Electronically Filed
Oct 11 2021 11:54 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Natural or man-made disasters, an outbreak of highly infectious disease, terrorist activity or war could adversely affect the number of visitors to our facilities and disrupt our operations, resulting in a material adverse effect on our business, financial condition, results of operations and cash flows.

So called "Acts of God," such as typhoons and rainstorms, particularly in Macao, and other natural disasters, man-made disasters, outbreaks of highly infectious diseases, terrorist activity or war may result in decreases in travel to and from, and economic activity in, areas in which we operate, and may adversely affect the number of visitors to our properties. Any of these events also may disrupt our ability to staff our business adequately, could generally disrupt our operations and could have a material adverse effect on our business, financial condition, results of operations and cash flows. Although we have insurance coverage with respect to some of these events, we cannot assure you any such coverage will be sufficient to indemnify us fully against all direct and indirect costs, including any loss of business that could result from substantial damage to, or partial or complete destruction of, any of our properties.

Our failure to maintain the integrity of our information and information systems, which contain legally protected information about us and others, could happen in a variety of ways, including as a result of unauthorized access, breach of our cybersecurity systems and measures, or other disruption or corruption of our information systems, software or data, or access to information stored outside of our information systems, and could impair our ability to conduct our business operations, delay our ability to recognize revenue, compromise the integrity of our business and services, result in significant data losses and the theft of our IP, damage our reputation, expose us to liability to third parties, regulatory fines and penalties, and require us to incur significant costs to maintain the privacy and security of our information, network and data.

We face global cybersecurity and information security threats, which may range from uncoordinated individual attempts to sophisticated and targeted measures directed at us. Cyber-attacks and information security breaches may include, but are not limited to, attempts to access information, including legally protected information about people including customers and company information, computer malware such as viruses, denial of service, ransomware attacks that encrypt, exfiltrate, or otherwise render data unusable or unavailable in an effort to extort money or other consideration as a condition to purportedly returning the data to a usable form, operator errors or misuse, or inadvertent releases of data or documents, and other forms of electronic and non-electronic information security breaches.

Our business requires the collection and retention of large volumes of data and non-electronic information, including credit card numbers and other legally protected information about people in various information systems we maintain and in those maintained by third parties with whom we contract and may share data. We also maintain important internal company information such as legally protected information about our employees and information relating to our operations. The integrity and protection of that legally protected information about people and company information are important to us. Our collection of such legally protected information about people and company information is subject to extensive regulation by private groups such as the payment card industry as well as domestic and foreign governmental authorities, including gaming authorities. If a cybersecurity or privacy event occurs, we may be unable to satisfy applicable laws and regulations or the expectation of regulators, employees, customers or other impacted individuals.

Privacy and cybersecurity laws and regulations are developing and changing frequently, and vary significantly by jurisdiction. Many applicable laws and regulations protecting privacy and addressing cybersecurity have not yet been interpreted by regulators or courts, which causes uncertainty. We may incur significant costs in our efforts to comply with the various applicable privacy and cybersecurity laws and regulations as they emerge and change. Also, privacy and cybersecurity laws and regulations may limit our ability to protect individuals, including customers and employees. For example, these laws and regulations may restrict information sharing in ways that make it more difficult to obtain or share information concerning at-risk individuals. Compliance with applicable privacy laws and regulations also may adversely impact our ability to market our products, properties, and services to our guests and patrons. In addition, non-compliance by us, or potentially by third parties with which we share information, with any applicable privacy and cybersecurity law or regulation, including accidental loss, inadvertent disclosure, unauthorized access or dissemination, or breach of security may result in damage to our reputation and could subject us to fines, penalties, required corrective actions, lawsuits, payment of damages, or restrictions on our use or transfer of data. We are subject to different regulator(s)' and others' interpretations of our compliance with these new and changing laws and regulations.

In addition, we have experienced a sophisticated criminal cybersecurity attack in the past, including a breach of our information technology systems in which customer and company information was compromised and certain

company data may have been destroyed, and we may experience additional cybersecurity attacks in the future, potentially with more frequency or sophistication. We rely on proprietary and commercially available systems, software, tools, and monitoring to provide security for processing, transmission, and storage of customer and employee information, such as payment card and other confidential or proprietary information. We also rely extensively on computer systems to process transactions, maintain information, and manage our businesses. Disruptions in the availability of our computer systems, through cyber-attacks or otherwise, could impact our ability to service our customers and adversely affect our sales and the results of operations. For instance, there has been an increase in criminal cybersecurity attacks against companies where customer and company information has been compromised and company data has been destroyed. Our information systems and records, including those we maintain with third-party service providers, as well as the systems of other third parties that share data with us under contractual agreements, may be subject to cyber-attacks and information security breaches. Our third-party information system service providers and other third parties that share data with us pursuant to contractual agreements face risks relating to cybersecurity and privacy similar to ours, and we do not directly control any of such parties' information security or privacy operations. For example, the systems currently used for the transmission and approval of payment card transactions, and the technology utilized in payment cards themselves, all of which can put payment card data at risk, are determined and controlled by the payment card industry, not us.

A significant theft, destruction, loss or fraudulent use of legally protected information about people or company information maintained by us or by a third-party service provider or other third party that shares data with us pursuant to contractual agreement could have an adverse effect on our reputation, cause a material disruption to our operations and management team and result in remediation expenses (including liability for stolen assets or information, repairing system damage and offering incentives to customers or business partners to maintain their relationships after an attack) and regulatory fines, penalties and corrective actions, or lawsuits by regulators, third-party service providers, third parties that share data with us pursuant to contractual agreements and/or people whose data is or may be impacted. Such theft, destruction, loss or fraudulent use could also result in litigation by shareholders alleging our privacy protections and protections against cyber-attacks were insufficient, our response to an attack was faulty or insufficient care was taken in ensuring we were able to comply with cybersecurity, privacy or data protection regulations, protect information, identify risks and attacks, or respond to and recover from a cyber-attack, or by customers and other parties whose information was subject to such attacks. Advances in computer software capabilities and encryption technology, new tools, and other developments, including continuously evolving attack methods that may exploit vulnerabilities based on these advances, may increase the risk of a security breach or other intrusion. In addition, we may incur increased cybersecurity and privacy protection costs that may include organizational changes, deploying additional personnel and protection technologies, training employees and engaging third-party experts and consultants. There can be no assurance the insurance the Company has in place relating to cybersecurity and privacy risks will be sufficient in the event of a major cybersecurity or privacy event. Any of these events could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Our gaming operations rely heavily on technology services provided by third parties. In the event there is an interruption of these services to us, it may have an adverse effect on our operations and financial condition.

We engage a number of third parties to provide gaming operating systems for the facilities we operate. As a result, we rely on such third parties to provide uninterrupted services to us in order to run our business efficiently and effectively. In the event one of these third parties experiences a disruption in its ability to provide such services to us (whether due to technological difficulties or power problems), this may result in a material disruption at the gaming facilities in which we operate and have a material adverse effect on our business, financial condition, results of operations and cash flows.

Any unscheduled interruption in our technology services is likely to result in an immediate, and possibly substantial, loss of revenues due to a shutdown of our gaming operations, cloud computing and gaming systems. Such interruptions may occur as a result of, for example, catastrophic events or rolling blackouts. Our systems are also vulnerable to damage or interruption from earthquakes, floods, fires, telecommunication failures, terrorist attacks, computer viruses, computer denial-of-service attacks and similar events.

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.

We previously announced the renovation, expansion and rebranding of Sands Cotai Central, the addition of approximately 370 luxury suites in the St. Regis Tower Suites Macao and the development of approximately 290

EXHIBIT “V”

Policy Number
GLO 0171169-02

ENDORSEMENT

ZURICH AMERICAN INSURANCE COMPANY

Named Insured: LAS VEGAS SANDS CORP.
Effective Date: 06/01/2016

12:01 A.M., Standard Time

Agent Name: BEECHER CARLSON INSURANCE SERVICES **Agent No. 18176-000**

IT IS HEREBY AGREED AND UNDERSTOOD THAT THE FOLLOWING CHANGES HAVE BEEN MADE TO THE POLICY;

EFFECTIVE 06/01/2016 FORM# U-GL-1114-A CW (10/02) BROAD FORM NAMED INSURED IS BEING ADDED TO THE POLICY PER THE ATTACHED.

EFFECTIVE 06/01/2016 THE INSURED MAILING ADDRESS IS BEING REVISED TO SHOW THE FOLLOWING;

3555 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NV 89109

EFFECTIVE 06/01/2016 FORM# U-GL-1114-A CW (10/02) POLLUTION EXCLUSION LIMITED EXCEPTIONS FOR HOSPITALITY INDUSTRY IS BEING ADDED TO THE POLICY PER THE ATTACHED.

EFFECTIVE 06/01/2016 FORM# CG 22 64 (04/13) PESTICIDE OR HERBICIDE APPLICATOR -- LIMITED POLLUTION COVERAGE IS BEING ADDED TO THE POLICY PER THE ATTACHED.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Policy Number
GLO 0171169-02

ENDORSEMENT

ZURICH AMERICAN INSURANCE COMPANY

Named Insured: LAS VEGAS SANDS CORP

Effective Date:06/01/2016
12:01 A.M., Standard Time

Agent Name: BEECHER CARLSON INSURANCE

Agent No.18176-000

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

It is hereby agreed that **SECTION II – WHO IS AN INSURED 1.** is amended to include:

Any individual or entity (your client) who requires you to provide primary general liability insurance under written contract for "managed premises". Coverage is provided to your client only while a written contract is in effect with your client that requires your management, control of or providing of services to or for the "managed premises".

This insurance does not apply to any claims by a Named Insured against your client.

Under **SECTION V –** Definitions it is agreed that the following is added:

"Managed premises" means:

(1) The location(s) or premises described in the written contract that is owned by your client and for whom you are performing premises management services, and
(2) All operations on those locations or premises described in paragraph (1) above or elsewhere which are necessary or incidental to the ownership, maintenance or use of those premises or locations, and
(3) You have signed and accepted a contract to exercise management control over your client's location(s) or premises and you have assumed the duties required by the contract.

All other terms and conditions of this policy remain unchanged.

U-GL-1114-A CW (10/02)

Policy Number
GLO 0171169-02

ENDORSEMENT

ZURICH AMERICAN INSURANCE COMPANY

Named Insured LAS VEGAS SANDS CORP.

Effective Date: 06/01/2016
12:01 A.M., Standard Time

Agent Name BEECHER CARLSON INSURANCE

Agent No. 18176-000

JOINT VENTURE, PARTNERSHIP AND LLC

PART 3. OF SECTION II - WHO IS AN INSURED IS DELETED AND REPLACED BY THE FOLLOWING:

3. ANY ORGANIZATION YOU NEWLY ACQUIRE OR FORM, AND OVER WHICH YOU MAINTAIN OWNERSHIP OR MAJORITY INTEREST, WILL QUALIFY AS A NAMED INSURED IF THERE IS NO OTHER SIMILAR INSURANCE AVAILABLE TO THAT ORGANIZATION. HOWEVER:

A. COVERAGE UNDER THIS PROVISION IS AFFORDED ONLY UNTIL THE 180TH DAY AFTER YOU ACQUIRE OR FORM THE ORGANIZATION OR THE END OF THE POLICY PERIOD, WHICHEVER IS EARLIER;

B. COVERAGE A DOES NOT APPLY TO "BODILY INJURY" OR "PROPERTY DAMAGE" THAT OCCURRED BEFORE YOU ACQUIRED OR FORMED THE ORGANIZATION; AND

C. COVERAGE B DOES NOT APPLY TO "PERSONAL AND ADVERTISING INJURY" ARISING OUT OF AN OFFENSE COMMIT- TED BEFORE YOU ACQUIRED OR FORMED THE ORGANIZATION;

D. IF THE ORGANIZATION IS A JOINT VENTURE, PARTNERSHIP OR LIMITED LIABILITY COMPANY, COVERAGE IS AFFORDED ONLY TO THE EXTENT OF THE PERCENTAGE OF OWNERSHIP INTEREST OF ANY INSURED IN THE ORGANIZATION.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Innkeepers Legal Liability Coverage Endorsement

ZURICH

POLICY NUMBER	EFF. DATE OF POL.	EXP. DATE OF POL.	EFF. DATE OF END.	PRODUCER	ADD'L. PREM	RETURN PREM.
GLO 0171169-02	06/01/2016	06/01/2017	06/01/2018	18178-000		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

SCHEDULE

LIMITS OF LIABILITY & SELF-INSURED RETENTION

Per Occurrence Limit:	**$ 1,000,000**
Per Guest Limit:	**$ 1,000,000**
Aggregate:	**$ 1,000,000**
Self-Insured Retention Per Occurrence Limit:	**$ 100,000**

It is agreed that SECTION I. COVERAGES is amended to include the following additional coverage:

A. Coverage I. – Innkeepers Legal Liability Coverage

1. **Insuring Agreement:**

   We will pay those sums that you become legally obligated to pay as damages because of loss or destruction of, or damage to "covered property" due to an "occurrence" which takes place during the policy period. We have the right and duty to defend any suit brought against you seeking damages that are payable under this insurance. We may investigate and settle any claim or suit as we deem expedient. We will not defend any suit after we have paid judgments or settlements equal to the applicable Limit of Insurance shown in the Schedule of this endorsement.

2. **Exclusions**

   This insurance does not apply to:

   a. **Acts Committed By The Insured**

      Loss or destruction of, or damage to property resulting from any dishonest or criminal act committed by the insured, whether acting alone or in collusion with others;

   b. **Assumed Liability**

      Liability you assume under any written agreement entered into with a "guest" before the "occurrence" of any loss, destruction or damage.

c. **Fire**

Destruction of, or damage to property resulting from fire.

d. **Food or Liquid**

Destruction of, or damage to property resulting from the spilling, upsetting or leaking of any food or liquid.

e. **Governmental Action**

Loss or destruction of, or damage to property resulting from seizure or destruction of the property by order of governmental authority.

f. **Inherent Vice**

Destruction of or damage to property resulting from insects, animals, wear and tear, gradual deterioration or inherent vice.

g. **Laundering or Cleaning**

Destruction of or damage to property while in your care and custody for laundering or cleaning.

h. **Nuclear**

Loss or destruction of, or damage to property resulting from nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.

i. **Release of Others from Liability**

Your release of any other person or organization from legal liability.

j. **War and Similar Actions**

Loss or destruction of, or damage to property resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident.

B. **LIMITS OF INSURANCE**

1. The most we will pay in the aggregate for all damages because of loss or destruction of or damage to "covered property" in any one "occurrence" is the Per Occurrence Limit of Insurance shown in the SCHEDULE of this endorsement. All loss, destruction or damage involving a single act or event or series of related acts or events whether caused by one or more persons is considered one "occurrence".

2. Subject to the applicable limits stated in 1. above, the most we will pay for all damages because of loss or destruction of or damage to property of any one "guest" is the Per Guest Limit of Insurance shown in the SCHEDULE of this endorsement.

3. The Aggregate Limit shown in the Schedule is the most we will pay for all damages because of loss or destruction of, or damage to Covered Property during the policy period.

C. **SELF INSURED RETENTION**

1. Our obligation to pay damages on your behalf applies only to the amount of damages in excess of the self-insured retention amount shown in the SCHEDULE of this endorsement.

2. The self-insured retention amount applies hereunder to all damages combined arising out of any one "occurrence".

3. We may at our sole option either:

   a. pay any part or all of the self-insured retention amount to settle any claim or "suit" and upon our notifying you of this action you shall reimburse us for the applicable self-insured retention amount; or

   b. simultaneously upon receipt of notice of any claim or "suit" or at any time thereafter call upon you to pay any part or all of the self-insured retention amount, to be held or applied by us as appropriate.

D. **CONDITIONS**

1. **Condition 2. - Duties in the Event of Loss, Claim or Suit:**

The following is added:

If you have reason to believe that any loss or destruction of, or damage to "covered property" involves a violation of law, you must notify the appropriate law enforcement authorities.

2. **Condition 4. – Other Insurance**

For purposes of this insurance only, the following **Other Insurance** provisions apply:

This insurance does not apply to damages recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the damages, this insurance will apply to that part of the damages not recoverable or recovered under the other insurance.

3. **Non-Cumulation of Limit of Insurance**

Limits of Insurance stated in the SCHEDULE of this endorsement do not accumulate from year to year or period to period.

E. **DEFINITIONS**

1. "Covered property" means any property belonging to your "guests" while the property is in your possession or on your "premises". "Covered property" does not include:

   a. Samples, Articles for Sale: Samples or articles carried or held for sale or for delivery after sale;

   b. Vehicles: Any vehicle including its equipment and accessories or any property contained in or on the vehicle.

2. "Guest" means any person or group of persons temporarily residing in or renting premises from you for a short term period(s) of 30 days or less. Guest does not include any residential or commercial tenant of yours that is leasing or renting property from you on a long term lease or rental basis."

3. "Occurrence" for purposes of this insurance only, means an act or event or series of related acts or events caused by one or more persons, which results in loss or destruction of or damage to "covered property".

4. "Premises" means the interior of any building that you own, rent or occupy that is used in the conduct of your business operations.

Policy Number
GLO 0171169-02

ENDORSEMENT

ZURICH AMERICAN INSURANCE COMPANY

Named Insured: Las Vegas Sands Corp

Effective Date: 06/01/2016
12:01 A.M., Standard Time

Agent Name: BEECHER CARLSON INSURANCE SERV **Agent No.** 18176-000

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under any of the following:

COMMERCIAL GENERAL LIABILITY PART

It is agreed that U-GL-1502 – Personal and Advertising Injury Definition Amendment – Limited, is deleted from the policy, effective 06/01/2016:

It is also agreed that the following form is amended as follows, effective 06/01/2016:

- U-GL-1114 – Innkeepers Legal Liability Coverage Endorsement – Revised;
- U-GL-1345 – General Liability Supplemental Coverage Endorsement, is amended to remove Sections A. and B.;
- U-GL-872 – Premium And Reports Agreement – Composite Rated Policies – Revised;
- CG 25 04 – Designed Location(s) General Aggregate Limit, Schedule, to "All owned and leased locations";
- U-GU-1016 – Knowledge by Position or Department, is revised to include Employee Benefits Liability – Claims-Made Coverage Form under "This endorsement modifies insurance provided under the:" section

Innkeepers Legal Liability Coverage Endorsement

ZURICH

POLICY NUMBER	EFF. DATE OF POL.	EXP. DATE OF POL.	EFF. DATE OF END.	PRODUCER	ADD'L. PREM	RETURN PREM
GLO 0171169-02	06/01/2016	06/01/2017	06/01/2016	18176-000		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

SCHEDULE

LIMITS OF LIABILITY & SELF-INSURED RETENTION

Per Occurrence Limit:	**$ 1,000,000**
Per Guest Limit:	**$ 1,000,000**
Aggregate:	**$ 1,000,000**
Self-Insured Retention Per Occurrence Limit:	**$ 100,000**

It is agreed that SECTION I. COVERAGES is amended to include the following additional coverage:

A. **Coverage I. – Innkeepers Legal Liability Coverage**

1. **Insuring Agreement:**

   We will pay those sums that you become legally obligated to pay as damages because of loss or destruction of, or damage to "covered property" due to an "occurrence" which takes place during the policy period. We have the right and duty to defend any suit brought against you seeking damages that are payable under this insurance. We may investigate and settle any claim or suit as we deem expedient. We will not defend any suit after we have paid judgments or settlements equal to the applicable Limit of Insurance shown in the Schedule of this endorsement.

2. **Exclusions**

   This insurance does not apply to:

   a. **Acts Committed By The Insured**

      Loss or destruction of, or damage to property resulting from any dishonest or criminal act committed by the insured, whether acting alone or in collusion with others;

   b. **Assumed Liability**

      Liability you assume under any written agreement entered into with a "guest" before the "occurrence" of any loss, destruction or damage.

c. **Fire**

Destruction of, or damage to property resulting from fire.

d. **Food or Liquid**

Destruction of, or damage to property resulting from the spilling, upsetting or leaking of any food or liquid.

e. **Governmental Action**

Loss or destruction of, or damage to property resulting from seizure or destruction of the property by order of governmental authority.

f. **Inherent Vice**

Destruction of or damage to property resulting from insects, animals, wear and tear, gradual deterioration or inherent vice.

g. **Laundering or Cleaning**

Destruction of or damage to property while in your care and custody for laundering or cleaning.

h. **Nuclear**

Loss or destruction of, or damage to property resulting from nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.

i. **Release of Others from Liability**

Your release of any other person or organization from legal liability.

j. **War and Similar Actions**

Loss or destruction of, or damage to property resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident.

B. **LIMITS OF INSURANCE**

1. The most we will pay in the aggregate for all damages because of loss or destruction of or damage to "covered property" in any one "occurrence" is the Per Occurrence Limit of Insurance shown in the SCHEDULE of this endorsement. All loss, destruction or damage involving a single act or event or series of related acts or events whether caused by one or more persons is considered one "occurrence".
2. Subject to the applicable limits stated in 1. above, the most we will pay for all damages because of loss or destruction of or damage to property of any one "guest" is the Per Guest Limit of Insurance shown in the SCHEDULE of this endorsement.
3. The Aggregate Limit shown in the Schedule is the most we will pay for all damages because of loss or destruction of, or damage to Covered Property during the policy period.

C. **SELF INSURED RETENTION**

1. Our obligation to pay damages on your behalf applies only to the amount of damages in excess of the self-insured retention amount shown in the SCHEDULE of this endorsement.
2. The self-insured retention amount applies hereunder to all damages combined arising out of any one "occurrence".
3. We may at our sole option either:
   a. pay any part or all of the self-insured retention amount to settle any claim or "suit" and upon our notifying you of this action you shall reimburse us for the applicable self-insured retention amount; or
   b. simultaneously upon receipt of notice of any claim or "suit" or at any time thereafter call upon you to pay any part or all of the self-insured retention amount, to be held or applied by us as appropriate.

D. **CONDITIONS**

1. **Condition 2. - Duties in the Event of Loss, Claim or Suit:**

   The following is added:

   If you have reason to believe that any loss or destruction of, or damage to "covered property" involves a violation of law, you must notify the appropriate law enforcement authorities.

2. **Condition 4. – Other Insurance**

   For purposes of this insurance only, the following **Other Insurance** provisions apply:

   This insurance does not apply to damages recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the damages, this insurance will apply to that part of the damages not recoverable or recovered under the other insurance.

