . to evaluate their floors at the Venetian and make recommendations*  
21 *concerning how they can make the floors safer. The one thing we've determined so*  
22 *far, Mr. Elliot told him that under no circumstances is marble an acceptable surface*  
23 *for a floor such as a hotel/casino like the Venetian. He made recommendations*  
*concerning how they could go from marble to tile and increase the co-efficient of*  
*friction -- slip resistance -- to the .5 industry standard from where it is now.*

24 (See Exhibit M, *Reporter's Transcript* of the May 28, 2019 hearing, at 14, ln 10-23, emphasis added.)

25 16. During that May 28, 2019 hearing, Mr. Galliher represented to the Court that the David  
26 Elliott deposition testimony from 2009 presented: "*a smoking gun big time.*" (See *id.* at 17, ln 2-3,  
27 emphasis added.)  
28

1           17.     Based on these new allegation represented by Plaintiff at the May 28, 2019 hearing, the  
2 Court noted: “I think at the end of the day, with what's been alleged, it would do a disservice to this  
3 case if I didn't allow there to be some exploration to see if there's evidence that could support the  
4 damages claim.” (See *id.* at 24, 22-25, emphasis added.)

5           18.     A transcript of the David Elliott deposition was obtained subsequent to the May 28,  
6 2019 hearing. (Exhibit N, *Transcript of David Elliott (taken February 13, 2009)*, in Farina v. Desert  
7 Palace, Inc., case no. A542232, attached hereto.)

8           19.     Mr. Elliott presented the following testimony in his February 13, 2009 deposition  
9 related to the Venetian:  
10

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

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

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

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

18               Q.     But it's not marble flooring?

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

20               Q.     Is it tile?

21               A.     It's a ceramic tile.

22 (See *id.* at 34, ln 12-25, emphasis added.)

23           20.     The February 13, 2009 deposition testimony of David Elliott is not the “*smoking gun*  
24 *big time*” Plaintiff’s counsel made it out to be before the Court in the May 28, 2019 hearing. To the  
25 contrary, the above-cited deposition testimony of Mr. Elliott confirms that he found the Venetian  
26 flooring to be slip resistant and safe, even exemplary.

27           21.     Defendants filed a motion for reconsideration related to the Court’s granting Plaintiff’s  
28 motion for leave to add a claim of punitive damages on July 3, 2019, with a hearing set for July 16,  
2019.

1           22.     On June 25, 2019, Mr. Galliher and I had a brief meet and confer outside the courtroom  
2 of Department 25 following a hearing related to this matter. During that conference, Mr. Galliher  
3 inquired about production of the unredacted reports related to those previously produced. I advised  
4 that I was waiting for the Court to sign and file one of the competing proposed orders submitted. Mr.  
5 Galliher advised that he would be filing a motion to compel. He further asserted entitlement to  
6 subsequent incident reports. However, Mr. Galliher did not make reference to a reported batch of other  
7 incidents occurring at the Venetian between November 4, 2013 and November 4, 2016. Our EDCR  
8 2.34 conference was limited to the production of unredacted versions of previously produced incident  
9 reports and post incident reports.  
10

11           23.     Subsequent to the above discussion, I received correspondence from Mr. Galliher dated  
12 in which he quite vaguely produced a table of information purportedly relating to prior incidents. (See  
13 Exhibit O, *Correspondence from Keith Galliher, Esq., to Michael Royal, Esq.*, dated 06.25.19.) Mr.  
14 Galliher did not produce any documents supporting the information presented in the chart produced  
15 in his June 25, 2019 correspondence, nor did he discuss the issue with me pursuant to EDCR 2.34. The  
16 number of events set forth in the table within counsel's June 25, 2019 letter is similar to the number  
17 previously identified and produced in this matter, it did not occur to me that the table of incidents was  
18 different from those previously disclosed, as I noticed some events which appeared familiar.<sup>1</sup>  
19

20           24.     Defendant previously provided a Rule 34 request of Plaintiff to produce the entire file  
21 of all experts she identified in this matter. (See Exhibit P, *Plaintiff, Joyce Sekera's, Responses to*  
22 *Defendant Venetian Casino Resort, LLC's First Set of Request for Production of Documents* (served  
23 08.27.18), No. 18.)  
24  
25  
26

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27           <sup>1</sup>As discussed further herein below, after investing hours to review Plaintiff's accusations, I  
28 managed to identify only five (5) events not previously produced by Defendants, only two (2) of which  
occurred within the Venetian casino level area of the property.

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

6  
7           26.     Mr. Jennings had produced a written report dated May 30, 2019, in which he made the  
8     following proclamation:

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

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

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

25  
26           28.     I sent correspondence to Mr. Galliher on July 2, 2019 following the Jennings deposition  
27     demanding production of the prior incident information he produced to Mr. Jennings in or about May  
28

1 2019. (See Exhibit S, *Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*, dated  
2 07.02.19.) To date, there has been no response.

3 29. In this matter, Defendants have produced a total of sixty-six (66) identified prior  
4 incident reports related to slip and falls in the Venetian casino level area. Defendants did not limit  
5 production to just the Grand Lux area where the subject incident occurred. Plaintiff claimed to have  
6 identified another sixty-five (65) in the June 25, 2019 correspondence. However, in the pending  
7 motion, Plaintiff now only identifies forty-six (46) other incidents, apparently paring the number down  
8 by nineteen (19) without any explanation.

10 30. In reviewing the forty-six (46) prior incidents identified by Plaintiff in the pending  
11 motion, I have determined that all are among the sixty-six (66) previously produced by Defendants but  
12 for only five (5). Thus, the number Plaintiff claims withheld by Defendants is not 196, sixty-five (65)  
13 or forty-six (46), but appears to be, at best, five (5).

15 31. In Plaintiff's motion, she has presented a table of alleged *46 Undisclosed Incident*  
16 *Reports* in a deceptive manner. For example, item no. 6 on page 5 of the motion was previously  
17 produced to Plaintiff. Therefore, Plaintiff has the omitted information for time and the report no. Yet,  
18 Plaintiff has presented the motion as though she has only partial information from some source other  
19 than Defendants. That is misleading. Plaintiff provided the Court with further omissions on page 6  
20 of the pending motion (nos. 10, 13, 14, 17 and 17), page 7 (nos 26, 27, 28, 30, 33, and 34, and page  
21 8 (nos 39, 41, and 45).

23 32. I have identified the five (5) reports found in the duplicate prior incidents documented  
24 by Plaintiff in the table found within the pending motion, and offer the following by way of response:

25 a. **11/7/13 (Grand Lux Café; Marble slip and fall)** (no event no. provided by Plaintiff);

26 This event involves a patron who claims to have slipped and rolled his ankle two days earlier  
27 (November 5, 2013) while walking just outside the Grand Lux Café, without claiming the involvement  
28

1 of a liquid substance. No evidence of a foreign substance was ever identified. This incident is  
2 arguably not responsive to Plaintiff's request, as it is not factually similar; however, in the spirit of  
3 cooperation, Defendants will produce a redacted version of this report pursuant to NRCP 16.1 and  
4 NRCP 34.

5           b.       **12/27/13 (WOW Fountain Feature)** (no event number provided by Plaintiff);

6           The WOW Fountain Feature is not located within or anywhere near the Venetian casino area,  
7 but is on the Palazzo side of the property. Defendants would not have produced this report from its  
8 initial search for like falls occurring on marble flooring within the Venetian casino level of the property  
9 and maintain that it is not relevant today.

10           c.       **04/20/15 (Lobby 1 Trip/Fall)** (no event number provided by Plaintiff);

11           Information provided in Plaintiff's summary in the Opposition on page 6, ln 13-15, describes  
12 this as a trip and fall on a metal strip. Since the alleged incident does not involve a foreign substance  
13 on the floor, nor does it involve a slip, Defendants would not have produced it since it is not at all  
14 factually similar.

15           e.       **03/18/16 (5th floor of garage elevator lobby)** 1603V-3584

16           This report was not produced to Plaintiff by Defendants in this action; however, it is already  
17 in Plaintiff's possession by way of Peter Goldstein, Esq., in the *Smith vs. Venetian* litigation. It was  
18 one of the four reports Mr. Galliher claimed were not provided by Venetian when the parties were  
19 before the Discovery Commissioner on March 13, 2019. I addressed this in my March 25, 2019 letter  
20 to Mr. Galliher following the March 13, 2019 hearing, advising that it is an event located on an exterior  
21 area of the property on a different floor (parking garage), that is not deemed relevant to the subject area  
22 of the Grand Lux rotunda. Plaintiff did not object to this explanation, but merely added this event  
23 again in the instant motion without advising the Court that it was previously addressed by Defendants.  
24  
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1 f. 06/11/16 (Venetian front office, puddle of water) 1606V-2353

2 This incident involves a reported slip/fall on water in the front desk area of the Venetian  
3 property, which is nowhere near the Grand Lux rotunda area where the subject incident occurred nor  
4 does it involve a factually similar circumstance. This is also a case presently litigated against Venetian,  
5 identified by Plaintiff in Exhibit 16 of Plaintiff's Motion to Compel Testimony and Documents, where  
6 Plaintiff clearly is already in possession of this information. Regardless, in the spirit of cooperation,  
7 Defendants will produce a redacted version of this report pursuant to NRCP 16.1 and NRCP 34.  
8

9 33. Thus, after wading through the sixty-five (65) reports allegedly *undisclosed* by  
10 Defendants in this matter, per the June 25, 2019 correspondence, which was refined to forty-six (46)  
11 in this subject motion (without explanation by Plaintiff's counsel), there are actually only five (5) which  
12 were not part of the sixty (66) prior incident reports previously produced to Plaintiff by Defendants in  
13 this matter. Of those five (5) reports, only two (2) would be potentially factually similar and located  
14 within the Venetian casino level area. These two (2) additional reports have now been provided to  
15 Plaintiff.  
16

17 34. Mr. Galliher has not explained how he obtained information related to the alleged 196  
18 prior incident reports of events occurring in the Venetian Grand Lux rotunda area referenced by Mr.  
19 Jennings in his May 30, 2019 rebuttal report. Mr. Galliher has not revealed what he produced to Mr.  
20 Jennings to support his gold factual assertion, whether information included duplicates of previously  
21 identified and produced events, such as what Plaintiff has done on pages 5-8 of the pending motion,  
22 how he compiled the information June 25, 2019 and the motion of July 1, 2019, or whether he is  
23 presently in possession of all of these incident reports.  
24

25 35. If Plaintiff is in possession of 196 prior incident reports she produced to her expert, Mr.  
26 Jennings, it is Defendants' contention that they must be provided immediately.  
27  
28

1           36.     Although I was present with Plaintiff's counsel for the Tom Jennings deposition on July  
2     2, 2019, there was no discussion about the production of *previously undisclosed* prior incident reports  
3     beyond that described above. In other words, Plaintiff's counsel did not advise that he was in  
4     possession of information that there were any *previously undisclosed* prior incident reports as set forth  
5     in the June 25, 2019 correspondence. Plaintiff filed the pending motion to compel in the hours  
6     following the Jennings deposition.  
7

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

16          38.     On May 31, 2019, Plaintiff served Rule 34 requests which include the production of  
17    incident reports from January 1, 2000 to the present. (See Exhibit T, *Plaintiff's Sixth Request for*  
18    *Production of Documents and Materials to Defendants*, served 05.31.19, Nos. 23-26, 29.)  
19

20          39.     Exhibit 15 to Plaintiff's motion, identified as *Plaintiff's Notice of Motion and Motion*  
21    *for Terminating Sanctions, et al* filed by Peter Goldstein, Esq., on February 13, 2019 in the *Smith*  
22    matter, was denied by the District Court in a hearing held on May 7, 2019. Therefore, the relevance  
23    of that motion referenced on page 17 of the motion to compel is unclear.

24          40.     On July 9, 2019, I attempted to have an EDCR 2.34 conference with Plaintiff's counsel  
25    about the issues addressed herein above, and was advised that any such conferences must be held only  
26    with Mr. Galliher, who has not responded to my request for the documents he provided to Tom  
27    Jennings to support an expert opinion but has not produced to me.  
28



1           41.     On July 11, 2019, I spoke with Mr. Galliher regarding the 196 prior incident reports  
2 provided to Mr. Jennings and the request for production of prior incident reports back to January 1,  
3 2000. Mr. Galliher advised that he would be producing the information he provided to Tom Jennings;  
4 however, I have not yet received them as of the date of this filing. Mr. Galliher and I also discussed  
5 his intent to insist that Venetian produce records related to prior incidents for the preceding twenty (20)  
6 years. We disagree that Venetian is obligated to produce records in the broad scope of the production  
7 request.  
8

9           42.     I have met the requirements of EDCR 2.34 to confer with Plaintiff's counsel about  
10 issues surrounding the Tom Jennings deposition and failure to produce copies of the 196 prior incident  
11 reports as related in his report of May 30, 2019 and the.

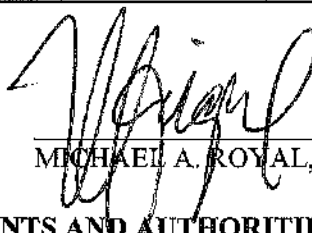
12           43.     This opposition and counter motion is not brought in bad faith, or for any improper  
13 purpose.  
14

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

EXHIBIT	TITLE
A	Transcript of Joyce Sekera Deposition (03.14.19) pp. 19-21, 75-79, 109
B	Venetian Security Narrative Report (IR 1611V-0680) (10.04.16) (VEN 008-09)
C	Surveillance Footage of Subject Incident (VEN 019)
D	Marked Venetian security scene photo (VEN 043) for demonstrative purposes
E	Transcript of Maria Cruz Deposition (04.17.19)
F	Transcript of Milan Graovac Deposition (taken 04.22.19)
G	Transcript of Louie Calleros Deposition (taken 04.22.19)
H	Transcript of Sang Han Deposition (taken 05.07.19)
I	Transcript of Christopher Johnson deposition (taken 05.07.19)
J	Supplemental Responses to Plaintiff's Requests for Production of Documents and Materials to Defendant, served 01.04.19
K	Transcript of Hearing Before Discovery Commissioner, dated 03.13.19, select pp

<b>L</b>	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated 03.25.19
<b>M</b>	Reporter's Transcript of May 28, 2019 hearing
<b>N</b>	Transcript of David Elliott (taken February 13, 2009), in <i>Farina v. Desert Palace, Inc.</i> , case no. A542232, selected pages
<b>O</b>	Correspondence from Keith Galliher, Esq., to Michael Royal, Esq., dated 06.25.19
<b>P</b>	Plaintiff, Joyce Sekera's, Responses to Defendant Venetian Casino Resort, LLC's First Set of Request for Production of Documents, served 08.27.18
<b>Q</b>	Second Subpoena Duces Tecum for Tom Jennings, served 06.10.19
<b>R</b>	Expert Rebuttal Report, Thomas Jennings (dated 05.30.19)
<b>S</b>	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated 07.02.19
<b>T</b>	Plaintiff's Sixth Request for Production of Documents and Materials to Defendants, served 05.31.19
<b>U</b>	Complaint, filed 04.12.18
<b>V</b>	First Amended Complaint, filed 06.28.19
<b>W</b>	Discovery Commissioner's Report and Recommendation (filed 07.09.19), <i>Boucher v. Venetian Casino Resort, LLC</i> , Case No. A-18-773651-C

Executed on 12 day of July, 2019.

  
MICHAEL A. ROYAL, ESQ.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF RELEVANT FACTS**

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

1 (See Exhibit C at 12:36:50.) Plaintiff testified that she had walked that same path hundreds of previous  
2 times without ever seeing evidence of any foreign substance on the floor. (See Exhibit B at 19-21, 75-  
3 79, 109.)

4 The cause of Plaintiff's fall is in dispute, as Venetian denies that there was any foreign  
5 substance on the floor at the time the incident occurred. This is very clear from surveillance footage  
6 of the incident and related testimony by responders. (See *id.*; see also *Declaration of Michael A.*  
7 *Royal, Esq.* paragraphs 4-9.) Regardless, Venetian produced sixty-six (66) prior incident reports from  
8 November 4, 2013 through November 4, 2016 related to incidents occurring in the common area of  
9 the Venetian casino level area where the subject incident occurred.  
10

## 11 II.

### 12 NATURE OF OPPOSITION

13 Defendants contend that the issue surrounding the production of unredacted reports to those  
14 produced responsive to Plaintiff's Production Request No. 7 remains an open issue, as there is no order  
15 and Defendants are awaiting filing of the order, where competing orders were presented to the District  
16 Judge. As for the alleged other four (4), forty-seven (47), sixty-five (65) or 197 prior incident reports  
17 allegedly not produced (depending on which numbers Plaintiff chooses to assert on any given day),  
18 Defendants only very recently became aware of this alleged issue and there was no meet and confer  
19 with Plaintiff pursuant to EDCR 2.34 prior to filing of the instant motion. If Plaintiff already has the  
20 information, then it is unclear what Plaintiff expects Defendants to do. Regarding Plaintiff's demand  
21 for subsequent incident reports, this is a simple negligence case arising from an alleged temporary  
22 transitory condition on the Venetian floor. Plaintiff argues in the motion to compel that this litigation  
23 is akin to a products defect claim. It is not. That is simply not the case. In fact, Plaintiff has pled and  
24 continues to plead this as a simple negligence case. (See Exhibits T and U.) There is no reasonable  
25 basis to allow Plaintiff to obtain other incident reports subsequent to her fall.  
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III.

**LEGAL ANALYSIS**

A. **Plaintiff Failed to Comply With EDCR 2.34 Regarding Alleged Undisclosed Reports**

Prior to filing this Motion, Plaintiff failed to comply with her meet-and-confer obligation pursuant to EDCR 2.34, which is sets forth in pertinent part as follows:

*Discovery motions may not be filed unless an **affidavit** of moving counsel is attached thereto setting forth that after a discovery dispute conference or a good faith effort to confer, counsel have been unable to resolve the matter satisfactorily. A conference requires either a personal or telephone conference between or among counsel. Moving counsel must set forth in the affidavit what attempts to resolve the discovery dispute were made, what was resolved and what was not resolved, and the reasons therefor. If a personal or telephone conference was not possible, the affidavit shall set forth the reasons.<sup>2</sup>*

Similarly, Rule 37 of the Nevada Rules of Civil Procedure mandates as follows:

*On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.<sup>3</sup>*

Plaintiff's motion lacks any declaration or affidavit whatsoever in compliance with the above-stated rules. Therefore, the motion should not be considered. Plaintiff's counsel did not attempt a meaningful, good-faith discussion regarding the alleged undisclosed prior incident reports, and she has not attached an affidavit of any kind to the pending motion. It is therefore defective and the motion should be denied in its entirety. However, if the Court is inclined to consider Plaintiff's motion to compel.

B. **Unredacted Reports**

The Discovery Commissioner previously ruled in Defendants' favor on this issue and it was thereafter presented to the District Court on May 14, 2019. Counsel prepared competing orders for the

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<sup>2</sup>EDCR 2.25(a).

<sup>3</sup>NRCP 37(a)(1).

1 judge's signature. To date, there has been no order signed. Defendants have rights that do not accrue  
2 until after an order is signed and filed by the Court and notice of entry provided. That has not yet  
3 occurred.

4 At the time of the May 14, 2019 hearing, Defendants were unaware that the Discovery  
5 Commissioner's Report and Recommendation related to redaction of information on prior incident  
6 reports was affirmed by Judge Jones in the *Smith* matter on May 7, 2019, based on a ruling by the  
7 preceding Discovery Commissioner. Judge Delaney appeared to be of the understanding that the April  
8 2, 2019 DCCR related to the protection of prior incident reports in this matter was a novel, isolated,  
9 outlier decision; therefore, she granted the objection and ordered that unredacted reports be produced.  
10 The rules allow Defendants to bring this new information before the judge. Since this issue remains  
11 open, and Defendants have not exhausted their rights, where production of unredacted reports will  
12 result in irreparable harm to Defendants as Plaintiff shares the private information of Venetian guests  
13 freely with the world (thus far without any specific limitation), Defendants have not yet produced  
14 unredacted reports.<sup>4</sup>

15  
16  
17 C. **Other Allegedly "Undisclosed" Prior Incident Reports**

18 1. **Plaintiff's Claim of Four (4) Missing Reports at the March 13, 2019 Hearing is Not**  
19 **Properly Before the Court; However, it Was Long Ago Resolved**

20 The Discovery Commissioner will recall that during the March 13, 2019 hearing, Plaintiff's  
21 counsel complained that although Defendants provided sixty-four (64) prior incident reports, he  
22 compared production provided by Venetian in the *Smith* litigation and identified a total of four (4) prior  
23 incident reports Mr. Galliher claimed were not produced by Defendants in this matter. (See Exhibit  
24 K at 7, in 13-21.) That issue was raised by Plaintiff for the first time during the March 13, 2019  
25 hearing. There was no EDCR 2.34 Conference and the matter was not briefed. Nevertheless, the  
26

27  
28 <sup>4</sup>It is noteworthy that Plaintiff did not serve the First Amended Complaint until after the order  
granting her leave to do so was executed and filed with the District Court.

1 Discovery Commissioner responded that parties were to address it and then bring it before her later  
2 after an EDCR 2.34 conference if it remained unresolved. (*See id.* at 14-15.) Defendants reviewed  
3 the issue of the four (4) alleged missing reports and addressed it in correspondence of March 25, 2019.  
4 (*See Exhibit L.*) There has been no further discussion regarding those four (4) reports pursuant to  
5 EDCR 2.34 as directed by the Discovery Commissioner. Therefore, this issue is not properly before  
6 the Court. If the Court chooses to address it, Defendants explained that three (3) of the four (4) prior  
7 incident reports were outside the three (3) years requested by Plaintiff and that one (1) of the reports  
8 within the three year time period was an exterior lobby in the parking garage area of the property, not  
9 remotely close to the subject Grand Lux rotunda area.  
10

11           2.     **The Issue of Sixty-Five (65) Allegedly Undisclosed Reports (June 25, 2019 Letter)**  
12                   **is Not Properly Before the Court**

13           On June 25, 2019, following a brief EDCR 2.34 Conference held earlier on the same date to  
14 address the issue of when unredacted reports would be produced, Plaintiff's counsel sent  
15 correspondence addressing the status of unredacted reports. (*See Exhibit O.*) In the same  
16 corresponded, Plaintiff presented a table of sixty-five (65) incident reports, which Defendants initially  
17 presumed related to the previously produced unredacted reports. Since Plaintiff had never previously  
18 advised that she was in possession of an additional sixty-five (65) prior incident reports, Defendants  
19 did not readily identify this as a new issue. To date, Plaintiff has not addressed this with Defendants  
20 pursuant to EDCR 2.34. Had that occurred, Plaintiff's counsel may have realized that his list of sixty-  
21 five (65) prior incident reports was by and large a restatement of information already in Plaintiff's  
22 possession. The pending motion does not contain an affidavit affirming any attempt to comply with  
23 meet and confer requirements as per local rules and as otherwise required by EDCR 2.34, NRCP 37,  
24 or otherwise.  
25

26  
27           As noted above, Defendants have reviewed the list of sixty-five (65) reports and identified only  
28 two (2) of which relate to incidents occurring within the Venetian casino area level of the property (and

1 that neither are, frankly, factually similar). Thus, Plaintiff's claim that Defendants did not produce  
2 sixty-five (65) prior incident reports in the June 25, 2019 was blatantly false.

3 3. **The Issue of Forty-Six (46) Allegedly Undisclosed Reports (July 2, 2019 Motion)**  
4 **is Not Properly Before the Court**

5 Since Plaintiff did not comply with EDCR 2.34 requirements prior to filing the instant motion,  
6 Defendants have no idea why she pared down the sixty-five (65) allegedly undisclosed prior incident  
7 reports to forty-six (46). However, Defendants believe that Plaintiff's counsel reviewed the list of  
8 sixty-five (65) and found nineteen (19) duplicates, which were eliminated prior to filing this motion.  
9 Had Plaintiff taken a little more time, she would have discovered that of the forty-six (46) alleged  
10 undisclosed reports, there were really only five (5) - and of those five (5), only two (2) of which relate  
11 to a slip and fall on a foreign substance within the Venetian casino level area of the property.