3. **Non-Cumulation of Limit of Insurance**

   Limits of Insurance stated in the SCHEDULE of this endorsement do not accumulate from year to year or period to period.

E. **DEFINITIONS**

1. "Covered property" means any property belonging to your "guests" while the property is in your possession or on your "premises". "Covered property" does not include:

   a. Samples, Articles for Sale: Samples or articles carried or held for sale or for delivery after sale;

   b. Vehicles: Any vehicle including its equipment and accessories or any property contained in or on the vehicle.

2. "Guest" means any person or group of persons temporarily residing in or renting premises from you for a short term period(s) of 30 days or less. Guest does not include any residential or commercial tenant of yours that is leasing or renting property from you on a long term lease or rental basis."

3. "Occurrence" for purposes of this insurance only, means an act or event or series of related acts or events caused by one or more persons, which results in loss or destruction of or damage to "covered property".

4. "Premises" means the interior of any building that you own, rent or occupy that is used in the conduct of your business operations.

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

Policy Number: GLO 0171169-02

ZURICH AMERICAN INSURANCE COMPANY

Named Insured LAS VEGAS SANDS CORP.

Policy Period: Coverage begins 06-01-2016 at 12:01 A.M.; Coverage ends 06-01-2017 at 12:01 A.M.

Producer Name: BEECHER CARLSON INSURANCE SERV Producer No. 18176-000

Item 1. Business Description:

Item 2. Limits of Insurance

GENERAL AGGREGATE LIMIT	$ 2,000,000	
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	$ 2,000,000	
EACH OCCURRENCE LIMIT	$ 1,000,000	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ 1,000,000	Any one premises
MEDICAL EXPENSE LIMIT	N/A	Any one person
PERSONAL AND ADVERTISING INJURY LIMIT	$ 1,000,000	Any one person or organization

Item 3. Retroactive Date **(CG 00 02 ONLY)**

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" offense which occurs before the Retroactive Date, if any, shown here: NONE
(Enter Date or "None" if no Retroactive Date applies)

Item 4. Form of Business and Location Premises

Form of Business: CORPORATION

Location of All Premises You Own, Rent or Occupy: **See Schedule of Locations**

Item 5. Schedule of Forms and Endorsements

Form(s) and Endorsement(s) made a part of this Policy at time of issue:
See Schedule of Forms and Endorsements

Item 6. Premiums

Coverage Part Premium:

Other Premium:

Total Premium:

U-GL-D-1115-B CW (9/04)

Innkeepers Legal Liability Coverage Endorsement

ZURICH

POLICY NUMBER	EFF. DATE OF POLICY	EXP. DATE OF POLICY	EFF. DATE OF ENDT	PRODUCER NO.	ADD'L PREMIUM	RETURN PREMIUM

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

SCHEDULE

LIMITS OF LIABILITY & DEDUCTIBLE

Per Occurrence Limit:	**$ 1,000,000**
Per Guest Limit:	**$ 1,000,000**
Aggregate:	**$ 1,000,000**

It is agreed that SECTION I. COVERAGES is amended to include the following additional coverage:

A. Coverage I. – Innkeepers Legal Liability Coverage

1. **Insuring Agreement:**

   We will pay those sums that you become legally obligated to pay as damages because of loss or destruction of, or damage to "covered property" due to an "occurrence" which takes place during the policy period. We have the right and duty to defend any suit brought against you seeking damages that are payable under this insurance. We may investigate and settle any claim or suit as we deem expedient. We will not defend any suit after we have paid judgments or settlements equal to the applicable Limit of Insurance shown in the Schedule of this endorsement.

2. **Exclusions**

   This insurance does not apply to:

   a. **Acts Committed By The Insured**

      Loss or destruction of, or damage to property resulting from any dishonest or criminal act committed by the insured, whether acting alone or in collusion with others;

   b. **Assumed Liability**

      Liability you assume under any written agreement entered into with a "guest" before the "occurrence" of any loss, destruction or damage.

   c. **Fire**

      Destruction of, or damage to property resulting from fire.

   d. **Food or Liquid**

      Destruction of, or damage to property resulting from the spilling, upsetting or leaking of any food or liquid.

   e. **Governmental Action**

      Loss or destruction of, or damage to property resulting from seizure or destruction of the property by order of governmental authority.

   f. **Inherent Vice**

      Destruction of or damage to property resulting from insects, animals, wear and tear, gradual deterioration or inherent vice.

   g. **Laundering or Cleaning**

      Destruction of or damage to property while in your care and custody for laundering or cleaning.

   h. **Nuclear**

      Loss or destruction of, or damage to property resulting from nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.

i. **Release of Others from Liability**

Your release of any other person or organization from legal liability.

j. **War and Similar Actions**

Loss or destruction of, or damage to property resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident.

B. **LIMITS OF INSURANCE**

1. The most we will pay in the aggregate for all damages because of loss or destruction of or damage to "covered property" in any one "occurrence" is the Per Occurrence Limit of Insurance shown in the SCHEDULE of this endorsement. All loss, destruction or damage involving a single act or event or series of related acts or events whether caused by one or more persons is considered one "occurrence".
2. Subject to the applicable limits stated in 1. above, the most we will pay for all damages because of loss or destruction of or damage to property of any one "guest" is the Per Guest Limit of Insurance shown in the SCHEDULE of this endorsement.
3. The Aggregate Limit shown in the Schedule is the most we will pay for all damages because of loss or destruction of, or damage to Covered Property during the policy period.

C. **DEDUCTIBLE**

1. Our obligation to pay damages on your behalf applies only to the amount of damages in excess of the deductible amount shown in the SCHEDULE of this endorsement.
2. The deductible amount applies hereunder to all damages combined arising out of any one "occurrence".
3. We may at our sole option either:
   a. pay any part or all of the deductible amount to settle any claim or "suit" and upon our notifying you of this action you shall reimburse us for the applicable deductible amount; or
   b. simultaneously upon receipt of notice of any claim or "suit" or at any time thereafter call upon you to pay any part or all of the deductible amount, to be held or applied by us as appropriate.

D. **CONDITIONS**

1. **Condition 2. - Duties in the Event of Loss, Claim or Suit:**

   The following is added:

   If you have reason to believe that any loss or destruction of, or damage to "covered property" involves a violation of law, you must notify the appropriate law enforcement authorities.
2. **Condition 4. – Other Insurance**

   For purposes of this insurance only, the following **Other Insurance** provisions apply:

   This insurance does not apply to damages recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the damages, this insurance will apply to that part of the damages not recoverable or recovered under the other insurance.
3. **Non-Cumulation of Limit of Insurance**

   Limits of insurance stated in the SCHEDULE of this endorsement do not accumulate from year to year or period to period.

E. **DEFINITIONS**

1. "Covered property" means any property belonging to your "guests" while the property is in your possession or on your "premises". "Covered property" does <u>not</u> include:
   a. Samples, Articles for Sale: Samples or articles carried or held for sale or for delivery after sale;
   b. Vehicles: Any vehicle including its equipment and accessories or any property contained in or on the vehicle.
2. "Occurrence" for purposes of this insurance only, means an act or event or series of related acts or events caused by one or more persons, which results in loss or destruction of or damage to "covered property".
3. "Premises" means the interior of any building that you own, rent or occupy that is used in the conduct of your business operations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION (COVERAGE B ONLY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following is added to Paragraph **2. Exclusions** of **Section I – Coverage B – Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

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EXHIBIT “W”

Register of Actions
Case No. A-18-772761-C

Joyce Sekera, Plaintiff(s) vs. Venetian Casino Resort LLC, Defendant(s)	§	Case Type:	**Negligence - Premises Liability**
	§	Date Filed:	**04/12/2018**
	§	Location:	**Department 25**
	§	Cross-Reference Case Number:	**A772761**
	§		

Party Information

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

Events & Orders of the Court

06/26/2019 **All Pending Motions** (9:00 AM) (Judicial Officer Truman, Erin)

Minutes

06/26/2019 9:00 AM

- Defendants' Motion to Quash Plaintiff's NRCP 45 Subpoena Duces Tecum Served Upon David Elliot, PE and for Protective Order on an OST Venetian Casino Resort, LLC and Las Vegas Sands, LLC's Motion to Strike Witness Gary Shulman and for Appropriate Sanctions Mr. Royal stated Gary Shulman was a 14 year employee of Venetian as a Table Games Supervisor, and he was near the scene of the slip and fall. Mr. Royal spoke with Mr. Shulman during the course and scope of Mr. Shulman's employment. Mr. Royal was not aware that Mr. Shulman was terminated January 2019, but Plaintiff advised Mr. Royal of the possible change in employment. Mr. Royal addressed Mr. Shulman's conversations with Mr. Royal and then with Mr. Galliher. Because of the circumstances with Mr. Galliher, Mr. Royal must waive the attorney client privilege to cross examine Mr. Shulman. Mr. Royal requested Mr. Galliher be dismissed as legal counsel in this case, or Dismiss the case. Commissioner stated Mr. Galliher's representation is not before the Commissioner today. Upon Commissioner's inquiry, Mr. Galliher argued Mr. Royal stated Gary Shulman was no longer employed by the Venetian, so Mr. Galliher Subpoenaed Mr. Shulman. The conversation between Mr. Royal and Mr. Shulman was not privileged, and Mr. Shulman is a percipient witness. In Commissioner's opinion, in order to proceed under Rule 49.015 regarding an allegation that counsel was supporting perjury, an Evidentiary Hearing before the Judge is needed to determine whether or not that occurred. Colloquy regarding Mr. Han's deposition testimony. Mr. Galliher stated Mr. Han's communication was privileged because he is the Head of Housekeeping, and Mr. Shulman was a Table Games Supervisor in a casino. Argument by Mr. Royal. In this case, Commissioner made it clear to allow someone to testify under Rule 49, there must be an Evidentiary Hearing before the Trial Judge. Commissioner stated Mr. Shulman was testifying as a percipient witness to what he observed being close to the incident. COMMISSIONER RECOMMENDED, Venetian Casino Resort, LLC and Las Vegas Sands, LLC's Motion to

Strike Witness Gary Shulman and for Appropriate Sanctions is DENIED; alternative relief provided, and for the purpose of discovery, Mr. Shulman's deposition testimony is allowed, and Commissioner leaves it to the District Court Judge whether there will be a Motion in Limine on the conversations between counsel. Based on the case law before Commissioner, Commissioner's position was the conversations were not privileged. Mr. Royal requested leave to take Mr. Shulman's second deposition. Argument by Mr. Galliher. COMMISSIONER RECOMMENDED, Mr. Shulman's second deposition can be re-noticed with a certain amount of latitude as discussed. Mr. Royal stated Mr. Elliot is not an expert in this case. Arguments by counsel. COMMISSIONER RECOMMENDED, Defendants' Motion to Quash Plaintiff's NRCP 45 Subpoena Duces Tecum Served Upon David Elliot, PE and for Protective Order is GRANTED IN PART; Mr. Elliot can be Subpoenaed and Deposed to the extent he has ever been disclosed as a testifying expert in any case on behalf of the Venetian, and Mr. Elliot's reports and deposition testimony as an expert for Venetian must be DISCLOSED to Plaintiff's counsel; everything else is PROTECTED; expert disclosures are CLOSED, and Mr. Elliot will not be disclosed. Any knowledge beyond what he's previously done, and disclosed as having done by Venetian goes to the claims and defenses in this case; the Recommendation includes Mr. Elliot's testimony and reports on behalf of Plaintiff. Argument by Mr. Galliher; the information is relevant to the punitive damages claim. COMMISSIONER RECOMMENDED, the Recommendation STANDS. Upon Mr. Royals' inquiry, the Recommendation is LIMITED to marble floors. Mr. Royal to prepare the Report and Recommendations, and Mr. Galliher to approve as to form and content. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.

Parties Present
Return to Register of Actions

EXHIBIT “X”

Electronically Filed
4/22/2019 10:47 AM
Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual, Plaintiff, v. VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; YET UNKNOWN EMPLOYEE; DOES I through X, inclusive, Defendants.	CASE NO.: A-18-772761-C DEPT. NO.: 25 **PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT** **HEARING REQUESTED**

Plaintiff, Joyce Sekera, submits her Motion for Leave to Amend Her Complaint (the "Motion") to add a claim for punitive damages. Punitive damages are warranted in this case because

Venetian consciously disregarded their customers' safety by refusing to fix the known hazard which caused Plaintiff's fall.[1]

This Motion is based upon the records and pleadings on file herein, the points and authorities attached hereto, and any oral arguments that may be allowed at the hearing of this Motion.

DATED this 22nd day of April, 2019

THE GALLIHER LAW FIRM

Keith E. Galliher, Jr., Esq.
Nevada Bar Number 220
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Attorney for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a personal injury case arising out of a slip and fall on the shiny marble floors in the Venetian Casino Resort. On November 4, 2016 Plaintiff sustained serious injuries after she slipped and fell on water on the marble floors of Venetian near the Grand Lux Cafe. During discovery Plaintiff's expert tested the marble floors and determined they were significantly below industry slip resistant standards when wet. Based on the deposition of Venetian's responding EMT/security officer this dangerous condition resulted in 466-700 injury falls in the last five years. Incident reports were taken in all of these cases, however, because Venetian determined the discovery rules and court orders do not apply to them, they only disclosed 64 of these reports. Nonetheless, Plaintiff identified another 4 incident reports disclosed to another slip and fall case, and another 5 incidents from downloading court documents. As discussed below, the Court should grant Plaintiff's Motion

[1] A copy of the proposed Amended Complaint is attached hereto as Exhibit "1."

because Venetian consciously disregarded the safety of its customers when it failed to increase the slip resistance of their floors after receiving notice of the hazard from hundreds of customers.

II. FACTUAL BACKGROUND

On November 4, 2016 around 12:30 p.m. Plaintiff Joyce Sekera was walking through Venetian. (*See* Incident Report, attached as Exhibit "3" at 4.) As she passed the Grand Lux Café Restrooms Plaintiff slipped and fell on water on the marble floors. (*Id.*) On the way down Plaintiff struck her left elbow which caused immediate pain and limited her range of motion. (*Id.*) Venetian's EMT/security officer Joseph Larson ("Mr. Larson") responded to the fall. (*Id.*) Plaintiff was initially very embarrassed by the fall and did not want to be transported to the hospital. (*Id.*) Mr. Larson put Plaintiff's left arm in a splint and assisted her to a more private area. (*Id.*) After some discussion Mr. Larson convinced Plaintiff to seek medical attention at Centennial Hills Hospital. (*Id.* at 5.)

During discovery Plaintiff requested Venetian produce:

> 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 [August 15, 2018].

(Plaintiff's Requests for Production, attached as Exhibit "4.")

On October 11, 2018, before receiving Venetian's answers, Plaintiff took the deposition of Mr. Larson. (Deposition of Joseph Larson, attached as Exhibit "5.") Mr. Larson testified he had worked at Venetian as an EMT/security officer for nine years. (*Id.* at 20:23-24:1.) Mr. Larson worked eight-hour shifts, five days a week. (*Id.* at 28:12-15.) Mr. Larson testified two or three EMT/security officers work per shift per side (Venetian and Palazzo). (*Id.* at 28:23-35.) During the nine years he worked at Venetian Mr. Larson testified he investigated 100 injury falls on marble floors. (*Id.* at 24:3-27:14.)

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Based upon these numbers, Plaintiff estimated she would receive somewhere around 466-700[2] slip and fall incident reports in response to her request for production. Thus, three months later when Venetian disclosed a mere 64 redacted incident reports, Plaintiff instantly suspected the vast majority were missing. (*See* e.g. Declaration of Defense Counsel Michael Royal, Esq. in Support of Venetian's Motion for Protective Order, attached as Exhibit "6" at ¶ 17.) To verify Venetian's compliance with the discovery request, the undersigned contacted Mr. Peter Goldstein, Esq., ("Mr. Goldstein") Plaintiff's counsel in another pending premise liability action against Venetian. (*See Carol Smith v. Venetian Casino Resort, LLC*, Case No. A-17-753362-C.) From their discussion, the undersigned and Mr. Goldstein realized Venetian provided them each with reports Venetian did not give the other. (*See* Plaintiff's Motion for Terminating Sanctions in *Smith v. Venetian,* attached as Exhibit "7.") To determine which reports Venetian failed to provide each Plaintiff, the parties put together a table of all the incident reports disclosed in the two cases. (*See* Summary of Falls in *Sekera v. Venetian* and *Smith v. Venetian,* attached as Exhibit "8.")[3] After comparing the discovery provided, the undersigned and Mr. Goldstein determined Venetian willfully left out four reports in response to Plaintiff's Requests for Production which were disclosed in *Smith v. Venetian*, and willfully left out 35 reports in response to plaintiff's requests for production in *Smith v. Venetian.* (*Id.*) Additionally, Plaintiff pulled pleadings from five of the 50 or so cases filed against Venetian in the Eighth Judicial District Court in the last five years and discovered none of the incident reports from these slip and falls were disclosed either. (*See* Complaint and incident report from A-16-

[2] 100 x 2 x 4.2 x 5/9 = **466**;
100 x 3 x 4.2 x 5/9 = **700**
Where 100 represents the injury falls Mr. Larson attended to in his 9 years; 2 and 3 represents the number of EMT/security officers on the clock per shift, and 4.2 represents the number of shifts per week (168 hrs per week / 40hr shift), and 5/9 represents 5 of 9 years Mr. Larson worked. (Exhibit "4" at 24:3-27:14 (100 falls); 20:23-24:1 (9 years); 28:23-35 (2-3 EMT/security officers per shift); 28:12-15 (8 hr shifts)).

[3] The PDF files of incident reports provided by Venetian in these two pages collectively contain over 1000 pages. Thus, this summary is attached for the Court's convenience. Upon the Court's request Plaintiff can produce the original PDF files.

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737866-C; Commissioner's Decision on Request for Exemption from A-15-728316-C; Commissioner's Decision on Request for Exemption from A-15-729566-C; Complaint from A-17-749115-C; and Complaint from A-17-751293-C, attached collectively as Exhibit "9.")

On December 4, 2018 Plaintiff's human factors and safety engineering expert, Thomas Jennings, conducted a formal site inspection and performed a slip resistance test at Venetian where Plaintiff fell. (*See* Report of Thomas Jennings, attached as Exhibit "10" at 5.) Mr. Jennings' test revealed the marble floors at Venetian where Plaintiff fell had a wet slip resistance of 0.33. (*Id.* at 5.) The industry standard for wet coefficient of friction is 0.50. (*Id.* at 2.)

III. LEGAL ARGUMENT

A. Standard for a Motion for Leave to Amend

NRCP 15(a) requires leave to amend "be freely given when justice so requires." NRCP 15(a); *see also Kantor v. Kantor,* 116 Nev. 886, 891, P.3d 825, 828 (2000) ("After a responsive pleading is filed, a party may amend his or her pleading only by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires"); *Adamson v. Bowker,* 85 Nev. 115, 121, 450 P.2d 796, 800 (1969) ("Rule 15(a) declares that leave to amend shall be freely given when justice so requires; this mandate is to be heeded"). It is reversible error to deny a motion for leave without a reasonable justification. *Id.* at 120, 450 P.2d at 800.

A party generally must seek leave to amend before the deadline in the scheduling order, unless the movant shows good cause for the untimely filing. *See Nutton v. Sunset Station, Inc.* 131 Nev. Adv. Rep. 34 (Nev. Ct. App. June 11, 2015). Finally, a court should only deny a Motion for Leave to Amend if the opposing party can prove "undue delay, bad faith or dilatory motive on the part of the movant." *Stephens v. S. Nev. Music Co.,* 89 Nev. 104, 105–06, 507 P.2d 138, 139 (1973); *see also Nutton v. Sunset Station, Inc.,* 131 Nev. Adv. Op. 34, 357 P.3d 966, 970 (Nev. App. 2015); *Foman v. Davis,* 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962) ("If the underlying

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facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be 'freely given.' ").

Here, the deadline to amend pleadings is not until May 17, 2019. (*See* Stipulation and Order to Extend Discovery, attached as Exhibit "3" at 2:3-4.) As the deadline to amend pleadings has not passed, the Court must grant Plaintiff's Motion to amend her Complaint to add punitive damages unless Venetian can prove "undue delay, bad faith or dilatory motive."

B. Punitive Damages Are Appropriate Because Venetian Consciously Disregarded the Known Hazard Which Caused Plaintiff's Fall

"Punitive damages are designed to punish and deter a defendant's culpable conduct and act as a means for the community to express outrage and distaste for such conduct." *Countrywide Home Loans. Inc. v. Thitchener,* 124 Nev. 725, 739, 192 P.3d 243 252 (2008); *see also Republic Ins. v. Hires,* 107 Nev. 317, 320, 810 P.2d 790, 792 (1991) ("Punitive damages provide a benefit to society by punishing undesirable conduct not punishable by the criminal law"). Punitive damages are a "means of punishing the tortfeasor and deterring the tortfeasor and others from engaging in similar conduct." *Siggelkow v. Phoenix Ins. Co.,* 109 Nev. 42, 44-45, 846 P.2d 303, 304-05 (1993). "The allowance of punitive damages also provides a benefit to society by punishing undesirable conduct that is not punishable by the criminal law." *Id.* at 45, 846 P.2d at 305.

A plaintiff may recover punitive damages when evidence demonstrates 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

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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). "In other words, under NRS 42.001(1), to justify punitive damages, the defendant's conduct must have exceeded 'mere recklessness or gross negligence." *Id. quoting Countrywide Home Loans. Inc. v. Thitchener*, 124 Nev. 725, 742-43, 192 P.3d 243, 254-55 (2008).

In *Maduike v. Agency Rent-A-Car,* the Nevada Supreme Court held the refusal to repair a known dangerous condition, without more, does not support punitive damages. *Maduike*, 114 Nev. 1, 953, P.2d 24, 26-27 (1998). However; the Court retreated from this approach in *Thitchener* and ruled that the disjunctive "implied malice" prong of the punitive damages statute permits such damages for the conscious disregard of unsafe conditions. *See Thitchener,* 124 Nev. at 739-40 & n.51, 192 P.3d at 253-55 & n.51. The Court defined conscious disregard as the "knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences." NRS 42.001(1). In *Thitchener,* the Court allowed punitive damages in a wrongful eviction case, under the implied malice theory, where plaintiffs "presented evidence of multiple ignored warning signs suggesting that Countrywide knew of a potential mix-up, as well as evidence indicating Countrywide continued to proceed with the foreclosure despite knowing of the probable harmful consequences of doing so." *Thitchener*, 124 Nev. at 744, 192 P.3d at 255.

Other states similarly hold punitive damages are available in cases where the facts show Defendant acted with conscious disregard for the safety of others. For example, in *Nolin v. National Convenience Stores* the California Appellate Court upheld a punitive damages award arising out of a a slip and fall incident at a self-serve gas station. *Nolin v. Nat'l Convenience Stores, Inc.,* 95 Cal.

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App. 3d 279, 157 Cal. Rptr. 32 (Ct. App. 1979), In *Nolin*, the gas nozzle, when used, consistently overflowed and spilled gasoline onto the pump and ground. *Id.* at 283, 157 Cal. Rptr. at 34. The manager of a gas station expressed concern about the hazardous condition to the district representative and informed him spilled gasoline caused two customers slip and fall. *Id.* Additional testimony indicated several of the defendant's employees also slipped and fell on spilled gasoline from the same nozzle. *Id.* at 284, 157 Cal. Rptr. at 34. The district representative brushed off manager's concern and failed to remedy the problem. *Id.* Plaintiff then slipped and fell on gasoline spilled from the overflowing nozzle. *Id.* at 282, 157 Cal. Rptr. at 33. At trial the jury awarded plaintiff $68,101 in compensatory damages and $50,000 in punitive damages. *Nolin,* 95 Cal. App. 3d at 281, 157 Cal. Rptr. at 33. The court upheld the punitive damages because the defendant "showed a complete lack of concern regarding the harmful potential the probability and likelihood of injury." *Id.* at 288, 157 Cal. Rptr. at 37. *See also Workman v. UA Theatre Circuit, Inc.*, 84 F. Supp. 2d 790, 793-94 (S.D. W.Va. 2000)(movie theatre's failure to correct a known hazardous condition – water on floor from leaking roof – where large numbers of the public are business invitees is evidence sufficient to go to trial on punitive damages for defendant's reckless conduct where plaintiff slipped and fell on the water); *Poulter v. Cottrell, Inc.,* 50 F.Supp.3d 953, (N.D. Ill. 2014) (plaintiff who slipped and fell on defendant's equipment could proceed to trial on punitive damages where defendant's actions showed reckless indifference for the safety of others by its inaction in the face of a known danger that was remediable and/or by its cavalier willingness to expose the public to an unreasonable risk of physical injury).

Similar to the defendant in *Nolin,* Venetian's conscious disregard of a known hazard also warrants punitive damages. Venetian was aware their marble floors created an unreasonable danger when wet but did nothing to remedy it; the marble floors have a wet slip resistance of 0.33, nearly a third below the industry standard of 0.50. In other words, Venetian's marble floors, when wet are

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nearly 50% more slippery than industry standards. This dangerous condition was not hidden in a corner or difficult to spot; rather, this marble floor is part of a major walkway in the casino directly in front of the restrooms. Venetian could have easily remedied this unsafe condition by applying a slip resistant treatment to their marble floors at a cost of ¢21 to ¢35 per square foot, but they choose not to. (Exhibit "10" at 2.)

Moreover, Plaintiff's fall was not the first time a patron notified Venetian's management of the unsafe marble floors. Venetian was notified of the problem over and over and over again; their EMT/security officers made a *minimum* 73 incident reports of injury slip and falls on the marble floors in the three years prior to Plaintiff's fall. The Court should note **73 represents a fraction of the times customers notified Venetian of the issue.** The EMT/security officer, Mr. Larson testified he investigated 100 injury falls on marble floors in Venetian during the 9 years he worked there. If we do the math and assume Mr. Larson was an average EMT/security officer, there should be somewhere around 840-1260[4] injury falls on marble floors at Venetian in the last 9 years. Narrowing that down to the scope of Plaintiff's Request for Production (5 years), there should be 466-700[5] slip and fall incident reports. **In other words, one injury fall occurs on Venetian's marble floors every 2.6 – 3.9 days.** However, Because Venetian decided they are the only litigant in the State of Nevada which the discovery rules and court orders do not apply to, Plaintiff could not determine the exact amount of injury falls. Based on Venetian's refusal to disclose all of the incident reports, Plaintiff believes the number of injuries falls on marble floors is closer to 700. In any event, this number is infinitely larger than the two prior slip and falls sufficient to uphold the punitive damages award in *Nolin.*

[4] *See supra,* FN 2.
[5] *See supra,* FN 2.

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What happened to Plaintiff is not the result of ordinary negligence, but the result of Venetian's conscious disregard for the safety of Plaintiff and other customers. Customers repeatedly placed Venetian on repeated notice their floors were unreasonably slippery when wet, but Venetian did nothing to correct it. Because Venetian failed to remedy this hazardous condition, Plaintiff fell and sustained serious injuries. Moreover, Venetian's subsequent actions evidence its guilty state of mind. Venetian provided a mere fraction, 15-20%, of the incident reports requested by Plaintiff. It did the same thing in *Smith v. Venetian* and at in doing so violated numerous court orders. After Venetian was caught playing hide-the-ball in both cases, it moved for a protective order on the previously disclosed incident reports. (Defendant's Addendum to Reply To Plaintiff's Opposition to Defendant's Motion for Protective Order, attached as Exhibit "11" at 4:19-23.) There is only one motivation for such deplorable conduct: Venetian intentionally refused to fix a problem that caused numerous injuries and does not want to be held accountable via punitive damages.

Instead coating the marble floors with slip resistant product at a cost of ¢21 to ¢35 per square foot Venetian allowed its guests to get injured year after year. (Exhibit "10" at 2.) Plaintiff's injuries would not have occurred but for Venetian's willful failure to act. 466-700 individuals slipped and fell on the marble floors at Venetian in the last five years, and rather than address this issue, Venetian acts as if nothing is wrong. Apparently, Venetian does not believe a cost of ¢21 to ¢35 per square foot outweighs the benefit of preventing one injury slip and fall every 2.6 – 3.9 days. As such, Venetian's conscious disregard of the inherent danger of their marble floors justifies a claim for punitive damages.

//

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IV. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests this Court grant her Motion to Amend her Complaint to add punitive damages.

DATED this 22nd day of April, 2019

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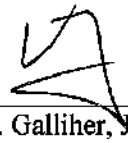

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CERTIFICATE OF SERVICE

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 MOTION FOR LEAVE TO AMEND THE COMPLAINT** was served on the 22 day of April, 2019, to the following addressed parties by:

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

_____ Facsimile, pursuant to EDCR 7.26 (as amended)

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An Employee of THE GALLIHER LAW FIRM

EXHIBIT “Y”

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

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

JOYCE SEKERA, Plaintiff, vs. VENETIAN CASINO RESORT, Defendant.	REPORTER'S TRANSCRIPT OF PLTF'S MOTION TO AMEND DEFT'S MOTION TO STRIKE

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: TUESDAY, MAY 28, 2019

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

1 APPEARANCES:
2 For the Plaintiff: KEITH GALLIHER, ESQ.
3 KATHLEEN GALLIHER, ESQ.
4
5 For the Defendant: MICHAEL ROYAL, ESQ.
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1 LAS VEGAS, NEVADA; TUESDAY, MAY 28, 2019
2 P R O C E E D I N G S
3 * * * * *
4
5 THE COURT: Page 8, Joyce Sekera vs. Venetian
6 Casino Resort.
7 MR. GALLIHER: Good morning, your Honor. Keith
8 Galliher and Kathleen Galliher on behalf of Joyce
9 Sekera.
10 THE COURT: Good to see you back. Now, you're
11 all seasoned. You don't get any special --
12 MR. GALLIHER: Very experienced now.
13 MR. ROYAL: Mike Royal for Defendants, your
14 Honor.
15 THE COURT: Good morning.
16 So this is Plaintiff's motion for leave to amend
17 the complaint, and the Defendant's motion to strike
18 related to information that was included in the reply to
19 the Defendant's opposition. And the strike was geared
20 toward what has been styled as unauthenticated evidence or
21 alternatively to allow defense the opportunity to respond
22 on order shortening time.
23 The way this all boils down, I really think we can
24 address it here today. They want to add punitive damages.
25 The argument is this is essentially a negligence claim and

1 at the Venetian are very dangerous, very dangerous. And
2 if there is a spot of water, a slight amount of water on
3 the floor a customer can slip and fall. This is coming
4 from management. So it's not like they don't know that
5 their floors are very, very dangerous to their customers.
6 So that's coming again from their own employees'
7 testimony.
8 Then we've got the David Elliot situation. This is
9 something which is recent which we have yet to discover,
10 but we intend to. And that is the Venetian in the
11 mid-2000s -- 2005, 2006, 2007 -- hired David Elliot -- who
12 the court is probably familiar with. He's a court
13 qualified bio-mechanical engineer, PE. They hired him to
14 evaluate their floors at the Venetian and make
15 recommendations concerning how they can make the floors
16 safer.
17 The one thing we've determined so far, Mr. Elliot
18 told him that under no circumstances is marble an
19 acceptable surface for a floor such as a hotel/casino like
20 the Venetian. He made recommendations concerning how they
21 could go from marble to tile and increase the co-efficient
22 of friction -- slip resistance -- to the .5 industry
23 standard from where it is now.
24 As we know from Dr. Jennings report the slip testing.
25 When wet the slip resistance was .33. It's far below the

1 industry average. Now we've got the Venetian hiring
2 somebody, who's an expert, to come in and advise
3 concerning the floors and how to make them safer. Nothing
4 has changed. The floors are still marble. They're still
5 not slip resistant. We've got that information as well.
6 Also we've got the fact that there are now coatings
7 available for these types of marble floors. And if you
8 use a coating on the marble floors you can make them more
9 slip resident. And the Venetian has elected -- what we
10 know so far -- remember, we're talking about an amendment,
11 so we need an opportunity to discover information. But
12 what we know is that the Venetian has not utilized all of
13 the substances available to it to coat the marble floors
14 and, perhaps, make them more slip resistant.
15 THE COURT: Let me turn your argument back to
16 you, Mr. Galliher, that you made to Mr. Royal on his
17 motion, which was like where is the law to support this.
18 You know that if we're going to have punitives that
19 ultimately -- and it's a viable claim in a case, then it's
20 ultimately going to have to be proven by clear and
21 convincing evidence that there was oppression, fraud,
22 malice. That type of things. What you're arguing is just
23 sheer quantity of accident and that that converts what
24 occurred here into oppression, fraud, or malice. Where is
25 the case law that would support, in a negligence action,

EXHIBIT “Z”

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 CERTIFIED COPY

5 JOYCE SEKERA, an Individual,

6 Plaintiff,

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

8 VENETIAN CASINO RESORT, LLC,
d/b/a THE VENETIAN LAS VEGAS,
9 a Nevada Limited Liability
Company; LAS VEGAS SANDS, LLC
10 d/b/a THE VENETIAN LAS VEGAS,
a Nevada Limited Liability
11 Company; YET UNKNOWN EMPLOYEE;
DOES I through X, inclusive,
12
Defendants.
13 _____/

14

15 **DEPOSITION OF GARY SHULMAN**

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

18 On Wednesday, April 17, 2019
At 3:15 p.m.

19

20

21

22

23

24
Reported By: PAULINE C. MAY
25 CCR 286, RPR

1 A I did.
2 Q Tell me how that happened.
3 A Well, when you first fill out online that
4 you are terminated, there is a -- I guess a little bit
5 of an investigation that the Department of Employment
6 does. And they came to the conclusion that the
7 comment I made was nothing more than an isolated
8 comment that was taken out of context and did not
9 constitute any misconduct in the workplace.
10 Q Did you have any problems, like warning
11 notes and so forth, at the Venetian before this
12 comment when you were terminated?
13 A I had a number of problems for about six
14 months before this incident.
15 Q When did they start?
16 A They started around March of 2018.
17 Q And as you look back on those events, what
18 is your feeling about the problems that surfaced at
19 the Venetian regarding you?
20 A Well, I'm, you know, very disappointed and
21 very upset at the Venetian. I received what I believe
22 was some retaliation, intimidation, harassment. I
23 received three written warnings in a two-week period
24 for things that nobody ever got any discipline for,
25 three writeups with potentially only one mistake on my

1 part.
2 One of the warnings was because I didn't
3 catch someone else's mistake. Another one was, I
4 chose to sit down -- I was standing for an hour
5 waiting in a closed pit with no chips on the table.
6 We were filling up the tables with chips.
7 It's a well-known fact over there I have
8 really bad arthritis in my hip, so I sat down. And
9 they brought me in and gave me a written warning for
10 that.
11 And all three of these written warnings they
12 chose not to use any progressive discipline, just skip
13 a couple of steps. And that was very upsetting to me
14 because I've seen these things happen for 13 years
15 with nothing more than a slap on the hand usually.
16 Q So did you have any -- was there any event
17 which predated what you have described was harassment
18 and so forth on the part of the Venetian?
19 A Well, there was a young lady, her name was
20 Rhonda Salinas, and I received what I believe was
21 harassment, belittling you in front of other people,
22 making false allegations that -- that you did things
23 that you never did.
24 And it got to the point where, about three
25 days before I was suspended pending investigation, I

1 went to human resources to file a complaint about her.
2 And then a couple days later, I made this comment to a
3 gentleman named Barry Goldberg, who at the time I felt
4 was a friend of mine, from New Jersey and we were both
5 Philadelphia fans, and we talked.
6 And, you know, I said -- I really didn't
7 volunteer much information. I just said -- he said,
8 "How are you?"
9 I said, "Oh, kind of stressful, you know. I
10 don't like doing things like I did. I had to go
11 complain about someone."
12 And he said, joking around, "I hope it
13 wasn't me."
14 And I said, "No," I said, "but someone's in
15 a world of shit."
16 And I didn't know at the time I was talking
17 about me.
18 Q So you are talking about the event that
19 predated your termination at the Venetian?
20 A Yeah.
21 Q Well, I'm going back to -- you talked about
22 a pattern of harassment and intimidation on the part
23 of the Venetian for roughly a six-month time frame
24 before you were terminated.
25 A Uh-huh.

1 Q Now, in your view, was there anything that
2 you were involved in before that six-month time frame
3 that you believe resulted in harassment and
4 intimidation?
5 A Yeah. There's a supervisor -- or an area
6 supervisor is the next level up. They got rid of the
7 term pit manager, so now it's table game supervisor,
8 area supervisor, and then you have like an assistant
9 casino manager.
10 The casino manager, Mike Connery(phonetic),
11 had brought us in maybe like eight months before all
12 this happened with the lady. Wanted to tell us that
13 we were going to be asked to watch more tables, we
14 were going to be asked to help each other out more.
15 If there's two people in one section, it's not that
16 busy, you see another person in another section that's
17 busier, then why don't you go over there and help.
18 So I found myself in a situation one day
19 where I was in Pit 4 with about I believe seven tables
20 to myself, which is quite a bit in that section. And
21 dealers were making mistakes; customers were upset
22 because I just couldn't service them, get them the
23 waitress, take their players card so they could get
24 rated and get their points for playing.
25 And I voiced my opinion on the way to break

1 to another supervisor because I saw three other
2 supervisors in a pit, Pit 9, which is our salon, with
3 no players at all. And I made a comment to -- trying
4 to think of his name. I'll come up with his name.
5 I'll come up with it -- Ryan. Ryan Parker.
6 And I told him, "Really disappointed. You
7 know, I got dealers making mistakes. I got customers
8 complaining about service and there's three
9 supervisors in this section doing nothing, and I
10 thought we were supposed to help each other out."
11 And just, he kind of looked at me. He did
12 say, "Well, if you do find yourself needing help, call
13 us. We'll try and get some help." And then I went on
14 my way.
15 Then the next day I went into Pit 4, getting
16 the pit ready. We report at 11:45. One of the area
17 managers, his name is Abraham Ly, spelled L-y, came
18 over to me.
19 He said, "Between me and you, management is
20 really pissed off about that comment you made. Mike
21 Connery, the casino manager, takes that personally,
22 that you're suggesting that he doesn't know how to
23 staff the casino. And if I were you, I would be
24 watching your back. Management is out to get you."
25 I said to him, "What do you mean they're out

1 to get me?"
2 He said, "Well, let me put it this way.
3 Every little thing you do is being watched, and
4 they're just waiting for you to make a mistake to
5 create a problem for you."
6 Q Well, now you've discussed this claim with
7 me in my office. Have you ever discussed this claim
8 with Mr. Royal? That's the gentleman next to you.
9 A Yeah.
10 No.
11 Q Okay. You've never discussed the claim with
12 him at any time?
13 A No. The last -- I only met with Mike Royal,
14 I believe it was on the 28th of November, 2018.
15 Q Well, so you did meet with Mr. Royal?
16 A I met with him, yeah, at the casino once.
17 Q At the casino?
18 A I thought you said did I meet with him after
19 these things happened.
20 Q No. I want to know if you met with him in
21 connection with the fall event which we're here about
22 today.
23 A Yes. I'm sorry, I did.
24 Q And when was this?
25 A November 28, 2018, I believe.

1 you; right?
2 A Say that again.
3 Q I have never said anything to you that would
4 give you the impression that your job could be in
5 jeopardy?
6 A No.
7 Q Would it surprise you to learn that you
8 actually met with me in June of 2018?
9 A I may have had the date wrong.
10 Q Well, you would have had it a lot wrong.
11 A Yeah.
12 Q That's a lot earlier than November 2018;
13 isn't it?
14 A Yeah, it's true. Yeah, it would be.
15 Q If you met with me in June 2018 and all this
16 stuff started within six months or so -- I don't
17 know -- 60 days is what I understood from your earlier
18 testimony.
19 A Uh-huh.
20 Q Does that at all influence your thinking
21 about this connection you think might occur between
22 your meeting with me and ultimately being terminated?
23 A I don't know.
24 Q Well, did things start going south in July
25 of 2018?

1 A They started going south in May.
2 Q Okay. Before you met with me --
3 A Uh-huh.
4 Q -- right?
5 A Yes.
6 Q Okay. So what was started going south in
7 May of 2018?
8 A Well, that's when I received the three
9 written warnings in a two-week period.
10 Q I see, okay. So because -- with the timing
11 that you testified about on direct, I was confused
12 because I thought you said you got these three
13 warnings between November of 2018 and January when you
14 were let go in January of 2019.
15 Did I understand that incorrectly?
16 A Say that again.
17 Q Okay. I understood that your testimony on
18 direct with Mr. Galliher was that you met with me and
19 then, within a very short period of time after that,
20 you got these three written warnings and then a couple
21 other things were put in your file and then you were
22 terminated.
23 A That sounds about right.
24 Q That's what you testified to?
25 A Yes.

1 Q You just now testified that everything
2 started to go south in May of 2018 before you even
3 knew who I was.
4 A Uh-huh.
5 Q Correct?
6 A Yes.
7 Q So if I met with you in June of 2018, you
8 would have already received three warnings by that
9 time --
10 A That's correct.
11 Q -- in 2018?
12 A Yeah.
13 Q Okay. And so I'm just -- I'm trying to
14 figure out this connection that you have made that I
15 somehow played a role in getting warnings -- you
16 getting warnings prior to you ever knowing who I was
17 or ever meeting with me.
18 A Well, we're still investigating as to the
19 real reason I was terminated.
20 I am convinced that the reason they gave me
21 has nothing to do with me being terminated. Whether
22 it pertained to me not supporting the Venetian with
23 the slip-and-fall or whether it was their anger at me
24 using my FMLA privileges, we're still investigating
25 that.

EXHIBIT “AA”

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Team Member Discipline History

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

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

EXHIBIT “BB”

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual, Plaintiff, v. VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; YET UNKNOWN EMPLOYEE; DOES I through X, inclusive, Defendants.	CASE NO.: A-18-772761-C DEPT. NO.: 25 **PLAINTIFF'S REPLY IN SUPPORT OF HER MOTION FOR LEAVE TO AMEND THE COMPLAINT**

Plaintiff, Joyce Sekera, submits her Reply in Support of Her Motion for Leave to Amend Her Complaint (the "Motion") to add a claim for punitive damages. Punitive damages are warranted in

this case because Venetian consciously disregarded its customers' safety by refusing to fix the known hazard which caused Plaintiff's fall.

This Reply is based upon the records and pleadings on file herein, the points and authorities attached hereto, and any oral arguments that may be allowed at the hearing of this Motion.

DATED this 15th day of May, 2019

THE GALLIHER LAW FIRM

Keith E. Galliher, Jr., Esq.
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Attorney for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

A. Venetian Actions Show the Court It Cannot Trust Its Claim There is Only "64" Prior Incidents

Venetian alleges Plaintiff's Motion should be denied because the arguments are "conjur[ed] up out of thin air," that Plaintiff's presumptions are "fabricated" and that this is "an absurd smoke and mirrors tactic" and a "mythical sinister plot." (Defendant's Opp. at 14:4-5; 14:10; 14:14; 14:15-16.) Venetian is referring to Plaintiff's calculation – based on Mr. Larson's testimony – that there were 466-700 injury slip and falls on marble floors in the past five years, of which Venetian only disclosed 64. (Venetian's Mot. for Protective Order at 3:26-7.) Venetian's actions prove Plaintiff's projected number (466-700) more reliable than its unsubstantiated "smoke and mirrors" allegation. Venetian repeatedly showed the Court it has no regard for the laws of this state, the orders of this Court, or the rules of civil procedure:

- Venetian violated the discovery rules by purposely leaving out four incident reports in response to Plaintiff's Requests for Production, but which Venetian disclosed in another case, *Smith v. Venetian*. (Plaintiff's Objection to Discovery Commissioner's Report and Recommendation.)
- Venetian violated a court order in *Smith v. Venetian* by purposely leaving out 35 reports in its response to plaintiff's requests for production. (Plaintiff's Objection to Discovery Commissioner's Report and Recommendation; Defendant's Addendum to Reply to its Motion for Protective Order at Exhibit "B.")
- Venetian did not review the discrepancy and provide "all reports deemed responsive" as ordered by the Discovery Commissioner. (Discovery Commissioner's Report and Recommendation at 3:21-25.) Instead, Venetian forced Plaintiff to dig through court proceedings and download pleadings in hopes of finding the incidents Venetian refused to provide. (Plaintiff's Mot. at Exhibit "7.") Venetian admits the incident reports for two of the five cases Plaintiff pulled were yet again "inadvertently" left out. (Defendant's Opp. at 12:1-11.)
- Mr. Royal repeatedly declared under penalty of perjury he "had personal knowledge of" and was "competent to testify" to things he was not, i.e. the undersigned's personal thoughts, motives and intentions. (Defendant's Response to Plaintiff's Objection to Discovery Commissioner's Report and Recommendation at 9:1-2; 9:2-3; 9:9-11; 6:9-10.)
- Venetian repeatedly lied to the Court that Plaintiff violated a protective order, in not one, but four pleadings. (Defendant's Response to Plaintiff's Objection to Discovery Commissioner's Report and Recommendation at 13:1, 24:20, 25:8, 26:17) These four pleadings, filed into the public record wrongfully and frivolously accused the undersigned of a "blatant violation" of the Protective Order because the undersigned did not follow a non-existent, non-discussed,

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non-briefed "provision" that only existed in Venetian's mind. (Defendant's Opp. at 15:17-18; Defendant's Response to Plaintiff's Objection to Discovery Commissioner's Report and Recommendation at 24:26-25:1.)