13 Plaintiff acknowledges that she has been exchanging information with counsel in other ongoing  
14 cases against Venetian. This is particularly why an EDCR 2.34 conference would have been helpful  
15 here, since counsel for the parties could have discussed this alleged new information and potentially  
16 resolved the issues. For example, if Plaintiff's counsel had taken time to actually review the evidence  
17 before filing this motion, he would likely have discovered that Defendants have already produced forty-  
18 one (41) of the forty-six (46) prior incident reports very carefully set forth and numbered in the pending  
19 motion. The parties may have discovered that there were actually only five (5) other events not  
20 previously disclosed, then could have had a discussion to review them as set forth in Paragraph thirty-  
21 two (32) of the above Declaration. Since Plaintiff was in possession of most of the security reports  
22 identified on pages 5-8 of the pending motion, it is unclear why she withheld information in the table  
23 thereby presenting the illusion of missing information due to non-production. It is rather rich that  
24 Plaintiff has accused Defendants of intentionally withholding information from her in their discovery  
25 responses while at the same time Plaintiff is withholding information from the Court.  
26  
27  
28

1 The subject incident occurred in the Grand Lux rotunda of the Venetian, which itself is subject  
2 to a lot of pedestrian traffic as it is located at the base on the escalators to and from the parking garage  
3 and third floor valet, and is also a main artery between the front desk and the guest tower elevator  
4 lobby. In his deposition of July 2, 2019, Plaintiff's expert Tom Jennings acknowledged that issues  
5 surrounding coefficient of friction can vary depending on factors which include the amount of foot  
6 traffic.<sup>5</sup>

7  
8 Recall that Mr. Jennings testified on July 2, 2019 that Plaintiff is in possession of 196 prior  
9 incident reports related to incidents occurring solely in the Grand Lux rotunda area where the subject  
10 incident occurred. Those reports were produced to Mr. Jennings by Plaintiff but never to Defendants.

11 During the March 13, 2019 hearing, the Discovery Commissioner noted the following after  
12 ruling that the reports produced to Plaintiff could remain in redacted form:

13  
14 *With that said, if the Plaintiff goes through the reports and identifies incidents that*  
15 *occurred in substantially the same location as this incident occurred or have*  
16 *substantially similar facts as to the incident at issue -- because The Venetian is a huge*  
17 *place, and so it needs to be sufficiently identified to be in the same location or under*  
18 *similar facts -- then I'd ask that the two of you have a 2.34 conference about disclosing*  
19 *the contact information for those particular incidents because I'm sure that's a much*  
*more narrow scope than all of them. And if you cannot agree following that 2.34*  
*conference, then bring it back to the Commissioner's attention and we will have a*  
*hearing regarding the disclosure of the contact and privacy information with regard*  
*to those individuals.*

20 (See Exhibit K at 12, ln 12-23, emphasis added.) Plaintiff has made no effort to comply with this  
21 instruction. She has not limited her request for prior incident reports to the Grand Lux rotunda or to  
22 substantially similar facts. She has just unleashed a shotgun blast of prior incidents, relying on sheer  
23 numbers (most of them wholly contrived) to bolster her notice argument - which is especially  
24 important to her here, since she actually fell on a dry marble floor.

25  
26  
27  
28 <sup>5</sup>This was Mr. Jennings' explanation of why his coefficient of friction measurements were so  
different in the *Smith v. Venetian* litigation in an area less than 100 feet away.



1 At this point, Defendants need some guidance from the Discovery Commissioner as to what  
2 exactly Plaintiff is entitled to. Defendants have produced sixty-six (66) redacted prior incident reports  
3 related to falls occurring at the Venetian casino level area from November 4, 2013 - November 4, 2016  
4 and has agreed to provide two (2) additional reports as noted above. Plaintiff is now apparently  
5 expanding it to the entire property, including different floors, different towers, and obviously different  
6 circumstances, when her own expert, Mr. Jennings, testified that Venetian flooring in different areas  
7 can test differently based on a variety of circumstances.  
8

9 Plaintiff's request for prior incident reports should be limited to the area of the subject incident.  
10 If there are, in fact, 196 prior incident reports related to the area of Plaintiff's fall for the four-and-a-  
11 half preceding years, as Mr. Jennings has both reported and testified, then Plaintiff has sufficient  
12 information upon which to make a notice argument - even to support punitive damages. However,  
13 obtaining reports from different areas throughout the property, different floors, different circumstances,  
14 etc., is a mere fishing expedition.  
15

16 4. **Plaintiff's Motion Oddly Fails to Address the 196 Prior Incident Reports Provided**  
17 **to Plaintiff Expert Tom Jennings**

18 In addition to Plaintiff withholding information in readily in her possession to create a false  
19 impression the Court, as set forth above, there is another glaring omission in the pending motion; *to*  
20 *wit*: Plaintiff claims to already have 196 prior incident reports (from January 1, 2012 to August  
21 5, 2016) which relate solely to the area of the Grand Lux rotunda. (See Exhibit R at 3.) Mr.  
22 Jennings testified in deposition on July 2, 2019 that he received these reports from Plaintiff's counsel  
23 in May 2019. However, Mr. Jennings could not produce any information related to these alleged 196  
24 prior incident reports at the deposition in response to a subpoena duces tecum.  
25

26 D. **Plaintiff is Not Entitled to Subsequent Incident Reports in a Simple Negligence Case**  
27 **Arising From an Alleged Temporary Transitory Condition on an Interior Floor**  
28

1 Plaintiff is moving to compel Defendants to produce incident reports from January 1, 2000 to  
2 the present. (See Exhibit T, Nos. 23-26, 29.) Plaintiff's counsel has made it clear that every document  
3 obtained via discovery (or otherwise) in this litigation goes into a repository and is shared with multiple  
4 attorneys/firms presently litigating cases against Venetian. Plaintiff now seeks to attain post incident  
5 claim information which is clearly not relevant to show notice and would not be admissible at trial.  
6

7 In *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189, 561 P.2d 1342 (1977), the trial court  
8 issued a pretrial discovery order permitting blanket discovery of the petitioner's medical records and  
9 income tax returns where the plaintiff had brought an action for personal injuries. The Nevada  
10 Supreme Court limited the discovery to only those matters addressing issues raised in the complaint,  
11 stating that the trial court abused its discretion by allowing *carte blanche* discovery of all information  
12 contained in those materials without regard to relevancy. That is exactly what Plaintiff is doing here  
13 against Defendants.  
14

15 This is a simple negligence action, arising from an alleged slip and fall from a temporary  
16 transitory condition. (See Exhibit U, *Complaint* (filed 04.12.18); Exhibit V, *First Amended Complaint*  
17 (filed 06.28.19).) Plaintiff has not set forth a claim for product defect, for example; yet, that is the kind  
18 of discovery course Plaintiff is following here. As noted above, Defendants dispute the existence of  
19 a foreign substance on the floor as the cause of Plaintiff's fall on November 4, 2016.  
20

21 Plaintiff's demand for subsequent incident reports is based on a claim for punitive damages  
22 which the Court allowed Plaintiff to file in an Amended Complaint during a hearing on May 28, 2019,  
23 where Plaintiff's counsel made representations related to the 2009 testimony of David Elliott which  
24 were later discovered to be unfounded. A motion for reconsideration has been filed and is set to be  
25 heard on July 16, 2019. Even if the punitive damages claim remains, it does not entitle Plaintiff to  
26 obtain the kind of discovery she is demanding here to address not only an alleged temporary transitory  
27 condition, but one where the clear evidence suggests there was no such condition at all. There is  
28

1 simply no basis for punitive damages in a simple negligence case arising from a temporary transitory  
2 condition.

3 Subsequent incidents have no value or relevance to establish notice. They will do nothing to  
4 establish whether there was a foreign substance on the floor causing Plaintiff's fall and, if so,  
5 how/when the substance was introduced to the floor, how long it was there, and the procedures  
6 followed by Venetian staff to patrol the subject area.

7  
8 Plaintiff has cited cases from multiple other jurisdictions to support her motion to compel  
9 subsequent incident reports; however, she has quite notably failed to present any cases from Nevada.  
10 Also, none of the cases cited by Plaintiff stand for the proposition that the production of subsequent  
11 incident reports is required in a simple negligence action arising from an alleged transitory condition.

12 The leading case cited by Plaintiff, *Hilliard v. A. H Robins Co.*, 148 Cal. App. 3d 374, 196 Cal.  
13 Rptr. 117 (Ct. App. 1983), is a product defect case. None of the string of cases cited by Plaintiff  
14 thereafter support her assertion that she is entitled to subsequent incident reports in a simple negligence  
15 case such as this. (See Plaintiff's Motion to Compel at 15-16 (*Schaffer v. Edward D. Jones & Co.*,  
16 1996 SD 94, 552 N.W.2d 801 (1996) (securities fraud); *Roth v. Farner-Bocken Co.*, 667 N.W.2d 651  
17 (S.D. 2003) (wrongful termination, discrimination); *Boshears v. Saint Gobain Calmar, Inc.*, 272 S.W.3d  
18 215, 226 (Mo. Ct. App. 2008) (negligence action arising from explosion with discovery allowed to  
19 address subsequent remedial measures); *Bergeson v. Dilworth*, 959 F.2d 245 (10th Cir. 1992) (relates  
20 to the admission of post incident letters written by others related to the subject incident relevant to the  
21 subject event); *Smith v. Ingersoll-Rand Co.*, 214 F.3d 1235, 1249 (10<sup>th</sup> Cir. 2000) (product defect case);  
22 *GM Corp. v. Mosely*, 213 Ga. App. 875 (Ga. Ct. App. 1994) (product defect case); *Wolfe v.*  
23 *McNeil-PPC Inc.*, 773 F. Supp.2d 561 (E.D. Pa. 2011) (product defect case); *Coale v. Dow Chem. Co.*,  
24 701 P.2d 885 (Colo.App. 1985) (product defect case); *Palmer v. A.H Robins Co.*, 684 P.2d 187 (Colo.  
25  
26  
27  
28

1 1984) (product defect case); *Hoppe v. G.D. Searle & Co.*, 779 F.Supp. 1413 (S.D.N.Y. 1991) (product  
2 defect case).)

3 Defendants cannot find one Nevada case supporting Plaintiff's motion to compel them to  
4 produce subsequent incident reports in a simple negligence action such as this one. The expert  
5 disclosure deadline has passed and Plaintiff has not identified an expert who will present testimony  
6 that the flooring at Venetian is defective - nor has Plaintiff even made that allegation. (See Exhibits  
7 U and V.) The Discovery Commissioner recently provided the following in a Discovery  
8 Commissioner's Report and Recommendation (filed 07.09.19), in the case of *Boucher v. Venetian*  
9 *Casino Resort, LLC*, Case No. A-18-773651-C: *Subsequent incident reports do not need to be*  
10 *provided, because liquid on a walkway is a transient condition.* (See Exhibit W.)

11  
12 There is no basis to support Plaintiff's motion to compel the production of subsequent incident  
13 reports in a slip and fall case from a temporary transitory condition based on negligence.  
14

15 **COUNTERMOTION TO COMPEL INFORMATION AND DOCUMENTS OF PRIOR**  
16 **INCIDENT REPORTS PROVIDED TO PLAINTIFF EXPERT THOMAS JENNINGS AND**  
17 **IDENTIFIED IN HIS MAY 30, 2019 REBUTTAL REPORT AND FOR LEAVE TO**  
18 **RETAKE THE JENNINGS DEPOSITION TO ADDRESS THE 196 PRIOR CLAIMS**  
19 **REFERENCED IN HIS REPORT**

20 Defendants hereby file this countermotion for NRCP 26(c) protective order as to Plaintiff's  
21 demand for incident reports from January 1, 2000 to present as set forth in Plaintiff's Sixth Request  
22 for Production of Documents and Materials to Defendants served on May 31, 2019. (See Exhibit T,  
23 Nos. 23-26, 29.) Defendants further file this countermotion to compel Plaintiff to produce a copy of  
24 all incident reports provided to expert Tom Jennings used to support his factual assertion that there  
25 have been 196 prior incidents occurring in the Grand Lux rotunda area of the Venetian property from  
26 January 1, 2015 to August 5, 2015. Defendants further move the Court to compel Plaintiff to produce  
27 all prior incident reports related to the sixty-five (65) matters identified in her correspondence of June  
28

1 25, 2019, or which are otherwise in Plaintiff's possession beyond those produced by Defendants  
2 pursuant to NRCP 16.1 or otherwise in response to an NRCP 34 request.

3 A. **Defendants Move for Protection Under NRCP 26(c) From Plaintiff's Expansive Discovery**  
4 **of Incident Reports from January 1, 2000 to Present**

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

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

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

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

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

1       The objective of discovery rules is to limit discovery to relevant matters, and to prevent "*fishing*  
2 *expeditions*" by restricting litigants to discovery that only implicates matters raised by them in the  
3 pleadings. (See FED. R. CIV. P. 26(b), Advisory Committee Note, Amendments to Federal Rules  
4 of Civil Procedure, at 388-90). Pursuant to the Nevada Rules of Civil Procedure, the court in which  
5 the action is pending may make any order/recommendation which justice requires to protect a party  
6 so that certain discovery abuses do not occur. (See NRCP 26). The compulsion of production of  
7 irrelevant information is an inherently undue burden. (See *Jimenez v. City of Chicago*, 733 F. Supp.  
8 2d 1268, 1273 (W.D. Wash. 2010) (citing, *Compaq Computer Corp. v. Packard Bell Elecs.*, 163  
9 F.R.D. 329, 335-336 (N.D. Cal. 1995)).

11       In Plaintiff's Request No. 29, she seeks the following information: *Any and all complaints*  
12 *submitted by guests or other individuals regarding the safety of marble floors.* (See Exhibit T, No. 29.)  
13 This request is preceded by numerous requests for information dating back to January 1, 2000. (See  
14 *id.*, Nos. 23-26.) In other words, Plaintiff is seeking anything and everything related to Venetian  
15 flooring dating back twenty (20) years. As such, Plaintiff is seeking a massively expanded amount of  
16 information beyond her initial request for prior incident reports from November 4, 2013 *to the present*,  
17 which Defendants have produced in redacted form up to and including November 4, 2016.  
18 (See Exhibit J at 4-5, Request No. 7.) Defendants have always objected to Plaintiff's demand for  
19 subsequent incident reports. (See *id.*) Plaintiff's latest request is overly broad in that it is not  
20 sufficiently limited in time, limited to the subject fall area, limited to factually similar facts, etc.  
21 Plaintiff simply demands anything and everything.

24       Defendants therefore move this Honorable Court for an order protecting it from Plaintiff's  
25 ongoing demands for past and present incident reports. Defendants move for the Court to provide the  
26 parties with a scope limited to three (3) years preceding the subject incident to the date of the subject  
27 incident, occurring in the Grand Lux rotunda. As noted, Plaintiff's expert claims he has seen 196 such  
28

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

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

5 Defendants have properly requested that Plaintiff produce a copy of the entire file for any  
6 experts retained in this matter. (See Exhibit P at 6, no. 18.) Defendants further requested that Mr.  
7 Jennings produce a copy of his entire file at the July 2, 2019 deposition. (See Exhibit Q.) Mr. Jennings  
8 confirmed in deposition that he received a copy of information from Plaintiff's counsel identifying the  
9 196 prior incident reports set forth in his May 30, 2019 rebuttal. Mr. Jennings further stated that he  
10 is no longer in possession of this information. Defendants have demanded that this be provided by  
11 Plaintiff. It remains a contested issue. Therefore, Defendants hereby move this Honorable Court for  
12 an order compelling Plaintiff to produce all information provided to Mr. Jennings to support his  
13 conclusion that there were 196 prior incidents occurring in the Grand Lux rotunda area from January  
14 1, 2012 to August, 5 2016.<sup>6</sup>

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

---

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

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

7 **IV.**

8 **CONCLUSION**

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

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

17 DATED this 12 day of July, 2019.

18 **ROYAL & MILES LLP**

19  
20 By 

21 Michael A. Royal, Esq. (SBN: 4370)

22 Gregory A. Miles, Esq. (SBN 4336)

23 1522 W. Warm Springs Rd.

24 Henderson, NV 89014

25 *Attorney for Defendants*

26 *LAS VEGAS SANDS, LLC, and*

27 *VENETIAN CASINO RESORT, LLC*  
28



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12 day of July, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL TESTIMONY AND DOCUMENTS AND COUNTERMOTION FOR PROTECTIVE ORDER AS TO PLAINTIFF'S REQUEST FOR PRODUCTION OF INCIDENT REPORTS FROM JANUARY 1, 2000 TO PRESENT, COUNTERMOTION TO COMPEL INFORMATION AND DOCUMENTS OF PRIOR INCIDENT REPORTS PROVIDED TO PLAINTIFF EXPERT THOMAS JENNINGS AND IDENTIFIED IN HIS MAY 30, 2019 REBUTTAL REPORT AND FOR LEAVE TO RETAKE THE JENNINGS DEPOSITION TO ADDRESS THE 196 PRIOR CLAIMS REFERENCED IN HIS REPORT** 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;

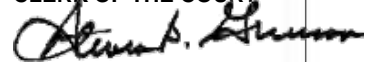
to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

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THE GALLIHER LAW FIRM  
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An employee of ROYAL & MILES LLP

# EXHIBIT “M”



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18 Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

16 JOYCE SEKERA, an Individual,  
17 Plaintiff,

18 v.

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

25 Defendants.

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

**PLAINTIFF'S REPLY IN SUPPORT OF  
HER MOTION TO COMPEL  
TESTIMONY AND DOCUMENTS,  
OPPOSITION TO DEFENDANTS'  
MOTION TO COMPEL DOCUMENTS  
FROM JENNINGS AND OPPOSITION  
TO DEFENDANTS' MOTION FOR A  
PROTECTIVE ORDER**

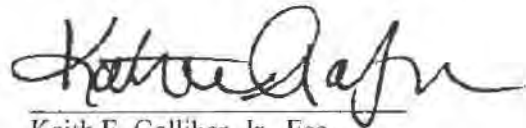
26 //  
27  
28

1 Plaintiff hereby submits her reply in support of her motion to compel testimony and  
2 documents, opposition to Defendants' motion to compel documents from Jennings and opposition to  
3 Defendants' motion for a protective order.

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

7 DATED this 25<sup>th</sup> day of July, 2019

THE GALLIHER LAW FIRM

8  
9  
10 

11 Keith E. Galliher, Jr., Esq.  
12 Nevada Bar Number 220  
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17 *Attorney for Plaintiff*

18 **MEMORANDUM AND POINTS OF AUTHORITIES**

19 **I. REPLY IN SUPPORT OF MOTION TO COMPEL**

20 **A. The Discovery Commissioner Should Compel Venetian to Produce the Prior  
21 Unredacted Incident Reports**

22 The Discovery Commissioner should order Venetian to produce the unredacted incident  
23 reports because the Court ordered Venetian to produce the reports over 2 months ago. At the hearing  
24 on May 14, 2019 The Honorable Judge Delaney ruled Venetian's position was unsupported and  
25 "novel" in that no counsel for a casino, including herself while working in-house for Mirage, would  
26 or ever has moved to protect unredacted incident reports because there "is no legal basis" for such a  
27 protective order.<sup>1</sup> (Plaintiff's Mot. at Exhibit "4.") This issue is therefore not "open" or unresolved.

28 <sup>1</sup> Venetian's grossly misleads the Discovery Commissioner by stating "Judge Delaney appeared to  
be of the understanding that the April 2, 2019 DCRR related to the protection of prior incident

1 as the uniform holding of courts nationwide is that a court cannot grant a protective order on  
2 unredacted incident reports.

3 More significantly, the Court should compel Venetian to produce the unredacted reports  
4 because Venetian agreed the Court ordered it to produce the unredacted reports: both of the  
5 competing orders Plaintiff and Venetian submitted state Venetian must provide the unredacted  
6 reports.<sup>2</sup> (Email from Defense Counsel and attached document with proposed changes, attached as  
7 Exhibit "1.") As set forth in Exhibit "1" Venetian approved the following language in Plaintiff's  
8 Order:

9 IT IS HEREBY ORDERED that Plaintiff's Objection is GRANTED, the Discovery  
10 Commissioner's Report and Recommendation is REVERSED in its entirety. There  
11 is no legal basis to preclude Plaintiff from knowing the identity of the individuals  
12 contained in the incident reports as this information is relevant discovery. There is  
13 also no legal basis to preclude Plaintiff from sharing the ~~redacted~~ unredacted  
14 incident reports with persons not involved in this litigation. However, the Court  
15 strongly cautions Plaintiff to be careful with how she shares and uses this  
16 information.

17 Based upon the above edits submitted by Venetian's, Venetian does not dispute the Court  
18 ordered it to produce the unredacted incident reports. Court orders are not optional, they are  
19 mandatory. To date, Venetian has not provided the 64 unredacted incident reports which the Court  
20 ordered it to provide nearly 2 months ago. Further, all incident reports Venetian produced  
21 subsequent to the hearing have likewise been in redacted form only. Venetian cites no authority to  
22 support its opinion that it can ignore the Court's May 14, 2019 order because it has "rights."<sup>3</sup>

23 reports in this matter was a novel, isolated, outlier decision; therefore, she granted the objection and  
24 ordered that unredacted reports be produced."

25 <sup>2</sup> Venetian's claim it failed produce the incident reports because the parties submitted "competing  
26 orders" is also misleading. The parties **only disputed** the wording of the 5<sup>th</sup> paragraph related to the  
27 denial of Venetian's counter-motion for sanctions. (See Defendant's Opp. at 6:7-11, 8:3-4, 16:15-17

28 <sup>3</sup> Venetian instead throws around vague references to the facts that "The rules allow Defendants to  
bring this new information before the judge. Since this issue remains open, and Defendants have not  
exhausted their rights..." However, "not exhausting rights" is not a valid reason to violate a Court  
order – if it was, everyone would ignore court orders and point to the fact their case had yet to come  
before the United States Supreme Court. Rather, Venetian is required to request a stay, which it had  
the opportunity to do (and did not do) during the objection hearing. Moreover, Venetian has no "new  
factual information" and even if it did new facts are irrelevant because the Court determined there is  
"no **legal** basis" to order a protective order on the incident reports. (Plaintiff's Mot. at Exhibit "4.")

(Defendant's Mot. at 18:1, 18:12.) Because Venetian cannot point to any authority excusing its conduct, the Discovery Commissioner should force Venetian to produce the unredacted incident reports.

**B. Venetian Provided All Known Responsive Reports at This Time**

After a careful review of the previously disclosed table, the undersigned owes Venetian and this Honorable Court an apology. The undersigned misinterpreted the notations of staff on the comparison table they put together and in hindsight should have spent more time studying the tables and/or clarified the table summaries with staff before filing this motion. Since the filing of this motion Venetian has produced all additional responsive reports. Plaintiff therefore withdraws this portion of her motion.

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

The Discovery Commissioner should compel Venetian to produce the subsequent incident reports because they are admissible for three major reasons: (1) to prove the malice element of punitive damages, (2) to prove causation and (3) to prove punitive damages.

Venetian argues this is still a "simple negligence" case despite the fact the Court granted Plaintiff's motion to amend her complaint to add a claim for punitive damages. Venetian argues there is still an outstanding motion for reconsideration on the issue.<sup>4</sup> (Defendant's Mot. at 23:21-28.) The Court will decide on the motion for reconsideration on July 30, 2019, three days before the hearing on this motion to compel. If the Court determines punitive damages stay, then the discovery rules allow Plaintiff to discover the subsequent incident reports because they are admissible at trial as "evidence which would tend to prove the essential factors of the conscious disregard concept of

<sup>4</sup> Venetian also argues that even if the punitive damages claim remains Plaintiff is not entitled to subsequent incident reports because the issue is a "transitory condition." This argument is disingenuous. The Court granted Plaintiffs' motion to amend to add a claim for punitive damages because Venetian knew its marble floors were unreasonably slippery and posed a high risk to guests but nonetheless refused to increase their slip resistance. Marble floors have been in Venetian since it opened nearly 20 years ago and they are thus not a "transitory condition."



malice.” *Hilliard v. A. H. Robins Co.*, 148 Cal. App. 3d 374, 401, 196 Cal. Rptr. 117, 135 (Ct. App. 1983) citing *Blank v. Coffin*, 20 Cal.2d 457, 463, 126 P.2d 868, 871 (1942); see also *Ettus v. Orkin Exterminating Co.*, 233 Kan. 555, 568, 665 P.2d 730, 741 (1983) (citing *Byers v. Santiam Ford, Inc.*, 281 Or. 411, 416, 574 P.2d 1122, 1125 (1978)) (“Evidence of the parties’ conduct subsequent to the event, which produces plaintiff’s claim for punitive damages, whether aggravating or mitigating, must be probative of the defendant’s state of mind at the time of the transaction.”); *Jimenez v. Chrysler Corp.*, 74 F. Supp. 2d 548, 562 (D.S.C. 1999), *rev’d in part, vacated in part sub nom. Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439 (4th Cir. 2001) (holding “subsequent knowledge of problems” is admissible to prove conscious disregard and sufficient grounds to support the a jury’s verdict of punitive damages); *Webster v. Boyett*, 496 S.E.2d 459 (Ga. 1998), (holding evidence of prior and subsequent conduct should be admissible for the purpose of proving punitive damages in a **drunk driving accident**).<sup>5</sup> The jury may hear, and Plaintiff may thus discover, subsequent incident

<sup>5</sup> See also *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. Farnner 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 post-injury conduct because it was relevant to pre-injury evidence supporting an award of punitive damages); *Hill v. USA Truck, Inc.*, No. 8:06-CV-1010-GRA, 2007 WL 1574545, at \*15 (D.S.C. May 30, 2007); *Hallman v. Cushman*, 196 S.C. 402, 13 S.E.2d 498, 501 (1941); *Eaves v. Penn*, 587 F.2d 453, 464 (10th Cir.1978) (evidence of defendant’s subsequent conduct admissible under Rule 404(b)

1 reports because they are relevant to Venetian's culpable state of mind, i.e. malice: "It is indeed  
2 manifest that subsequent conduct may tend to throw light upon the immediate occurrence under  
3 investigation, especially where mental attitudes are important, such as a conscious failure to observe  
4 due care, and the like." *Hallman*, 196 S.C. at 402, 13 S.E.2d at 501. Thus, if the Court determines  
5 punitive damages stand, Plaintiff may discover (1) subsequent incident reports, (1) evidence of other  
6 subsequent conduct discussed in RFPs Nos. 7, 29, 23, 34, 25, 26 and 30, and (3) testimony from  
7 Venetian's 30(b)(6) witness about subsequent incidents, subsequent measures taken to change the  
8 coefficient of friction and subsequent slip testing.