- Venetian frivolously filed a Motion for Sanctions arguing the Court required the undersigned to request the return of the documents covered by the protective order, disclosed before the Court issued the Protective Order. (Defendant's Response to Plaintiff's Objection to Discovery Commissioner's Report and Recommendation at 12:14-16; Defendant's Reply to Plaintiff's Countermotion to Strike 8:15-16; Second Addendum to Reply to Plaintiff's Countermotion to Strike at 4:15-15; Defendant's Opp. to Motion to Amend Complaint at 15:5-6, 15:17 15:21,) The parties did not brief this issue, Mr. Royal, the undersigned and the Court did not discuss this matter in the hearing, and Mr. Royal did not include this issue in the Report and Recommendation he drafted. (*Id.* at Exhibit "A", Exhibit "B.") There is no law, rule, statute or case which supports this argument. (*See generally,* Plaintiff's Objection to Discovery Commissioner's Report and Recommendation.) It is common sense one cannot violate an instruction that is not given. Even after Plaintiff informed Venetian of the gaping hole in its argument, Venetian continued to wrongfully accuse the undersigned of violating the Protective Order. (Plaintiff's Motion to Strike; Defendant's Reply to Plaintiff's Countermotion to Strike; Second Addendum to Reply to Plaintiff's Countermotion to Strike; Defendant's Opp. to Motion to Amend Complaint.)
- Venetian unjustly accused the undersigned and Mr. Goldstein of criminal conspiracy and implied Professional Responsibility violations for "working in concert to defy a Court Order in order to promote their respective causes." (Defendant's Response to Plaintiff's Objection to Discovery Commissioner's Report and Recommendation at 10:6-7.) Venetian pinpointed the supposed time of the conspiracy before the Court issued the protective order, thus

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undersigned and Mr. Goldstein could not "conspire" to violate an un-issued protective order. (Plaintiff's Motion to Strike.)

- Mr. Shulman testified that Mr. Royal met with him and asked him to lie. (Deposition of Gary Shulman, attached as Exhibit "1" at 21:13-25; 56:13-57:1; 61:5-6.) Mr. Shulman told Mr. Royal he saw water on the floor. (*Id.* at 21:13-25.) **"At that time he [Mr. Royal] said "No, it wasn't wet. You didn't see anything wet. You are mistaken."** " (*Id.* at 23:16-17.) Mr. Shulman insisted "I'm pretty sure it was. I mean, that's why I called PAD to clean it up. In 13 years I've never called PAD to clean up a dry spot." (*Id.* at 23:18-20.) **"And he [Mr. Royal] says, "But, no, no, there was nothing wet there." "** (*Id.* at 23:21-22.) **"[Y]ou [Mr. Royal] just kept refuting me, basically, "No, you are mistaken. It wasn't wet." "** (*Id.* at 61:5-6.) Mr. Shulman believed Mr. Royal was "intimidating" him, that Mr. Royal "didn't want me to be truthful" and that Mr. Royal wanted him to lie under oath. (Exhibit "1" at 56:13-57:1.)
- Venetian harassed and eventually fired Mr. Shulman, an employee who'd never received a written warning in his 13 years of employment, within 60 days of his dispute with Mr. Royal. (*Id.* at 26:8-9; 25:22-26:16.)

Venetian is an awful corporate citizen with a history of despicable conduct in multiple cases, showing it has no respect for the laws of this state, orders of this Court, or the rules of civil procedure. Venetian's actions speak louder than its words and the Court cannot take its statement regarding the number of injuries falls at face value. Depending on the time of day and the case, there could be 34[1], 64[2], 68[3] or 70[4] injuries on marble floors in the last five years. Despite the fact that

---

[1] Number of falls disclosed in *Smith v. Venetian*.
[2] Number of falls initially disclosed to Plaintiff.
[3] Number of falls disclosed to Plaintiff after the Discovery Commissioner ordered Venetian to provide the additional missing reports provided in Smith v. Venetian.
[4] Number of falls disclosed to Plaintiff after Plaintiff provided Venetian with 5 pleadings refencing additional undisclosed falls.

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Venetian admitted it "inadvertently" missed four reports provided in *Smith v. Venetian,* and then yet again "inadvertently" failed to disclose another three reports of cases filed in District Court, Venetian still maintains there are only 64 incidents and it has **no idea** how Plaintiff "invented a new mythical number" of reports (64+4+3 = 70[5]) (Defendant's Opp. at 14:19; *see also* 13:24; 20:6.) As Venetian has proved we cannot trust its words, Plaintiff's projected number – 466-700 or one slip and fall every 2.6 – 3.9 days – based on Mr. Laron's testimony and simple calculations, is more reliable.

B. Punitive Damages Are Appropriate Because Venetian Consciously Disregarded the Known Hazard Which Caused Plaintiff's Fall

Venetian implies that Plaintiff must prove her case for punitive damages to win this Motion to Amend: "Chapter 42.005(1), Nevada Revised Statutes, requires a plaintiff to prove by clear and convincing evidence that a defendant has been guilty of oppression, fraud, or malice in order to obtain an award of punitive damages." That is not the case. "The liberality embodied in NRCP 15(a) **requires courts to err on the side of caution and permit amendments that appear arguable or even borderline,** because denial of a proposed pleading amendment amounts to denial of the opportunity to explore any potential merit it might have had." *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 975 (Nev. App. 2015) (emphasis added).

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

[5] Plaintiff originally cited the number "73" because she believed all 5 pleadings she pulled belonged to relevant undisclosed incident reports (64+4+5=73). However, Venetian alleges 3 of these reports would not be responsive to Plaintiff's request so the number is now 70.

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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).

The evidence in this case shows Venetian consciously disregarded the hazard of its marble floors and thus the evidence supports a claim for punitive damages. Venetian's marble floors test at a 0.33 wet slip resistance, nearly a third below the industry standard of 0.50. In other words, Venetian's wet marble floors are nearly 33% more slippery than industry standards. Venetian can easily remedy this unsafe condition by applying a slip resistant treatment to its marble floors at a cost of ¢21 to ¢35 per square foot, but Venetian choose not to. (Motion to Amend at Exhibit "10.")

Venetian knows its wet marble floors are unreasonably dangerous but does nothing to remedy it; patrons notified Venetian of the unsafe condition by filing injury incident reports every 2.6 – 3.9 days for the last five years. Moreover, Venetian's management is aware of the issue. (Deposition of Maria Consuelo Cruz, attached as Exhibit "2" at 15:26-16:3; 15:5-15:3.) A Venetian maid who witnessed Plaintiff's fall testified that management knew about the issue and even informed her the marble was "slippery and dangerous when wet":

> Q: Did your supervisors ever tell you that the floors at the Venetian, the marble floors, were slippery and dangerous when wet?
> A: Of course.

(*Id.* at 15:26-16:) She understood this to mean the floors were dangerous to customers "even with just a tiny spill of coffee" or "a little bit of soda." (*Id.* at 14:16-19; 21:4-5.) Another Venetian porter who responded to Plaintiff's fall testified the marble floors are "very dangerous" when wet with "even one drop." (Deposition of Milan Graovac, attached as Exhibit "3" at 9:23-25; 19:6-10.)

Not only did management know the marble floors were slippery when wet, but they have engineers on staff who regularly check the floors. (Deposition of Christopher Johnson, attached as Exhibit "4" at 15:1-6.) Security Officer Johnson testified:

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Q: And how about any physical observation at the scene; would you have made notes of that?

A: I don't believe so. That's not my duty to actually make on the scene. **We have engineers that come out and they do accident checks and stuff like that.**

(*Id.*) (emphasis added). Moreover, Plaintiff evidence indicates Venetian knew about the issue as early as 2009 and failed to do anything about it for 10 years. (Motion for New Trial in *Livia Farina v. Desert Palace, Inc. dba Caesars Palace and Casino,* attached as Exhibit "5" at 7:12-17; 38:25-28.) This motion states plaintiff's expert, David Elliott, testified on February 13, 2009 "he consulted with the Venetian Hotel to achieve an aesthetically pleasing design of the floor surface using ceramic tile that met a .5 wet coefficient of friction..." (*Id.* at 7:12-17; 38:25-28; *see also* Motion in Limine No. 6 to Exclude Reference to Plaintiff's Expert David Elliott's Surveys of Other Casino Properties in *Livia Farina v. Desert Palace, Inc. dba Caesars Palace and Casino,* attached as Exhibit "6" at 10.) Thus, Venetian knew its floors did not meet industry standards and were unreasonably dangerous to customers in 2009. Venetian was so concerned about this it searched for and paid a consultant to help them increase safety and keep the aesthetically pleasing design. Apparently, Venetian ignored its own consultant's suggestions because its marble floors still test at .33, nearly a third below the industry standard of 0.50. (Plaintiff's Mot. at Exhibit "10.")

Plaintiff is tracking down Mr. Elliott's deposition and report ordered by Venetian, however, may be forced to send subpoenas to the prior litigants, the deposition company, and Mr. Elliot, or send a request for production to Venetian. Without a claim for punitive damages these subpoenas and discovery request may fall outside the scope of discovery. Thus, Plaintiff would never learn the extent of Mr. Elliott's consultation with Venetian, whether and to what extent he warned management of the dangerous conditions, what options he gave Venetian to remedy the situation, and how Venetian responded to his suggestions. The contents of this report alone could provide clear and convincing evidence of punitive damages. This report may reveal that Mr. Elliot informed

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Venetian's upper management the marble floors were below industry standards, extremely hazardous, caused hundreds of injuries a year, and there was a low-cost, quick and easy way to fix them. If this were the case, it would have been reckless for management to ignore the issue because they didn't care or didn't want to spend the money.

This evidence is not "invented", neither is it "fabricated", nor is it based "upon a house of cards" as Venetian claims. (Defendant's Opp. at 15:23; 14:10; 15:22.) This evidence is real: one real person notified Venetian of the hazard every 2.6 – 3.9 days, Venetian hired a real expert, Ms. Cruz's testimony is real and Mr. Graovac's testimony is real. What happened to Plaintiff is not the result of ordinary negligence, but the result of Venetian's conscious disregard for the safety its customers and as such Plaintiff must be allowed to amend her Complaint to add punitive damages. Plaintiff and Defendant can then conduct discovery on the issue,[6] and if it turns out there is insufficient evidence to prove punitive damages, Defendant is free to make a motion for summary judgment.

B. Venetian Has Not Shown Undue Delay, Bad Faith or Dilatory Motive Required to Defeat Plaintiff's Motion to Amend

NRCP 15(a) requires leave to amend "be freely given when justice so requires." NRCP 15(a); *see also Kantor v. Kantor,* 116 Nev. 886, 891, P.3d 825, 828 (2000). "This mandate is to be heeded." *Adamson v. Bowker,* 85 Nev. 115, 121, 450 P.2d 796, 800 (1969). It is reversible error to deny a motion for leave without a reasonable justification. *Id.* at 120, 450 P.2d at 800. If a motion to amend is not futile a **court should only deny a motion for leave to amend if the opposing party can prove "undue delay, bad faith or dilatory motive on the part of the movant."** *Stephens v. S. Nev. Music Co.,* 89 Nev. 104, 105–06, 507 P.2d 138, 139 (1973); *see also Foman v. Davis,* 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962). The Nevada Supreme Court held **at least 10 times that the standard is "undue delay, bad faith or dilatory motive."** *Id.; see also Delay*

[6] Discovery in this case does not close until August 15, 2019. (Stipulation and Order to Extend Discovery, attached as Exhibit "7" at 2:1-2.)

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Burnett v. C.B.A. Sec. Serv., Inc., 107 Nev. 787, 789, 820 P.2d 750, 752 (1991) ("delay, bad faith, or a dilatory motive are all sufficient reasons to deny a motion to amend a pleading.") *Kantor*, 116 Nev. at 891, 825 P.3d at 828 ("Sufficient reasons to deny a motion to amend a pleading include undue delay, bad faith or dilatory motives on the part of the movant.") *Garmong v. Rogney & Sons Const.*, 127 Nev. 1136, 373 P.3d 916 (2011) ("a denial [of a motion to amend] may be warranted if undue delay, bad faith, or dilatory motives on the part of the movant are involved."); *Wolverton v. On Demand Sedan Servs., Inc.*, 127 Nev. 1186, 373 P.3d 974 (2011) ("undue delay, bad faith or dilatory motive on the part of the movant" provides sufficient grounds for denying a motion to amend."); *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. Adv. Op. 31, 416 P.3d 249, 254–55 (2018) ("[s]ufficient reasons to deny a motion to amend a pleading include undue delay, bad faith or dilatory motives on the part of the movant."); *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 970 (Nev. App. 2015); *Fernandez v. Blanck*, No. 61066, 2014 WL 605901, at *1 (Nev. Feb. 13, 2014); *Fernandez v. Fernandez*, No. 61686, 2014 WL 6449647, at *1 (Nev. Nov. 14, 2014) ("delay, bad faith, and dilatory motive are valid reasons" to deny a motion to amend); *O'Neal v. Juvenile Master Lu*, No. 67128, 2015 WL 7523925, at *4 (Nev. App. Nov. 19, 2015).

Despite the fact that Nevada Supreme Court clearly held a motion for leave to amend should be freely granted absent proof of "delay, bad faith or dilatory motive," Venetian chooses to cite a different standard from the Ninth Circuit and United States Supreme Court:

> When considering a motion to amend such as this one, the court, *"[t]he issue is not whether a plaintiff will ultimately prevail,* ***but whether he claimant is entitled to offer evidence in support of the claims.*** *Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test."* (Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).) Leave to amend should not be granted if *"it is clear that the complaint could not be saved by an amendment."* (Livid Holdings Ltd. v. Salomon Smith Barney, 11 Inc., 416 F.3d 940,946 (9th Cir. 2005).)

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(Defendant's Opp. at 18:4-11.) (emphasis added). Not only is this an incorrect, more stringent standard but Venetian's Opposition never mentions "delay," "bad faith" or "dilatory motive." (*See generally,* Defendant's Opp.) As Venetian failed to meet its burden of proof to show delay, bad faith, or dilatory motive, this Court must grant Plaintiff's Motion.

C. NRS 42.007 Does Not Apply Because Plaintiff is Not Pursuing Punitive Damages on a Theory of Vicarious Liability

Venetian argues the Court should deny Plaintiff's Motion to Amend because NRS 42.007 requires Plaintiff to "plead specific conduct on the part of the manager, directors, or officers of the corporation. (Defendant's Opp. at 21:16-22:22.) NRS 42.007 deals with "limitations on liability by employer for wrongful act of employee." *See* NRS 42.007. In support of this argument Venetian cites *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (2008). *Countrywide* does not support this argument: "NRS 42.007 was intended to limit employers' pure **vicarious liability** for the wrongful acts of employees committed within the scope of employment." *Id.* at 746, 192 P.3d at 257 *citing* Senate Daily Journal, 68th Leg. 18 (Nev., June 2, 1995) (comments of Senator Mark A. James); Hearing on S.B. 474 Before Senate Comm. on Judiciary, 68th Leg. (Nev., May 18, 1995) (noting the testimony of the Nevada Resort Association's representative, indicating that the thrust of the bill is to "eliminate vicarious liability for punitive damages" by requiring "deliberate, i.e., knowing conduct [on behalf of employers]"). In *Countrywide,* a Countrywide employee authorized the wrong unit to be "trashed-out" out in preparation to be re-sold after a foreclosure. *Id.* at 731, 192 P.3d at 247. The plaintiff, the owner of the trashed-out unit, "argued that Countrywide was subject to punitive damages on the theory that it was **vicariously liable** for [the employee's] conduct." *Id.* at 746, 192 P.3d at 257. Based upon this argument, Venetian concludes Plaintiff must comply with NRS 42.007. However, *Countrywide* merely holds "NRS 42.007 controls

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the question of **vicarious employer liability** for punitive damages in Nevada." *Id.* at 745, 192 P.3d at 257.

NRS 42.007 does not apply to the case at hand because Plaintiff is not pursuing a claim for punitive damages on a theory of vicarious liability. Plaintiff does not argue Venetian is subject to punitive damages based on the conduct of an individual employee. Rather, Plaintiff argues Venetian, the corporation, is subject to punitive damages because it consciously disregarded its customers' safety when it refused to fix a known hazard – its significantly below industry standards, unreasonably slippery marble floors – after receiving notice via 466-700 injury slip and falls reports in the last five years. Thus, because Plaintiff is not pursuing punitive damages based on vicarious liability, NRS 42.007 is irrelevant.

If, for sake of argument, Plaintiff claimed punitive damages stemming from vicarious liability, Plaintiff could easily show Venetian's officers, directors or managers consciously disregarded guests' safety because they knew their marble floors were dangerous and significantly below industry standards. Venetian's maid testified her manager told her the floors were "slippery and dangerous when wet." (Exhibit "2" at 15:26-16:3.) Guests notified Venetian's management when they filed 466-700 injury slip and falls incident reports in the last five years. Finally, Venetian's management knew about the issue because they have engineers on staff and specifically hired a consultant to tell them how to fix it. (Exhibit "4" at 15:1-6; Exhibit "5" at 7:12-17; 38:25-28.) Thus, if NRS 42.007 applied to Plaintiff, Plaintiff could show Venetian's "officers, directors, or managing agents acted with the intent to harm". (Defendant's Opp. at 22: 18-19.)

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II. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests this Court grant her Motion to Amend her Complaint to add punitive damages.

DATED this 15TH day of May, 2019

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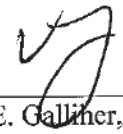

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EXHIBIT “CC”

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, Plaintiff, vs. VENETIAN CASINO RESORT LLC, ET AL., Defendants.	CASE NO.: A-18-772761 DEPT. XXV

BEFORE THE HON. ERIN TRUMAN, DISCOVERY COMMISSIONER

WEDNESDAY, JUNE 26, 2019

RECORDER'S TRANSCRIPT OF HEARING
ALL PENDING MOTIONS

APPEARANCES:

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

For the Defendants: MICHAEL A. ROYAL, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

certainly may be. He was very definite about the tenor of the conversation, very definite about what was said.

So the bottom line is there was nothing improper that was done here, and I don't have an obligation to call defense counsel and say, you know, I'm deposing this witness next week, and this is what he's going to say. I would love to have that as a standard because nobody calls me to tell me what all the people I've deposed are going to say before deposition.

So this is a lot of hyperbole and much ado about nothing because the bottom line is nothing was done improper here. We had a conversation that wasn't privileged from the get-go. I elicited testimony from the witness who volunteered it at deposition, and the witness testified regarding his perception of events, right or wrong. And if Mr. Royal, you know, basically if he doesn't believe the testimony, that's his privilege. If he thinks there's Cross-Examination room, that's his privilege. But it does not stand for the proposition that he gets to disqualify a witness because he doesn't like what the witness had to say.

DISCOVERY COMMISSIONER: Why is it that you, in Mr. Han's deposition, said --

MR. GALLIHER: Mr. -- whose?

DISCOVERY COMMISSIONER: Mr. Han, H-A-N, said on May 6, 2019: When you say you were told by -- let's see.

Question: How did you prepare for today's deposition? By the way, my voice is not so good because I'm getting over a virus.

Answer: Yeah. I was informed that I was being called upon

today, and so I was told what I would be doing generally.

Question: When you say you were told, by whom?

Answer: I was informed by Mr. Royal.

Question: All right. I don't want to know about your conversation with Mr. Royal. They're privileged.

MR. GALLIHER: M-hmm.

DISCOVERY COMMISSIONER: Why did you say Mr. Han's communications with Mr. Royal were privileged when now your position is Mr. Shulman's are not?

MR. GALLIHER: Mr. Han was the head of housekeeping. He was the boss man of the department --

DISCOVERY COMMISSIONER: Okay.

MR. GALLIHER: -- that investigated the fall.

DISCOVERY COMMISSIONER: So he's the head of housekeeping?

MR. GALLIHER: Yeah. So I consider him entirely different.

DISCOVERY COMMISSIONER: Okay.

MR. GALLIHER: As a table supervisor, table supervisor doesn't have speaking authority for the Venetian, so that's why in that situation the better part of discretion is, okay, he's the head honcho of the department that investigated the fall, enough, so we didn't go into the conversations.

But Mr. Shulman was nothing more than a table supervisor in a casino. Big difference.

DISCOVERY COMMISSIONER: Mr. Royal.

MR. ROYAL: None of that was fleshed out at all in Mr. Han's deposition. He was not an investigator. He was just like Mr. Shulman. He works in housekeeping. He doesn't work with PAD. PAD is the department that would have had something to do with clean up and patrolling of this particular area. Mr. Han --

DISCOVERY COMMISSIONER: What's PAD?

MR. ROYAL: I'm sorry. Public Area Department. Excuse me.

DISCOVERY COMMISSIONER: Okay.

MR. ROYAL: Mr. Han, just like Mr. Shulman, was on a break. He was going to get something, you know, something on a break. He just happened to come by the area and he stopped by and he was one of several people who came by when the Plaintiff was sitting on the floor.

He didn't testify. That was never established. When he said, oh, your discussion with Mr. Royal is privileged, none of what he -- counsel just said was ever established -- that he investigated the accident? He showed up. He looked at it. I had to find out who he was just because I saw him show up in a suit in the video and said, okay, who's this guy? He looks like an employee. I don't have a report from him. I don't have anything. I just know he showed up and he testified I'm just a guy who just happened to be there, and I'm willing to tell you what I saw, and that was it.

So he's no different than Mr. Shulman, except that Mr. Shulman said, yes, I've seen spills before, and this is how we respond in the casino area when we see a spill. But -- I do this, I do that, I put chairs around it, we want to, you know, keep people from stepping in it,

EXHIBIT “DD”

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

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

JOYCE SEKERA, Plaintiff, vs. VENETIAN CASINO RESORT, Defendant.	REPORTER'S TRANSCRIPT OF DEFT'S MOTION FOR RECONSIDERATION ON OST

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: TUESDAY, JULY 30, 2019

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

1 was surgical. They knew that Dr. Smith was likely do the
2 surgery well before the expert deadline disclosures.
3 To that extent, your Honor, if the Court is inclined
4 to grant this motion, we'd just ask that the expert
5 deadline -- rather you don't open the expert deadlines
6 again. That they remain closed.
7 THE COURT: I'll come to Mr. Galliher on that.
8 I wanted both sides to argue.
9 I did note that when you sought new deadlines
10 that you literally sought all new deadlines, even
11 including the motion to amend. I really don't understand
12 at this stage, with as much discovery that has occurred
13 and the fact that the Court already granted and added in,
14 you know, whatever was likely needed to be added in, how
15 we're resetting all the deadlines. But more specifically,
16 it does seem it would be a bit of an overreach to look at
17 resetting all these expert deadlines, pending this other
18 discovery. Maybe if this other discovery pans out to
19 something, wouldn't that be the more appropriate time to
20 try to look at that. We've already got experts covering
21 what you knew existed.
22 MR. GALLIHER: Well, not necessarily.
23 What happened is Dr. Smith and Mark said Joyce
24 Sekera was potentially a surgical candidate and his
25 recommendation was going depend on how she reacted to

1 injection therapy. That's rasodomies. She had the
2 rasodomies and by report did not react well. And after
3 she went back to see Dr. Smith -- remember this is July
4 9th. This is a couple weeks ago. She saw Dr. Smith. He
5 says, okay. The rasodomies have failed. Now you are a
6 surgical candidate. So contrary to what Mr. Royal
7 stated -- and by the way, we didn't see the March note
8 because it was sent through her worker's compensation
9 lawyer. It wasn't sent to us.
10 So we saw the July note and it was like, okay. And
11 she was redeposed. She testified, hey, if I'm going to
12 have to have this done, I'll have it done. So we know
13 she's going to have surgery.
14 Again, we're a year-and-a-half into this case. Now
15 we've got a client whose medical condition has changed.
16 So I'm addressing the experts only. I think the Court
17 understands the reason why we have to have an extension of
18 discovery because we still don't have the unredacted
19 reports so we can't do our discovery. We've had 4
20 requests for production of documents in this case. All
21 have been refused. All will be the subject of motions to
22 compel. I expect to be before the discovery commissioner
23 many times within the next several months trying to get
24 discovery to support our claims in this case, because the
25 Venetian will not voluntarily produce anything.

1 Any further clarification or information.
2 MR. GALLIHER: No, your Honor. I would like a
3 transcript. I don't write very fast with my aging hands.
4 THE COURT: Just get your orders in place and
5 get them done.
6 MR. ROYAL: He represented Plaintiff was re
7 deposed. She did not.
8 THE COURT: Has she been redeposed.
9 How is that your understanding -- I can't have you
10 both in here saying something happened and something
11 didn't happen.
12 Did she get deposed or not.
13 MR. ROYAL: She only got deposed once. She did
14 not get redeposed.
15 MR. GALLIHER: That's what I said. He redeposed
16 Mr. Schulman. He's redeposed several witnesses.
17 THE COURT: When we're in here next time, have
18 your facts straight, be artful and clear about what you
19 argue. I don't want to keep hearing this happened, this
20 didn't happen. He said this, maybe that. Then I find out
21 that's not the case.
22 MR. GALLIHER: I understand. Thank you.
23
24 * * * * *
25

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual, Plaintiff, v. VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; YET UNKNOWN EMPLOYEE; DOES I through X, inclusive, Defendants.	CASE NO.: A-18-772761-C DEPT. NO.: 25 **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER AND OPPOSITION TO DEFENDANTS' MOTION TO COMPEL**

Plaintiff hereby submits her opposition to Defendants' motion for a protective order and opposition to Defendants' motion to compel.

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

DATED this 20th day of August, 2019

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MEMORANDUM AND POINTS OF AUTHORITIES

I. INTRODUCTION

This is a personal injury case arising out of a slip and fall in the Venetian Casino Resort. On November 4, 2016 around 12:30 p.m. Plaintiff Joyce Sekera was walking through Venetian. As Joyce passed the Grand Lux Café Restrooms, she slipped and fell on water on the black marble floors. On the way down Plaintiff struck her skull on the pillar and her left elbow on the ground. The first Venetian employee to come to Joyce's aid, Gary Shulman, confirmed there was water on the floor. (*See* Deposition of Gary Shulman, attached as Exhibit "1" at 8:6-10; 8:23-9:11; 10:8-17.) Mr. Shulman also testified he met with Defense Counsel and told him there was water on the floor, to which Defense Counsel responded "No, you didn't, wink, wink" "no, no, there was nothing wet there" and "No, you are mistaken. It wasn't wet." (*Id.* at 56:16-17; 23:21-22; 61:5-6.)

Over the last two years Plaintiff underwent low back injections, medial branch blocks and two rounds of radio frequency ablations. (July 10, 2019 Pain Institute of Nevada Record, attached as Exhibit "2" at 2.) In June, after Plaintiff's most recent set of radio frequency ablations failed, Dr. Smith opined "I do not see how this woman will be able to avoid surgical treatment" "Rhizotomies

in my opinion will give her some temporary relief, but certainty not long-term." (July 8, 2019 Western Regional record, attached as Exhibit "3.") Plaintiff will thus be undergoing L5-S1 surgery in the near future. Based upon these facts the Court recently granted Plaintiff's motion to extend discovery and trial 270 days. Also relevant to this opposition is Plaintiff's motion to amend her complaint to add a claim for punitive damages. On May 28, 2019 the Court granted Plaintiff's motion to amend her complaint to add a claim for punitive damages agreeing with Plaintiff's argument that punitive damages were appropriate because Venetian knew its marble floors were unreasonably slippery and posed a high risk to guests but nonetheless refused to increase their slip resistance.

Despite punitive damages bring on the table, Defendants move for a protective order on 14 requests for production, 2 interrogatories and a 30(b)(6) deposition with 18 parameters all relevant to that claim. Defendants additionally move to compel documents in Plaintiff's expert's job file.[1] Defendants motion is largely based upon the confused contention that this case involves a transient condition (water on the floor) rather than the permanent dangerous condition of Defendants' marble floors. As discussed in detail below, Defendants' motion for a protective order must be denied because the discovery sought is admissible on the issues of notice and punitive damages and relevant to ensure compliance with the discovery rules. Similarly, Defendants motion to compel must be denied because Plaintiff already supplied the relevant documents and the other documents sought are in the Defendants possession as they are the Defendants internal documents.

II. FACTUAL BACKGROUND

A. Discovery Requests

On August 16, 2018 Plaintiff sent Defendants her first set of requests for production. Plaintiff's 7th request asked Defendants provide:

[1] To the extent this Opposition exceeds the usual 30-page limit, Plaintiff apologizes. Plaintiff could not meaningfully respond to Defendants' motion for a protective order on 14 requests for production, 2 interrogatories and the 30(b)(6) deposition with 18 parameters as well as Defendants' motion to compel Plaintiff's expert job file and 196 incident reports within the 30-page limit.

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

(Defendants' Mot. at 3:16-21, Exhibit "A.")

In response to this request, Defendants produced 64 redacted incident reports between November 4, 2013 and November 4, 2016. (Excerpts of Michael Royal's Declaration in Support of Motion for Protective Order, attached as Exhibit "4" at 3:25-4:2.) Defendants produced these reports before moving for a protective order. Defendants ignored the portion of Plaintiff's request which asked for subsequent incident reports and subsequently misrepresented to the Court that Plaintiff had only requested reports "occurring within three years preceding the subject incident." (*Id.* at 3:14-16.)

Plaintiff requested Defendants provide the unredacted reports so she could identify witnesses to counter Defendants' comparative negligence claim that Plaintiff should have seen liquid on the floor before she fell. (*Id.* at 4:3-14.) Defendants refused to produce the unredacted reports and filed a motion for a protective order without moving to protect the subsequent incident reports contained in the same request.[2] (*Id.*) Defendants now move for an additional protective order on the subsequent incident reports **nearly 11 months after their response was due.**

After briefing and oral argument, the Discovery Commissioner issued a Report and Recommendation stating the incident reports should be subject to a protective order and recommending Defendants not be required to provide unredacted reports. (Discovery Commissioner's Report and Recommendation, attached as Exhibit "5.") Plaintiff objected to the Report and Recommendation. The Court heard Plaintiff's Objection on May 14, 2019. (Court Minutes, attached as Exhibit "6.") The Court determined there was not "any legal basis" for the protective order and ordered Defendants produce the unredacted incident reports. (*Id.*) It has been

[2] The Court previously ruled Plaintiff did nothing wrong by sharing unprotected discovery with other lawyers. Nonetheless Defendants continued to demonize Plaintiff's counsel by implying he did something wrong by sharing the unprotected documents with other lawyers.

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over three (3) months since the Court ordered Defendants produce the unredacted reports. Defendants continue to refuse to abide by the Court's order.

On November 7, 2018 Plaintiff served Defendants with her second set of requests for production of documents. Plaintiff's 11th request asked Defendants for:

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

(Defendants' Mot. at 4:19-24, Exhibit "D.") Defendants now move for a protective order on this request **over 8 months after their response was due.**

On March 15, 2019 Plaintiff served Defendants with her third set of requests for production of documents. Plaintiff requested Defendants provide the following:

> REQUEST NO. 12:
> Any and all documents, reports, emails, correspondence, test results, including expert reports generated by Plaintiff's and/or The Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas with respect to the coefficient of friction, wet and dry, of the marble floors located on the ground floor and Bouchon restaurant floor of The Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas from three years before the fall, November 4, 2013, to the present.
>
> REQUEST NO. 13:
> Any and all documents invoices, work orders or communications with respect to the purchase and/or application of any coating placed on the marble floors located on the ground floor and Bouchon restaurant floor of the Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas from three years before the fall, November 4, 2013, to the present.
>
> REQUEST NO. 14:
> Any and all incident/security reports regarding injury falls on the marble floors located at the Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas, from three years before the fall, November 4, 2013, to the present.

(Defendants' Mot. at 4:27-5:10, Exhibit "E.") Defendants now move for a protective order on these requests **nearly 4 months after their response was due.**

On April 15, 2019 Defendants served their responses to Plaintiff's third set of requests for production. (Defendants' Rspn. to Plt.'s Third RFPs, attached as Exhibit "7.") In response to Plaintiff's 12th request, Defendants stated "As to any such reports obtained from November 3, 2013 to November 4, 2016 on the main casino floor level where the subject incident occurred, Defendants

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702-735-0049 Fax: 702-735-0204

have no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1 and all supplements thereto." (*Id.* at 2:21-24.) Plaintiff later learned this statement was untrue. (*See* Sec. II.C. "C. Defendants' History of Playing Hide the Ball in Discovery.") Defendants' did not respond to the portion of Plaintiff's 12th request which asked for documents, emails, correspondence, test results. (*Id.*)

On May 31, 2019 Plaintiff served Defendants with her sixth set of requests for production of documents. Plaintiff requested Defendants provide the following:

> 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. 29:
> Any and all complaints submitted by guests or other individuals regarding the safety of the marble floors.
>
> REQUEST NO. 30:
> Any and all quotes and estimates and correspondence regarding quotes and estimates relating to the modification of the marble floors to increase their slip resistance.

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(Defendants' Mot. at 5:18:6-7, Exhibit "F.") Defendants now move for a protective order on these requests **over a month after their response was due.**

On June 24, 2019 Defendants served their responses to Plaintiff's sixth set of requests for production. (Defendants' Rspn. to Plt.'s Sixth RFPs, attached as Exhibit "8.") In response to Plaintiff's 24th, 25th and 26th requests asking for correspondence, emails, internal communications, transcripts, minutes and notes Defendants stated they "have no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1, NRCP 34, and all supplements thereto." (*Id.* at 3:22-24, 4:18-21, 5:12-15.). Defendants' did not previously produce any correspondence, emails, internal communications, transcripts, minutes or notes in any of their disclosures. Thus, Defendants told Plaintiff they have no correspondence, emails, internal communications, transcripts, minutes and notes related to their marble floors from January 1, 2000 to present.

On June 20, 2019 Plaintiff served Defendants with her first set of interrogatories. Plaintiff's first interrogatory asked Defendants:

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

(Defendants' Mot. at 6:10-17, Exhibit "G.") Defendants now move for a protective order on this interrogatory **over a month after their response was due.**

On July 17, 2019 Plaintiff served Defendants with her ninth set of requests for production of documents. Plaintiff's 35th request asked Defendants 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 cases occurring on marble floors within the subject VENETIAN CASINO RESORT from the May 3, 1999 to the present.

(Defendants' Mot. at 6:19-23, Exhibit "H.")

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On July 19, 2019 Plaintiff served Defendants with her tenth set of requests for production of documents. Plaintiff's 36th request asked Defendants for:

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

(Defendants' Mot. at 6:27-7:4, Exhibit "I.")

On July 22, 2019 Plaintiff served Defendants with her second set of interrogatories. Plaintiff's second interrogatory asked Defendants:

> Please identify names, addresses and phone numbers of any and all individuals designated as safety engineers[3] who perform(ed) accident checks at the Venetian from the year 2000 to the present.

(Defendants' Mot. at 6:10-17, Exhibit "J.")

On July 30, 2019 Plaintiff served Defendants with her eleventh set of requests for production of documents. Plaintiff's 37th request asked Defendants for:

> Any and all quotes, estimates, correspondence, emails, memorandums, minutes, file notes and/or other documentation related to Venetian's decision to remove and replace the carpet with marble flooring and Venetian's removal and replacement of carpet with marble flooring as referenced by Christina Tonemah[4] in her deposition. (25: 9-26: 26; 1-6)

---

[3] On May 16, 2019 Security Officer Christopher Johnson testified:

> Q: And how about any physical observation at the scene; would you have made notes of that?
>
> A: I don't believe so. That's not my duty to actually make on the scene. **We have engineers that come out and they do accident checks and stuff like that.**

(Excerpts of Deposition of Christopher Johnson, attached as Exhibit "9" at 15:1-6.) (emphasis added).

[4] On July 12, 2019 Christiana Tonemah, a former Venetian executive testified that Venetian initially did not have marble flooring: "when we first opened, the first five years, everything was carpeted… everything but the grand hallway." (Deposition of Christiana Tonemah, attached as Exhibit "10" at 25:9-15.) Mr. Galliher confirmed that Ms. Tonemah was "talking specifically about the casino… the marble walkway" to which Ms. Tonemah responded "Correct." (*Id.* at 25:16-18.) Ms. Tonemah further testified the marble walkways in the casino were installed "During their refurbishing probably after we had been open – probably the year after or the year of the Palazzo opening…" (*Id.* at 25:21-23.) The Palazzo opened in January 2008. *See Howard Stutz,* Officials Open Palazzo Casino, LAS VEGAS REVIEW JOURNAL (Jan. 1, 2008), https://www.reviewjournal.com/business/officials-open-palazzo-casino/.

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702-735-0049 Fax: 702-735-0204

(Defendants' Mot. at 7:11-7:18, Exhibit "K.")

B. The 30(b)(6) Deposition

On July 30, 2019 Plaintiff served her second amended deposition notice for Defendants' Rule 30(b)(6) witness. (Defendants' Mot. at 7:18-7:25.) Plaintiff's notice included the following parameters:

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

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

(Defendants' Mot. at Exhibit "L.")

C. Defendants' History of Playing Hide the Ball in Discovery

On April 15, 2019 Defendants served their responses to Plaintiff's third set of requests for production which stated "As to any such [incidents] reports obtained from November 3, 2013 to November 4, 2016 on the main casino floor level where the subject incident occurred, Defendants have no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1 and all supplements thereto." (Exhibit "7" at 2:21-24.) Shortly after receiving Plaintiff's counsel went digging through a few prior cases to identify responsive incident report not produced. Plaintiff's counsel quickly found 2 prior responsive incident reports that resulted in litigation (case nos. A-15-729566-C and A-17-751293-C) which Defendants "missed" when compiling their responses. Defendants later admitted these reports "should have been included by Venetian in its response to the request for prior incident reports" and that "Defendants will supplement NRCP 34 responses to provide" these reports. (Excerpts of Michael Royal's Declaration in Support of Opposition to Motion to Amend, attached as Exhibit "11" at 12:1-15.)

In July 2019 Plaintiff filed her first motion to compel in which listed additional responsive reports Defendants again conveniently missed. (Defendants' Opp. to Plt.'s Mot. to Compel filed July 12, 2019, attached as Exhibit "12.") Defendants, in their opposition admitted they did not provide an "11/7/13 (Grand Lux Cafe; Marble slip and fall)" and a 06/11/16 "Venetian front office" slip and fall on "a puddle of water." (*Id.* at 10:25-11:4, 12:1-12:8.) Defendants then provided both of these reports.

Defendants also did not fully and fairly disclose incident reports in three other cases: *Smith v. Venetian, Cohen v. Venetian* and *Boucher v. Venetian.* In *Smith v. Venetian,* Defendants left out 35 incident reports responsive to the Smith's request for production. (Motion for Case Ending Sanctions in *Smith v. Venetian* attached as Exhibit "13" at 4:7-10, 5:5.) In *Boucher v. Venetian,* Defendants left

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out 32 incident reports responsive to the Boucher's request for production. (Excerpts of Motion to Amend in *Boucher v. Venetian* attached as Exhibit "14" at 7:19-11:19.)

D. Other Strange Events During Discovery

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

Recently Venetian current employees started testifying **marble is not more slippery than carpet**:

> Q: When we talk about the marble floors when wet, versus the carpeted floors when wet, which one is the most slippery?
>
> ...
>
> A: It's the same, basically.
>
> Q: All right. So your testimony is that a carpeted floor, when wet, would be as slippery?
>
> A: Yeah.

(Deposition of Kecia Powell, attached as Exhibit "15" at 19:21-20:10.)

> Q: So as you testify here today, do you think that a marble floor when wet is any more dangerous than any other surface when wet?
>
> ...
>
> A: I would have to say no.
>
> Q: All right. So the answer to my question is no, you don't believe the marble floor is any more dangerous?
>
> A: No.

(Deposition of Pete Krueger, attached as Exhibit "16" at 10:25-11:9.)

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702-735-0049 Fax: 702-735-0204

E. Thomas Jennings Job File

Defendants took the deposition of Plaintiff's expert Thomas Jennings, P.E. ("Mr. Jennings") on July 2, 2019. (Defendants' Mot. at 10:21.) During the deposition Mr. Jennings testified Plaintiff's counsel gave him a "spreadsheet" of 196 prior slip and falls at Venetian. (*Id.* at 11:18-12:18, Exhibit "S" at 84:25.) Defense counsel even doubled check this was correct:

> Q. You didn't look at the actual reports, you just saw a spreadsheet?
> A. Correct.

(*Id.* at Exhibit "S" 86:1-3.) On July 22, 2019 Plaintiff sent Defendants a copy of the email to Mr. Jennings and the attached spreadsheet of the 196 prior incidents at Venetian which were provided to Mr. Jennings (*Id.* at 12:19-21.)

III. OPPOSITION TO MOTION FOR A PROTECTIVE ORDER

A. Legal Standard for a Motion for a Protective Order

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

> A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending — or as an alternative on matters relating to an out-of-state deposition, in the court for the judicial district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
>
> ...
>
> If a motion for a protective order is wholly or partially denied, the court may, on just terms, order that any party or person provide or permit discovery... Rule 37(a)(5) applies to the award of expenses.

NRCP 26(c).

The party seeking the protective order has the burden of persuasion under Rule 26. *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986) (discussing the burdens under the analogous FRCP 26(c)). To meet the burden of persuasion, "the party seeking the protective order must show good cause by demonstrating a particular need for the protection sought." *Beckman Indus., Inc., v. Int'l. Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Rule 26(c) requires more than

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

B. Defendants' Motion Rests on the Faulty Premise that Punitive Damages Are Not in Play

Defendants' motion rests on the faulty premise that this is a "simple negligence case" or that punitive damages are not in play because Defendants have an outstanding 12(b)(6) motion to dismiss or alternatively motion for summary judgment. (Defendants' Mot. at 8:5, 8:25, 17:24-5, 23:4-5, 23:23-24, 24:3.) The Court has consistently held this is not a "simple negligence" case. First, the Court granted Plaintiff's motion to amend her complaint to add a claim for punitive damages because Venetian knew its marble floors were unreasonably slippery and posed a high risk to guests. Then the Court denied Defendants' motion for reconsideration on the order granting Plaintiff's motion to amend her complaint. Defendants nonetheless still argue this is a "simple negligence" case because they have an outstanding 12(b)(5) motion to dismiss or alternatively motion for summary judgment. (Defendants' Mot. at 24:3.) This argument lacks any merit. As explained in Plaintiff's opposition to Defendants' motion to dismiss or alternatively motion for summary judgment: **A proposed amendment is "futile if the plaintiff seeks to amend the complaint in order to plead**

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Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

an impermissible claim, such as one which would not survive a motion to dismiss under NRCP 12(b)(5)." *Lennox Indus., Inc. v. Aspen Mfg., Inc.*, 416 P.3d 205 (Nev. 2018) (*quoting Nutton v. Sunset Station*, Inc., 131 Nev. Adv. Op. 34, 357 P.3d 966, 973 (Nev. App. 2015)); *see also Select Portfolio Servicing, Inc. v. SFR Investments Pool 1, LLC*, 385 P.3d 59 (Nev. 2016.) ("A proposed amendment is futile only if it could not withstand a [Federal] Rule 12(b)(6) motion to dismiss."); *7963 Laurena Ave. Tr. v. Bank of New York Mellon*, 385 P.3d 581 (Nev. 2016); *Peck v. Wilson*, No. 69181, 2016 WL 2870299, at *2 (Nev. App. May 6, 2016). (Plaintiff's Opp. to Defendants' Mot. to Dismiss at 9:13-23.) Thus, "[w]hen the Court granted Plaintiff's motion to amend her complaint to add a claim for punitive damages it, by implication, it determined Plaintiff's claim for punitive damages could survive a 12(b)(5) motion to dismiss." (*Id.* at 9:26-10:2.) In regard to Defendants' alternative motion for summary judgment, the Court clearly stated it will "revisit it [the issue of punitive damages] on dispositive motion, **once discovery has taken place**." (Excerpts Court Transcript from Hearing on Defendants' Motion for Reconsideration, attached as Exhibit "17" at 19:21-23.) As such, Defendants' argument this is a simple negligence case is meritless: punitive damages are now clearly on the table and the subsequent information discussed above is therefore admissible at trial.