9 The Nevada Supreme Court also "previously held that evidence of subsequent, similar  
10 accidents involving the same condition may be relevant on the issues of causation and whether there  
11 is a defective and dangerous condition." *Reingold v. Wet "N Wild Nevada, Inc.*, 113 Nev. 967, 969,  
12 944 P.2d 800, 802 (1997) citing *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 416, 470 P.2d 135, 140  
13 (1970); see also *Jeep Corp. v. Murray*, 101 Nev. 640, 646, 708 P.2d 297, 301 (1985). In other  
14 words, the Supreme Court ruled that subsequent accidents are not only discoverable, but that they  
15 meet the even higher standard of admissibility a trial. Subsequent incident reports are thus  
16 discoverable and admissible at trial to show malice, to prove causation and to prove the existence of  
17 a dangerous condition. Thus, because subsequent incident reports are admissible at trial to prove  
18 three separate elements of the charged torts, the Discovery Commissioner should grant Plaintiff's  
19 motion to compel.

20 //

21 //

22  
23  
24 to show defendant's intent at time of alleged breach of fiduciary duty); *Lakin v. Senco Prods., Inc.*,  
25 925 P.2d 107, 116 (Or. Ct. App. 1996) (affirming introduction of evidence relating to the defendant's  
26 post-accident conduct); *Chart v. General Motors Corp.*, 258 N.W.2d 680, 683-84 (1977); *Hodges v.*  
27 *S.C. Toof & Co.*, 833 S.W.2d 896, 902 (Tenn. 1992) (in assessing punitive damages, jurors must  
28 consider "whether, once the misconduct became known to defendant, defendant took remedial action  
or attempted to make amends by offering a prompt and fair settlement for actual harm caused").



**D. The Court Should Allow Plaintiff to Examine Venetian's 30(b)(6) Witness on Measures Taken to Produce/Locate Security Incident Injury Falls because Defendant's Opposition Does Not Set Forth an Argument Against It**

The Nevada Supreme Court held the "failure to respond to an argument... acts as a concession." See *Wong v. Sunrise Mountainview Hosp., Inc.*, No. 61375, 2014 WL 3764807, at \*2 (Nev. July 29, 2014) citing *See Citizens for Responsibility & Ethics in Washington v. Cheney*, 593 F.Supp.2d 194, 229 (D.D.C.2009) (holding when plaintiff only addressed two requirements in his opposition to defendant's motion to dismiss the other three requirements waived as "failure to respond to an argument... acts as a concession.") EDCR 2.20 reflects this principal: a party opposing a motion submit "a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion and/or joinder should be denied." EDCR 2.20(e). EDCR 2.20(e) gives the district court authority to "to grant motions that are not properly opposed..." *Benjamin v. Frias Transportation Mgmt. Sys., Inc.*, 433 P.3d 1257 (Nev. 2019). The opposing party's failure "to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same." EDCR 2.20(e).

In *Benjamin*, the district court granted the defendant's motion to dismiss because the plaintiff did not properly oppose the arguments made in the motion. *Benjamin*, 433 P.3d 1257 (Nev. 2019). When the plaintiff failed to timely serve the defendant driver, the defendant cab company filed a motion to dismiss on behalf of the driver for improper service, and in turn, the cab company, because the claims against the cab company were based on vicarious liability. *Id.* The trial court granted the defendant's motion to dismiss because the plaintiff failed to "properly oppose" it. *Id.* The Nevada Supreme Court affirmed because the plaintiff "did not present any argument in his opposition that [one defendant] remained liable for [plaintiff's] injuries even if the claims against the [other defendant] were dismissed." *Id.* See also *King v. Carlidge*, 121 Nev. 926, 928, 124 P.3d 1161, 1162-63 (2005) (upholding the trial court's grant of defendant's motion for summary judgment because plaintiff's opposition failed "to include any evidentiary support," but rather contained "mere allegations and conclusory statements").

Here, similar to the plaintiff in *Benjamin*, Venetian does not “properly oppose” Plaintiff’s motion because Venetian does not address the issue of the 30(b)(6) deposition. (*See generally*, Defendant’s Opp.) Plaintiff’s motion emphasizes that she should be allowed to discuss the measures Venetian took to locate and produce incident reports because (1) Venetian has shown time and time again in 4 cases – *Sekera v. Venetian*, *Cohen v. Venetian*, *Smith v. Venetian* and *Boucher v. Venetian* – that cannot be trusted to fully and fairly disclose incident reports, and because (2) the rules allowing discovery sanctions would be rendered meaningless if the parties were not permitted to discover information related to violations to ensure compliance with the rules. Venetian’s opposition fails to even mention “30(b)(6)” let alone address these arguments. This failure is clearly not an oversight, as Venetian references the body of Plaintiff’s argument regarding Venetian’s 30(b)(6) witness and questions the “relevance” of Plaintiff’s exhibit referenced in that same argument. (*See* Defendant’s Opp. At 13:22-23.) (“Exhibit 15 to Plaintiffs motion, identified as Plaintiff’s Notice a/Motion and Motion for Terminating Sanctions, et al filed by Peter Goldstein, Esq., on February 13, 2019 in the Smith matter, was denied by the District Court in a hearing held on May 7, 2019. Therefore, the relevance of that motion referenced on page 17 of the motion to compel is unclear.”) Venetian’s, like the plaintiff in *Benjamin*, therefore did not argue why the Plaintiff cannot question on measures taken to locate and produce incident reports. Thus, this Court should rule the same as the *Benjamin* Court and approve Plaintiff’s 30(b)(6) parameters because Defendant’s failure to address the argument is an admission the motion is meritorious.

## II. LIMITED OPPOSITION / RESPONSE TO DEFENDANTS’ MOTION TO COMPEL DOCUMENTS PROVIDED TO TOM JENNINGS’

On July 22, 2019 Defendant served its 16<sup>th</sup> supplement to its list of witnesses and production of documents for early case conference. (Defendant’s 16<sup>th</sup> Supp., attached as Exhibit “2.”) This supplement contained the communication from Plaintiff’s counsel to Plaintiff’s expert Tom Jennings (“Mr. Jennings”) regarding the 196 incidents which occurred in the Venetian. The supplement also contained a copy of the table summarizing the reports that Plaintiff provided to Mr. Jennings. These

documents make up all the documents sought in Defendant's counter motion to compel documents provided to Mr. Jennings, and this issue is therefore moot.

### III. OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER

#### A. Factual Background

On May 31, 2019 Plaintiff made the following requests for production of documents relevant to the instant motion:

##### REQUEST NO. 23:

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

##### REQUEST NO. 24:

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

##### REQUEST NO. 25:

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

##### REQUEST NO. 26:

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

##### REQUEST NO. 27:

Any and all directives, correspondence, emails, postings, or other documentation from Venetian management to PAD personnel which addresses or refers to concerns about the safety of the marble floors located within the Venetian Hotel and Casino from January 1, 2000 to date.

(Defendant's Opp. at Exhibit "I.")

On July 17, 2019 Plaintiff made the following additional request for production:

##### REQUEST NO. 35:

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

1 occurring on marble floors within the subject VENETIAN CASINO RESORT from  
2 the May 3, 1999 to the present.

3 (Plaintiff's Ninth Req. for Production of Documents, attached as Exhibit "3.")

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

#### 14 **B. Legal Standard for a Motion for a Protective Order**

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

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

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

28 NRCP 26(c).

29 The party seeking the protective order has the burden of persuasion under Rule 26. *Cipollone*  
30 *v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986) (discussing the burdens under the  
31 analogous FRCP 26(c)). To meet the burden of persuasion, "the party seeking the protective order



1 must show good cause by demonstrating a particular need for the protection sought.” *Beckman*  
2 *Indus., Inc., v. Int’l. Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Rule 26(c) requires more than  
3 “broad allegations of harm, unsubstantiated by specific examples or articulated reasoning.” *Id.*; see  
4 also *Cipollone*, 785 F.2d at 1121; *Lewis v. St. Luke’s Hosp. Ass’n*, 132 F.3d 33 (6th Cir. 1997);  
5 *Springs v. Ally Fin. Inc.*, 684 F. App’x 336, 338 (4th Cir.), cert. denied, 138 S. Ct. 221, 199 L. Ed. 2d  
6 119 (2017). Rather, “the seeking protection from disclosure must “allege specific prejudice or  
7 harm.” *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir. 2011).  
8 If the party proves such harm will result from disclosure of the discovery documents, then the Court  
9 must “balance “the public and private interests to decide whether maintaining a protective order is  
10 necessary.” *Id.* (quoting *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir.2002) (internal  
11 quotations omitted). No longer can the time-honored cry of “fishing expedition” serve to preclude a  
12 party from inquiring into the facts underlying his opponent’s case. Mutual knowledge of all the  
13 relevant facts gathered by both parties is essential to proper litigation. To that end, either party may  
14 compel the other to disgorge whatever facts he has in his possession.” *Washoe County Board of*  
15 *School Trustees v. Pirhala*, 84 Nev. 1, 6, 435 P.2d 756, 759 (1968).

16 **B. The Discovery Commissioner Should Deny Defendant’s Motion for a Protective**  
17 **Order Because Venetian Has Not Shown Good Cause**

18 Defendant’s entire argument for a protective order is as follows:

19 Defendants have always objected to Plaintiff’s demand for subsequent incident  
20 reports. Plaintiff’s latest request is overly broad in that is not sufficiently limited in  
21 time, limited to the subject area, limited to factually similar facts, ect. Plaintiff simply  
22 demands everything.

23 (Defendant’s Opp, at 27:24-28:2.)

24 Venetian’s cry that Plaintiff’s request for production is “overly broad in that is not  
25 sufficiently limited in time, limited to the subject area, limited to facts, ect,” is exactly what the 3<sup>rd</sup>,  
26 4<sup>th</sup>, 6<sup>th</sup> and 9<sup>th</sup> Circuits meant when they stated “broad allegations of harm, unsubstantiated by  
27 specific examples or articulated reasoning.” Venetian’s argument does not explain how Plaintiff’s  
28 request is not “limited to facts.” Plaintiff and this Honorable Court have no idea what “facts”  
Venetian even refers to. Venetian’s argument does not explain what “limited to the subject area”

1 means. Venetian's argument does not describe why Plaintiff's request is "not sufficiently limited in  
2 time." Finally, Plaintiff the Court can only guess at to what Venetian means by "ect." Venetian's two  
3 sentence explanation as to why good cause exists is grossly inadequate to satisfy the burden of proof  
4 as it is too broad, too vague and lacks specific examples and articulated reasoning. For this reason  
5 alone, Venetian's motion for a protective order should be denied.

6 Venetian also improperly attempts to re-litigate an issue which the Court previously decided  
7 in Plaintiff's objection to Venetian's initial motion protective order. Parties cannot "file immediate,  
8 repetitive, serial motions until the right circumstances or the right judge allows them to achieve a  
9 different result, based on essentially the same facts." *Mosley v. Figliuzzi*, 113 Nev. 51, 58, 930 P.2d  
10 1110, 1114 (1997), *overruled on other grounds by Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042  
11 (2004); *see also Nance v. Ferraro*, 418 P.3d 679, 684 (Nev. App. 2018) ("Parties may not file  
12 repetitive, serial motions seeking to relitigate the same issues based on the same underlying facts.")  
13 Venetian's initial motion for a protective order argued "Reports of prior slip and fall incidents,  
14 which occurred on different circumstances, and on different dates, in different areas of the  
15 property have no relevancy to the issue of whether Venetian had notice." (Defendant's Mot. for a  
16 Protective Order dated Feb. 1, 2019 at 7:25-8:1.) In response to Plaintiff's objection to the Discovery  
17 Commissioner's report and recommendations Venetian then: "Reports of prior slip and fall  
18 incidents, which occurred on different circumstances, and on different dates, in different areas of  
19 the property have no relevancy to the issue of whether Venetian had notice." (Defendant's Rspn. to  
20 Plt's Obj. to the DCRR dated Apr. 23, 2019 at 17:13-15.) At the hearing on the objection, the Court  
21 did not limit the scope of Plaintiff's request for production in relation to factually similar  
22 circumstances (wet vs. dry floor slips and falls as Venetian requested) or only to the immediate area  
23 of Plaintiff's fall (in the Grand Lux Café rotunda). As Venetian previously raised this argument  
24 before the Discovery Commissioner and the Court, the proper place for it is a motion for  
25 reconsideration, not a new motion for a protective order.

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**C. The Discovery Commissioner Should Deny Venetian's Motion Because The Information Sought Is Relevant to Venetian's Conscious Disregard of a Known Hazard**

A plaintiff may recover punitive damages when the evidence demonstrates that the defendant acted with "malice, express or implied." *Wyeth v. Rowatt*, 126 Nev. Adv. Rep. 44, 244 P.3d 765, 783 (2010) quoting NRS 42.005(1). "'Malice, express or implied,' means conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others." *Id.* quoting NRS 42.001(3) (emphasis added). "A defendant has a 'conscious disregard' of a person's rights and safety when he or she knows of 'the probable harmful consequence of a wrongful act and a willful and deliberate failure to act to avoid those consequences.'" *Id.* quoting NRS 42.001(1).

Prior incident reports from January 1, 2000 to present are relevant to show Venetian consciously disregarded the safety of its customers when it failed to increase the marble floors' slip resistance floors after receiving notice of the hazard from hundreds of customers. Prior incident reports dating back to 2000 show a pattern of repeated notice and failure on Venetian's part to take any action.

Additionally, former Venetian executive Ms. Tonomah testified the Venetian ripped up the carpet casino walkways and replaced them with marble around 2007 or 2008. In other words, Venetian not only consciously disregarded the dangerous condition of their marble floors, but they actually added to the hazard by significantly increasing the square footage marble in their casino. By choosing to replace carpet with marble Venetian made all 20 years of incident reports relevant to Plaintiff's punitive damages claim. Incident reports from before 2007 or 2008 are relevant to show Venetian knew slips and falls occurred at a lower rate when carpet covered their casino floor. Incident reports from after 2007 or 2008 are relevant to show the spike in incidents caused by Venetian's decision to install additional marble flooring and corresponding increase. Based upon this trend, Plaintiff anticipates she will find internal documents, memorandum or reports indicating concern regarding the increased number of incidents and/or the safety of the new marble floors. These documents are relevant to show the Venetian knew marble was dangerous but nonetheless

1 consciously choose to add more of it or they realized the marble was dangerous and failed to switch  
2 it back to carpet.

3 Interestingly, Venetian anticipated this argument from Plaintiff: numerous witnesses recently  
4 testified marble is not more slippery than carpet:

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

7 A: It's the same, basically.

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

10 A: Yeah.

11 (Deposition of Kecia Powell, attached as Exhibit "5" at 19:21-20:10.)

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

14 A: I would have to say no.

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

17 A: No.

18 (Deposition of Pete Krueger, attached as Exhibit "6" at 19:21-20:10.) Common sense  
19 however, tells us otherwise: marble floors are more slippery and therefore more dangerous  
20 than carpet.

21 In sum, because Venetian choose to replace a safe floor with a more dangerous marble floor,  
22 the incident reports from 2000 to present are relevant and discoverable. Moreover, the other  
23 documents in Plaintiff's requests for production 23-27 (i.e. are also discoverable because conscious  
24 disregard has no time limit. Any document that indicates Venetian knew its marble floors were  
25 hazardous and consciously decided to do nothing about – whether dated January 1, 2000 or January  
26 1, 2016 – is admissible and relevant to prove Plaintiff's case for punitive damages. As all documents  
27 Plaintiff requested in her requests for production nos. 23-27 and 35 are relevant to the case at hand,  
28 the Discovery Commissioner should deny Venetian's motion for a protective order on the same.

//

//



D. The Discovery Commissioner Should Deny Venetian's Motion Because The Information Sought Is Relevant to the Jury's Determination of the Amount of Punitive Damages

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

"[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575, 116 S. Ct. 1589, 1599, 134 L. Ed. 2d 809 (1996). "This principle reflects the accepted view that some wrongs are more blameworthy than others." *Id.* For example, repeated misconduct is more reprehensible than a single action:

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

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

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

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

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

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

(NEV. J.I. 10.20 BAJI 14.71) To determine the reprehensibility of the defendant's conduct, we consider, among other factors, whether **"the conduct involved repeated actions or was an isolated incident."** *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 409, 123 S. Ct. 1513, 1516.

1 155 L. Ed. 2d 585 (2003); *see also Wyeth v. Rowatt*, 126 Nev. 446, 475, 244 P.3d 765, 785 (2010).  
2 (considering the defendant's "conduct involved repeated actions" when analyzing the  
3 reprehensibility.)


4 Here, Plaintiff seeks evidence – incident reports and other documents related to the slip  
5 resistance of the marble floors dating back to 2000 – that directly related to the "reprehensibility" of  
6 Venetian's conduct. The more times individuals notified Venetian of the hazardous condition of  
7 their marble floors, the more reprehensible Venetian's conduct and the more punitive damages  
8 Nevada instructs the jury to award. Similarly, the more times Venetian acknowledged hazardous  
9 condition of their marble floors and failed to remedy it, the more reprehensible Venetian's conduct  
10 and the more punitive damages Nevada instructs the jury to award. As each prior incident shows  
11 another time Venetian was notified of the issue, all prior incidents are relevant to the jury's  
12 determination of the amount of punitive damages. Similarly, each unfavorable slip test report,  
13 correspondence or other document acknowledging are relevant to the jury's determination of the  
14 amount of punitive damages. Thus, because the incident reports and other documents from 2000 to  
15 present go directly to the reprehensibility of Venetian's conduct, they are discoverable.

16 **IV. CONCLUSION**

17 Based on the foregoing, Plaintiff respectfully requests this Court (1) grant her motion to  
18 compel testimony and documents; (2) deny Venetian's counter motion to compel documents from  
19 Mr. Jennings as moot and (3) deny Venetian's counter motion for a protective order.

20 DATED this 25<sup>th</sup> day of July, 2019

21 THE GALLIHER LAW FIRM

22  
23   
24 Keith E. Galliher, Jr., Esq.  
25 Nevada Bar Number 220  
26 Kathleen H. Gallagher, Esq.  
27 Nevada Bar Number 15043  
28 1850 E. Sahara Avenue, Ste. 107  
Las Vegas, Nevada 89104  
*Attorney for Plaintiff*

**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 REPLY IN SUPPORT OF HER MOTION TO COMPEL TESTIMONY AND DOCUMENTS, OPPOSITION TO DEFENDANTS' MOTION TO COMPEL DOCUMENTS FROM JENNINGS AND OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER** was served on the 25<sup>th</sup> 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 “N”



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12  
13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA  
15

16 JOYCE SEKERA, an Individual,  
17  
18 Plaintiff,

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

19 v.

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

**FIRST AMENDED COMPLAINT**

25 Defendants.  
26

27 Plaintiff, by and through her undersigned attorneys, complains of Defendants as follows:  
28

**GENERAL ALLEGATIONS**

**I**

Plaintiff is a resident of the State of Nevada. The incident which gives rise to this cause of action occurred within the State of Nevada

**II**

Defendants, VENETIAN CASINO RESORT, LLC d/b/a THE VENETIAN LAS VEGAS (hereinafter VENETIAN), LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS (hereinafter VENETIAN), are, upon information and belief, Nevada Limited Liability Companies duly licensed and doing business within the State of Nevada.

**III**

1. The true names of DOES I through V, their citizenship and capacities, whether individual, corporate, associates, partnership or otherwise, are unknown to Plaintiff who therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes, and therefore alleges, that each of the Defendants, designated as DOES I through V, are or may be, legally responsible for the events referred to in this action, and caused damages to the Plaintiff, as herein alleged, and Plaintiff will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

2. DOES I through V are employers of Defendants who may be liable for Defendants negligence pursuant to NRS 41.130, which states:

Whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury shall be liable to the person injured for damages; and where

1 the person causing such injury is employed by another person or corporation responsible for his  
2 conduct, such person or corporation so responsible shall be liable to the person injured for damages.

3  
4 IV

5 On or about November 4, 2016 at approximately 1:00 p.m. Defendants negligently and  
6 carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid  
7 on the floor causing the Plaintiff to slip and fall. Defendant had actual and/or constructive notice of  
8 the condition which caused the fall. Pursuant to the mode of operation doctrine Defendant was on  
9 continuous notice of the presence of liquid on its floors.

10 V

11 At the aforementioned place and time, Plaintiff was walking through the VENETIAN when  
12 her foot came into contact with a liquid substance on the floor causing her to slip and fall. The liquid  
13 on the floor coupled with the composition of the floor, rendered the area dangerous for use as a  
14 passageway for the Plaintiff and for other patrons of the VENETIAN.

15 VI

16 The Defendant knew or should have known that liquid located in an area of the fall was  
17 dangerous and in the exercise of ordinary care would have had reasonable opportunity to remedy the  
18 situation prior to the happening of the fall herein alleged. In spite of Defendants actual, constructive  
19 and/or continuous notice of the presence of the liquid, the Defendant failed to take appropriate  
20 precautions to prevent injury to Plaintiff and/or guests and/or patrons.

21 VII

22 The Defendant knew that its marble floors caused unreasonable amount of injury slip and  
23 falls and thus were dangerous to pedestrians, and in the existence of ordinary care, would have had  
24 opportunity to remedy the situation prior to Plaintiff's fall.

VIII

In the three years prior to Plaintiff's fall there were at least 73 injury slip and falls on the marble floors in Venetian. In spite of Defendant's actual, constructive, and/or continuous notice their marble floors were significantly more slippery than is safe for pedestrians, the Defendant failed to take any appropriate precautions to prevent injury to Plaintiff and other guests.

FIRST CLAIM FOR RELIEF

(Negligence)

I

Plaintiff repeats and realleges the allegations contained in Paragraphs I through VI of her General Allegations as though fully set forth herein.

II

As a direct and proximate result of the negligence of Defendant and its yet unknown employee and/or employees, Plaintiff sustained personal injuries to her head, neck, back, arms and legs and has suffered pain and discomfort all to her damage in a sum in excess of FIFTEEN THOUSAND DOLLARS (\$15,000).

III

Upon information and belief, Defendant had actual or constructive notice of the hazard posed by their marble floors. Defendant knew that the unsafe condition posed an unreasonable hazard or slip and fall risk to the general public, invitees, patrons and business invitees. Defendant's failure to remedy the situation was knowing, wanton, willful, malicious and/or done with conscious disregard for the safety of Plaintiff and of the public. Defendant's outrageous and unconscionable conduct warrants an award of punitive damages pursuant to NRS 42.005.



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IV

Said injuries have resulted in medical treatment all to Plaintiff's damage in a sum in excess of FIFTEEN THOUSAND DOLLARS (\$15,000).

V

Plaintiff has been compelled to retain the services of an attorney to prosecute this action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs of suit incurred herein.

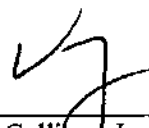
**WHEREFORE**, Plaintiff prays for judgment in her favor and against Defendant as follows:

**FIRST CLAIM FOR RELIEF**

1. General damages in a sum in excess of \$15,000;
2. Special damages in a sum in excess of \$15,000;
3. Punitive damages;
4. Attorney's fees and costs of suit incurred herein; and,
5. For such other and further relief as the Court may deem just and proper on the premises.

DATED this 27<sup>th</sup> day of June, 2019

THE GALLIHER LAW FIRM

  
\_\_\_\_\_  
Keith E. Gallihier, Jr., Esq.  
Nevada Bar Number 220  
1850 E. Sahara Avenue, Ste. 107  
Las Vegas, Nevada 89104  
*Attorney for Plaintiff*

# EXHIBIT “O”

## Jennings Forensic Services, LLC

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calnevsafety@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

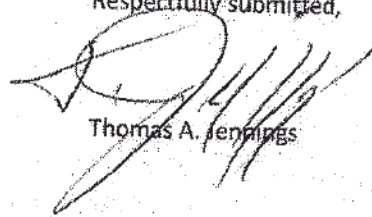
Friction: Definitions, Laboratory and Field measurements and a Comprehensive Bibliography' by James M. Miller, Don B. Chaffin and Robert O. Andres. Within the conclusions of that extensive study is the following:

"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 “P”



**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 occur when coefficient of friction was above .50?

2 A. Well, I believe I've talked with counsel about  
3 that following the result of the testing, that there are  
4 multiple reasons why people lose their balance and  
5 suddenly fall.