C. Plaintiff's Counsel Never Stated He is " "mining" information from Venetian to use not only in this case but in other future cases"

Defendants repeatedly allege Plaintiff's counsel stated he was "in the process of "mining" information from Venetian to use not only in this case but in other future cases" or that he was mining information for lawyers in other cases. (Defendants' Mot. at 9:1-16.) The undersigned **NEVER** made such a statement or otherwise implied, eluded to or suggested he was engaged in such conduct. This allegation is completely untrue and was designed specifically and intentionally by Defendants to get the Court to rule in their favor.

Defendants then allege, based upon this statement that "this [Plaintiff's discovery] is a thinly veiled attempt by Plaintiff's counsel to "*mine information*" that will potentially allow him to identify potential clients involved in incidents within the preceding two years." (Defendants' Mot. at 23:27-

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702-735-0049 Fax: 702-735-0204

24:2.) This second statement strongly implies Plaintiff's counsel is sending discovery requests to aid in his violation of NRPC 7.3(a) ("a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.") Defendants offer no evidence to back up this statement. Rather, Defendants are merely hurling allegations aimed at attacking the undersigned's professional reputation. The undersigned has been nothing less than an outstanding member of the bar for the last 45 years. The fact that Defense counsel, without a scintilla of evidence, would imply otherwise is gravely concerning.

D. The Discovery Commissioner Should Deny Defendants' Motion Protective Order on the Prior Incident Reports Because They Are Admissible to Prove Notice of a Dangerous Condition

Defendants once again mislead the Court in their "under Nevada law, prior similar incidents involving a transient condition cannot be used to prove constructive notice" section. (Defendants' Mot. at 20:23-4.) The title of Defendants section makes clear it deals with "prior incidents," the body and the conclusion both also argues about "prior incidents." (*Id.* at 20:23-4, 21:12-13, 21:17.) However, two lines under the title about "prior incidents" Defendants state "The Discovery Commissioner has already ruled that reports of incidents occurring **subsequent** to the subject accident need not be produced, in light of the fact that Plaintiff alleges negligence due to the presence of liquid spilled on the walkway at the Venetian and "liquid on a walkway is a transient condition." (*Id.* at 20:26-21:4.) Not only is statement irrelevant to this section but it also misleads the reader into believing Defendants are referencing the discoverability prior incidents. Defendants also fail to inform the Discovery Commissioner that the plaintiff in the case objected to the report and recommendation and that objection has yet to be heard. (Objection to Report and Recommendation in *Boucher v. Venetian,* attached as Exhibit "18.") More importantly, however, Defendants fail to inform the Court that Discovery Commissioner Bulla ruled Defendants' floors are not a "transitory condition":

> DISCOVERY COMMISSIONER: But I think what you are not understanding is that this case is not as simple as it looks at first glance. There is a difference between a permanent condition and a transitory condition.

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702-735-0049 Fax: 702-735-0204

> ...
> Here's the small, little, tiny problem that the Venetian has -- you have a floor that, in and of itself, isn't apparently a problem, but every time water goes on that floor, which is foreseeable -- the people will bring in water bottles, or the drinks will be shared on the casino floor and end up on the tile -- then your floor turns into something different. It turns into a fall hazard. And if you didn't have that big, thick notebook sitting in front of you to show all the slip and falls you've had on this flooring, we might be able to argue something differently.

(October 31, 2018 Discovery Hearing Transcript from *Smith v. Venetian* at 4:17-5:11, attached as Exhibit "19.") Defendants (also Venetian) in the *Smith* case objected to this report and recommendation **with the same argument Defendants (Venetian) make here** – under *Eldorado Club v. Graff,* 78 Nev. 507, 377 P.2d 174 (1962) "prior slip and falls...are not relevant to the slip and fall here nor admissible to show liability or notice." (Venetian's Objection to the DCRR in *Smith v. Venetian* at 16:19-17:20, attached as Exhibit "20"; *cf.* Defendants Mot. at 21:16-19 ("the Eldorado Club, Inc. court expressly held that it is reversible error to receive *"notice evidence"* of prior similar incidents involving transient conditions to prove constructive notice.")) **The District Court found this argument meritless, overruled Defendants' objection and affirmed the report and recommendation.** (Order on Objection to DCRR in *Smith v. Venetian,* attached as Exhibit "21.") In other words, Defendants previously brought this argument, lost, knew it was a meritless argument, and nonetheless made the same argument to waste time and resources in a nearly identical case.

Defendants are well aware the *Eldorado* argument is meritless – this is likely why they referenced, but did not extensively discuss it the *Eldorado* case in their initial motion for protective order and response to Plaintiff's Objection to the DCRR dated April 2, 2019. (Exhibit "4" at 8:1; Excerpts of Defendants' Rspn. To Plt's Obj., attached as Exhibit "22" at 17:16.) In other words, Defendants previously argued, and are now again arguing, the Court should grant their protective order on incident reports based upon the *Eldorado* case. This behavior is tantamount to relitigating issues which Defendants know full well[5] they are not allowed to do. *See Mosley v. Figliuzzi,* 113

[5] In their opposition to Plaintiff's initial motion for protective order, Defendants attempted to relitigate the issue of whether incident reports outside the Grand Lux Café area were discoverable. Plaintiff's reply in support, citing the same case law, informed Defendants they could not relitigate issues. (Excerpts of Plt's RIS of Her Mot. to Compel, attached as Exhibit "23" at 12:6-12.)

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Nev. 51, 58, 930 P.2d 1110, 1114 (1997), *overruled on other grounds by Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042 (2004) (Parties cannot "file immediate, repetitive, serial motions until the right circumstances or the right judge allows them to achieve a different result, based on essentially the same facts."); *see also Nance v. Ferraro*, 418 P.3d 679, 684 (Nev. App. 2018) ("Parties may not file repetitive, serial motions seeking to relitigate the same issues based on the same underlying facts.")

More important, is why *Eldorado* does not apply to this case. In *Eldorado* the plaintiff sued the defendant for negligence for leaving a lettuce leaf on a ramp. *Eldorado*, 78 Nev. at 510, 377 P.2d at 176. The Court, in holding prior falls were inadmissible emphasized that "no contention is made that the ramp was dangerous per se; that there was a structural, permanent or continuing defect." *Id.* at 510, 377 P.2d 176. The *Eldorado* Court continued: "the admissibility of evidence of prior accidents **in this kind of a case,** to show notice or knowledge of the danger causing the accident, is **generally confined** to situations where there are conditions of permanency." *Id.* at 511, 377 P.2d 176. (emphasis added) "Evidence of the type here in question is **usually excluded** where it relates to a **temporary condition** which might or might not exist from one day to the other **unless, of course,** there is proper showing that the conditions surrounding the prior occurrences have continued and persisted." *Id.* (emphasis added). Thus, the *Eldorado* case only deals with transitory conditions. Because this case is not about a transitory condition, but about the permanent dangerous condition of Venetian's unreasonably slippery marble floors the *Eldorado* case does not apply.

Defendants again attempt to mislead the Discovery Commissioner by stating "Plaintiff does not allege that the permanent condition of the Venetian interior tile flooring itself was the cause of her fall…" (Defendants' Mot. at 21:5-7.) Defendants know full well this is untrue; Plaintiff argued this numerous times to the Court, who agreed with Plaintiff[6] that punitive damages were appropriate because Venetian knew its **marble floors were unreasonably slippery** and posed a high risk to

[6] The Court agreed with Plaintiff by granting her motion to amend on May 28, 2019 to add a claim for punitive damages. The Court also agreed with Plaintiff by denying Defendants' motion to dismiss or alternatively for summary judgment on punitive damages on August 27, 2019.

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Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

guests. The whole basis for Plaintiff's claim of punitive damages is the non-transitory condition of Venetian's marble floors. If Defendants somehow forgot this after all the briefing on the motion to amend, all the briefing on the motion for reconsideration, all the briefing on their motion to dismiss, and all the briefing on their motion for summary judgment, Plaintiff reminded Defendants **in writing** at least another 6 times.[7] Plaintiff's theory of liability – backed by the Court's stamp of approval on Plaintiff's claim for punitive damages – is that this is not transitory condition, *Eldorado* does not apply and therefore *Eldorado* cannot be the basis for ordering a protective order on prior incident reports.

E. The Discovery Commissioner Should Deny Defendants' Motion Protective Order the 30(b)(6) Parameters Related to Measures Taken to Produce/Locate Security Incident Injury Falls and Computer Data Because They Are Relevant to Ensure Compliance with and Enforce the Discovery Rules

Venetian has shown time and again in this case, in *Cohen v. Venetian,* in *Smith v.* Venetian and in *Boucher v. Venetian,* that it simply cannot be trusted to fully and fairly disclose incident reports. As previously discussed, Plaintiff has repeatedly caught Venetian selectively disclosing incident reports. Venetian initially disclosed 64 redacted reports. After consulting with counsel in the *Smith v. Venetian* matter and the *Cohen v. Venetian* matter and sorting through prior court filings Plaintiff's counsel discovered that the Venetian left out numerous reports responsive to Plaintiff's Request for Production No. 7. Venetian did the same thing in *Smith v. Venetian,* leaving out 35 incident reports and also in *Boucher v. Venetian,* leaving out 32 incident reports. (*See, e.g.* Exhibit "13" and Exhibit "14.")

From these filings it is evident that Venetian has engaged in a deliberate pattern of evasive discovery abuse in at least four cases in the last 6 months and therefore cannot be trusted to fully and fairly disclose documents. Based upon this evasive behavior, Plaintiff re-noticed the 30(b)(6)

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[7] *See, e.g.*
1. 6/12/2019 Opp. to Defendants' Mot. to Quash at 2:17-21;
2. 7/19/2019 Mot. to Extend Discovery and Trial at 4:25-5:3;
3. 7/24/2019 Mot. for Jury Trial 2:22-25;
4. 7/25/2019 RIS Mot. to Compel at 4:25-27;
5. 8/2/2019 Opp. to MTD or Alternatively MSJ at 13:1, 14:1-2;
6. 8/13/2019 RIS Mot. for Jury Trial and Opp. to Mot. for Sanctions at 4:8-11.

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702-735-0049 Fax: 702-735-0204

deposition to include questions related to the measures taken to locate the incident reports and Defendants internal computer, data and communication systems.

Defendants' motion claims Parameter 7[8] proves Mr. Galliher "in the process if "mining" information from Venetian to use not only in this case but in other future cases" and that this is "an ongoing collaboration effort." (Defendants' Mot. at 9:1-8.) If this conspiracy was actually true Plaintiff's counsel would have listed all 31 open cases[9] against Defendant Venetian. Rather, Plaintiff

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[8] "The name, address and phone number of the specific employee(s) tasked with retrieving incident reports from Venetian's system for this litigation, the litigation in Smith v. Venetian (A-17-753362-C), Cohen v. Venetian (A-17-761036-C) and Boucher v. Venetian (A-18-773651-C) and the name address and phone number of the individual who assigned them this task."

[9]
1. John Anderson v. Venetian (A-12-668979-C)
2. Megan Elizabeth Crofton (A-16-736014-C)
3. Christopher Scott Sykes v. Venetian (A-16-737181-C)
4. Stacy White v. Venetian (A-16-747572-C)
5. Carol Smith v. Venetian (A-17-753362-C)
6. Gary McMillan v. Venetian (A-17-756825-C)
7. Jeannete LaBoy v. Venetian (A-17-756537-C)
8. John Kierce v. Venetian (A-17-757314-C)
9. Nichole and Anson Banks v. Venetian (A-17-757336-C)
10. Johna Leavitt v. Venetian (A-17-766988-C)
11. Elvia Echeverri v. Venetian (A-18-771675-C)
12. Angelica Boucher v. Venetian (A-18-773651-C)
13. Veronica M Vargas (A-18-776292-C)
14. Maria Amparo v. Venetian (A-18-777242-C)
15. Tracey Johnson/Flood v. Venetian (A-18-779409-C)
16. Suthinand Tannil v. Venetian (A-18-781369-C)
17. Todd Russo v. Venetian (A-18-786638-C)
18. Gerardo Mendoza v. Venetian (A-19-786973-C)
19. Maria De Jesus Herrera v. Venetian (A-19-787496-C)
20. Darren Price v. Venetian (A-19-787927-C)
21. Juan C Ferrari v. Venetian (A-19-788567-C)
22. Raymond J. Malpica, Jr. v. Venetian (A-19-792110-C)
23. Anthony M., Sr. Alford v. Venetian (A-19-792468-C)
24. Raymond Wood v. Venetian (A-19-794875-C)
25. Dora Coogler v. Venetian (A-19-795039-C)
26. Susan Simone v. Venetian (A-19-795225-C)
27. Brittney Cox v. Venetian (A-19-796014-C)
28. Sheryl Miller v. Venetian (A-19-796490-C)
29. Tommy Arbia v. Venetian (A-19-797587-C)
30. Tiffany Randolph v. Venetian (A-19-798269-C)
31. Gloria D. Jelks v. Venetian (A-19-800332-C)

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702-735-0049 Fax: 702-735-0204

narrowly tailored Parameter 7 to include only the three other cases where Plaintiff confirmed Defendants failed to fully and fairly disclose incident reports. Plaintiff asked for "the name, address and phone number of the specific employee(s) tasked with retrieving incident reports" for all four known cases where Venetian was caught hiding incident reports so Plaintiff could determine whether Defendants' conduct was intentional (because all incident reports were retrieved by the same person) or less culpable (because different employees retrieved different incident reports leaving potential room for error). The names of all Defendants employees retrieving incident reports for these four cases are discoverable because they are relevant to future motions for sanctions. NRCP 37(b)(3) specifically states sanctions may be awarded "unless the failure [to obey a discovery order] was substantially justified or other circumstances make an award of expenses unjust." If one individual was retrieving incident reports for all cases, there is no substantial justification for his/her selective disclosure in each case. More importantly, the Plaintiff and the Court need this information to analyze a motion for case dispositive sanctions. Specifically, a motion for case dispositive sanctions and corresponding order must analyze "the feasibility and fairness of less severe sanctions" and the "need for deterring similar abusive conduct." *Blanco v. Blanco,* 129 Nev. 723, 730, 311 P.3d 1170, 1174 (2013). Plaintiff cannot properly argue these factors without knowing whether Defendants failure to fully and fairly disclose incident reports was intentional. The only way to determine whether defendants are intentionally hiding incident reports is to determine which individual or individuals were tasked with retrieving the incident reports in these four cases.

Defendants' responses to Plaintiff's 12th, 24th, 25th and 26th requests for production also prompted additional 30(b)(6) topics because Defendants claimed that they had "no documents responsive" i.e. no correspondence, emails, internal communications, transcripts, minutes and notes from January 1, 2000 to present. Plaintiff found it suspicious that Defendants have no responsive documents spanning a 20-year period. To ensure defendants were once again refusing to comply with the discovery rules, Plaintiff amended the 30(b)(6) deposition to include additional parameters

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Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

related to internal communication systems. *See e.g.* Parameters 10[10] and 11.[11] The physical location of the electronic records (including communications) (Parameter 12), the description of backups of that data (Parameter 13), inventory of backups and when they were created (Parameter 14), user permissions for modifying and deleting data (Parameter 15), the use of data deletion programs (Parameter 16), list of people with access to that data (Parameter 17) and electronic data policies and procedures (Parameter 18) naturally follow from Plaintiff's previous requests for information related to electronic communication because if Defendants' 30(b)(6) witness testifies the data is gone or deleted, Plaintiff needs to follow up with questions covered by Parameter 12-18 to ensure the data was properly deleted without malicious intent and there is no way to retrieve it.

NRCP 37(b) provides consequences for a party who fails to abide by the discovery rules and Court orders. This Rule, the other rules related to discovery and our entire body of case law regarding the same would be rendered meaningless if the parties were not permitted to discover information related to these violations to ensure compliance with the rules and support sanctions. Because Defendants repeatedly violated the rules and court orders in numerous cases Plaintiff and the Court can no longer trust its promise that it has fully and fairly responded to discovery in good faith and abided by all Court orders. Venetian **chose** to engage in a game of "hide the ball." This choice made it necessary for Plaintiff to ask about Defendants computer systems, data management, communication systems and measures taken to locate and produce incident reports to discover why no documents evidencing communications exist over a 20-year period, why so many reports were not disclosed, how to find the remaining reports and how the issues can be avoided in the future. This is the only way Plaintiff and the Court can ensure that Venetian complies with the Discovery Rules.

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[10] "Identity of, description of and policies and procedures for the use of all internal systems for data management, complaint and report making, note keeping, minute/transcript taking and employee e-mail, messaging and other communication systems and description of all employee accounts for said systems"

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

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702-735-0049 Fax: 702-735-0204

F. The Discovery Commissioner Should Deny Defendants' Motion Protective Order on the Subsequent Incident Reports Because They Are Admissible to Prove Causation, Admissible to Prove Existence of a Dangerous Condition and Admissible to Prove Punitive Damages

A number of Plaintiff's discovery requests touch on the issue of subsequent incidents and other conduct.[12] The Discovery Commissioner should deny Defendants motion for a protective order on the Plaintiff's requests related to subsequent information because this information is admissible to prove: (1) the malice element of punitive damages, (2) causation and (3) the existence of defective or dangerous condition.

The Nevada Supreme Court "has previously held that evidence of subsequent, similar accidents involving the same condition may be relevant on the issues of causation and whether there is a defective and dangerous condition." *Reingold v. Wet "N Wild Nevada, Inc.*, 113 Nev. 967, 969, 944 P.2d 800, 802 (1997) *citing Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 416, 470 P.2d 135, 140 (1970); *see also Jeep Corp. v. Murray*, 101 Nev. 640, 646, 708 P.2d 297, 301 (1985). In other

[12] *See* RFP No. 7 (asking for documents related to prior and subsequent slip and falls), RFP Nos. 12 and 23 (asking for documents related to prior and subsequent slip testing), RFP No. 13 (asking for prior and subsequent documents related to coating placed on the marble floors) , RFP No. 14 (asking for prior and subsequent security reports related to injury falls on marble floor), RFP No. 24 (asking for prior and subsequent communications related to the safety of the marble floors), RFP No. 25 (asking for prior and subsequent documents related to company meetings where the safety of the marble floors was discussed), RFP No. 26 (asking for prior and subsequent documents from contractors, subcontractors and flooring experts that discuss the safety of the marble floors), RFP No. 29 (asking for prior and subsequent guest complaints related to the safety of the marble floors), RFP No. 30 (asking for prior and subsequent quotes and estimates related to modifying the marble floors to increase their slip resistance), RFP No. 35 (asking for prior and subsequent claims forms, legal actions, complaints, security reports, computer lists, investigative documents and other memoranda related to slip and falls on marble floors), RFP No. 36 (asking for prior and subsequent entries in Venetian's Alliance System related to slip and falls on marble floors), RFP No. 37 (asking for documents related to Venetian's decision to remove and the removal and replacement of carpet with marble flooring), Interrogatory No. 1 (list of prior and subsequent lawsuits for slip and falls on marble floors), Interrogatory No. 2 (asking for the names of safety engineers employed by Venetian to perform accident checks prior to and subsequent to Plaintiff's fall) and Plaintiff's 30(b)(6) parameters (questions related to (1) the total number of prior and subsequent injury falls, (2) prior and subsequent actions taken to decrease the coefficient of friction on the marble floors, (3) prior and subsequent slip testing, and (4) prior and subsequent information relating to the removal/replacement of carpet with marble).

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words, the Supreme Court ruled that subsequent accidents are not only discoverable, but that they meet the even higher standard of admissibility a trial.

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

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

> In proving that [the] defendant.... acted in conscious disregard of the safety of others, plaintiff...was not limited to [defendant's] conduct and activities that directly caused her injuries. The conscious disregard concept of malice does not limit an inquiry into 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

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702-735-0049 Fax: 702-735-0204

> 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).

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

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Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

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) to show defendant's intent at time of alleged breach of fiduciary duty); *Lakin v. Senco Prods., Inc.*, 925 P.2d 107, 116 (Or. Ct. App. 1996) (affirming introduction of evidence relating to the defendant's post-accident conduct); *Chart v. General Motors Corp.*, 258 N.W.2d 680, 683-84 (1977); *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 902 (Tenn. 1992) (in assessing punitive damages, jurors must 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"); *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.)

Subsequent conduct is admissible to prove punitive damages because it is relevant to the defendant's culpable state of mind, i.e. malice: "It is indeed manifest that subsequent conduct may tend to throw light upon the immediate occurrence under investigation, especially where mental attitudes are important, such as a conscious failure to observe due care, and the like." *Hallman*, 196 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;

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702-735-0049 Fax: 702-735-0204

Coale v. Dow Chem. Co., 701 P.2d 885, 890 (Colo.App. 1985); *Palmer,* 684 P.2d at 204; *Hoppe,* 779 F.Supp. at 1424-1425; *Peshlakai v. Ruiz*, 39 F. Supp. 3d 1264, 1341-43 (D.N.M. 2014).

At the time of trial Plaintiff bears the burden of proving punitive damages by clear and convincing evidence. NRS 42.005(1). NRS 42.005(1) requires Plaintiff to prove that Venetian acted with malice i.e. "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." NRS 42.001(3) (emphasis added). In other words, Plaintiff must prove Venetian's conduct is "culpable." *Countrywide Home Loans, Inc. v. Thitchener,* 124 Nev. 725, 739, 192 P.3d 243, 252 (2008). As held by many courts across the nation, Plaintiff can admit evidence of subsequent conduct at trial, including incident reports, to prove Venetian's culpable conduct. Because the standard of proof for admissibility at trial is higher than the standard for discoverability, it is axiomatic that the information is discoverable. *See* NRCP 26(a)(1) ("Information within this scope of discovery need not be admissible in evidence to be discoverable.") As such, a protective order on subsequent incident reports, evidence of other subsequent conduct, and testimony from Defendants' 30(b)(6) witness about incidents and conduct is improper.

G. The Discovery Commissioner Should Deny Venetian's Motion for a Protective Order Because the Prior and Subsequent Incidents and Documentation Are 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

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702-735-0049 Fax: 702-735-0204

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. **<u>The reprehensibility of the conduct of the defendant;</u>**
> 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 **<u>"the conduct involved repeated actions or was an isolated incident."</u>** *State Farm Mut. Auto. Ins. Co. v. Campbell,* 538 U.S. 408, 409, 123 S. Ct. 1513, 1516, 155 L. Ed. 2d 585 (2003); *see also Wyeth v. Rowatt,* 126 Nev. 446, 475, 244 P.3d 765, 785 (2010) (considering the defendant's "conduct involved repeated actions" when analyzing the reprehensibility.)