6 The layperson usually attributes it to a slip  
7 when, in fact, it is everything from a misstep to a  
8 scuff slip to a change of directional slip. All produce  
9 something similar to a slip. But it wasn't due to the  
10 fact that the walking surface fell below the standard  
11 for a slip-resistant walking surface.

12 Q. Okay. In those cases?

13 A. In those cases.

14 Q. Let me ask you about some of the other cases  
15 you've had.

16 Peter Goldstein -- or is it Goldberg?

17 A. Goldstein.

18 Q. Peter Goldstein, you're presently a retained  
19 expert in a case he's handling against the Venetian?

20 A. Yes, sir.

21 Q. The plaintiff's name is Carol Smith?

22 A. Yes, sir.

23 Q. You've been deposed in that case?

24 A. Yes.

25 Q. You have done an inspection in that case?



1 A. Yes.

2 Q. And you've prepared reports in that case?

3 A. Yes, sir.

4 Q. Okay. How many times have you been retained by  
5 Peter Goldstein in any cases against the Venetian?

6 A. Would be the first, I believe.

7 Q. Okay. How many cases with Peter Goldstein  
8 total where he's retained you as an expert?

9 A. Two or three over a 15-year period.

10 Q. Okay. And do they all relate to slip-and-falls  
11 or do they have various fact scenarios?

12 A. Good question, and I can't honestly recall.

13 Q. What other attorneys have you worked with on  
14 the plaintiff side in any cases you've handled against  
15 the Venetian? Let's just keep it related to marble  
16 floors.

17 A. Well, that would simply be Mr. Goldstein, as I  
18 recall, and Mr. Galliher. I've only done the two on  
19 that.

20 Q. Okay. So you've done two -- so you've been  
21 retained as an expert for the plaintiff in two cases  
22 against the Venetian related to slip-and-falls on marble  
23 floors?

24 A. Best of my recollection, that's correct.

25 Q. Okay. And you don't recall being retained by

1 A. Correct.

2 Q. Now, you did test it at .40 at least one  
3 direction; correct?

4 A. Correct.

5 Q. And according to the study that we just  
6 reviewed, in the 1983 study, .40 would have been -- at  
7 least they determined to be adequate; correct?

8 A. Under controlled conditions.

9 Q. Got it. Okay.

10 Now, let me ask you about the Smith case.

11 Where did the slip-and-fall occur in Smith,  
12 because I'm not actually familiar with that?

13 The Carol Smith case versus Venetian.

14 A. Oh, I believe it was over by the escalator to  
15 the right -- you know the escalator where you come down  
16 from the upper level?

17 Q. Yes.

18 Well, is this from the parking garage?

19 A. Yes.

20 Q. Okay. So I'm going to ask you a few landmarks.

21 Do you know where the JuiceFarm is, the Bouchon  
22 Bakery?

23 A. You're testing my memory. I don't pay  
24 attention to the occupancy by name.

25 Q. The reason I ask is because you make reference

1 to -- on page 3 of your report, you say, "Food courts,  
2 cafés, coffee bars, and other operations" --

3 A. Right.

4 Q. -- "that dispense beverages."

5 I'm wondering, did you observe that or were you  
6 told that information?

7 A. No, no, no. I've observed that. I've been to  
8 that property multiple times. I can't tell you the  
9 names of all those.

10 Q. Okay. All right. I got it.

11 You just say this happened -- the Carol Smith  
12 slip-and-fall you say happened somewhere around the base  
13 of the escalator that comes down from the parking garage  
14 escalator in the Venetian?

15 A. If you went down to the base of the escalator  
16 and turned right and then you walked a little bit  
17 towards the -- they have, like, a coffee bar that sits  
18 sort of behind the escalator, then there's, like, a  
19 little general store at the back, it would be right in  
20 that general vicinity as I recall the location.

21 Q. There's a shoe shine place there.

22 Do you remember that?

23 A. I do.

24 Q. Is that -- was it near the shoe shine place?

25 A. Near, but near to me is...

1 Q. Okay. Is it between the shoe shine place and  
2 the entry to the gift shop?

3 A. Approximately. That's close.

4 Q. Okay. So this would be maybe -- would it be,  
5 like, 100 feet or so away from the slip-and-fall that  
6 occurred in the Sekera case?

7 A. It's reasonable. Close.

8 Q. So the Smith case did not happen in the Grand  
9 Lux rotunda?

10 A. The same area where we're here today?

11 Q. Right.

12 A. No.

13 Q. Now, my understanding is when you did the dry  
14 test of the Smith case, it was .90 coefficient of  
15 friction?

16 A. Correct.

17 Q. When you did the wet test, it was .40  
18 coefficient of friction?

19 A. Correct.

20 Q. Okay. And any explanation as to why it would  
21 be different -- your testing would be different in the  
22 Smith case versus the Sekera case?

23 A. Well --

24 MR. KUNZ: Speculation.

25 Go ahead.

1           THE WITNESS: From an engineering standpoint,  
2     sure, there's possibilities that can explain that.  
3     Mostly it would be: Is this area more transited by  
4     pedestrian traffic than the Sekera incident? Was the  
5     floor application put on by Venetian at the same level  
6     in that case as in this case?

7           So, yeah, there's multiple possibilities as to  
8     why you would have a discrepancy between 0.4 and 0.33.  
9     Frankly, it's not that far off.

10    BY MR. ROYAL:

11       Q.    Okay. Now, you talk about floor applications,  
12    and you make mention of that on page 2 of your initial  
13    report?

14       A.    Yes.

15       Q.    You don't identify the floor applications  
16    specifically.

17           What floor applications are you talking about?

18       A.    There are a number of commercial products by  
19    the dozen that can be applied to any walking surface  
20    that will increase the slip resistance level to 0.5 or  
21    higher. And depending on the product, it will retain  
22    that level even with a heavy volume of pedestrian  
23    traffic. It depends on the volume of traffic, it  
24    depends on the surface to which it's being applied, but  
25    there are those products out there. There's numbers of

1           A.    It tells us that the English XL Tribometer, or  
2   the XL Tribometer as it's called, is a recognized valid  
3   instrument for slip resistance testing.

4           Q.    I looked at that and maybe I missed it.  I  
5   didn't see that particular equipment identified  
6   specifically there.

7                   Is it or is it just about calibration?

8           A.    No, no, no.  F2508-11 is about the validation  
9   of variable instrument tribometers as an objective  
10  testing instrument for slip resistance.  There's a  
11  history behind all of that, which I think you're  
12  probably aware of that.

13          Q.    I wanted to ask you about -- can you just tell  
14  me, what's the DCOF versus the SCOF?

15          A.    DCOF is the dynamic coefficient of friction and  
16  SCOF is the static coefficient of friction.  The  
17  difference between the two is static coefficient of  
18  friction is the amount of force necessary to incipiate  
19  [sic] motion across the surface.

20                   A dynamic coefficient of friction is the amount  
21  of force necessary to continue motion across the  
22  surface.  Quite different.

23          Q.    Okay.  Which one applies here?

24          A.    Static coefficient of friction.

25          Q.    And explain why that is.

1           A.     Because most heels slip first, simply cases of  
2     a walking surface not having the appropriate level of  
3     slip resistance to prevent a sudden slip.

4                     And dynamic friction slip-and-falls would mean  
5     that you're on a sheet of ice and you're sort of skating  
6     across and you ultimately lose your balance and fall.

7                     All studies that I have reviewed and all  
8     lectures I've attended through every engineering course  
9     at every school, static coefficient of friction is the  
10    primary -- in fact, 90-some percent cause of slips and  
11    falls, not dynamic friction.

12           Q.     I'm just looking at an article from 2008 that  
13    makes reference to the dynamic coefficient of friction  
14    with a -- they have a wet value of .42 or greater  
15    coefficient of friction.

16                     What would that relate to?

17           A.     To me, that is a dynamic friction level.  How  
18    they got it, what they used, how many tests did they  
19    provide, what was the surface, you really can't compare  
20    dynamic coefficient of friction and static coefficient  
21    of friction mathematically or in terms of reliability in  
22    predicting slip-and-fall events.  They are two  
23    completely different physical efforts.

24           Q.     Are you aware of the .42 coefficient of  
25    friction recommended level for flooring related to the

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 “Q”

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  
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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:

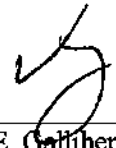
8 Any and all complaints submitted by guests or other individuals regarding the safety of the  
9 marble floors.

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 31<sup>st</sup> 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  
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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 31<sup>st</sup> 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

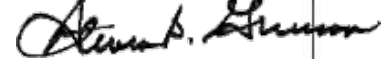
\_\_\_\_\_ Receipt of Copy on this \_\_\_\_\_ day of May, 2019,

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 “R”



**DCRR**

FARHAN R. NAQVI

Nevada Bar No. 8589

SARAH M. BANDA

Nevada Bar No. 11909

NAQVI INJURY LAW

9500 West Flamingo Road, Suite 104

Las Vegas, Nevada 89147

Telephone: (702) 553-1000

Facsimile: (702) 553-1002

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. <sup>training, policy and procedure</sup> 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 <sup>subject</sup> 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 <sup>subject</sup> lobby only <sup>and only for the 24 hours before and after the incident at issue.</sup> (Request No. 29).

THE COURT FURTHER FINDS that Defendant filed a Countermotion requesting a protective order be issued regarding: <sup>✓</sup> 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, <sup>subject to a privilege log.</sup> 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<sup>surveillance,</sup> 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 NRC 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 <sup>Cap</sup> 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.

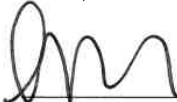
6 DATED this 5<sup>th</sup> July day of ~~June~~, 2019.



DISCOVERY COMMISSIONER

10 Respectfully Submitted by:

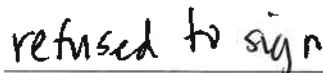
11 NAQVI INJURY LAW

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 

22 MICHAEL M. EDWARDS, ESQ.  
23 Nevada Bar No. 6281  
24 DAVID P. PRITCHETT, ESQ.  
25 Nevada Bar No. 10959  
26 8945 W. Russell Road Suite 300  
27 Las Vegas, Nevada 89148  
28 *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.

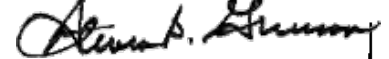
A copy of the foregoing Discovery Commissioner's Report was:

\_\_\_\_\_ 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 “S”



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](mailto: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 ///

24 ///



1 **CONCLUSIONS OF LAW**

2 9. The Self-Service Mode of Operation theory of negligence under Nevada premises  
3 liability law is a narrowly limited exception to the law applied in circumstances where a business  
4 owner has chosen a self-service mode of operation for its business requiring its guests/customers to  
5 perform tasks traditionally performed by employees; and that the guest, in the performance of that task  
6 traditionally performed by the businesses employee, caused a hazard to be present on the owner's  
7 premises. (See FGA, Inc. v. Giglio, 128 Nev. 271, 281, 278 P.3d 490, 496 (2012), citing Ciminski v.  
8 Finn Corp. 13 Wn. App. 815, 537 P.2d 850, 853 (Wash. Ct. App. 1975).)

10 10. There is no evidence to support a claim that Venetian chose a mode of operation that  
11 requires its guests/customers to perform tasks traditionally performed by Venetian employees

12 11. There is no evidence to support a claim that any guest/customer of Venetian was  
13 performing said self-service task traditionally performed by a Venetian employee that caused the  
14 hazardous condition of which Plaintiff complains, to be present at the Venetian premises.

15 12. The absence of evidence that the Alleged Condition was the result of a Venetian  
16 customer or guest performing a self-service task that was traditionally performed by employees is  
17 dispositive to application of the mode of operation approach.

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

21 **ORDER**

22  
23  
24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants Motion for  
25 Partial Summary Judgment on Mode of Operation Theory of Liability is GRANTED.

26 ///

27 ///

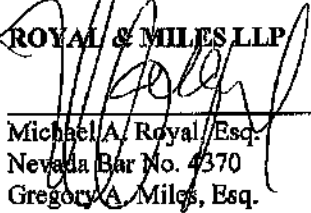
1 IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff is  
2 precluded from having the jury instructed on the mode of operation theory of liability at trial.

3 DATED this 19<sup>th</sup> day of July, 2019

4  
5   
6 DISTRICT COURT JUDGE


7 Submitted by:

8 **ROYAL & MILES LLP**

9   
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  
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Attorneys for Defendants  
VENETIAN CASINO RESORT, LLC and  
LAS VEGAS SANDS, LLC

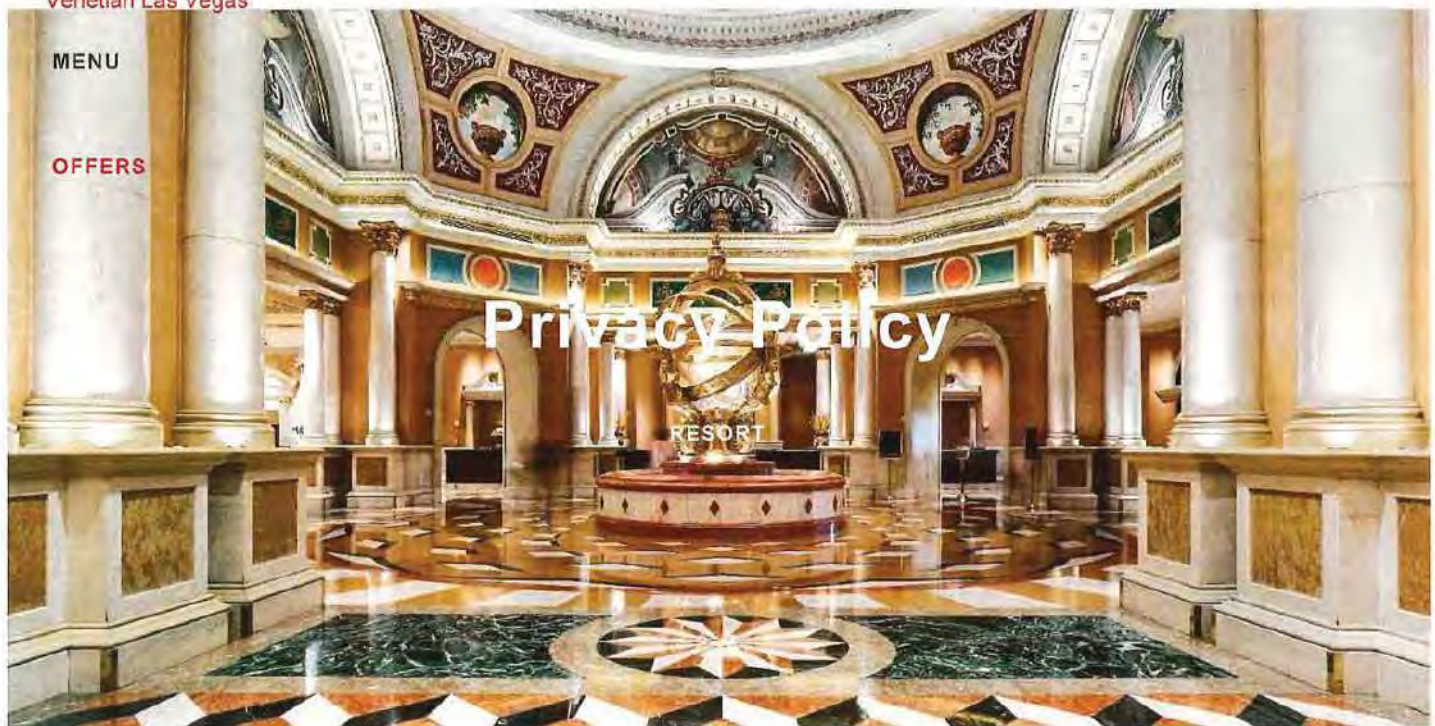
Reviewed by:

15 **THE GALLIHER LAW FIRM**

16   
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  
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# EXHIBIT “T”

The Venetian Las Vegas The  
Venetian Las Vegas



## Privacy Policy

*Last Updated: May 2018*

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

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



**CHECK RATES**



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

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

### **Note to EU and non-EU Residents**

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

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

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

### **Personal Data We Collect and Use**

#### **General Information**

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

#### **Cookies**

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

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

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

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

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

### **Personal Data**

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

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

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

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

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

### **Information Collected During Your Stay**

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

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

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

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

### **Other Sources of Data**

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

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

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



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

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

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

### **Legal Gaming Age Policy**

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

### **How We May Use Your Information**

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

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

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



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

### **How We Share Information**

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

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

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

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

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

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

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

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

### **Your Choices Regarding Your Information**

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

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

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

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

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

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

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

### **How We Protect Your Personal Data**

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

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

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

### **Notice to Residents of the EU, EEA, and Switzerland**

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

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

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

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

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

### **Changes to this Privacy Policy**

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

### **Contact Us**

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

#### *Mail*

Privacy Office, Legal Department  
Las Vegas Sands Corp.



3355 Las Vegas Boulevard South  
Las Vegas, Nevada 89109

*Email*

[Privacy@Sands.com](mailto:Privacy@Sands.com)

[PRIVACY POLICY](#)

[FAQ](#)

[CONTACT US](#)

*Reservations*

[CAREER](#)

[PRESS](#)

[EMAIL SIGN-UP](#)

**866.659.9643**

*Concierge*

**866.725.2990**

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# EXHIBIT “U”





*Sands*

LAS VEGAS SANDS CORP.

ANNUAL REPORT 2018



*F*ellow Shareholders,



I am pleased to present to you our 2018 Annual Report.

Las Vegas Sands had another good year in 2018. The company delivered strong financial and operating results, generating industry-leading adjusted property EBITDA, cash flows and profit. We also contributed meaningfully to leisure and business tourism appeal, employment, and support for local businesses in each of our markets.

The strength of our business model and cash flow allowed us to invest in future growth initiatives in each of our markets while also increasing the return of capital to shareholders during the year. We returned over \$3.2 billion of capital to shareholders in 2018. We increased our recurring dividend, as we have in each year since we established our recurring dividend in 2012, to \$3.08 per share for the 2019 year. We continue to fortify our industry-leading balance sheet, which remains an important competitive advantage as we pursue new development opportunities in new markets, including in Japan.

Macao's development and evolution as Asia's leading tourism destination accelerated during 2018. Market-wide visitation from China reached a record 25.2 million visits, an increase of 14% compared to last year. Growth in MICE (meetings, incentive, convention, and exhibition), retail, and entertainment were all on display in Macao this year, as we continue to contribute to Macao's diversification.

The company has invested more than \$13.0 billion to deliver on our promise to help Macao in its diversification and its continued evolution into the world's leading leisure and business tourism destination. Over the next three years, we will increase our total investment to over \$15 billion as we make additional investments of \$2.2 billion to expand the market-leading scale of our hotel room, retail and entertainment offerings on Cotai.

In Singapore, Marina Bay Sands again delivered impressive financial and operating performance while continuing to contribute to Singapore's leisure and business tourism appeal. Marina Bay Sands stands as the pre-eminent reference site for new jurisdictions considering the opportunity to harness the economic power and direct contributions to tourism, employment and GDP growth of our unique convention-based Integrated Resort business model.

Our Las Vegas properties enjoyed strong financial performance in 2018, bolstered by robust convention and group meeting business.

Importantly, the benefits of our convention-based Integrated Resort business model extend far beyond our own financial success. The company's properties and service offerings increase the appeal of our host cities and countries as leisure and business tourism destinations, while helping to diversify their economies, attract outside investment and increase employment. I am proud to highlight the positive impact the company and our more than 50,000 team members bring to the local communities in which we operate.

Thank you for the confidence you have shown in our company. We look forward to sharing with you the ongoing success of the company in the years ahead.

A handwritten signature in blue ink, appearing to read 'Sheldon G. Adelson'.

Sheldon G. Adelson  
Chairman of the Board and Chief Executive Officer  
April 2019



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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form 10-K**

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2018

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-32373

**LAS VEGAS SANDS CORP.**

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of  
incorporation or organization)

3355 Las Vegas Boulevard South  
Las Vegas, Nevada

(Address of principal executive offices)

27-0099920

(IRS Employer  
Identification No.)

89109

(Zip Code)

Registrant's telephone number, including area code:

(702) 414-1000

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock (\$0.001 par value)	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports); and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>	Emerging growth company	<input type="checkbox"/>
Non-Accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

As of June 29, 2018, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was \$27,125,139,905 based on the closing sale price on that date as reported on the New York Stock Exchange.

The Company had 775,051,979 shares of common stock outstanding as of February 19, 2019.

**DOCUMENTS INCORPORATED BY REFERENCE**

Description of document

Portions of the definitive Proxy Statement to be used in connection with the registrant's 2019 Annual Meeting of Stockholders

Part of the Form 10-K

Part III (Item 10 through Item 14)

**Las Vegas Sands Corp.**

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## PART I

### ITEM 1. — BUSINESS

#### Our Company

Las Vegas Sands Corp. ("LVSC," or together with its subsidiaries "we" or the "Company") is a Fortune 500 company and the leading global developer of destination properties ("Integrated Resorts") that feature premium accommodations, world-class gaming, entertainment and retail, convention and exhibition facilities, celebrity chef restaurants and other amenities.

We currently own and operate Integrated Resorts in Asia and the United States. We believe our geographic diversity, best-in-class properties and convention-based business model provide us with the best platform in the hospitality and gaming industry to continue generating substantial growth and cash flow while simultaneously pursuing new development opportunities. Our unique convention-based marketing strategy allows us to attract business travelers during the slower mid-week periods while leisure travelers occupy our properties during the weekends. Our convention, trade show and meeting facilities, combined with the on-site amenities offered at our Macao, Singapore and Las Vegas Integrated Resorts, provide flexible and expansive space for conventions, trade shows and other meetings.

We focus on the mass market, which comprises our most profitable gaming segment. We believe the mass market segment will continue to have long-term growth as a result of the introduction of more high-quality gaming facilities and non-gaming amenities into our various markets.

Our properties also cater to VIP and premium players by providing them with luxury amenities and high service levels. The Paiza Club located at our properties is an important part of our VIP gaming marketing strategy. Our Paiza Clubs are exclusive invitation-only clubs available to our premium players that feature high-end services and amenities, including luxury accommodations, restaurants, lounges and private gaming salons. We also offer players club loyalty programs at our properties, which provide access to rewards, privileges and members-only events. Additionally, we believe being in the retail mall business and, specifically, owning some of the largest retail properties in Asia will provide meaningful value for us, particularly as the retail market in Asia continues to grow.

Through our 70.0% ownership of Sands China Ltd. ("SCL"), we own and operate a collection of Integrated Resorts in the Macao Special Administrative Region ("Macao") of the People's Republic of China ("China"). These properties include The Venetian Macao Resort Hotel ("The Venetian Macao"); Sands Cotai Central; The Parisian Macao; The Plaza Macao and Four Seasons Hotel Macao, Cotai Strip (the "Four Seasons Hotel Macao"); and the Sands Macao.

In Singapore, we own and operate the iconic Marina Bay Sands, which has become one of Singapore's major tourist, business and retail destinations since its opening in 2010.

Our properties in the United States include The Venetian Resort Las Vegas, a luxury resort on the Las Vegas Strip, and the Sands Expo and Convention Center (the "Sands Expo Center," and together with The Venetian Resort Las Vegas, the "Las Vegas Operating Properties") in Las Vegas, Nevada and the Sands Casino Resort Bethlehem (the "Sands Bethlehem") in Bethlehem, Pennsylvania.

We are dedicated to being a good corporate citizen, anchored by the core values of serving people, planet and communities. We strive to deliver a positive working environment for our team members worldwide and pledge to promote the advancement of aspiring team members through a range of educational partnerships, grants and leadership training. We also drive social impact through the Sands Cares charitable giving and community engagement program, and environmental performance through the award-winning Sands ECO360 global sustainability program. Through our Sands ECO360 global sustainability program, we develop and implement environmental practices to protect natural resources, offer our team members a safe and healthy work environment, and enhance the resort experiences of our guests. We are committed to creating and investing in industry-leading policies and procedures to safeguard our patrons, partners, employees and neighbors. Our industry-leading Integrated Resorts provide substantial contributions to our host communities including growth in leisure and business tourism, sustained job creation and ongoing financial opportunities for local small and medium-sized businesses.

LVSC was incorporated in Nevada in August 2004. Our common stock is traded on the New York Stock Exchange (the "NYSE") under the symbol "LVS." Our principal executive office is located at 3355 Las Vegas Boulevard South,

Las Vegas, Nevada 89109 and our telephone number at that address is (702) 414-1000. Our website address is [www.sands.com](http://www.sands.com). The information on our website is not part of this Annual Report on Form 10-K.

Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, proxy statements and other Securities and Exchange Commission ("SEC") filings, and any amendments to those reports and any other filings we file with or furnish to the SEC under the Securities Exchange Act of 1934 are made available free of charge on our website as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC and are also available at the SEC's web site address at [www.sec.gov](http://www.sec.gov).

Investors and others should note we announce material financial information using our investor relations website (<https://investor.sands.com>), our company website, SEC filings, investor events, news and earnings releases, public conference calls and webcasts. We use these channels to communicate with our investors and the public about our company, our products and services, and other issues.

In addition, we post certain information regarding SCL, a subsidiary of Las Vegas Sands Corp. with ordinary shares listed on The Stock Exchange of Hong Kong Limited, from time to time on our company website and our investor relations website. It is possible the information we post regarding SCL could be deemed to be material information.

The contents of these websites are not intended to be incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file or furnish with the SEC, and any reference to these websites are intended to be inactive textual references only.

This Annual Report on Form 10-K contains certain forward-looking statements. See "Item 7 — Management's Discussion and Analysis of Financial Condition and Results of Operations — Special Note Regarding Forward-Looking Statements."

Our principal operating and developmental activities occur in three geographic areas: Macao, Singapore and the United States. Management reviews the results of operations for each of its operating segments, which generally are our Integrated Resorts. In Macao, our operating segments are: The Venetian Macao; Sands Cotai Central; The Parisian Macao; The Plaza Macao and Four Seasons Hotel Macao; and Sands Macao. In Singapore, our operating segment is Marina Bay Sands. In the United States, our operating segments are the Las Vegas Operating Properties and Sands Bethlehem. We also have ferry operations and various other operations that are ancillary to our Macao properties (collectively, "Ferry Operations and Other") that we present to reconcile to our consolidated statements of operations and financial condition. In addition to our reportable segments noted above, management also reviews construction and development activities for each of our primary projects currently under development, which include the expansion and rebranding of Sands Cotai Central to The Londoner Macao, the Four Seasons Tower Suites Macao, the St. Regis Tower Suites Macao and our Las Vegas condominium project (for which construction currently is suspended) in the United States.

#### **Strengths and Strategies**

We believe we have a number of strengths that differentiate our business from our competitors, including:

**Diversified, high quality Integrated Resort offerings with substantial non-gaming amenities.** Our Integrated Resorts feature non-gaming attractions and amenities including world-class entertainment, expansive retail offerings and market-leading meetings, incentives, conventions and exhibitions ("MICE") facilities. These attractions and amenities enhance the appeal of our Integrated Resorts, contributing to visitation, length of stay and customer expenditure at our resorts. The broad appeal of our market-leading Integrated Resort offerings in our various markets enables us to serve the widest array of customer segments in each market.

**Substantial and diversified cash flow from existing operations.** We generated \$4.70 billion of cash from operations during the year ended December 31, 2018, primarily from gaming and non-gaming sources, including retail, hotel, food and beverage, entertainment and MICE business.

**Market leadership in the growing high-margin mass market gaming segment.** We focus on the high-margin mass gaming segment. During the year ended December 31, 2018, we had the highest percentage of gaming win from mass tables and slots of the Macao operators, with approximately 30% market share. Management estimates our mass market table revenues typically generate a gross margin that is approximately four times higher than the gross margin



on our typical VIP table revenues in Macao. During the year ended December 31, 2018, non-rolling gross gaming revenue contributed to over two-thirds of total gross gaming revenue at Marina Bay Sands.

**Established brands with broad regional and international market awareness and appeal.** Our brands enjoy broad regional and international market awareness and appeal. The Venetian Macao is the most visited Integrated Resort in Macao, and enjoys broad brand awareness both regionally and globally. We estimate that since 2016 The Parisian Macao digital marketing and social media program has reached over 4 billion online impressions, including from platforms within China such as Sina Weibo. Additionally, Marina Bay Sands has become an iconic part of the Singapore skyline and is often featured in movies and other media.

**Experienced management team with a proven track record.** Mr. Sheldon G. Adelson is our founder, chairman and chief executive officer. Mr. Adelson's business career spans more than seven decades and has included creating and developing to maturity numerous companies. Mr. Adelson created the MICE-based Integrated Resort and pioneered its development in the Las Vegas and Singapore markets, as well as in Macao, where he planned and developed the Cotai Strip. Mr. Robert G. Goldstein, our President and Chief Operating Officer, has been an integral part of the Company's executive team from the very outset - even before The Venetian Resort Las Vegas was a concept. Mr. Goldstein is one of the most respected and knowledgeable hospitality and gaming executives in the industry today, and provides strategic direction to our properties. Mr. Patrick Dumont, our Executive Vice President and Chief Financial Officer, has been with the Company for more than eight years and has prior experience in corporate finance and management. He and the management team are focused on increasing our balance sheet strength, preserving the Company's financial flexibility to pursue development opportunities and continuing to execute our return of excess capital to shareholders.

**Unique MICE and entertainment facilities.** Our market-leading MICE and entertainment facilities contribute to our markets' diversification and appeal to business and leisure travelers while diversifying our cash flows and increasing revenues and profit. Our 5.2 million square feet of global MICE space is specifically designed to meet the needs of meeting planners and corporate events and trade show organizers from around the world. Our experience and expertise in this industry continues to drive leisure and business tourism to our markets. The live entertainment program at our properties, specifically in Asia, is a key traffic driver and has established us as the leader in the field of tourism and leisure activities.

Building on our key strengths, we seek to enhance our position as the leading developer and operator of Integrated Resorts and casinos by continuing to implement the following business strategies:

**Developing and diversifying our Integrated Resort offerings to include a full complement of products and services to cater to different market segments.** Our Integrated Resorts include MICE space, additional retail, dining and entertainment facilities and a range of hotel offerings to cater to different segments of our markets, including branded suites and hotel rooms. We are able to leverage the recognition and the sales, marketing and reservation capabilities of premier hotel brands to attract a wide range of customers in different market segments to our properties. We believe our partnerships with renowned hotel management partners, our diverse Integrated Resort offerings and the convenience and accessibility of our properties will continue to increase the appeal of our properties to both the business and leisure customer segments.

**Leveraging our scale of operations to create and maintain an absolute cost advantage.** Management expects to benefit from lower unit costs due to the economies of scale inherent in our operations. Opportunities for lower unit costs include, but are not limited to, lower utility costs; more efficient staffing of hotel and gaming operations; and centralized laundry, transportation, marketing and sales, and procurement. In addition, our scale allows us to consolidate certain administrative functions and leverage purchasing on a global scale.

**Focusing on the high-margin mass market gaming segment, while continuing to provide luxury amenities and high service levels to our VIP and premium players.** Our properties cater not only to VIP and premium players, but also to mass market customers, which comprise our most profitable gaming segment. We believe the mass market segment will continue to be a long-term growing segment as a result of the introduction of more high-quality gaming facilities and non-gaming amenities into our markets.

**Identifying targeted investment opportunities to drive growth across our portfolio.** We plan to continue to invest in the expansion of our facilities and the enhancement of the leisure and business tourism appeal of our property portfolio.

## Asia Operations

### *Macao*

The Venetian Macao is the anchor property of our Cotai Strip development and is conveniently located approximately two miles from the Taipa Ferry Terminal on Macao's Taipa Island and six miles from the bridge linking Hong Kong, Macao and Zhuhai. The Venetian Macao includes approximately 374,000 square feet of gaming space with approximately 710 table games and 1,540 slot machines. The Venetian Macao features a 39-floor luxury hotel tower with over 2,900 elegantly appointed luxury suites and the Shoppes at Venetian, approximately 943,000 square feet of unique retail shopping with more than 350 stores featuring many international brands and home to more than 50 restaurants and food outlets featuring an international assortment of cuisines. In addition, The Venetian Macao has approximately 1.2 million square feet of convention facilities and meeting room space, an 1,800-seat theater, the 15,000-seat CotalArena that hosts world-class entertainment and sporting events and a Paiza Club.

Sands Cotai Central, which features four hotel towers, is located across the street from The Venetian Macao, The Parisian Macao and The Plaza Macao and Four Seasons Hotel Macao, and is our largest Integrated Resort on the Cotai Strip. Sands Cotai Central opened in phases, beginning in April 2012. The property features four hotel towers: the first hotel tower, which opened in April 2012, consisting of approximately 650 five-star rooms and suites under the Conrad brand and approximately 1,200 four-star rooms and suites under the Holiday Inn brand; the second hotel tower, which opened in September 2012, consisting of approximately 1,800 rooms and suites under the Sheraton brand; the third hotel tower, which opened in January 2013, consisting of approximately 2,100 rooms and suites under the Sheraton brand; and the fourth hotel tower, which opened in December 2015, consisting of approximately 400 rooms and suites under the St. Regis brand. The Integrated Resort includes approximately 367,000 square feet of gaming space with approximately 430 table games and 1,410 slot machines, approximately 369,000 square feet of meeting space, a 1,701-seat theater, approximately 520,000 square feet of retail space with more than 150 stores and home to more than 50 restaurants and food outlets. We previously announced the renovation, expansion and rebranding of Sands Cotai Central into a new destination Integrated Resort, The Londoner Macao, by adding extensive thematic elements both externally and internally. The Londoner Macao will feature new attractions and features from London, including some of London's most recognizable landmarks, and expanded retail and food and beverage venues. We will add approximately 370 luxury suites in the St. Regis Tower Suites Macao. Design work is nearing completion and construction is being initiated and will be phased to minimize disruption during the property's peak periods. We expect the additional St. Regis Tower Suites Macao to be completed in 2020 and The Londoner Macao project to be completed in phases throughout 2020 and 2021.

On September 13, 2016, we opened The Parisian Macao, our newest Integrated Resort on the Cotai Strip, which is connected to The Venetian Macao and The Plaza Macao and Four Seasons Hotel Macao, and includes approximately 253,000 square feet of gaming space with approximately 340 table games and 1,100 slot machines. The Parisian Macao also features approximately 2,500 rooms and suites and the Shoppes at Parisian, approximately 296,000 square feet of unique retail shopping with more than 150 stores featuring many international brands and home to 23 restaurants and food outlets featuring an international assortment of cuisines. Other non-gaming amenities at The Parisian Macao include a meeting room complex of approximately 63,000 square feet and a 1,200-seat theater. Directly in front of The Parisian Macao, and connected via a covered walkway to the main building, is a half-scale authentic re-creation of the Eiffel Tower containing a viewing platform and restaurant.

The Plaza Macao and Four Seasons Hotel Macao, which is located adjacent to The Venetian Macao, has approximately 105,000 square feet of gaming space with approximately 120 table games and 160 slot machines at its Plaza Casino. The Plaza Macao and Four Seasons Hotel Macao also has 360 elegantly appointed rooms and suites managed by Four Seasons Hotels, Inc., several food and beverage offerings, and conference and banquet facilities. The Shoppes at Four Seasons includes approximately 242,000 square feet of retail space and is connected to the Shoppes at Venetian. The Plaza Macao and Four Seasons Hotel Macao also features 19 ultra-exclusive Paiza Mansions, which are individually designed and made available by invitation only. We previously announced the Four Seasons Tower Suites Macao, which will feature approximately 290 additional premium quality suites. We have completed the structural work of the tower and have commenced preliminary build out of the suites. We expect the project to be completed in the first quarter of 2020.

The Sands Macao, the first U.S. operated Las Vegas-style casino in Macao, is situated near the Macao-Hong Kong Ferry Terminal on a waterfront parcel centrally located between Macao's Gongbei border gate with China and Macao's

central business district. The Sands Macao includes approximately 213,000 square feet of gaming space with approximately 220 table games and 870 slot machines. The Sands Macao also includes a 289-suite hotel tower, spa facilities, several restaurants and entertainment areas, and a Paiza Club.

We operate the gaming areas within our Macao properties pursuant to a 20-year gaming subconcession that expires in June 2022. See "Regulation and Licensing — *Macao Concession and Our Subconcession*."

### ***Singapore***

Marina Bay Sands features approximately 2,600 rooms and suites located in three 55-story hotel towers. Atop the three towers is the Sands SkyPark, an extensive outdoor recreation area with a 150-meter infinity swimming pool and leading restaurant and nightlife brands. The Integrated Resort offers approximately 160,000 square feet of gaming space with approximately 625 table games and 2,360 slot machines; The Shoppes at Marina Bay Sands, an enclosed retail, dining and entertainment complex with signature restaurants from world-renowned chefs; an event plaza and promenade; and an art/science museum. Marina Bay Sands also includes approximately 1.2 million square feet of meeting and convention space and a state-of-the-art theater for top Broadway shows, concerts and gala events.

We operate the gaming area within our Singapore property pursuant to a 30-year casino concession provided under a development agreement entered into in August 2006. See "Regulation and Licensing — *Development Agreement with Singapore Tourism Board*."

## **Asia Markets**

### ***Macao***

Macao is the largest gaming market in the world and the only market in China to offer legalized casino gaming. According to Macao government statistics issued publicly on a monthly basis by the Gaming Inspection and Coordination Bureau (commonly referred to as the "DICJ"), annual gaming revenues were \$37.7 billion in 2018, a 13.4% increase compared to 2017.

We expect Macao will continue to experience meaningful long-term growth and the approximately 36 million visitors Macao welcomed in 2018 will continue to increase over time. We believe this growth will be driven by a variety of factors, including the movement of Chinese citizens to urban centers in China, continued growth of the Chinese outbound tourism market, the increased utilization of existing transportation infrastructure, the introduction of new transportation infrastructure and the continued increase in hotel room inventory in Macao and neighboring Hengqin Island. There has been significant investment announced and recently completed by concessionaires and subconcessionaires in new resort development projects on Cotai. These new resorts should help increase the critical mass on Cotai and further drive Macao's transformation into a leading business and leisure tourism hub in Asia.

Table games are the dominant form of gaming in Asia, with Baccarat being the most popular game. We continue to experience Macao market-leading visitation and are focused on driving high-margin mass market gaming, while providing luxury amenities and high service levels to our VIP and premium players. We intend to continue to introduce more modern and popular products that appeal to the Asian marketplace and believe our high-quality gaming product has enabled us to capture a meaningful share of the overall Macao gaming market across all types of players.

### ***Proximity to Major Asian Cities***

Visitors from Hong Kong, southeast China, Taiwan and other locations in Asia can reach Macao in a relatively short time, using a variety of transportation methods, and visitors from more distant locations in Asia can take advantage of short travel times by air to Zhuhai, Shenzhen, Guangzhou or Hong Kong (followed by a road, ferry or helicopter trip to Macao). In addition, numerous air carriers fly directly into Macao International Airport from many major cities in Asia.

Macao draws a significant number of customers who are visitors or residents of Hong Kong. One of the major methods of transportation to Macao from Hong Kong is the jetfoil ferry service, including our ferry service, CotaiJet. Macao is also accessible from Hong Kong by helicopter. In addition, the bridge linking Hong Kong, Macao and Zhuhai, which opened in 2018, has reduced the travel time between Hong Kong and Macao and the travel time from the Hong Kong International Airport to Macao.

### *Competition in Macao*

Gaming in Macao is administered by the government through concessions awarded to three different concessionaires and three subconcessionaires, of which we are one. No additional concessions have been granted by the Macao government since 2002; however, if the Macao government were to allow additional gaming operators in Macao through the grant of additional concessions or subconcessions, we would face additional competition.

Sociedade de Jogos de Macau S.A. ("SJM") holds one of the three concessions and currently operates 20 facilities throughout Macao. Historically, SJM was the only gaming operator in Macao. Many of its gaming facilities are relatively small locations that are offered as amenities in hotels; however, some are large operations, including the Hotel Lisboa and The Grand Lisboa. In February 2014, SJM announced the development of Grand Lisboa Palace, a 2,000-room resort on Cotai that is scheduled to open in the second half of 2019.

MGM Grand Paradise Limited, a joint venture between MGM Resorts International and Pansy Ho Chiu-King, obtained a subconcession from SJM in April 2005 (which subconcession expires in March 2020), allowing the joint venture to conduct gaming operations in Macao. The MGM Grand Macau opened in December 2007 and is located on the Macao Peninsula adjacent to the Wynn Macau. In February 2018, MGM Grand Paradise Limited opened MGM Cotai, which includes approximately 1,400 hotel rooms and other non-gaming amenities, and is located behind Sands Cotai Central.

Wynn Resorts (Macao), S.A. ("Wynn Resorts Macau"), a subsidiary of Wynn Resorts Limited, holds a concession and owns and operates the Wynn Macau and Encore at Wynn Macau. In August 2016, Wynn Resorts Macau opened a 1,700-room integrated resort, Wynn Palace, which is located behind the City of Dreams and MGM Cotai.

In 2006, an affiliate of Publishing and Broadcasting Limited ("PBL") purchased the subconcession right under Wynn Resorts Macau's gaming concession, which permitted the PBL affiliate to receive a gaming subconcession from the Macao government. The PBL affiliate, Melco Crown Entertainment Limited ("Melco Crown"), owns and operates Altira and the City of Dreams, an integrated casino resort located adjacent to our Sands Cotai Central, which includes Nuwa, The Countdown Hotel and Grand Hyatt hotels. In October 2015, Melco Crown and its joint venture partners opened Studio City, a 1,600-room casino resort on Cotai. Melco Crown opened its fifth tower at City of Dreams, the 772-room Morpheus Tower, in June 2018.

Galaxy Casino Company Limited ("Galaxy") holds the third concession and has the ability to operate casino properties independent of our subconcession agreement with Galaxy and the Macao government. Galaxy currently operates six casinos in Macao, including StarWorld Hotel and Galaxy Macau, which is located near The Venetian Macao. In May 2015, Galaxy opened the second phase of its Galaxy Macau, which includes approximately 1,250 hotel rooms, as well as additional retail and convention and exhibition facilities.

Our Macao operations also face competition from other gaming and resort destinations, both in Asia and globally.

### *Singapore*

Singapore is regarded as having the most developed financial and transportation infrastructure in the Southeast Asia region. Singapore has established itself as a destination for both business and leisure visitors, offering convention and exhibition facilities as well as world-class shopping malls and hotel accommodations. In 2006, after a competitive bid process, the Singapore government awarded two concessions to develop and operate two integrated resorts. We were awarded the concession for the Marina Bay site, which is adjacent to Singapore's central business district, and Genting International was awarded the second site, located on Singapore's Sentosa Island.

Based on figures released by the Singapore Tourism Board (the "STB"), Singapore welcomed over 18 million international visitors in 2018, a 6.2% increase compared to 2017. Tourism receipts are estimated to have reached 26.8 billion Singapore dollars ("SGD," approximately \$19.6 billion at exchange rates in effect on December 31, 2018) in 2017 (the latest information publicly available at the time of filing), a 4.3% increase compared to 2016. The Casino Regulatory Authority (the "CRA"), the gaming regulator in Singapore, does not disclose gaming revenue for the market and thus no official figure exists.

We believe Marina Bay Sands is ideally positioned within Singapore to cater to both business and leisure visitors. The Integrated Resort is centrally located within a 20-minute drive from Singapore's Changi International Airport and near the Marina Bay Cruise Center, a deep-water cruise ship terminal, and Bayfront station, a mass rapid transit station.



Marina Bay Sands is also located near several entertainment attractions, including the Gardens by the Bay botanical gardens and the Singapore Sports Hub, a sports complex featuring the 55,000-seat National Stadium.

Baccarat is the preferred table game in both VIP and mass gaming. Additionally, contributions from slot machines and from mass gaming, including electronic table games offerings, have enhanced the early growth of the market. As Marina Bay Sands and the Singapore market as a whole continue to mature, we expect to broaden our visitor base to continue to capture visitors from around the world.

#### *Proximity to Major Asian Cities*

About 100 airlines operate in Singapore, connecting it to some 400 cities in about 100 countries. In 2018, 66 million passengers passed through Singapore's Changi Airport, a 5.5% decrease as compared to 2017. Based on figures released by the STB, the largest source markets for visitors to Singapore for 2018 were China and Indonesia. The STB's methodology for reporting visitor arrivals does not recognize Malaysian citizens entering Singapore by land, although this method of visitation is generally thought to be substantial.

#### *Competition in Singapore*

Gaming in Singapore is administered by the government through the award of licenses to two operators, of which we are one. Pursuant to the request for proposals to develop an integrated resort at Marina Bay, Singapore (the "Request for Proposal"), the CRA was required to ensure there would not be more than two casino licenses during an initial ten-year exclusive period (the "Exclusivity Period"), which expired on February 28, 2017.

Resorts World Sentosa, which is 100% owned by Genting Singapore and located on Sentosa Island, is primarily a family tourist destination connected to Singapore via a 500-meter long vehicular and pedestrian bridge. Apart from the casino, the resort includes six hotels, a Universal Studios theme park, the Marine Life Park, the Maritime Experiential Museum, aquarium, conventions and exhibitions facilities, restaurants, as well as a Malaysian food street, and retail shops.

Our Singapore operations also face competition from other gaming and resort destinations, both in Asia and globally.

### **U.S. Operations**

#### ***Las Vegas***

Our Las Vegas Operating Properties is an Integrated Resort that includes The Venetian Resort Las Vegas and the Sands Expo Center.

The Venetian Resort Las Vegas features three hotel towers. The Venetian Tower is a 35-story three-winged luxury hotel tower with 3,015 suites rising above the casino. The second tower is an adjoining 1,013-suite, 12-story Venezia Tower. The Palazzo Tower has 3,064 suites situated in a 50-story luxury hotel tower, which features modern European ambience and design, and is directly connected to The Venetian Tower and Sands Expo Center. The Venetian Resort Las Vegas has approximately 225,000 square feet of gaming space and includes approximately 240 table games and 1,870 slot machines. The Venetian Resort Las Vegas features a variety of amenities for its guests, including Paiza Club, several theaters and Canyon Ranch SpaClub.

The Venetian Resort Las Vegas features an enclosed retail, dining and entertainment complex, referred to as the Grand Canal Shoppes. The portion of the complex located within The Venetian Tower (previously known as "The Grand Canal Shoppes") and the portion located within The Palazzo Tower (previously known as "The Shoppes at The Palazzo") were sold to GGP Limited Partnership ("GGP") in 2004 and 2008, respectively.

Sands Expo Center is one of the largest overall trade show and convention facilities in the United States (as measured by net leasable square footage), with approximately 1.2 million gross square feet of exhibit and meeting space. We also own an approximately 1.1 million-gross-square-foot meeting and conference facility that links Sands Expo Center to The Venetian Resort Las Vegas. Together, we offer approximately 2.3 million gross square feet of state-of-the-art exhibition and meeting facilities that can be configured to provide small, mid-size or large meeting rooms and/or accommodate large-scale multi-media events or trade shows.

In May 2016, we announced plans to work with Madison Square Garden Company to bring a 400,000-square-foot venue built specifically for music and entertainment to Las Vegas. In February 2018, Madison Square Garden

unveiled its plans for MSG Sphere at The Venetian, an 18,000-seat venue, which, subject to regulatory approvals and entitlements, will be located near, and connected directly to, our Las Vegas Operating Properties and is currently expected to open in 2021.

#### ***Pennsylvania***

We own and operate the Sands Bethlehem, a gaming, hotel, retail and dining complex located on the site of the historic Bethlehem Steel Works in Bethlehem, Pennsylvania. The Sands Bethlehem features approximately 146,000 square feet of gaming space that includes approximately 190 table games and 3,260 slot machines; a hotel tower with 282 rooms; a 150,000-square-foot retail facility ("The Outlets at Sands Bethlehem"); an arts and cultural center; and a 50,000-square-foot multipurpose event center.

We own 86% of the economic interest in the gaming, hotel and entertainment portion of Sands Bethlehem through our ownership interest in Sands Bethworks Gaming LLC ("Sands Bethworks Gaming") and approximately 35% of the economic interest in the retail portion of Sands Bethlehem through our ownership interest in Sands Bethworks Retail LLC ("Sands Bethworks Retail").

On March 8, 2018, the Company entered into a purchase and sale agreement under which PCI Gaming Authority, an unincorporated, chartered instrumentality of the Poarch Band of Creek Indians, will acquire Sands Bethlehem for a total enterprise value of \$1.30 billion. The closing of the transaction is subject to regulatory review and other closing conditions.

#### **Las Vegas Market**

The Las Vegas hotel/casino industry is highly competitive. Hotels on the Las Vegas Strip compete with other hotels on and off the Las Vegas Strip, including hotels in downtown Las Vegas. In addition, there are large projects in Las Vegas in the development stage or currently suspended and, if opened, may target the same customers as we do. Based on figures released by the Las Vegas Convention and Visitors Authority (the "LVCVA"), Las Vegas welcomed 42 million visitors during 2018, relatively flat compared to 2017.

We also compete with legalized gaming from casinos located on Native American tribal lands, including those located in California. While the competitive impact on our operations in Las Vegas from the continued growth of Native American gaming establishments in California remains uncertain, the proliferation of gaming in California and other areas located in the same region as our Las Vegas Operating Properties could have an adverse effect on our financial condition, results of operations and cash flows. Our Las Vegas Operating Properties also compete, to some extent, with other hotel/casino facilities in Nevada, with hotel/casino and other resort facilities elsewhere in the country and the world, and with Internet gaming and state lotteries.

In addition, certain states have legalized, and others may legalize, casino gaming in specific areas. The continued proliferation of gaming venues could have a significant and adverse effect on our business. In particular, the legalization of casino gaming in or near major metropolitan areas from which we traditionally attract customers could have a material adverse effect on our business. The current global trend toward liberalization of gaming restrictions and the resulting proliferation of gaming venues could result in a decrease in the number of visitors to our Las Vegas Operating Properties, which could have an adverse effect on our financial condition, results of operations and cash flows. Also, on December 23, 2011, the U.S. Department of Justice (the "DOJ") released an opinion that concluded the Wire Act only related to interstate transmission of wire communications regarding wagers on sporting events or information assisting in the placing of wagers on sporting events (the "2011 Opinion"). In concluding as such, the DOJ reversed earlier opinions that the Wire Act was not limited to only sporting events or contests. On January 14, 2019, the DOJ released a Slip Opinion dated November 2, 2018 that reversed the 2011 Opinion.

Las Vegas generally competes with trade show and convention facilities located in and around major U.S. cities. Within Las Vegas, the Sands Expo Center competes with the Las Vegas Convention Center (the "LVCC"), which currently has approximately 3.2 million gross square feet of convention and exhibit facilities. In addition to the LVCC, some of our Las Vegas competitors have convention and conference facilities that compete with our Las Vegas Operating Properties. Based on figures released by the LVCVA, nearly 7 million convention delegates visited Las Vegas during 2018, a 2.2% decrease compared to 2017.

Competitors of our Las Vegas Operating Properties that can offer a hotel/casino experience that is integrated with substantial trade show and convention, conference and meeting facilities, could have an adverse effect on our competitive

advantage in attracting trade show and convention, conference and meeting attendees. Major competitors in Las Vegas continue to implement and evaluate opportunities to expand casino, hotel and convention offerings.

#### Retail Mall Operations

We own and operate retail malls at our Integrated Resorts at The Venetian Macao, Sands Cotai Central, The Parisian Macao, The Plaza Macao and Four Seasons Hotel Macao, Sands Macao, Marina Bay Sands and Sands Bethlehem. Upon completion of all phases of Sands Cotai Central's renovation, rebranding and expansion to The Londoner Macao, we will own approximately 3.0 million square feet of gross retail space. As further described in "Agreements Relating to the Malls in Las Vegas" below, the Grand Canal Shoppes were sold to GGP and are not owned or operated by us. Management believes being in the retail mall business and, specifically, owning some of the largest retail properties in Asia will provide meaningful value for us, particularly as the retail market in Asia continues to grow.

Our malls are designed to complement our other unique amenities and service offerings provided by our Integrated Resorts. Our strategy is to seek out desirable tenants that appeal to our customers and provide a wide variety of shopping options. We generate our mall revenue primarily from leases with tenants through base minimum rents, overage rents and reimbursements for common area maintenance ("CAM") and other expenditures. For further information related to the financial performance of our malls, see "Part II — Item 7 — Management's Discussion and Analysis of Financial Condition and Results of Operations."

The tables below set forth certain information regarding our mall operations on the Cotai Strip and at Marina Bay Sands as of December 31, 2018. These tables do not reflect subsequent activity in 2019.

Mall Name	Total GLA <sup>(1)</sup>	Selected Significant Tenants
Shoppes at Venetian.....	813,376 <sup>(2)</sup>	Zara, Victoria's Secret, Uniqlo, Piaget, Rolex, H&M, Michael Kors, Bvlgari, Chanel Beaut�, Lululemon
Shoppes at Cotai Central .....	519,681 <sup>(3)</sup>	Marks & Spencer, Kid's Cavern, Zara, Under Armour, Omega, Nike, Chow Tai Fook, Lady M, Apple
Shoppes at Parisian .....	295,915	Alexander McQueen, Isabel Marant, Lanvin, Maje, Sandro, Zadig & Voltaire, Paul Smith
Shoppes at Four Seasons .....	241,548	Cartier, Chanel, Louis Vuitton, Herm�s, Gucci, Dior, Versace, Zegna, Berluti, Loro Piana, Saint Laurent Paris
The Shoppes at Marina Bay Sands .....	606,362 <sup>(4)</sup>	Louis Vuitton, Chanel, Prada, Gucci, Zara, Burberry, Dior, Cartier, Moncler, Herm�s, Armani, Dolce & Gabbana

(1) Represents Gross Leasable Area in square feet.

(2) Excludes approximately 130,000 square feet of space on the fifth floor currently not on the market for lease.

(3) The Shoppes at Cotai Central will feature up to an estimated 600,000 square feet of gross leasable area upon completion of all phases of Sands Cotai Central's renovation, rebranding and expansion to The Londoner Macao.

(4) Excludes approximately 153,000 square feet of space operated by the Company.

The following table reflects our tenant representation by category for our mall operations as of December 31, 2018:

Category	Square Feet	% of Square Feet	Representative Tenants
Fashion (luxury, women's, men's, mixed) .	863,721	38%	Louis Vuitton, Dior, Gucci, Versace, Chanel, Fendi, Hermès
Restaurants and lounges .....	422,546	18%	Bambu, Lei Garden, Ce La Vi, North, Café Deco
Multi-Brands.....	251,247	11%	Duty Free Americas, The Atrium
Fashion accessories and footwear .....	164,017	7%	Coach, Salvatore Ferragamo, Tumi, Rimowa, Michael Kors, Stuart Weitzman
Lifestyle, sports and entertainment.....	192,957	8%	Manchester United, Adidas, Ferrari, Lululemon, Under Armour
Jewelry.....	167,050	7%	Bvlgari, Omega, Cartier, Rolex, Tiffany & Co.
Health and beauty.....	84,281	4%	Sephora, The Body Shop, Sa Sa
Banks and services .....	46,278	2%	Bank of China, ICBC
Home furnishing and electronics.....	46,016	2%	Apple, Samsung, Zara Home
Specialty foods .....	39,336	2%	Godiva, Cold Storage Specialty, Haagen Dazs, Venchi
Arts and gifts .....	15,832	1%	Emporio di Gondola
Total.....	<u>2,293,281</u>	<u>100%</u>	

#### Advertising and Marketing

We advertise in many types of media, including television, Internet (including search engines, e-mail, online advertising and social media), radio, newspapers, magazines and other out-of-home advertising (including billboards), to promote general market awareness of our properties as unique leisure, business and convention destinations due to our first-class hotels, casinos, retail stores, restaurants and other amenities. We actively engage in direct marketing as allowed in various geographic regions.

We maintain websites to allow our customers to make room and/or restaurant reservations, purchase show tickets and provide feedback. We also continue to enhance and expand our use of digital marketing and social media to promote our Integrated Resorts, events and special offers, cultivate customer relationships and provide information and updates regarding our corporate citizenship efforts, including our sustainability and corporate giving programs.

#### Development Projects

We are constantly evaluating opportunities to improve our product offerings, such as refreshing our meeting and convention facilities, suites and rooms, retail malls, restaurant and nightlife mix and our gaming areas, as well as other revenue generating additions to our Integrated Resorts.

##### *Macao*

We previously announced the renovation, expansion and rebranding of the Sands Cotai Central into a new destination Integrated Resort, The Londoner Macao, by adding extensive thematic elements both externally and internally. The Londoner Macao will feature new attractions and features from London, including some of London's most recognizable landmarks, and expanded retail and food and beverage venues. We will add approximately 370 luxury suites in the St. Regis Tower Suites Macao. Design work is nearing completion and construction is being initiated and will be phased to minimize disruption during the property's peak periods. We expect the additional St. Regis Tower Suites Macao to be completed in 2020 and The Londoner Macao project to be completed in phases throughout 2020 and 2021.



We also previously announced the Four Seasons Tower Suites Macao, which will feature approximately 290 additional premium quality suites. We have completed the structural work of the tower and have commenced preliminary build out of the suites. We expect the project to be completed in the first quarter of 2020.

We anticipate the total costs associated with these development projects to be approximately \$2.2 billion. The ultimate costs and completion dates for these projects are subject to change as we finalize our planning and design work and complete the projects. See "Item 1A—Risk Factors—Risk Factors—*There are significant risks associated with our construction projects, which could have a material adverse effect on our financial condition, results of operations and cash flows.*"

#### ***United States***

We began constructing a high-rise residential condominium tower (the "Las Vegas Condo Tower"), located on the Las Vegas Strip within The Venetian Resort Las Vegas. In 2008, we suspended construction activities for the project due to reduced demand for Las Vegas Strip condominiums and the overall decline in general economic conditions. We continue to evaluate the highest return opportunity for the project. The impact of the suspension on the estimated overall cost of the project is currently not determinable with certainty. Should management decide to abandon the project, we could record a charge for some portion of the \$129 million in capitalized construction costs (net of depreciation) as of December 31, 2018.

#### ***Other***

We continue to evaluate additional development projects in each of our markets and pursue new development opportunities globally.

### **Regulation and Licensing**

#### ***Macao Concession and Our Subconcession***

In June 2002, the Macao government granted one of three concessions to operate casinos in Macao to Galaxy. During December 2002, we entered into a subconcession agreement with Galaxy, which was approved by the Macao government. The subconcession agreement allows us to develop and operate certain casino projects in Macao, including Sands Macao, The Venetian Macao, The Plaza Macao and Four Seasons Hotel Macao, Sands Cotai Central and The Parisian Macao, separately from Galaxy. Under the subconcession agreement, we are obligated to operate casino games of chance or games of other forms in Macao. We were also obligated to develop and open The Venetian Macao and a convention center by December 2007, and we were required to invest, or cause to be invested, at least 4.4 billion patacas (approximately \$548 million at exchange rates in effect at the time of the transaction) in various development projects in Macao by June 2009, which obligations we have fulfilled.

If the Galaxy concession is terminated for any reason, our subconcession will remain in effect. The subconcession may be terminated by agreement between Galaxy and us. Galaxy is not entitled to terminate the subconcession unilaterally; however, the Macao government, after consultation with Galaxy, may terminate the subconcession under certain circumstances. Galaxy has developed, and may continue to develop, hotel and casino projects separately from us.

According to the Macao gaming regulatory framework, 10.0% of each subconcessionaire's issued share capital must be held by its managing director, who must be appointed by the applicable subconcessionaire and must be a permanent Macao resident. Mr. Antonio Ferreira is the appointed managing director of Venetian Macau Limited ("VML") and a permanent Macao resident. Mr. Ferreira holds 10.0% of VML's issued share capital subject to a usufruct agreement entered into with Venetian Venture Development Intermediate Limited ("VVDIL"), the immediate parent company of VML and a wholly owned subsidiary of SCL. The usufruct provides that VVDIL has the sole and exclusive benefit of the 10.0% of VML's issued share capital held by Mr. Ferreira. Mr. Ferreira has no economic interest in VML and receives no distributions.

We are subject to licensing and control under applicable Macao law and are required to be licensed by the Macao gaming authorities to operate a casino. We must pay periodic and regular fees and taxes, and our gaming license is not transferable. We must periodically submit detailed financial and operating reports to the Macao gaming authorities and furnish any other information the Macao gaming authorities may require. No person may acquire any rights over the shares or assets of VML, SCL's wholly owned subsidiary, without first obtaining the approval of the Macao gaming

authorities. Similarly, no person may enter into possession of its premises or operate them through a management agreement or any other contract or through step in rights without first obtaining the approval of, and receiving a license from, the Macao gaming authorities. The transfer or creation of encumbrances over ownership of shares representing the share capital of VML or other rights relating to such shares, and any act involving the granting of voting rights or other stockholders' rights to persons other than the original owners, would require the approval of the Macao government and the subsequent report of such acts and transactions to the Macao gaming authorities.

Our subconcession agreement requires, among other things: (i) approval of the Macao government for transfers of shares in VML, or of any rights over or inherent to such shares, including the grant of voting rights or other stockholder's rights to persons other than the original owners, as well as for the creation of any charge, lien or encumbrance on such shares; (ii) approval of the Macao government for transfers of shares, or of any rights over such shares, in any of our direct or indirect stockholders, provided that such shares or rights are directly or indirectly equivalent to an amount that is equal to or higher than 5% of VML's share capital; and (iii) that the Macao government be given notice of the creation of any encumbrance or the grant of voting rights or other stockholder's rights to persons other than the original owners on shares in any of the direct or indirect stockholders in VML, provided that such shares or rights are equivalent to an amount that is equal to or higher than 5% of VML's share capital. The requirements in provisions (ii) and (iii) above will not apply, however, to securities listed as tradable on a stock exchange.

The Macao gaming authorities may investigate any individual who has a material relationship to, or material involvement with, us to determine whether our suitability and/or financial capacity is affected by this individual. LVSC and SCL shareholders with 5% or more of the share capital, directors and some of our key employees must apply for and undergo a finding of suitability process and maintain due qualification during the subconcession term, and accept the persistent and long-term inspection and supervision exercised by the Macao government. VML is required to notify the Macao government immediately should VML become aware of any fact that may be material to the appropriate qualification of any shareholder who owns 5% of the share capital, or any officer, director or key employee. Changes in licensed positions must be reported to the Macao gaming authorities, and in addition to their authority to deny an application for a finding of suitability or licensure, the Macao gaming authorities have jurisdiction to disapprove a change in corporate position. If the Macao gaming authorities were to find one of our officers, directors or key employees unsuitable for licensing, we would have to sever all relationships with that person. In addition, the Macao gaming authorities may require us to terminate the employment of any person who refuses to file appropriate applications.

Any person who fails or refuses to apply for a finding of suitability after being ordered to do so by the Macao gaming authorities may be found unsuitable. Any stockholder found unsuitable who holds, directly or indirectly, any beneficial ownership of the common stock of a company incorporated in Macao and registered with the Macao Companies and Moveable Assets Registrar (a "Macao registered corporation") beyond the period of time prescribed by the Macao gaming authorities may lose their rights to the shares. We will be subject to disciplinary action if, after we receive notice that a person is unsuitable to be a stockholder or to have any other relationship with us, we:

- pay that person any dividend or interest upon its shares;
- allow that person to exercise, directly or indirectly, any voting right conferred through shares held by that person;
- pay remuneration in any form to that person for services rendered or otherwise; or
- fail to pursue all lawful efforts to require that unsuitable person to relinquish its shares.

The Macao gaming authorities also have the authority to approve all persons owning or controlling the stock of any corporation holding a gaming license.

In addition, the Macao gaming authorities require prior approval for the creation of liens and encumbrances over VML's assets and restrictions on stock in connection with any financing.

The Macao gaming authorities must give their prior approval to changes in control of VML through a merger, consolidation, stock or asset acquisition, management or consulting agreement or any act or conduct by any person whereby he or she obtains control. Entities seeking to acquire control of a Macao registered corporation must satisfy the Macao gaming authorities concerning a variety of stringent standards prior to assuming control. The Macao gaming authorities may also require controlling stockholders, officers, directors and other persons having a material relationship

or involvement with the entity proposing to acquire control, to be investigated and licensed as part of the approval process of the transaction.

The Macao gaming authorities may consider some management opposition to corporate acquisitions, repurchases of voting securities and corporate defense tactics affecting Macao gaming licensees, and the Macao registered corporations affiliated with such operations, to be injurious to stable and productive corporate gaming.

The Macao gaming authorities also have the power to supervise gaming licensees in order to:

- assure the financial stability of corporate gaming operators and their affiliates;
- preserve the beneficial aspects of conducting business in the corporate form; and
- promote a neutral environment for the orderly governance of corporate affairs.

The subconcession agreement requires the Macao gaming authorities' prior approval of any recapitalization plan proposed by VML's Board of Directors. The Chief Executive of Macao could also require VML to increase its share capital if he deemed it necessary.

The Macao government also has the right, after consultation with Galaxy, to unilaterally terminate the subconcession agreement at any time upon the occurrence of specified events of default, including:

- the operation of gaming without permission or operation of business that does not fall within the business scope of the subconcession;
- the suspension of operations of our gaming business in Macao without reasonable grounds for more than seven consecutive days or more than fourteen non-consecutive days within one calendar year;
- the unauthorized transfer of all or part of our gaming operations in Macao;
- the failure to pay taxes, premiums, levies or other amounts payable to the Macao government;
- the failure to resume operations following the temporary assumption of operations by the Macao government;
- the repeated opposition to supervision and inspection or the repeated failure to comply with decisions of the Macao government, namely of the Macao gaming authorities;
- the failure to provide or supplement the guarantee deposit or the guarantees specified in the subconcession within the prescribed period;
- the bankruptcy or insolvency of VML;
- fraudulent activity by VML;
- serious and repeated violation by VML of the applicable rules for carrying out casino games of chance or games of other forms or the operation of casino games of chance or games of other forms;
- the grant to any other person of any managing power over VML; or
- the failure by a controlling shareholder in VML to dispose of its interest in VML following notice from the gaming authorities of another jurisdiction in which such controlling shareholder is licensed to operate casino games of chance to the effect that such controlling shareholder can no longer own shares in VML.

In addition, we must comply with various covenants and other provisions under the subconcession, including obligations to:

- ensure the proper operation and conduct of casino games;
- employ people with appropriate qualifications;
- operate and conduct casino games of chance in a fair and honest manner without the influence of criminal activities;
- safeguard and ensure Macao's interests in tax revenue from the operation of casinos and other gaming areas; and

- maintain a specified level of insurance.

The subconcession agreement also allows the Macao government to request various changes in the plans and specifications of our Macao properties and to make various other decisions and determinations that may be binding on us. For example, the Macao government has the right to require that we contribute additional capital to our Macao subsidiaries or that we provide certain deposits or other guarantees of performance in any amount determined by the Macao government to be necessary. VML is limited in its ability to raise additional capital by the need to first obtain the approval of the Macao gaming and governmental authorities before raising certain debt or equity.

If our subconcession is terminated in the event of a default, the casinos and gaming-related equipment would be automatically transferred to the Macao government without compensation to us and we would cease to generate any revenues from these operations. In many of these instances, the subconcession agreement does not provide a specific cure period within which any such events may be cured and, instead, we would rely on consultations and negotiations with the Macao government to give us an opportunity to remedy any such default.

The Sands Macao, The Venetian Macao, The Plaza Macao and Four Seasons Hotel Macao, Sands Cotai Central and The Parisian Macao are being operated under our subconcession agreement. This subconcession excludes the following gaming activities: mutual bets, lotteries, raffles, interactive gaming and games of chance or other gaming, betting or gambling activities on ships or planes. Our subconcession is exclusively governed by Macao law. We are subject to the exclusive jurisdiction of the courts of Macao in case of any dispute or conflict relating to our subconcession.

Our subconcession agreement expires on June 26, 2022. Unless our subconcession is extended, on that date, the casinos and gaming-related equipment will automatically be transferred to the Macao government without compensation to us and we will cease to generate any revenues from these operations. Beginning on December 26, 2017, the Macao government may redeem our subconcession by giving us at least one-year prior notice and by paying us fair compensation or indemnity.

Under our subconcession, we are obligated to pay to the Macao government an annual premium with a fixed portion and a variable portion based on the number and type of gaming tables employed and gaming machines operated by us. The fixed portion of the premium is equal to 30 million patacas (approximately \$4 million at exchange rates in effect on December 31, 2018). The variable portion is equal to 300,000 patacas per gaming table reserved exclusively for certain kinds of games or players, 150,000 patacas per gaming table not so reserved and 1,000 patacas per electrical or mechanical gaming machine, including slot machines (approximately \$37,195, \$18,598 and \$124, respectively, at exchange rates in effect on December 31, 2018), subject to a minimum of 45 million patacas (approximately \$6 million at exchange rates in effect on December 31, 2018). We also have to pay a special gaming tax of 35% of gross gaming revenues and applicable withholding taxes. We must also contribute 4% of our gross gaming revenue to utilities designated by the Macao government, a portion of which must be used for promotion of tourism in Macao. This percentage may be subject to change in the future.

Currently, the gaming tax in Macao is calculated as a percentage of gross gaming revenue; however, unlike Nevada, gross gaming revenue does not include deductions for credit losses. As a result, if we extend credit to our customers in Macao and are unable to collect on the related receivables from them, we have to pay taxes on our winnings from these customers even though we were unable to collect on the related receivables. If the laws are not changed, our business in Macao may not be able to realize the full benefits of extending credit to our customers.

In August 2018, we received an additional exemption from Macao's corporate income tax on profits generated by the operation of casino games of chance for the period of January 1, 2019 through June 26, 2022, the date our subconcession agreement expires. We entered into an agreement with the Macao government effective through the end of 2018 that provided for an annual payment of 42 million patacas (approximately \$5 million at exchange rates in effect on December 31, 2018) as a substitution for a 12% tax otherwise due from VML shareholders on dividend distributions. In September 2018, we requested an additional agreement with the Macao government through June 26, 2022, to correspond to the expiration of the income tax exemption for gaming operations; however, there is no assurance we will receive the additional agreement.

#### ***Development Agreement with Singapore Tourism Board***

On August 23, 2006, our wholly owned subsidiary, Marina Bay Sands Pte. Ltd. ("MBS"), entered into a development agreement, as amended by a supplementary agreement on December 11, 2009 (the "Development



Agreement"), with the STB to design, develop, construct and operate the Marina Bay Sands. The Development Agreement includes a concession for MBS to own and operate a casino within the Integrated Resort. In addition to the casino, the Integrated Resort includes, among other amenities, a hotel, a retail complex, a convention center and meeting room complex, theaters, restaurants and an art/science museum. MBS is one of two companies awarded a concession to operate a casino in Singapore. Under the Request for Proposal, the Exclusivity Period provides that only two licensees will be granted the right to operate a casino in Singapore during an initial ten-year period, which expired on February 28, 2017. In connection with entering into the Development Agreement, MBS entered into a 60-year lease with the STB for the parcels underlying the project site and entered into an agreement with the Land Transport Authority of Singapore for the provision of necessary infrastructure for rapid transit systems and road works within and/or outside the project site. During the Exclusivity Period, the Company, which is currently the 100% indirect shareholder of MBS, must continue to be the single largest entity with direct or indirect controlling interest of at least 20% in MBS, unless otherwise approved by the CRA.

The term of the casino concession provided under the Development Agreement is for 30 years commencing from the date the Development Agreement was entered into, or August 23, 2006. In order to renew the casino concession, MBS must give notice to the STB and other relevant authorities in Singapore at least five years before its expiration in August 2036. The Singapore government may terminate the casino concession prior to its expiration in order to serve the best interests of the public, in which event fair compensation will be paid to MBS.

On April 26, 2010, MBS was issued a casino license for a three-year period, which required payment of a license fee of SGD 38 million (approximately \$27 million at exchange rates in effect at the time of the transaction). On April 19, 2013 and April 19, 2016, MBS was granted a license for a further three-year period expiring on April 25, 2016 and April 25, 2019, respectively, which required payment of SGD 57 million and SGD 66 million, respectively (approximately \$46 million and \$47 million, respectively, at exchange rates in effect at the time of the transaction) as part of the renewal process. The license is renewable upon submitting a renewal application, paying the applicable fee and meeting the renewal requirements as determined by the CRA. We have filed a renewal application and believe we meet the renewal requirements as determined by the CRA; however, no assurance can be given the license renewal will be granted or for what period of time it will be granted.

The Development Agreement contains, among other things, restrictions limiting the use of the leased land to the development and operation of the project, requirements that MBS obtain prior approval from the STB in order to subdivide the hotel and retail components of the project, and prohibitions on any such subdivision during the Exclusivity Period. The Development Agreement also contains provisions relating to the construction of the project and associated deadlines for substantial completion and opening; the location of the casino within the project site and casino licensing issues; insurance requirements; and limitations on MBS' ability to assign the lease or sub-lease any portion of the land during the Exclusivity Period. In addition, the Development Agreement contains events of default, including, among other things, the failure of MBS to perform its obligations under the Development Agreement and events of bankruptcy or dissolution.

The Development Agreement required MBS to invest at least SGD 3.85 billion (approximately \$2.42 billion at exchange rates in effect at the time of the transaction) in the Integrated Resort, which was to be allocated in specified amounts among the casino, hotel, food and beverage outlets, retail areas, meeting, convention and exhibition facilities, key attractions, entertainment venues and public areas. This minimum investment requirement has been fulfilled.

Employees whose job duties relate to the operations of the casino are required to be licensed by the relevant authorities in Singapore. MBS also must comply with comprehensive internal control standards or regulations concerning advertising; branch office operations; the location, floor plans and layout of the casino; casino operations including casino-related financial transactions and patron disputes, issuance of credit and collection of debt, relationships with and permitted payments to gaming promoters; security and surveillance; casino access by Singaporeans and non-Singaporeans; compliance functions and the prevention of money laundering; periodic standard and other reports to the CRA; and those relating to social controls including the exclusion of certain persons from the casino.