The discovery requests Defendants seek a protective order on – incident reports and other documents related to the slip resistance of the marble floors dating back to 2000 – directly relate to the "reprehensibility" of Venetian's conduct. This is because the more times individuals notified Venetian of the hazardous condition of their marble floors, the more reprehensible Venetian's conduct and the more punitive damages Nevada instructs the jury to award. Similarly, the more times Venetian acknowledged hazardous condition of their marble floors and failed to remedy it, the more reprehensible Venetian's conduct and the more punitive damages Nevada instructs the jury to award. As each prior incident shows another time Venetian was notified of the issue, all prior

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702-735-0049 Fax: 702-735-0204

incidents are relevant to the jury's determination of the amount of punitive damages. Similarly, each unfavorable slip test report, correspondence or other document acknowledging are relevant to the jury's determination of the amount of punitive damages. Thus, because the incident reports and other documents from 2000 to present go directly to the reprehensibility of Venetian's conduct they cannot be the subject of a protective order.

H. The Discovery Commissioner Should Deny Defendants Motion for a Protective Order on Evidence Related to the 2008 Venetian Remodel Because It Is Relevant to Punitive Damages.

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 of marble in their casino. The choice surrounding this increased hazard including correspondence, work orders and other documentation related to the 2008 remodel is thus relevant to punitive damages. The fact that the remodel occurred eight years ago is irrelevant because conscious disregard has no time limit. Any document that indicates Venetian knew its marble floors were hazardous and consciously disregarded that hazard – whether dated January 1, 2000 or January 1, 2016 – is admissible and relevant to prove Plaintiff's case for punitive damages.

The fact that the remodel allegedly occurred in a different location then Plaintiff's fall is also irrelevant.[13] The issue is not where the remodel occurred it's whether Venetian knew its marble

[13] It is also worth nothing Venetian already litigated this issue and the Court previously decided it in during the hearing on Plaintiff's objection to Venetian's initial motion protective order. Venetian's initial motion for a protective order argued "Reports of prior slip and fall incidents, which occurred on different circumstances, and on different dates, in different areas of the property have no relevancy to the issue of whether Venetian had notice." (Exhibit "4" at 7:25-8:1.) In response to Plaintiff's objection to the Discovery Commissioner's report and recommendations Venetian then: "Reports of prior slip and fall incidents, which occurred on different circumstances, and on different dates, in different areas of the property have no relevancy to the issue of whether Venetian had notice." (Exhibit "22" at 17:13-15.) At the hearing on the objection, the Court did not limit the scope of Plaintiff's request for production in relation to factually similar circumstances (wet vs. dry floor slips and falls as Venetian requested) or only to the immediate area of Plaintiff's fall (in the Grand Lux Café rotunda). As Venetian previously raised this argument before the Discovery Commissioner

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floors were unreasonably slippery and posed a high risk to guests but nonetheless consciously disregarded the danger. As such, all internal documents, memorandum or reports indicating concern regarding the increased number of incidents and/or the safety of the marble floors, regardless of the location of those floors, are discoverable because they are relevant to conscious disregard.

I. Plaintiff is Not Seeking Information Protected by Work Product

As Plaintiff explained the last time Defendants moved for a protective order on work product without first talking to Plaintiff: "The only documents Plaintiff seeks related to litigation are ones discoverable under the rules." (Excerpts of Plaintiff's Opp. to Defendants' Mot. for a Protective Order Regarding David Elliott's Deposition, attached as Exhibit "24" at 5:25.) "Plaintiff is not seeking non-testifying expert materials in violation of NRCP 26(b)(4)(D). (Defendants' Mot. at 9:10-12.) Plaintiff is not seeking draft reports in violation NRCP 26(b)(4)(B). (Defendants' Mot. at 9:12-17.)" (*Id.* at 5:26-6:1.) "**The undersigned is not in the habit of making frivolous discovery requests as Venetian suggests.** Of course, Venetian would know this if it conducted the mandatory meet and confer under NRCP 26(c)(1) and EDCR 2.34(d)." (*Id.* at 6:3-5.) The same statements are true here: Plaintiff is not seeking any information protected by NRCP 26(b)(4), the undersigned in not in the habit of making such frivolous discovery requests and Defendants would have known this had they properly conducted the mandatory meet and confer.

IV. OPPOSITION TO MOTION TO COMPEL

A. Standard of Review for a Motion to Compel

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

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

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and the Court, the proper place for it is a motion for reconsideration, not a new motion for a protective order.

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

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

B. Plaintiff Already Provided Defendants All the Information Plaintiff Provided to Thomas Jennings

During his Deposition, Mr. Jennings testified he reviewed a "spreadsheet" of slip and fall events which occurred within the Venetian. (Defendants' Mot. at Exhibit "S" at 84:25.) Defense Counsel confirmed "You didn't look at the actual reports, you just saw a spreadsheet?" to which Mr. Jennings replied "Correct." (*Id.* at Exhibit "S" 86:1-3.) Plaintiff provided Defendants with a copy of the email to Mr. Jennings with this attached spreadsheet. (Defendant' Mot. at 12:19-21.) Defendants now bring a second motion to compel nonexistent documents despite the fact they know Plaintiff already provided all requested documents.

Defendants previously made this same motion to compel on July 17, 2019. (*See* Excerpts Defendants' July 12, 2019 Mot. to Compel at 28:5-29:6, attached as Exhibit "25" *cf.* Defendants' Mot. at 26:17-24.) On July 25, 2019 Plaintiff filed her opposition to Defendants' motion to compel documents from Thomas Jennings, P.E. (Exhibit "23.") Plaintiff's opposition stated:

> On July 22, 2019 Defendant served its 16th supplement to its list of witnesses and production of documents for early case conference. (Defendant's 16th 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 countermotion to compel** documents provided to Mr. Jennings, and this issue is therefore moot.

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(*Id.* at 8:20-9:2.) Plaintiff's counsel was crystal clear: counsel already provided Defendants with all the documents given to Mr. Jennings. Defendants know this is the truth because, by singing the opposition, Plaintiff's counsel certified under NRPC 11 that the factual contentions, including this one, have evidentiary support. *See* NRCP 11(b)(3). Again, if Plaintiff was not abundantly clear before: **she already provided Defendants all the documents provided to Mr. Jennings.** Absent an absurd request to gain free access to all of counsel's confidential emails, phone records and case files – which is not going to happen - Plaintiff has no idea what Defendants seek to accomplish with this motion.

C. The Discovery Commissioner Should Deny Defendants Motion to Compel Plaintiff to Produce Defendants' Incident Reports Because Defendants Already Have Their Incident Reports in Their Possession

Defendants also request the Discovery Commissioner compel Plaintiff to produce the copies of Defendants internal documents (incident reports) which Plaintiff has in her possession. This request is beyond absurd. First, Defendants already have every single one of the internal documents; Defendants' don't need Plaintiff to provide them. The purpose of discovery is to "discover" information. Defendants cannot "discover" documents which they possess because they discovered them when they created them. NRCP 26(b)(2)(C) states the Court should limit discovery if it determines "the discovery sought… can be obtained from some other source that is more convenient, less burdensome or less expensive." The current circumstance is exactly what the drafters had in mind when they wrote this rule. Defendants request Plaintiff prepare and produce information already in their possession. It is infinitely more convenient and infinitely less expensive for Defendants to look in their own file, organized according to their own preferences, rather than wait 30 days for Plaintiff to produce hundreds of pages of unorganized incident report.

More significantly, Venetian does not want Plaintiff to produce all of Defendants' incident reports, but only the ones "which have not been identified by Venetian in this action pursuant to NRCP 16.1 and NRCP 34." (Defendants' Mot. at 27:15-18.) In other words, after playing hide-the-ball and selectively disclosing incident reports in at least four open cases, Venetian wants Plaintiff to tell Venetian what incident reports she knows about before Venetian discloses any addition reports

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so Venetian knows exactly which incident reports it can continue safely hiding. The Discovery Commissioner should not permit such a blatant attempt to circumvent the discovery rules.

D. The Discovery Commissioner Should Deny Defendants Motion for Plaintiff to Pay Defendants' Costs to Retake Mr. Jennings Deposition Because Defendants Cannot Satisfy the Standard for Such Sanctions Under NRCP 30(d)(2)

Plaintiff does not oppose allowing Defendants to retake Mr. Jennings deposition regarding his supplemental report submitted on May 30, 2019 because both Defendants and Mr. Jennings were underprepared for questioning on this report at the deposition which took place a mere three days after the supplemental report was written. Although Mr. Jennings entire file should have been produced before or at the deposition, Defendants were not prejudiced by this failure because Defendants possess all the relevant information – the incident reports – which Defendants claim Mr. Jennings did not bring for them. Defendants were therefore more than capable of questioning Mr. Jennings on their own internal documents during his deposition. Nonetheless, in the spirit of cooperation Plaintiff agrees to allow Defendants retake the Mr. Jennings' deposition on this on the sole issue of the spreadsheet of the 196 incident reports Mr. Jennings reviewed.

NRCP 30(d)(2) states a "court may impose an appropriate sanction — including the reasonable expenses and attorney fees incurred by any party — on a person who impedes, delays, or frustrates the fair examination of the deponent." Cases interpret the corresponding FRCP 30(d)(2) to including situations where an individual "engag[s] in hostile, uncivil, and vulgar conduct" at a deposition, where "a deponent refuses to answer a question." *See, e.g. GMAC Bank v. HTFC Corp.*, 248 F.R.D. 182, 187 (E.D. Pa. 2008), *Maxwell v. S. Bend Work Release Ctr.*, No. 3:09-CV-008-PPS-CAN, 2010 WL 4318800 (N.D. Ind. Oct. 25, 2010). NRCP 30(d)(2) only permits the Court to impose expenses and fees for a deposition on the "person who impede, delays, or frustrates" the deposition. NRCP 30(d)(2). Defendants request the Court hold "Plaintiff [] responsible for all costs associate with that [the second] deposition" of Mr. Jennings. (Defendants' Mot. at 27:23-4.) Defendants' motion, however, does not allege Plaintiff or her counsel did anything to impede, delay or frustrate the deposition of Mr. Jennings. (*See generally* Defendant's Mot.) Defendants' motion lacks such argument because neither Plaintiff nor her counsel impeded, delayed or frustrated Mr.

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Jennings' deposition. Because Plaintiff did not impede, delay or frustrate Mr. Jennings' deposition an award of attorney's fees and costs for the second deposition would be improper.

V. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests the Discovery Commissioner deny Defendants' motion for a protective order and motion to compel in its entirety.

DATED this 29th day of August, 2019

THE GALLIHER LAW FIRM

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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 OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER AND OPPOSITION TO DEFENDANTS' MOTION TO COMPEL** was served on the 30 day of August, 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 August 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 1

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.
_____/

DEPOSITION OF GARY SHULMAN

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

On Wednesday, April 17, 2019
At 3:15 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

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14 * * * * *

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I N D E X

16

17 WITNESS PAGE
GARY SHULMAN
18 Examination By Mr. Galliher 3
Examination By Mr. Royal 30
19 Further Examination By Mr. Galliher 67
Further Examination By Mr. Royal 72
20 Further Examination By Mr. Galliher 74

21 EXHIBITS PAGE
Plaintiff's:
22 1 Color photocopies, two pages 38

23 Defendants':
A Mike Royal e-mail of June 29, 57
24 2018

25 -oOo-

Page 3

1 GARY SHULMAN,
2 having been first duly sworn to tell the truth, the
3 whole truth and nothing but the truth, was examined
4 and testified as follows:
5
6 EXAMINATION
7 BY MR. GALLIHER:
8 Q Would you state your name, please.
9 A Gary Shulman.
10 Q And your address.
11 A 10263 Jamapa Drive, Las Vegas, Nevada 89178.
12 Q Gary, have you ever had your deposition
13 taken before?
14 A No.
15 Q You understand today that you are under
16 oath?
17 A Yes.
18 Q And the oath you've taken carries with it
19 the same solemnity as if you were testifying in court
20 before a judge and a jury.
21 A Yes.
22 Q Do you understand that?
23 A Yes.
24 Q It also carries with it the penalties of
25 perjury. Do you understand that?

Page 4

1 A Yes.
2 Q A little general background first. How long
3 have you lived in Las Vegas?
4 A Just about 13 years. In May, it will be 13
5 years.
6 Q Where did you come from?
7 A At the time I was living in California for
8 90 days. I was living in Marietta near Temecula where
9 I worked for a casino called the Pechanga that was
10 there. And before that, I was in a casino in Arizona,
11 in Scottsdale, Arizona, for approximately three years.
12 Q And when you came to Las Vegas, was there a
13 reason why you relocated to Las Vegas?
14 A Yeah. I wanted to be -- you know, my
15 family, I have a brother and lot of cousins here. I
16 also wasn't real happy in California, and I knew the
17 Venetian at the time was considered a premier property
18 to work in and so that's why I came here. But it was
19 mostly to be with family.
20 Q When we talk about family, are you married?
21 A Yes.
22 Q What's your wife's name?
23 A Ellen.
24 Q Any children?
25 A She has a daughter; yes.

Page 5

1 Q Now, when you relocated to Las Vegas to go
2 to work at the Venetian, is that the reason you came
3 to town, apart from family, to go to work at the
4 Venetian?
5 A Yes.
6 Q And when you started at the Venetian, what
7 was your position?
8 A Table games supervisor.
9 Q Tell me what a table games supervisor does.
10 A We basically circulate among certain
11 sections and different sections of table game areas,
12 being a host to the guests, and also trying to
13 supervise the dealers, try and catch mistakes.
14 But basically, you know, some people play on
15 credit, so I would process paperwork for someone who
16 has a credit line and wants to take money out right at
17 the table. And, like I said, be a host, you know, get
18 the waitress if they need a cocktail, a cigarette
19 girl, ashtrays. Just basically a host to the guests.
20 Q Now, did there come a time when you were
21 employed at the Venetian that your job title changed
22 in any way?
23 A No.
24 Q So would it be fair to state, then, for the
25 entire 13 years you were employed at the Venetian, you

Page 6

1 were a table games supervisor?
2 A That's correct. A little less than 13
3 years, but...
4 Q A little less than 13 years?
5 A Yes.
6 Q How far did you go in school?
7 A Excuse me?
8 Q How far did you go in school?
9 A I have a bachelor's degree from Colorado
10 State University.
11 Q In what discipline?
12 A Business administration.
13 MR. GALLIHER: Off the record.
14 (Discussion off the record.)
15 BY MR. GALLIHER:
16 Q All right. I'm here today to talk to you
17 about a fall which occurred at the Venetian Hotel and
18 Casino on November 4, 2016. And before I get into the
19 fall, you were subpoenaed to today's deposition; is
20 that right?
21 A That's correct.
22 Q Now, in response to that subpoena, did you
23 contact my office?
24 A Yes, I did.
25 Q And did you and I have a conversation about

Page 7

1 today's deposition?
2 A Yes, we did.
3 Q And did you come by the office and meet with
4 me about today's deposition last week?
5 A Yes.
6 Q And did we discuss your version of what
7 happened?
8 A Yes.
9 Q And did I also show you the video
10 surveillance?
11 A Yes.
12 Q And I showed it to you two or three times;
13 is that right?
14 A Yes.
15 Q All right, so I want to talk to you about
16 that fall. And you've seen the video surveillance?
17 A Uh-huh.
18 Q Did you see yourself in the video
19 surveillance?
20 A Yes.
21 Q Why don't you start with what you remember
22 about the fall itself on that date.
23 A I remember getting relieved to take a
24 30-minute break. We get three 30-minute breaks every
25 day, traditionally working two hours at a time.

Page 8

1 As I go on break, I heard a noise and I
2 looked a little bit to my right and I noticed a lady
3 down on the marble area near one of the columns very
4 close to the Grand Lux, in between the Grand Lux Cafe
5 and the restrooms.
6 I went over to assist her. I did notice
7 that the floor was wet. It was some -- it was wet
8 pretty much near where she fell. I also saw some -- a
9 little bit of liquid at the base of the column that
10 she was next to.
11 I went to get PAD, our public area
12 department, to come and clean it up. I called for
13 security, and basically waited for all the
14 appropriate; people to get there and then I left.
15 Q When you say you approached the lady on the
16 floor, did you have any conversations with her?
17 A I asked her if she was okay and she said
18 that she hit her elbow, but other than that, she
19 thinks she was okay.
20 Q Now, you mentioned that you saw liquid on
21 the floor. Do you know what it was? Was it clear?
22 Was it not clear?
23 A It was pretty much clear. Most of it was on
24 like a black area of the marble. It was kind of hard
25 to tell exactly. I mean, could be a number of things.

Page 9

1 Vodka, water, maybe even coffee. I didn't really look
2 to see what it was. I was basically concerned for the
3 guest.
4 Q And how much liquid, if you can quantify it,
5 was on the floor when you approached?
6 A I would say equivalent to half a cup that
7 you have in your hand right now.
8 Q So this cup is 16 ounces, so we would say
9 roughly eight ounces of liquid?
10 A Yeah. It's hard for me to be exact with
11 that.
12 Q Did you see any colored liquid or did it
13 appear to be clear?
14 A It just appeared to be clear.
15 Q So if you were to give us your best estimate
16 of what you thought you saw on that floor, would it be
17 water or something else?
18 A It would be water or something else. I
19 mean, there's -- yeah, there's different things that
20 are clear. Someone could have a vodka on the rocks
21 and spill a little when they walk by. I really didn't
22 pay much concern, even up until now as to what it was.
23 Q But what you did know is that the floor was
24 wet when you approached this lady?
25 A Yes. Yes.

Page 10

1 Q And it appeared that there was approximately
2 eight ounces worth of liquid on that floor?
3 A I would say if you were -- I mean, I'm kind
4 of guessing a little bit, but if you were to gather
5 everything up, it might be eight ounces.
6 Q Can you give me an idea of the size of the
7 spill itself?
8 A The size of the spill, I know on the black
9 marble it was basically just like a small area like
10 that. And then there was drops that kind of lead to
11 the bottom of the column that she was next to.
12 Q And when you drew your little circle, if I
13 was to give you a circumference, it looks to me like
14 your circle is probably three to four inches in
15 circumference; is that right?
16 A That's about right. Yeah, it wasn't real
17 big.
18 Q And then, apparently, there were sprinkles
19 or spots of water that led toward the column?
20 A Yes.
21 Q Now, how long were you at the scene of the
22 fall?
23 A I would say at least 10 minutes.
24 Q So you spent approximately 10 minutes there.
25 And as I understand your testimony, did you also

Page 11

1 notify security of the fall?
2 A I believe I called surveillance and they
3 notified security. I may have called security. This
4 is two and a half years ago. I think I notified my
5 manager. Actually, her name was Chris Tonemah, and I
6 think she called security.
7 Q But you said something about you notified
8 the PAD people.
9 A Yes, I did. Actually went into the bathroom
10 to get them. It was a lot quicker because there's
11 always someone in there.
12 Q When you went into the bathroom, did you
13 find any PAD people there?
14 A Yes.
15 Q Do you remember whether it was a male or
16 female or both?
17 A It was just a male.
18 Q So you found a male there. Did you see a
19 female PAD employee in that bathroom or anywhere
20 nearby?
21 A Not that I recall.
22 Q Can you give me your best estimate of how
23 long it took the PAD people to arrive at the scene?
24 A It was very quickly. After I went into the
25 bathroom I pointed out to them, I said, you know,

Page 12

1 There's a lady down, you know, she slipped on
2 something that was wet. If you could please clean
3 that up and also clean up the base of the column where
4 there's more drops, I don't want anybody else
5 slipping.
6 Q Did you have that conversation with the
7 male?
8 A Yes. It was an Hispanic male.
9 Q And to this date, do you know his name?
10 A No, I don't.
11 Q Now, how long after you had the conversation
12 with this male did he arrive at the scene of the fall?
13 A Just a matter of seconds, really. I went
14 into the bathroom and waved him out and pointed to the
15 area, and then told him basically what needed to be
16 done and went there.
17 Q And did he bring anything to clean up the
18 spill?
19 A Yeah, yeah. He had a mop and a bucket and I
20 think he put one of them yellow signs there. I can't
21 remember, but could have been a yellow sign they put
22 down that say "Wet Floor."
23 Q And did you observe him actually clean up
24 the spill?
25 A Yeah, yeah.

Page 13

1 Q So I mean, as you testify here today, was
2 there any doubt in your mind that there was water or a
3 clear liquid on the floor as you approached the fall
4 scene?
5 A No, there was no doubt in my mind. The
6 floor was wet.
7 Q And do you know whether you saw any water or
8 liquid on the clothing of the woman that fell?
9 A I don't recall any -- any part. I didn't
10 really look for that, but, no, I didn't recall seeing
11 anything wet on her.
12 Q Sounds like basically what you did is,
13 you -- did you actually see the fall or did you
14 approach her after the fall?
15 A I approached her after the fall.
16 Q And something drew your attention to the
17 scene. Was it a noise?
18 A It was a noise; yeah.
19 Q And so you apparently zeroed in on the scene
20 of the fall shortly after it happened?
21 A That's correct.
22 Q And then when you saw the lady down, you
23 then approached her to make sure that she was okay?
24 A Yeah, and to advise her to stay down until
25 we can get help to make sure she's okay.

Page 14

1 Q And is that what you did; you advised her to
2 stay down?
3 A Yes.
4 Q Until help arrived?
5 A Yes.
6 Q So do you know how long after the fall the
7 security officer arrived?
8 A It was a good -- at least 10 minutes, maybe
9 15.
10 Q And have you ever experienced or seen falls
11 before at the Venetian?
12 A I can't say that I have, no.
13 Q So did that seem like an unusually long
14 period of time in your view, or not?
15 A Usually they come much quicker than that;
16 yeah.
17 Q So about 10, 15 minutes later the security
18 officer arrived. Now, do you remember what color
19 uniforms they wear?
20 A Some have a blue shirt with I think black
21 pants, and then when you get to the next level, the
22 supervisory level of security, usually a suit and tie
23 just like I was.
24 Q And in the video, there's other people shown
25 wearing suits and ties. Can you tell me who they work

Page 15

1 for?
2 A I know one worked for I believe the front
3 desk.
4 Q And anyone else?
5 A I think there was one other person there. I
6 can't remember where, what department that person
7 worked in.
8 Q Now, you mentioned that you were employed at
9 the Venetian for 13 years. And are you currently
10 employed at the Venetian?
11 A No, I'm not.
12 Q And when did you leave the Venetian?
13 A I was terminated officially on January 23rd
14 of 2019.
15 Q And what was the reason for your
16 termination?
17 A They said I made a comment that made another
18 team member feel threatened.
19 Q And did you make that comment?
20 A I made the comment, but not -- it was not a
21 threat in any way.
22 Q Did you, as a result of being terminated at
23 the Venetian, file for unemployment?
24 A Yes, I did.
25 Q And did you receive unemployment benefits?