There is a goods and services tax of 7% imposed on gross gaming revenue and a casino tax of 15% imposed on the gross gaming revenue from the casino after reduction for the amount of goods and services tax, except in the case of gaming by premium players, in which case a casino tax of 5% is imposed on the gross gaming revenue generated from such players after reduction for the amount of the goods and services tax. The casino tax rates will not be changed for a period of 15 years from March 1, 2007. The casino tax is deductible against the Singapore corporate taxable

income of MBS. The provision for bad debts arising from the extension of credit granted to gaming patrons is not deductible against gross gaming revenue when calculating the casino tax, but is deductible for the purposes of calculating corporate income tax and the goods and services tax (subject to the prevailing law). MBS is permitted to extend casino credit to persons who are not Singapore citizens or permanent residents, but is not permitted to extend casino credit to Singapore citizens or permanent residents except to premium players.

The key constraint imposed on the casino under the Development Agreement is the total size of the gaming area, which must not be more than 15,000 square meters (approximately 161,000 square feet). The following are not counted towards the gaming area: back of house facilities, reception, restrooms, food and beverage areas, retail shops, stairs, escalators and lift lobbies leading to the gaming area, aesthetic and decorative displays, performance areas and major aisles. The casino located within Marina Bay Sands may not have more than 2,500 gaming machines, but there is no limit on the number of tables for casino games permitted in the casino.

On January 31, 2013, certain amendments to the Casino Control Act (the "Singapore Act") became effective. Among the changes introduced by these amendments is a revision of the maximum financial penalty that may be imposed on a casino operator by way of disciplinary action on a number of grounds, including contravention of a provision of the Singapore Act or a condition of the casino license. Under the amended provisions, a casino operator may be subject to a financial penalty, for each ground of disciplinary action, of a sum not exceeding 10% of the annual gross gaming revenue (as defined in the Singapore Act) of the casino operator for the financial year immediately preceding the date the financial penalty is imposed.

The amendments to the Singapore Act also included an introduction of an additional factor to be considered by the CRA in determining future applications and/or renewals for a casino license. Applicants are required to be a suitable person to develop, maintain and promote the Integrated Resort as a compelling tourist destination that meets prevailing market demand and industry standards and contributes to the tourism industry in Singapore. The Singapore government has established an evaluation panel that will assess applicants and report to the CRA on this aspect of the casino licensing requirements. We believe MBS' iconic tourist destination in Singapore and the Far East is well-established at this time.

#### *State of Nevada*

The ownership and operation of casino gaming facilities in the State of Nevada are subject to the Nevada Gaming Control Act and the regulations promulgated thereunder (collectively, the "Nevada Act") and various local regulations. Our gaming operations are also subject to the licensing and regulatory control of the Nevada Gaming Commission (the "Nevada Commission"), the Nevada Gaming Control Board (the "Nevada Board") and the Clark County Liquor and Gaming Licensing Board (the "CCLGLB") and together with the Nevada Commission and the Nevada Board, the "Nevada Gaming Authorities").

The laws, regulations and supervisory procedures of the Nevada Gaming Authorities are based upon declarations of public policy that are concerned with, among other things:

- the prevention of unsavory or unsuitable persons from having a direct or indirect involvement with gaming at any time or in any capacity;
- the establishment and maintenance of responsible accounting practices and procedures;
- the maintenance of effective controls over the financial practices of licensees, including establishing minimum procedures for internal fiscal affairs and the safeguarding of assets and revenues, providing reliable record-keeping and requiring the filing of periodic reports with the Nevada Gaming Authorities;
- the prevention of cheating and fraudulent practices; and
- the establishment of a source of state and local revenues through taxation and licensing fees.

Any change in such laws, regulations and procedures could have an adverse effect on our Las Vegas operations.

Las Vegas Sands, LLC ("LVSLLC") is licensed by the Nevada Gaming Authorities to operate the resort hotel as set forth in the Nevada Act. The gaming license requires the periodic payment of fees and taxes and is not transferable. LVSLLC is also registered as an intermediary company of Venetian Casino Resort, LLC ("VCR"). VCR is licensed as a manufacturer and distributor of gaming devices and as a key employee of LVSLLC. LVSLLC and VCR are collectively referred to as the "licensed subsidiaries." LVSC is registered with the Nevada Commission as a publicly traded

corporation (the "registered corporation"). As such, we must periodically submit detailed financial and operating reports to the Nevada Gaming Authorities and furnish any other information the Nevada Gaming Authorities may require. No person may become a stockholder of, or receive any percentage of the profits from, the licensed subsidiaries without first obtaining licenses and approvals from the Nevada Gaming Authorities. Additionally, the CCLGLB has taken the position it has the authority to approve all persons owning or controlling the stock of any corporation controlling a gaming licensee. We, and the licensed subsidiaries, possess all state and local government registrations, approvals, permits and licenses required in order for us to engage in gaming activities at The Venetian Resort Las Vegas.

The Nevada Gaming Authorities may investigate any individual who has a material relationship to or material involvement with us or the licensed subsidiaries to determine whether such individual is suitable or should be licensed as a business associate of a gaming licensee. Officers, directors and certain key employees of the licensed subsidiaries must file applications with the Nevada Gaming Authorities and may be required to be licensed by the Nevada Gaming Authorities. Our officers, directors and key employees who are actively and directly involved in the gaming activities of the licensed subsidiaries may be required to be licensed or found suitable by the Nevada Gaming Authorities.

The Nevada Gaming Authorities may deny an application for licensing or a finding of suitability for any cause they deem reasonable. A finding of suitability is comparable to licensing; both require submission of detailed personal and financial information followed by a thorough investigation. The applicant for licensing or a finding of suitability, or the gaming licensee by whom the applicant is employed or for whom the applicant serves, must pay all the costs of the investigation. Changes in licensed positions must be reported to the Nevada Gaming Authorities, and in addition to their authority to deny an application for a finding of suitability or licensure, the Nevada Gaming Authorities have jurisdiction to disapprove a change in a corporate position.

If the Nevada Gaming Authorities were to find an officer, director or key employee unsuitable for licensing or to have an inappropriate relationship with us or the licensed subsidiaries, we would have to sever all relationships with such person. In addition, the Nevada Commission may require us or the licensed subsidiaries to terminate the employment of any person who refuses to file appropriate applications. Determinations of suitability or questions pertaining to licensing are not subject to judicial review in Nevada.

We, and the licensed subsidiaries, are required to submit periodic detailed financial and operating reports to the Nevada Commission. Substantially all of our and our licensed subsidiaries' material loans, leases, sales of securities and similar financing transactions must be reported to or approved by the Nevada Commission.

If it were determined we or a licensed subsidiary violated the Nevada Act, the registration and gaming licenses we then hold could be limited, conditioned, suspended or revoked, subject to compliance with certain statutory and regulatory procedures. In addition, we and the persons involved could be subject to substantial fines for each separate violation of the Nevada Act at the discretion of the Nevada Commission. Further, a supervisor could be appointed by the Nevada Commission to operate the casinos, and, under certain circumstances, earnings generated during the supervisor's appointment (except for the reasonable rental value of the casinos) could be forfeited to the State of Nevada. Limitation, conditioning or suspension of any gaming registration or license or the appointment of a supervisor could (and revocation of any gaming license would) have a material adverse effect on our gaming operations.

Any beneficial holder of our voting securities, regardless of the number of shares owned, may be required to file an application, be investigated, and have its suitability as a beneficial holder of our voting securities determined if the Nevada Commission has reason to believe such ownership would otherwise be inconsistent with the declared policies of the State of Nevada. The applicant must pay all costs of investigation incurred by the Nevada Gaming Authorities in conducting any such investigation.

The Nevada Act requires any person who acquires more than 5% of our voting securities to report the acquisition to the Chairman of the Nevada Board. The Nevada Act requires beneficial owners of more than 10% of our voting securities apply to the Nevada Commission for a finding of suitability within thirty days after the Chairman of the Nevada Board mails the written notice requiring such filing. Under certain circumstances, an "institutional investor" as defined in the Nevada Act, which acquires more than 10%, but not more than 25%, of our voting securities (subject to certain additional holdings as a result of certain debt restructurings), may apply to the Nevada Commission for a waiver of such finding of suitability if such institutional investor holds the voting securities only for investment purposes. Additionally, an institutional investor that has been granted such a waiver may acquire more than 25% but not more than 29% of our voting securities if such additional ownership results from a stock re-purchase program and such

institutional investor does not purchase or otherwise acquire any additional voting securities that would result in an increase in its ownership percentage.

An institutional investor will be deemed to hold voting securities only for investment purposes if it acquires and holds the voting securities in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the members of our Board of Directors, any change in our corporate charter, by-laws, management, policies or our operations or any of our gaming affiliates, or any other action the Nevada Commission finds to be inconsistent with holding our voting securities only for investment purposes. Activities deemed consistent with holding voting securities only for investment purposes include:

- voting on all matters voted on by stockholders;
- making financial and other inquiries of management of the type normally made by securities analysts for informational purposes and not to cause a change in management, policies or operations; and
- such other activities as the Nevada Commission may determine to be consistent with such investment intent.

If the beneficial holder of voting securities who must be found suitable is a corporation, partnership or trust, it must submit detailed business and financial information including a list of beneficial owners. The applicant is required to pay all costs of investigation.

Any person who fails or refuses to apply for a finding of suitability or a license within thirty days after being ordered to do so by the Nevada Commission or the Chairman of the Nevada Board may be found unsuitable. The same restrictions apply to a record owner if the record owner, after request, fails to identify the beneficial owner. Any stockholder found unsuitable who holds, directly or indirectly, any beneficial ownership of the common stock of a registered corporation beyond such period of time as may be prescribed by the Nevada Commission may be guilty of a criminal offense. We are subject to disciplinary action if, after we receive notice that a person is unsuitable to be a stockholder or to have any other relationship with us or a licensed subsidiary, we, or any of the licensed subsidiaries:

- pay that person any dividend or interest upon any voting securities;
- allow that person to exercise, directly or indirectly, any voting right conferred through securities held by that person;
- pay remuneration in any form to that person for services rendered or otherwise; or
- fail to pursue all lawful efforts to require such unsuitable person to relinquish his or her voting securities including, if necessary, the purchase for cash at fair market value.

Our charter documents include provisions intended to help us comply with these requirements.

The Nevada Commission may, in its discretion, require the holder of any debt security of a registered corporation to file an application, be investigated and be found suitable to own the debt security of such registered corporation. If the Nevada Commission determines a person is unsuitable to own such security, then pursuant to the Nevada Act, the registered corporation can be sanctioned, including the loss of its approvals, if without the prior approval of the Nevada Commission, it:

- pays to the unsuitable person any dividend, interest, or any distribution whatsoever;
- recognizes any voting right by such unsuitable person in connection with such securities; or
- pays the unsuitable person remuneration in any form.

We are required to maintain a current stock ledger in Nevada that may be examined by the Nevada Gaming Authorities at any time. If any securities are held in trust by an agent or by a nominee, the record holder may be required to disclose the identity of the beneficial owner to the Nevada Gaming Authorities and we are also required to disclose the identity of the beneficial owner to the Nevada Gaming Authorities. A failure to make such disclosure may be grounds for finding the record holder unsuitable. We are also required to render maximum assistance in determining the identity of the beneficial owner.

We cannot make a public offering of any securities without the prior approval of the Nevada Commission if the securities or the proceeds from the offering are intended to be used to construct, acquire or finance gaming facilities



in Nevada, or to retire or extend obligations incurred for such purposes. On November 15, 2018, the Nevada Commission granted us prior approval to make public offerings for a period of three years, subject to certain conditions (the "shelf approval"). The shelf approval, however, may be rescinded for good cause without prior notice upon the issuance of an interlocutory stop order by the Chairman of the Nevada Board. The shelf approval does not constitute a finding, recommendation, or approval by the Nevada Commission or the Nevada Board as to the investment merits of any securities offered under the shelf approval. Any representation to the contrary is unlawful.

Changes in our control through a merger, consolidation, stock or asset acquisition, management or consulting agreement, or any act or conduct by any person whereby he or she obtains control, shall not occur without the prior approval of the Nevada Commission. Entities seeking to acquire control of a registered corporation must satisfy the Nevada Board and the Nevada Commission concerning a variety of stringent standards prior to assuming control of such registered corporation. The Nevada Commission may also require controlling stockholders, officers, directors and other persons having a material relationship or involvement with the entity proposing to acquire control, to be investigated and licensed as part of the approval process of the transaction.

The Nevada legislature has declared that some corporate acquisitions opposed by management, repurchases of voting securities and corporate defense tactics affecting Nevada gaming licensees, and registered corporations that are affiliated with those operations, may be injurious to stable and productive corporate gaming. The Nevada Commission has established a regulatory scheme to ameliorate the potentially adverse effects of these business practices upon Nevada's gaming industry and to further Nevada's policy to:

- assure the financial stability of corporate gaming operators and their affiliates;
- preserve the beneficial aspects of conducting business in the corporate form; and
- promote a neutral environment for the orderly governance of corporate affairs.

Approvals are, in certain circumstances, required from the Nevada Commission before we can make exceptional repurchases of voting securities above the current market price thereof and before a corporate acquisition opposed by management can be consummated.

The Nevada Act also requires prior approval of a plan of recapitalization proposed by the Board of Directors in response to a tender offer made directly to our stockholders for the purposes of acquiring control of the registered corporation.

License fees and taxes, computed in various ways depending upon the type of gaming or activity involved, are payable to the State of Nevada and to Clark County, Nevada. Depending upon the particular fee or tax involved, these fees and taxes are payable monthly, quarterly or annually and are based upon:

- a percentage of the gross revenues received;
- the number of gaming devices operated; or
- the number of table games operated.

The tax on gross revenues received is generally 6.75% for the State of Nevada and 0.55% for Clark County. In addition, an excise tax is paid by us on charges for admission to any facility where certain forms of live entertainment are provided. VCR is also required to pay certain fees and taxes to the State of Nevada as a licensed manufacturer and distributor.

Any person who is licensed, required to be licensed, registered, required to be registered, or under common control with such persons (collectively, "licensees"), and who proposes to become involved in a gaming operation outside of Nevada, is required to deposit with the Nevada Board, and thereafter maintain, a revolving fund in the amount of \$10,000 to pay the expenses of any investigation by the Nevada Board into their participation in such foreign gaming operation. The revolving fund is subject to increase or decrease at the discretion of the Nevada Commission. Thereafter, licensees are also required to comply with certain reporting requirements imposed by the Nevada Act. Licensees are also subject to disciplinary action by the Nevada Commission if they knowingly violate any laws of any foreign jurisdiction pertaining to such foreign gaming operation, fail to conduct such foreign gaming operation in accordance with the standards of honesty and integrity required of Nevada gaming operations, engage in activities harmful to the State of Nevada or its ability to collect gaming taxes and fees, or employ a person in such foreign operation who has

been denied a license or a finding of suitability in Nevada on the ground of personal unsuitability or who has been found guilty of cheating at gambling.

The sale of alcoholic beverages by the licensed subsidiaries on the casino premises and at the Sands Expo Center is subject to licensing, control and regulation by the applicable local authorities. Our licensed subsidiaries have obtained the necessary liquor licenses to sell alcoholic beverages. All licenses are revocable and are not transferable. The agencies involved have full power to limit, condition, suspend or revoke any such licenses, and any such disciplinary action could (and revocation of such licenses would) have a material adverse effect on our operations.

#### *Commonwealth of Pennsylvania*

Sands Bethworks Gaming is subject to the rules and regulations promulgated by the Pennsylvania Gaming Control Board ("PaGCB") and the Pennsylvania Department of Revenue, the on-site direction of the Pennsylvania State Police and the requirements of other agencies.

On December 20, 2006, we were awarded one of two Category 2 "at large" gaming licenses available in Pennsylvania, which authorizes a licensee to open with up to 3,000 slot machines and to increase to up to 5,000 slot machines upon approval of the PaGCB, which may not take effect earlier than six months after opening.

In July 2007, we paid a \$50 million licensing fee to the Commonwealth of Pennsylvania and, in August 2007, were issued our gaming license by the PaGCB. Just prior to the opening of the casino at Sands Bethlehem, we were required to make a deposit of \$5 million, which was reduced to \$2 million in January 2010 when the law was amended, to cover weekly withdrawals of our share of the cost of regulation and the amount withdrawn must be replenished weekly.

In February 2010, we submitted a petition to the PaGCB to obtain a table games operation certificate to operate table games at Sands Bethlehem, based on a revision to the law in 2010 that authorized table games. The petition was approved in April 2010, we paid a \$17 million table game licensing fee in May 2010 and were issued a table games certificate in June 2010. Table games operations commenced on July 18, 2010.

We must notify the PaGCB if we become aware of any proposed or contemplated change of control including more than 5% of the ownership interests of Sands Bethworks Gaming or of more than 5% of the ownership interests of any entity that owns, directly or indirectly, at least 20% of Sands Bethworks Gaming, including LVSC. The acquisition by a person or a group of persons acting in concert of more than 20% of the ownership interests of Sands Bethworks Gaming or of any entity that owns, directly or indirectly, at least 20% of Sands Bethworks Gaming, with the exception of the ownership interest of a person at the time of the original licensure when the license fee was paid, would be defined as a change of control under applicable Pennsylvania gaming law and regulations. Upon a change of control, the acquirer of the ownership interests would be required to qualify for licensure and to pay a new license fee of \$50 million or a lesser "change of control" fee as determined by the PaGCB. In December 2007, the PaGCB adopted a \$3 million fee to be assessed on an acquirer in connection with a change in control unless special circumstances dictate otherwise. The PaGCB retains the discretion to eliminate the need for qualification and may reduce the license fee upon a change of control. The PaGCB may provide up to 120 days for any person who is required to apply for a license and who is found not qualified to completely divest the person's ownership interest.

Any person who acquires beneficial ownership of 5% or more of our voting securities will be required to apply to the PaGCB for licensure, obtain licensure and remain licensed. Licensure requires, among other things, that the applicant establish by clear and convincing evidence the applicant's good character, honesty and integrity. Additionally, any trust that holds 5% or more of our voting securities is required to be licensed by the PaGCB and each individual who is a grantor, trustee or beneficiary of the trust is also required to be licensed by the PaGCB. Under certain circumstances and under the regulations of the PaGCB, an "institutional investor" as defined under the regulations of the PaGCB, which acquires beneficial ownership of 5% or more, but less than 10%, of our voting securities, may not be required to be licensed by the PaGCB provided the institutional investor files an Institutional Notice of Ownership Form with the PaGCB Bureau of Licensing and has filed, and remains eligible to file, a statement of beneficial ownership on Schedule 13G with the SEC as a result of this ownership interest. In addition, any beneficial owner of our voting securities, regardless of the number of shares beneficially owned, may be required at the discretion of the PaGCB to file an application for licensure.

In the event a security holder is required to be found qualified and is not found qualified, the security holder may be required by the PaGCB to divest of the interest at a price not exceeding the cost of the interest.

### **Employees**

We directly employ approximately 51,500 employees worldwide and hire additional temporary employees on an as-needed basis. Our employees are not covered by collective bargaining agreements, except as discussed below with respect to certain Sands Expo Center and Sands Bethlehem employees. We believe we have good relations with our employees and any relevant union.

Certain unions have engaged in confrontational and obstructive tactics at some of our properties, including contacting potential customers, tenants and investors, objecting to various administrative approvals and picketing, and may continue these tactics in the future. Although we believe we will be able to operate despite such tactics, no assurance can be given we will be able to do so or the failure to do so would not have a material adverse effect on our financial condition, results of operations and cash flows. Although no assurances can be given, if employees decide to be represented by labor unions, management does not believe such representation would have a material effect on our financial condition, results of operations and cash flows.

Certain culinary personnel are hired from time to time to provide services for trade shows and conventions at Sands Expo Center and are covered under a collective bargaining agreement between Sands Expo Center and the Local Joint Executive Board of Las Vegas, for and on behalf of Culinary Workers Union, Local 226 and Bartenders Union, Local No. 165. This collective bargaining agreement expired in December 2000, but automatically renews on an annual basis. As a result, Sands Expo Center is operating under the terms of the expired bargaining agreement with respect to these employees.

Security officers at Sands Bethlehem voted to be represented by a labor union, the International Union, Security, Police, and Fire Professionals of America. On March 1, 2017, an initial collective bargaining agreement took effect, which includes a no-strike, no-lockout provision. The collective bargaining agreement expires on March 1, 2020.

### **Intellectual Property**

Our intellectual property ("IP") portfolio currently consists of trademarks, copyrights, patents, domain names, trade secrets and other confidential and proprietary information. We believe the name recognition, brand identification and image we have developed through our intellectual properties attract customers to our facilities, drive customer loyalty and contribute to our success. We register and protect our IP in the jurisdictions in which we operate or significantly advertise, as well as in countries in which we may operate in the future or wish to ensure protection of our rights.

### **Agreements Relating to the Malls in Las Vegas**

#### ***The Grand Canal Shoppes***

In May 2004, we completed the sale of The Grand Canal Shoppes and leased to GGP 19 retail and restaurant spaces on the casino level of The Venetian Las Vegas for 89 years with annual rent of one dollar, and GGP assumed our interest as landlord under the various leases associated with these 19 spaces. In addition, we agreed with GGP to:

- continue to be obligated to fulfill certain lease termination and asset purchase agreements;
- lease the portion of the theater space located within The Grand Canal Shoppes from GGP for a period of 25 years, subject to an additional 50 years of extension options, with initial fixed minimum rent of \$3 million per year;
- lease the gondola retail store and the canal space located within The Grand Canal Shoppes from GGP (and by amendment the extension of the canal space extended into The Shoppes at The Palazzo) for a period of 25 years, subject to an additional 50 years of extension options, with initial fixed minimum rent of \$4 million per year; and
- lease certain office space from GGP for a period of 10 years, subject to an additional 65 years of extension options, with initial annual rent of approximately \$1 million.

The lease payments relating to the theater, the canal space within The Grand Canal Shoppes and the office space from GGP are subject to automatic increases of 5% in the sixth lease year and each subsequent fifth lease year.

#### ***The Shoppes at The Palazzo***

We contracted to sell The Shoppes at The Palazzo to GGP pursuant to a purchase and sale agreement dated as of April 12, 2004, as amended (the "Amended Agreement"). Under the Amended Agreement, we also leased to GGP certain restaurant and retail space on the casino level of The Palazzo Tower for 89 years with annual rent of one dollar and GGP assumed our interest as landlord under the various space leases associated with these spaces. On June 24, 2011, we reached a settlement with GGP regarding the final purchase price. Under the terms of the settlement, we retained the \$295 million of proceeds previously received and participate in certain potential future revenues earned by GGP.

#### ***Cooperation Agreement***

Our business plan calls for each of The Venetian Resort Las Vegas, Sands Expo Center and the Grand Canal Shoppes, though separately owned, to be integrally related components of one facility (the "LV Integrated Resort"). In establishing the terms for the integrated operation of these components, the Fourth Amended and Restated Reciprocal Easement, Use and Operating Agreement, dated as of February 29, 2008, by and among Interface Group-Nevada, Inc., Grand Canal Shops II, LLC, Phase II Mall Subsidiary, LLC, VCR, and Palazzo Condo Tower, LLC (the "Cooperation Agreement") sets forth agreements regarding, among other things, encroachments, easements, operating standards, maintenance requirements, insurance requirements, casualty and condemnation, joint marketing, and the sharing of some facilities and related costs. Subject to applicable law, the Cooperation Agreement binds all current and future owners of all portions of the LV Integrated Resort and has priority over the liens securing LVSLLC's senior secured credit facility and in some or all respects any liens that may secure any indebtedness of the owners of any portion of the LV Integrated Resort. Accordingly, subject to applicable law, the obligations in the Cooperation Agreement will "run with the land" if any of the components change hands.

***Operating Covenants.*** The Cooperation Agreement regulates certain aspects of the operation of the LV Integrated Resort. For example, under the Cooperation Agreement, we are obligated to operate The Venetian Resort Las Vegas continuously and to use it exclusively in accordance with standards of first-class Las Vegas Boulevard-style hotels and casinos. We are also obligated to operate and use the Sands Expo Center exclusively in accordance with standards of first-class convention, trade show and exposition centers. The owners of the Grand Canal Shoppes are obligated to operate their property exclusively in accordance with standards of first-class restaurant and retail complexes. For so long as a portion of The Venetian Resort Las Vegas is operated in accordance with a "Venetian" theme, the owner of the Grand Canal Shoppes must operate the section formerly referred to as The Grand Canal Shoppes in accordance with the overall Venetian theme.

***Maintenance and Repair.*** We must maintain The Venetian Resort Las Vegas as well as some common areas and common facilities shared with the Grand Canal Shoppes. The cost of maintenance of all shared common areas and common facilities is to be shared between us and the owners of the Grand Canal Shoppes. We must also maintain, repair and restore Sands Expo Center and certain common areas and common facilities located in Sands Expo Center. The owners of the Grand Canal Shoppes must maintain, repair and restore the Grand Canal Shoppes and certain common areas and common facilities located within.

***Insurance.*** We and the owners of the Grand Canal Shoppes must maintain minimum types and levels of insurance, including property damage, general liability and business interruption insurance. The Cooperation Agreement establishes an insurance trustee to assist in the implementation of the insurance requirements.

***Parking.*** The Cooperation Agreement also addresses issues relating to the use of the LV Integrated Resort's parking facilities and easements for access. The Venetian Resort Las Vegas, Sands Expo Center and the Grand Canal Shoppes may use the parking spaces in the LV Integrated Resort's parking facilities on a "first come, first served" basis. The LV Integrated Resort's parking facilities are owned, maintained and operated by us, with the operating costs proportionately allocated among and/or billed to the owners of the components of the LV Integrated Resort. Each party to the Cooperation Agreement has granted to the others non-exclusive easements and rights to use the roadways and walkways on each other's properties for vehicular and pedestrian access to the parking garages.



*Utility Easement.* All property owners have also granted each other all appropriate and necessary easement rights to utility lines servicing the LV Integrated Resort.

*Consents, Approvals and Disputes.* If any current or future party to the Cooperation Agreement has a consent or approval right or has discretion to act or refrain from acting, the consent or approval of such party will only be granted and action will be taken or not taken only if a commercially reasonable owner would do so and such consent, approval, action or inaction would not have a material adverse effect on the property owned by such property owner. The Cooperation Agreement provides for the appointment of an independent expert to resolve some disputes between the parties, as well as for expedited arbitration for other disputes.

*Sale of the Grand Canal Shoppes by GGP.* We have a right of first offer in connection with any proposed sale of the Grand Canal Shoppes by GGP. We also have the right to receive notice of any default by GGP sent by any lender holding a mortgage on the Grand Canal Shoppes, if any, and the right to cure such default subject to our meeting certain net worth tests.

#### **ITEM 1A. — RISK FACTORS**

You should carefully consider the risk factors set forth below as well as the other information contained in this Annual Report on Form 10-K in connection with evaluating the Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also have a material adverse effect on our business, financial condition, results of operations and cash flows. Certain statements in "Risk Factors" are forward-looking statements. See "Item 7 — Management's Discussion and Analysis of Financial Condition and Results of Operations — Special Note Regarding Forward-Looking Statements."

##### **Risks Related to Our Business**

*Our business is particularly sensitive to reductions in discretionary consumer and corporate spending as a result of downturns in the economy.*

Consumer demand for hotel/casino resorts, trade shows and conventions and for the type of luxury amenities we offer is particularly sensitive to downturns in the economy and the corresponding impact on discretionary spending. Changes in discretionary consumer spending or corporate spending on conventions and business travel could be driven by many factors, such as: perceived or actual general economic conditions; any weaknesses in the job or housing market; additional credit market disruptions; high energy, fuel and food costs; the increased cost of travel; the potential for bank failures; perceived or actual disposable consumer income and wealth; fears of recession and changes in consumer confidence in the economy; or fears of war and future acts of terrorism. These factors could reduce consumer and corporate demand for the luxury amenities and leisure and business activities we offer, thus imposing additional limits on pricing and harming our operations.

*Our business is sensitive to the willingness of our customers to travel. Acts of terrorism, regional political events and developments in the conflicts in certain countries could cause severe disruptions in air travel that reduce the number of visitors to our facilities, resulting in a material adverse effect on our business, financial condition, results of operations and cash flows.*

We are dependent on the willingness of our customers to travel. Only a small amount of our business is and will be generated by local residents. Most of our customers travel to reach our Macao, Singapore, Las Vegas and Pennsylvania properties. Acts of terrorism may severely disrupt domestic and international travel, which would result in a decrease in customer visits to Macao, Singapore, Las Vegas and Pennsylvania, including our properties. Regional political events, including those resulting in travelers perceiving areas as unstable or an unwillingness of governments to grant visas, regional conflicts or an outbreak of hostilities or war could have a similar effect on domestic and international travel. Management cannot predict the extent to which disruptions in air or other forms of travel as a result of any further terrorist acts, regional political events, regional conflicts or outbreak of hostilities or war would have a material adverse effect on our business, financial condition, results of operations and cash flows.

*We are subject to extensive regulation and the cost of compliance or failure to comply with such regulations that govern our operations in any jurisdiction where we operate may have a material adverse effect on our business, financial condition, results of operations and cash flows.*

We are required to obtain and maintain licenses from various jurisdictions in order to operate certain aspects of our business, and we are subject to extensive background investigations and suitability standards in our gaming business. We also will become subject to regulation in any other jurisdiction where we choose to operate in the future. There can be no assurance we will be able to obtain new licenses or renew any of our existing licenses, or if such licenses are obtained, such licenses will not be conditioned, suspended or revoked; and the loss, denial or non-renewal of any of our licenses could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Our gaming operations and the ownership of our securities are subject to extensive regulation by the Nevada Commission, the Nevada Board and the CCLGLB. The Nevada Gaming Authorities have broad authority with respect to licensing and registration of our business entities and individuals investing in or otherwise involved with us.

Although we currently are registered with, and LVSLLC and VCR currently hold gaming licenses issued by, the Nevada Gaming Authorities, these authorities may, among other things, revoke the gaming license of any corporate entity or the registration of a registered corporation or any entity registered as a holding company of a corporate licensee for violations of gaming regulations.

In addition, the Nevada Gaming Authorities may, under certain circumstances, revoke the license or finding of suitability of any officer, director, controlling person, stockholder, noteholder or key employee of a licensed or registered entity. If our gaming licenses were revoked for any reason, the Nevada Gaming Authorities could require the closing of our casinos, which would have a material adverse effect on our business, financial condition, results of operations and cash flows. In addition, compliance costs associated with gaming laws, regulations or licenses are significant. Any change in the laws, regulations or licenses applicable to our business or gaming licenses could require us to make substantial expenditures or could otherwise have a material adverse effect on our business, financial condition, results of operations and cash flows.

A similar dynamic exists in all jurisdictions where we operate and a regulatory action against one of our operating entities in any gaming jurisdiction could impact our operations in other gaming jurisdictions where we do business.

We are subject to regulations imposed by the Foreign Corrupt Practices Act (the "FCPA"), which generally prohibits U.S. companies and their intermediaries from making improper payments to foreign officials for the purpose of obtaining or retaining business. We entered into a comprehensive civil administrative settlement with the SEC on April 7, 2016, and a non-prosecution agreement with the Department of Justice (the "DOJ") on January 19, 2017, which resolve all inquiries related to these government investigations and include ongoing reporting obligations to the DOJ through January 2020. Any violation of the FCPA could have a material adverse effect on our business, financial condition, results of operations and cash flows.

We also deal with significant amounts of cash in our operations and are subject to various reporting and anti-money laundering regulations. Recently, U.S. governmental authorities have evidenced an increased focus on the gaming industry and compliance with anti-money laundering laws and regulations. For instance, we are subject to regulation under the Currency and Foreign Transactions Reporting Act of 1970, commonly known as the "Bank Secrecy Act" ("BSA"), which, among other things, requires us to report to the Financial Crimes Enforcement Network ("FinCEN") certain currency transactions in excess of applicable thresholds and certain suspicious activities where we know, suspect or have reason to suspect such transactions involve funds from illegal activity or are intended to violate federal law or regulations or are designed to evade reporting requirements or have no business or lawful purpose. In addition, under the BSA, we are subject to various other rules and regulations involving reporting, recordkeeping and retention. Our compliance with the BSA is subject to periodic audits by the U.S. Treasury Department, and we may be subject to substantial civil and criminal penalties, including fines, if we fail to comply with applicable regulations. We are also subject to similar regulations in Singapore and Macao, as well as regulations set forth by the gaming authorities in the areas in which we operate. Any such laws and regulations could change or could be interpreted differently in the future, or new laws and regulations could be enacted. Any violation of anti-money laundering laws or regulations, or any accusations of money laundering or regulatory investigations into possible money laundering activities, by any of

our properties, employees or customers could have a material adverse effect on our business, financial condition, results of operations and cash flows.

***Because we are currently dependent primarily upon our properties in three markets for all of our cash flow, we are subject to greater risks than competitors with more operating properties or that operate in more markets.***

We currently do not have material operations other than our Macao, Singapore and Las Vegas properties. As a result, we are primarily dependent upon these properties for all of our cash.

Given our operations are currently conducted primarily at properties in Macao, Singapore and Las Vegas and a large portion of our planned development is in Macao, we will be subject to greater degrees of risk than competitors with more operating properties or that operate in more markets. The risks to which we will have a greater degree of exposure include the following:

- local economic and competitive conditions;
- inaccessibility due to inclement weather, road construction or closure of primary access routes;
- decline in air passenger traffic due to higher ticket costs or fears concerning air travel;
- changes in local and state governmental laws and regulations, including gaming laws and regulations;
- natural or man-made disasters, outbreaks of infectious diseases, terrorist activity or war;
- changes in the availability of water; and
- a decline in the number of visitors to Macao, Singapore or Las Vegas.

***We depend on the continued services of key managers and employees. If we do not retain our key personnel or attract and retain other highly skilled employees, our business will suffer.***

Our ability to maintain our competitive position is dependent to a large degree on the services of our senior management team, including Sheldon G. Adelson, Robert G. Goldstein and Patrick Dumont. The loss of their services or the services of our other senior managers, or the inability to attract and retain additional senior management personnel could have a material adverse effect on our business.

***The interests of our principal stockholder in our business may be different from yours.***

Mr. Adelson, his family members and trusts and other entities established for the benefit of Mr. Adelson and/or his family members (Mr. Adelson, individually our "Principal Stockholder," and the group, collectively our "Principal Stockholder and his family") beneficially own approximately 56% of our outstanding common stock as of December 31, 2018. Accordingly, Mr. Adelson exercises significant influence over our business policies and affairs, including the composition of our Board of Directors and any action requiring the approval of our stockholders, including the adoption of amendments to our articles of incorporation and the approval of a merger or sale of substantially all of our assets. The concentration of ownership may also delay, defer or even prevent a change in control of our company and may make some transactions more difficult or impossible without the support of Mr. Adelson. The interests of Mr. Adelson may differ from your interests.

***We are a parent company and our primary source of cash is and will be distributions from our subsidiaries.***

We are a parent company with limited business operations of our own. Our main asset is the capital stock of our subsidiaries. We conduct most of our business operations through our direct and indirect subsidiaries. Accordingly, our primary sources of cash are dividends and distributions with respect to our ownership interests in our subsidiaries derived from the earnings and cash flow generated by our operating properties. Our subsidiaries might not generate sufficient earnings and cash flow to pay dividends or distributions in the future. Our subsidiaries' payments to us will be contingent upon their earnings and upon other business considerations. In addition, our Singapore and U.S. subsidiaries' debt instruments and other agreements limit or prohibit certain payments of dividends or other distributions to us. We expect future debt instruments for the financing of future developments may contain similar restrictions.

*Our debt instruments, current debt service obligations and substantial indebtedness may restrict our current and future operations, particularly our ability to timely refinance existing indebtedness, finance additional growth, respond to changes or take some actions that may otherwise be in our best interests.*

Our current debt service obligations contain, or any future debt service obligations and instruments may contain, a number of restrictive covenants that impose significant operating and financial restrictions on us, including restrictions on our ability to:

- incur additional debt, including providing guarantees or credit support;
- incur liens securing indebtedness or other obligations;
- dispose of certain assets;
- make certain acquisitions;
- pay dividends or make distributions and make other restricted payments, such as purchasing equity interests, repurchasing junior indebtedness or making investments in third parties;
- enter into sale and leaseback transactions;
- engage in any new businesses;
- issue preferred stock; and
- enter into transactions with our stockholders and our affiliates.

In addition, our Macao, Singapore and U.S. credit agreements contain various financial covenants. See "Item 8 — Financial Statements and Supplementary Data — Notes to Consolidated Financial Statements — Note 9 — Long-Term Debt" for further description of these covenants.

As of December 31, 2018, we had \$11.99 billion of long-term debt outstanding, net of original issue discount, deferred offering costs (excluding those costs related to our revolving facilities) and cumulative fair value adjustments. This indebtedness could have important consequences to us. For example, it could:

- make it more difficult for us to satisfy our debt service obligations;
- increase our vulnerability to general adverse economic and industry conditions;
- impair our ability to obtain additional financing in the future for working capital needs, capital expenditures, development projects, acquisitions or general corporate purposes;
- require us to dedicate a significant portion of our cash flow from operations to the payment of principal and interest on our debt, which would reduce the funds available for our operations and development projects;
- limit our flexibility in planning for, or reacting to, changes in the business and the industry in which we operate;
- place us at a competitive disadvantage compared to our competitors that have less debt; and
- subject us to higher interest expense in the event of increases in interest rates.

Subject to applicable laws, including gaming laws, and certain agreed upon exceptions, our U.S. and Singapore debt is secured by liens on substantially all of our assets located in those countries, except for our equity interests in our subsidiaries.

Our ability to timely refinance and replace our indebtedness in the future will depend upon general economic and credit market conditions, approval required by local government regulators, adequate liquidity in the global credit markets, the particular circumstances of the gaming industry and prevalent regulations and our cash flow and operations, in each case as evaluated at the time of such potential refinancing or replacement. For example, we have a principal amount of \$98 million in long-term debt maturing during each of the three years ended December 31, 2021 and \$520 million and \$3.68 billion in long-term debt maturing during the years ending December 31, 2022 and 2023, respectively. If we are unable to refinance or generate sufficient cash flow from operations to repay our indebtedness on a timely basis, we might be forced to seek alternate forms of financing, dispose of certain assets or minimize capital expenditures and other investments, or reduce dividend payments. There is no assurance any of these alternatives would be available



to us, if at all, on satisfactory terms, on terms that would not be disadvantageous to us, or on terms that would not require us to breach the terms and conditions of our existing or future debt agreements.

We may attempt to arrange additional financing to fund the remainder of our planned, and any future, development projects. If such additional financing is necessary, we cannot assure you we will be able to obtain all the financing required for the construction and opening of these projects on suitable terms, if at all.

***The LIBOR calculation method may change and LIBOR is expected to be phased out after 2021.***

Some of our credit facilities calculate interest on the outstanding principal balance using LIBOR. On July 27, 2017, the United Kingdom Financial Conduct Authority (the "FCA") announced it would phase out LIBOR as a benchmark by the end of 2021. In the meantime, actions by the FCA, other regulators or law enforcement agencies may result in changes to the method by which LIBOR is calculated. At this time, it is not possible to predict the effect on our financial condition, results of operations and cash flows of any such changes or any other reforms to LIBOR that may be enacted in the United Kingdom or elsewhere.

***Fluctuations in foreign currency exchange rates could have an adverse effect on our financial condition, results of operations and cash flows.***

We record transactions in the functional currencies of our reporting entities. Because our consolidated financial statements are presented in U.S. dollars, we translate revenues and expenses, as well as assets and liabilities, into U.S. dollars at exchange rates in effect during or at the end of each reporting period, which subjects us to foreign currency translation risks. The strengthening of the U.S. dollar against the functional currencies of our foreign operations could have an adverse effect on our U.S. dollar financial results.

In certain instances, our entities whose functional currency is the U.S. dollar may enter, and will continue to enter, into transactions that are denominated in a currency other than U.S. dollars. At the date that such transaction is recognized, each asset and liability arising from the transaction is measured and recorded in U.S. dollars using the exchange rate in effect at that date. At each balance sheet date, recorded monetary balances denominated in a currency other than U.S. dollars are adjusted to U.S. dollars using the exchange rate at the balance sheet date, with gains or losses recorded in other income (expense), which subjects us to foreign currency transaction risks.

We are a parent company whose primary source of cash is distributions from our subsidiaries (see "*We are a parent company and our primary source of cash is and will be distributions from our subsidiaries.*"). Fluctuations in the U.S. dollar/SGD exchange rate, the U.S. dollar/Macao pataca exchange rate and/or the U.S. dollar/HKD exchange rate could have a material adverse effect on the amount of dividends and distributions from our Singapore and Macao operations.

On July 21, 2005, the People's Bank of China announced the renminbi will no longer be pegged to the U.S. dollar, but will be allowed to float in a band (and, to a limited extent, increase in value) against a basket of foreign currencies. We cannot assure you the Hong Kong dollar will continue to be pegged to the U.S. dollar and the Macao pataca will continue to be pegged to the Hong Kong dollar or the current peg rate for these currencies will remain at the same level. The floating of the renminbi and possible changes to the pegs of the Macao pataca and/or the Hong Kong dollar may result in severe fluctuations in the exchange rate for these currencies. Any change in such exchange rates could have a material adverse effect on our operations and on our ability to make payments on certain of our debt instruments. We do not currently hedge foreign currency risk related to the Hong Kong dollar, renminbi or pataca; however, we maintain a significant amount of our operating funds in the same currencies in which we have obligations, thereby reducing our exposure to currency fluctuations.

***We extend credit to a large portion of our customers and we may not be able to collect gaming receivables from our credit players.***

We conduct our gaming activities on a credit and cash basis. Any such credit we extend is unsecured. Table games players typically are extended more credit than slot players, and high-stakes players typically are extended more credit than players who tend to wager lesser amounts. High-end gaming is more volatile than other forms of gaming, and variances in win-loss results attributable to high-end gaming may have a significant positive or negative impact on cash flow and earnings in a particular quarter.

During the year ended December 31, 2018, approximately 15.3%, 16.0% and 65.8% of our table games drop at our Macao properties, Marina Bay Sands and our Las Vegas properties, respectively, was from credit-based wagering, while table games play at our Pennsylvania property was primarily conducted on a cash basis. We extend credit to those customers whose level of play and financial resources warrant, in the opinion of management, an extension of credit. These large receivables could have a significant impact on our results of operations if deemed uncollectible.

While gaming debts evidenced by a credit instrument, including what is commonly referred to as a "marker," and judgments on gaming debts are enforceable under the current laws of Nevada, and Nevada judgments on gaming debts are enforceable in all states under the Full Faith and Credit Clause of the U.S. Constitution, other jurisdictions around the world, including jurisdictions our gaming customers may come from, may determine, or have determined, enforcement of gaming debts is against public policy. Although courts of some foreign nations will enforce gaming debts directly and the assets in the U.S. of foreign debtors may be reached to satisfy a judgment, judgments on gaming debts from courts in the U.S. and elsewhere are not binding in the courts of many foreign nations.

In particular, we expect our Macao operations will be able to enforce gaming debts only in a limited number of jurisdictions, including Macao. To the extent our Macao gaming customers and gaming promoters are from other jurisdictions, our Macao operations may not have access to a forum in which it will be possible to collect all gaming receivables because, among other reasons, courts of many jurisdictions do not enforce gaming debts and our Macao operations may encounter forums that will refuse to enforce such debts. Moreover, under applicable law, our Macao operations remain obligated to pay taxes on uncollectible winnings from customers.

It is also possible our Singapore operations may not be able to collect gaming debts because, among other reasons, courts of certain jurisdictions do not enforce gaming debts. To the extent our Singapore gaming customers' assets are situated in such jurisdictions, our Singapore operations may not be able to take enforcement action against such assets to facilitate collection of gaming receivables.

Even where gaming debts are enforceable, they may not be collectible. Our inability to collect gaming debts could have a significant adverse effect on our results of operations and cash flows.

***Win rates for our gaming operations depend on a variety of factors, some beyond our control, and the winnings of our gaming customers could exceed our casino winnings.***

The gaming industry is characterized by an element of chance. In addition to the element of chance, win rates are also affected by other factors, including players' skill and experience, the mix of games played, the financial resources of players, the spread of table limits, the volume of bets played and the amount of time played. Our gaming profits are mainly derived from the difference between our casino winnings and the casino winnings of our gaming customers. Since there is an inherent element of chance in the gaming industry, we do not have full control over our winnings or the winnings of our gaming customers. If the winnings of our gaming customers exceed our winnings, we may record a loss from our gaming operations, which could have a material adverse effect on our financial condition, results of operations and cash flows.

***We face the risk of fraud and cheating.***

Our gaming customers may attempt or commit fraud or cheat in order to increase winnings. Acts of fraud or cheating could involve the use of counterfeit chips or other tactics, possibly in collusion with our employees. Internal acts of cheating could also be conducted by employees through collusion with dealers, surveillance staff, floor managers or other casino or gaming area staff. Failure to discover such acts or schemes in a timely manner could result in losses in our gaming operations. In addition, negative publicity related to such schemes could have an adverse effect on our reputation, potentially causing a material adverse effect on our business, financial condition, results of operations and cash flows.

***A failure to establish and protect our IP rights could have a material adverse effect on our business, financial condition and results of operations.***

We endeavor to establish, protect and enforce our IP, including our trademarks, copyrights, patents, domain names, trade secrets and other confidential and proprietary information. There can be no assurance, however, the steps we take to protect our IP will be sufficient. If a third party successfully challenges our trademarks, we could have difficulty maintaining exclusive rights. If a third party claims we have infringed, currently infringe, or could in the future infringe upon its IP rights, we may need to cease use of such IP, defend our rights or take other steps. In addition, if third parties

violate their obligations to us to maintain the confidentiality of our proprietary information or there is a security breach or lapse, or if third parties misappropriate or infringe upon our IP, our business may be affected. Our inability to adequately obtain, maintain or defend our IP rights for any reason could have a material adverse effect on our business, financial condition and results of operations.

***Our insurance coverage may not be adequate to cover all possible losses that our properties could suffer. In addition, our insurance costs may increase and we may not be able to obtain the same insurance coverage, or the scope of insurance coverage we deem necessary, in the future.***

We have comprehensive property and liability insurance policies for our properties in operation, as well as those in the course of construction, with coverage features and insured limits we believe are customary in their breadth and scope. Market forces beyond our control may nonetheless limit the scope of the insurance coverage we can obtain or our ability to obtain coverage at reasonable rates. Certain types of losses, generally of a catastrophic nature, such as earthquakes, hurricanes and floods, or terrorist acts, or certain liabilities may be uninsurable or too expensive to justify obtaining insurance. As a result, we may not be successful in obtaining insurance without increases in cost or decreases in coverage levels. In addition, in the event of a substantial loss, the insurance coverage we carry may not be sufficient to pay the full market value or replacement cost of our lost investment or in some cases could result in certain losses being totally uninsured. As a result, we could lose some or all of the capital we have invested in a property, as well as the anticipated future revenue from the property, and we could remain obligated for debt or other financial obligations related to the property.

Our debt instruments and other material agreements require us to maintain a certain minimum level of insurance. Failure to satisfy these requirements could result in an event of default under these debt instruments or material agreements.

***Conflicts of interest may arise because certain of our directors and officers are also directors of SCL.***

In November 2009, our subsidiary, SCL, listed its ordinary shares on The Main Board of The Stock Exchange of Hong Kong Limited (the "SCL Offering"). We currently own 70.0% of the issued and outstanding ordinary shares of SCL. As a result of SCL having stockholders who are not affiliated with us, we and certain of our officers and directors who also serve as officers and/or directors of SCL may have conflicting fiduciary obligations to our stockholders and to the minority stockholders of SCL. Decisions that could have different implications for us and SCL, including contractual arrangements we have entered into or may in the future enter into with SCL, may give rise to the appearance of a potential conflict of interest.

***Changes in tax laws and regulations could impact our financial condition, results of operations and cash flows.***

We are subject to taxation and regulation by various government agencies, primarily in Macao, Singapore and the U.S. (federal, state and local levels). From time to time, U.S. federal, state, local and foreign governments make substantive changes to income tax, indirect tax and gaming tax rules and the application of these rules, which could result in higher taxes than would be incurred under existing tax law or interpretation. In particular, government agencies may make changes that could reduce the profits we can effectively realize from our non-U.S. operations. Like most U.S. companies, our effective income tax rate reflects the fact that income earned and reinvested outside the U.S. is taxed at local rates, which are often lower than U.S. tax rates.

In December 2017, the U.S. enacted the Tax Cuts and Jobs Act (the "Act") also referred to as "U.S. tax reform." The Act made significant changes to U.S. income tax laws including lowering the U.S. corporate tax rate to 21% effective beginning in 2018 and transitioning from a worldwide tax system to a territorial tax system resulting in dividends from our foreign subsidiaries not being subject to U.S. income tax and creating a one-time tax on previously unremitted earnings of foreign subsidiaries. These changes are complex and will continue to require the Internal Revenue Service to issue interpretations and implement regulations that may significantly impact how we will apply the Act and impact our results of operations in the period issued.

If changes in tax laws and regulations were to significantly increase the tax rates on gaming revenues or income, or if there are additional significant interpretations and implementing regulations issued related to the Act, these changes could increase our tax expense and liability, and therefore, could have a material adverse effect on our financial condition, results of operations and cash flows.