Page 16

1 A I did.
2 Q Tell me how that happened.
3 A Well, when you first fill out online that
4 you are terminated, there is a -- I guess a little bit
5 of an investigation that the Department of Employment
6 does. And they came to the conclusion that the
7 comment I made was nothing more than an isolated
8 comment that was taken out of context and did not
9 constitute any misconduct in the workplace.
10 Q Did you have any problems, like warning
11 notes and so forth, at the Venetian before this
12 comment when you were terminated?
13 A I had a number of problems for about six
14 months before this incident.
15 Q When did they start?
16 A They started around March of 2018.
17 Q And as you look back on those events, what
18 is your feeling about the problems that surfaced at
19 the Venetian regarding you?
20 A Well, I'm, you know, very disappointed and
21 very upset at the Venetian. I received what I believe
22 was some retaliation, intimidation, harassment. I
23 received three written warnings in a two-week period
24 for things that nobody ever got any discipline for,
25 three writeups with potentially only one mistake on my

Page 17

1 part.
2 One of the warnings was because I didn't
3 catch someone else's mistake. Another one was, I
4 chose to sit down -- I was standing for an hour
5 waiting in a closed pit with no chips on the table.
6 We were filling up the tables with chips.
7 It's a well-known fact over there I have
8 really bad arthritis in my hip, so I sat down. And
9 they brought me in and gave me a written warning for
10 that.
11 And all three of these written warnings they
12 chose not to use any progressive discipline, just skip
13 a couple of steps. And that was very upsetting to me
14 because I've seen these things happen for 13 years
15 with nothing more than a slap on the hand usually.
16 Q So did you have any -- was there any event
17 which predated what you have described was harassment
18 and so forth on the part of the Venetian?
19 A Well, there was a young lady, her name was
20 Rhonda Salinas, and I received what I believe was
21 harassment, belittling you in front of other people,
22 making false allegations that -- that you did things
23 that you never did.
24 And it got to the point where, about three
25 days before I was suspended pending investigation, I

Page 18

1 went to human resources to file a complaint about her.
2 And then a couple days later, I made this comment to a
3 gentleman named Barry Goldberg, who at the time I felt
4 was a friend of mine, from New Jersey and we were both
5 Philadelphia fans, and we talked.
6 And, you know, I said -- I really didn't
7 volunteer much information. I just said -- he said,
8 "How are you?"
9 I said, "Oh, kind of stressful, you know. I
10 don't like doing things like I did. I had to go
11 complain about someone."
12 And he said, joking around, "I hope it
13 wasn't me."
14 And I said, "No," I said, "but someone's in
15 a world of shit."
16 And I didn't know at the time I was talking
17 about me.
18 Q So you are talking about the event that
19 predated your termination at the Venetian?
20 A Yeah.
21 Q Well, I'm going back to -- you talked about
22 a pattern of harassment and intimidation on the part
23 of the Venetian for roughly a six-month time frame
24 before you were terminated.
25 A Uh-huh.

Page 19

1 Q Now, in your view, was there anything that
2 you were involved in before that six-month time frame
3 that you believe resulted in harassment and
4 intimidation?
5 A Yeah. There's a supervisor -- or an area
6 supervisor is the next level up. They got rid of the
7 term pit manager, so now it's table game supervisor,
8 area supervisor, and then you have like an assistant
9 casino manager.
10 The casino manager, Mike Connery(phonetic),
11 had brought us in maybe like eight months before all
12 this happened with the lady. Wanted to tell us that
13 we were going to be asked to watch more tables, we
14 were going to be asked to help each other out more.
15 If there's two people in one section, it's not that
16 busy, you see another person in another section that's
17 busier, then why don't you go over there and help.
18 So I found myself in a situation one day
19 where I was in Pit 4 with about I believe seven tables
20 to myself, which is quite a bit in that section. And
21 dealers were making mistakes; customers were upset
22 because I just couldn't service them, get them the
23 waitress, take their players card so they could get
24 rated and get their points for playing.
25 And I voiced my opinion on the way to break

Page 20

1 to another supervisor because I saw three other
2 supervisors in a pit, Pit 9, which is our salon, with
3 no players at all. And I made a comment to -- trying
4 to think of his name. I'll come up with his name.
5 I'll come up with it -- Ryan. Ryan Parker.
6 And I told him, "Really disappointed. You
7 know, I got dealers making mistakes. I got customers
8 complaining about service and there's three
9 supervisors in this section doing nothing, and I
10 thought we were supposed to help each other out."
11 And just, he kind of looked at me. He did
12 say, "Well, if you do find yourself needing help, call
13 us. We'll try and get some help." And then I went on
14 my way.
15 Then the next day I went into Pit 4, getting
16 the pit ready. We report at 11:45. One of the area
17 managers, his name is Abraham Ly, spelled L-y, came
18 over to me.
19 He said, "Between me and you, management is
20 really pissed off about that comment you made. Mike
21 Connery, the casino manager, takes that personally,
22 that you're suggesting that he doesn't know how to
23 staff the casino. And if I were you, I would be
24 watching your back. Management is out to get you."
25 I said to him, "What do you mean they're out

Page 21

1 to get me?"
2 He said, "Well, let me put it this way.
3 Every little thing you do is being watched, and
4 they're just waiting for you to make a mistake to
5 create a problem for you."
6 Q Well, now you've discussed this claim with
7 me in my office. Have you ever discussed this claim
8 with Mr. Royal? That's the gentleman next to you.
9 A Yeah.
10 No.
11 Q Okay. You've never discussed the claim with
12 him at any time?
13 A No. The last -- I only met with Mike Royal,
14 I believe it was on the 28th of November, 2018.
15 Q Well, so you did meet with Mr. Royal?
16 A I met with him, yeah, at the casino once.
17 Q At the casino?
18 A I thought you said did I meet with him after
19 these things happened.
20 Q No. I want to know if you met with him in
21 connection with the fall event which we're here about
22 today.
23 A Yes. I'm sorry, I did.
24 Q And when was this?
25 A November 28, 2018, I believe.

Page 22

1 Q And where was this?
2 A This was in the back area of the salon in
3 one of the private rooms. The rooms aren't numbered,
4 it would probably be Number 1 of 2. I'm not sure, I
5 don't work in that section.
6 Q Can you tell me about the meeting?
7 MR. ROYAL: Hold on a second. I'm going
8 to -- you are getting into attorney-client information
9 related to our discussion with an employee at the
10 time, and I'm going to instruct him not to answer.
11 MR. GALLIHER: Well, he can instruct you,
12 but you can answer if you want to whether he instructs
13 you or not.
14 BY MR. GALLIHER:
15 Q Let me ask this question preliminarily. At
16 the time you met with Mr. Royal in November 2018, had
17 you hired him as your attorney?
18 A No.
19 Q Had you paid him a retainer or any money to
20 represent you in connection with anything?
21 A No.
22 Q Have you asked him to represent you in
23 connection with anything?
24 A No.
25 Q All right, so you met with him and you are

Page 23

1 claiming attorney-client privilege.
2 Are you -- you are no longer employed at the
3 Venetian; is that right?
4 A That's correct.
5 Q All right. So subject to his objection,
6 which is, of course, made part of the record, I'm
7 going to again ask you the question of: Tell me about
8 the meeting.
9 A Well, basically he asked me, you know, what
10 I remember and what I don't remember.
11 I explained to him a lot of what I already
12 said happened, that I went over, I was heading towards
13 my break, I saw a lady that was down. I went over to
14 her and asked if she was okay. I noticed the floor
15 was wet.
16 At that time he said, "No, it wasn't wet.
17 You didn't see anything wet. You are mistaken."
18 And I said, "Well, I'm pretty sure it was.
19 I mean, that's why I called PAD to clean it up. In 13
20 years I've never called PAD to clean up a dry spot."
21 And he says, "But, no, no, there was nothing
22 wet there."
23 And at that point, I kind of became
24 concerned that I might get in trouble if I keep
25 disagreeing with him. So I just said, "Okay, whatever

Page 24

1 you say," and that was it.
2 Q You talked about this pattern of harassment
3 and threats and so forth on the part of the Venetian.
4 Did you have -- was there a pattern of
5 threats and intimidation and so forth on the part of
6 the Venetian before you had this meeting with
7 Mr. Royal?
8 A No.
9 Q And how soon after you had this meeting with
10 Mr. Royal did that start?
11 A I would say 30 to 60 days.
12 Q And did that continue up to the time that
13 you were terminated?
14 A Yes.
15 Q Approximately how many times were you
16 written up by the Venetian?
17 A In the entire 13 years or just like --
18 Q Let's start with the time that -- the time
19 up to the time that you had a meeting with Mr. Royal
20 in November of 2018.
21 A Before I met Mr. Royal?
22 Q Yes. In other words, at the time frame up
23 to the time that you met with Mr. Royal, how many
24 times were you written up by the Venetian?
25 A There was nothing for about three years and

Page 25

1 then there was a couple of minor things.
2 There was one incident approximately three
3 years ago from this coming May where a dealer made a
4 mistake sending the wrong amount of chips to a
5 customer, and I didn't catch it and I got a written
6 warning for that. That was the only thing that I
7 really was aware of.
8 In the very beginning when I was there two
9 or three years, I read my schedule wrong and didn't
10 show up, which is -- casinos really frown on that. So
11 I was given what they call a Career Decision Day where
12 you write down what you did wrong, what you plan on
13 doing to prevent it from happening again, and then you
14 have to take a day off, which could be a paid day off
15 if you have vacation time, or an unpaid day off.
16 Q So sounds at least like the written warnings
17 were kind of few and far between during these initial
18 years up to the time that you met with Mr. Royal.
19 A Oh, yeah.
20 Q Now, after you met with Mr. Royal, how many
21 written warnings did you receive from the Venetian?
22 A I received three that I knew about. Then I
23 found out there was a couple more put in my file
24 without me knowing about it, but they weren't written
25 warnings. One was called a note to file and another

Page 26

1 one was called a verbal coaching.
2 They said that they are allowed to do that
3 without telling you. I'm not sure why, but I didn't
4 know they were in there until we did this peer review
5 to try to recover my job.
6 So but as far as written warnings, which are
7 much more serious, there was three in a two-week
8 period when I don't think I had three in the whole 13
9 years before that or 12 years before that.
10 Q And that was within the months after you met
11 with Mr. Royal until the time you are terminated?
12 A That's correct.
13 Q You were terminated when?
14 A The official termination date is
15 January 23rd.
16 Q Of 2019?
17 A Yes.
18 Q All right, so you've got a little less than
19 a two-month time frame from the time you met with
20 Mr. Royal in 2018 in November.
21 And during that two-month time frame, how
22 many written warnings did you receive? You said
23 three?
24 A Yes.
25 Q And then you also said two other entries

Page 27

1 were made in your job file -- I mean your employment
2 file --
3 A Yes.
4 Q -- regarding a verbal coaching.
5 And what was the other one?
6 A One was a note to file. I gave a customer,
7 a player at the table -- if you are not being a rated
8 player meaning we don't have your name, we don't
9 really give out thousand-dollar chips or higher.
10 And a mistake was made and the gentleman
11 left with chips, but we got him very quickly back.
12 And he was a rated player, so we found out who we was
13 and we were able to account for those chips.
14 I was talked to about it. They said at this
15 time we're not taking any disciplinary action, you
16 know. They knew I had some problems at the time and
17 my father with Alzheimer's in New Jersey and just a
18 lot of stress from that. So that was basically it.
19 Q All right. So what I'm getting at is,
20 during that roughly 60-day time frame between the time
21 you met with Mr. Royal and the time you were
22 terminated, would it be fair to state that you
23 received more written warnings at the time you had
24 during your 13 years at the Venetian?
25 A Absolutely.

Page 28

1 Q And as you look back on that situation, do
2 you have an opinion regarding why that happened?
3 A Well, I believe that they were very upset
4 about me using my privileges under the Family Medical
5 Leave Act. I was getting lots of flareups with my
6 neck and my hip and I had to --
7 I was definitely using it more than I'm
8 accustomed to. Sometimes I wouldn't be able to come
9 to work. Sometimes I would have to have procedures
10 done where they burn away the nerves in my neck and
11 put steroids into my hip.
12 Repeat the question.
13 Q Well, so what I'm trying to determine, your
14 opinion why it is you started receiving all those
15 writeups after you met with Mr. Royal.
16 So are you telling me it had to do with your
17 health issues?
18 A Had to do with health issues; yes. I
19 frequently, maybe once a week, once every two weeks
20 would have to leave early or not come in at all. And
21 I know that they were upset because it creates
22 staffing problems when this happens.
23 Q Now, you apparently pursued unemployment.
24 Did you receive it?
25 A Yes.

Page 29

1 Q Did you prevail at your initial hearing
2 before the unemployment board? In other words, did
3 you win?
4 A Yeah, we won. They didn't show up.
5 Q That apparently -- did that have to do with
6 the initial hearing or the appeal?
7 A The initial hearing was just a finding from
8 the Department of Employment that there was no
9 misconduct.
10 Q And then did the Venetian appeal that?
11 A Then the Venetian appealed that.
12 Q And did you appear at the appeal hearing?
13 A Yes.
14 Q Did the Venetian appear?
15 A They did not appear; no.
16 Q So what was the result of that appeal
17 hearing?
18 A That the appeal was dismissed.
19 Q And so you ended up receiving your
20 unemployment despite the fact that the Venetian
21 contested it?
22 A Yes.
23 Q Have you understood all my questions today?
24 A Yes.
25 Q Anything you want me to repeat or rephrase

Page 30

1 for you?
2 A No.
3 MR. GALLIHER: All right. Pass the witness.
4
5 EXAMINATION
6 BY MR. ROYAL:
7 Q Okay. When is the last time you looked at
8 that video? Was it with Mr. Galliher?
9 A Yes, about a week ago.
10 Q Do you remember when I was -- I reached out
11 to you to try and meet before the deposition?
12 A Yes, uh-huh.
13 Q Did you tell Mr. Galliher about that, about
14 my effort to meet with you?
15 A I believe so; yeah.
16 Q And, first of all, why wouldn't you meet
17 with me, but you would meet with Mr. Galliher?
18 A Well, I've experienced and also seen other
19 things, just incredible, what I think are ethic
20 violations and integrity.
21 And after what they did to me, I really
22 didn't feel comfortable being affiliated in any way
23 from anybody that had anything to do with Venetian.
24 Q Okay. Is there something in our
25 communications and our interchange, since the time you

Page 31

1 first met me, that led you to believe that I was being
2 somehow dishonest with you in any way?
3 A I don't know if I want to use the word
4 "dishonest." You know, I -- I saw the floor was wet
5 and you didn't seem happy about me saying that.
6 Q Okay. I'm having trouble recalling this
7 entire exchange you are talking about.
8 A Okay.
9 Q So let me ask it this way. You asked me --
10 let me get back to that.
11 You asked if -- prior, if you would meet
12 with me, whether or not you would be compensated. Do
13 you remember that?
14 A Yes.
15 Q Do you remember my response to that?
16 A You said to contact Mr. Galliher.
17 Q I don't --
18 A You didn't?
19 Q No, I didn't.
20 A Or that you would check with the opposing
21 counsel.
22 Q Okay. Well, let me -- did you get
23 compensated by Mr. Galliher?
24 A I just have a check I saw to cash for $26.
25 Q What date did you meet with Mr. Galliher?

Page 32

1 A It was a week ago today, I believe.
2 Q In this office -- in his office?
3 A Yes.
4 Q And how long was the meeting?
5 A Approximately an hour.
6 Q And other than reviewing the video, did you
7 review anything else?
8 A No.
9 Q Did you look at any photos of the scene; do
10 you remember?
11 A I didn't look at them with Mr. Galliher. I
12 had looked at them when you sent me e-mails with the
13 photos included --
14 Q Okay.
15 A -- as attachments.
16 Q Did you provide Mr. Galliher with anything
17 that I had written to you?
18 A No.
19 Q What else did you tell Mr. Galliher about
20 our meetings, other than what you have already
21 testified to today?
22 A Nothing.
23 Q Did Mr. Galliher indicate to you that
24 Ms. Sekera, his client, was carrying some coffee in
25 her hand at the time she fell?

Page 33

1 A I don't recall.
2 Q Okay. Do you remember that?
3 A That she had a cup of coffee?
4 Q Right.
5 A No, I don't.
6 Q Okay. So as you sit here today, you don't
7 recall whether or not Ms. Sekera was carrying a
8 beverage at the time she fell?
9 A No. I was not aware of anything, any
10 beverage she was carrying at the time she fell.
11 Q Okay. But you did watch the video; correct?
12 A Uh-huh.
13 Q Yes?
14 A Yes.
15 Q And when you watched the video, did you
16 watch her fall?
17 A Yeah.
18 Q Okay. I'm going to show you the video. I'm
19 going to have you watch the video starting at
20 12:36:46. This is VEN019. I'm just going to have you
21 watch this.
22 A Okay.
23 Q Do you recognize the area -- before I start
24 it, do you recognize the area?
25 A Uh-huh.

Page 34

1 Q Yes?
2 A Yes.
3 Q And I'm going to point. Do you see
4 yourself? I'm going to point up here to the top left.
5 I believe that's you walking towards the area.
6 A Okay.
7 Q I'm going to start it now.
8 A Okay.
9 Q Here she comes. Okay, do you see that?
10 A Yes.
11 Q Now she's on the ground now, or the floor,
12 at 12:36:54. I stopped it. Now I'm going to go back
13 again and I'm going to stop it at 12:36:49.
14 A Okay.
15 Q Can you see whether or not she's got
16 anything in her left hand?
17 A Yes, it does look like she has a cup of
18 coffee.
19 Q Okay. I'm going to start it. She goes
20 down; okay?
21 A Uh-huh.
22 Q What happens to the coffee? Do you see?
23 A Yep.
24 Q Okay. And someone responds there. There's
25 a woman who responds, she picks up the cup. See that?

Page 35

A Uh-huh.
Q Yes?
A Right now; yes.
Q You just need to say yes or no. That's why I'm saying that.
A Okay.
Q At 12:36:57 you are approaching?
A Uh-huh.
Q Correct?
A Yes.
Q Okay. I'm going to stop right here at 12:37:01. Do you remember being in that particular position when you first arrived at the scene, talking to the -- the plaintiff is on the floor.
A Yes.
Q Do you remember there being a couple of women standing around?
A Yes.
Q And do you remember seeing this woman who would be to your right, she's got a cup in her hand?
A I don't remember her there. I mean, I was pretty much looking at the lady.
Q Okay. The lady on the ground?
A Yeah.
Q Okay. I'm going to start this again. And

Page 36

then there's this gentleman, a larger gentleman in a suit who comes and stands behind the woman. I stopped it at 12:37:05. You don't know who that is?
A Which one?
Q This gentleman in the dark suit.
A No, I don't know who that is.
Q Okay. So when you said -- okay. So at 12:37:12 on the video, you actually say something and then you leave.
Can you tell us what you did at that point?
A I basically -- I don't really recall the exact words, it's too long ago.
I said, "Okay. Everybody is here that you need to help you. I hope you feel better," and I left.
Q Okay. Just like that?
A I believe so; yeah.
Q Okay. Where was -- where was the liquid that you saw on the floor? Because at that point, the time I just stopped it, you were just standing barely in front of the woman on the ground -- on the floor.
Where was the spill?
A I saw the spill. It's kind of in between where the lady and this gentleman is.
Q Okay.

Page 37

MR. GALLIHER: When you say "this gentleman," talking about the large fellow in the foreground?
MR. ROYAL: This gentleman here?
THE WITNESS: Uh-huh.
MR. ROYAL: You need to say yes or no.
THE WITNESS: Yes.
BY MR. ROYAL:
Q Okay. Did you see anything in front of where she's -- the woman is on the floor when you approached?
A Yeah, I saw the floor was wet.
Q Okay. What part of the floor was wet? If I show you a photo -- let's say if I show you a photo -- here's one, VEN0140 -- do you recognize the area that's depicted?
A Yes.
Q Okay. And so if I show this particular photo, are you able to point to the area where there was water or something on the floor?
A Yeah. I saw it in this black area right here, and then there was a couple drops that were at the base of the column.
Q Okay. I'm going to ask you to mark what you just pointed to on VEN040. I want you to circle where

Page 38

you say there was something on the floor.
A Okay.
Q Okay. Can you make that darker, please?
A Do you want to make a circle?
Q No, I just want you to darken your circle.
A This spot?
Q Yes.
Now, is that the only area where you saw anything on the floor? Was there anywhere else?
A That's all I saw.
Q Okay. So, in other words, you didn't see anything, looking at the photo, to the right of that; is that correct?
A That's correct.
Q I'd like you to just initial down at the bottom left. Put your initials and today's date of 4/17.
A Okay.
MR. ROYAL: We'll mark that as "A."
MR. GALLIHER: Make it a joint exhibit.
MR. ROYAL: Okay, I'm fine with that. Mark it as "1."
(Plaintiff's Exhibit 1 marked for identification.)
/////

Page 39

1 BY MR. ROYAL:
2 Q All right. Let's look at this next photo,
3 VEN041. Do you recognize what's depicted there?
4 A This looks like the same area.
5 Q Okay. Are you able to, using a pen, also
6 mark this particular photo indicating where you saw
7 something on the floor when you first arrived?
8 A It was somewhere in this black area.
9 Q Make a dark circle.
10 A And, again, with scattered drops and then a
11 little bit of a collection at the base of the column.
12 Q Okay. So go ahead and sign that again. And
13 while you are doing that, for the record, you've made
14 a circle on both of those photos and you've had some
15 dots which you indicate, I assume, to be sort of drops
16 of something.
17 A Yeah, like a splash mark.
18 Q Let's just make that part of Exhibit 1.
19 We'll just include it with Exhibit 1, all right?
20 MR. GALLIHER: Okay.
21 BY MR. ROYAL:
22 Q Okay. So as far as you can recall, after
23 12:37:14, which is depicted on this video, you never
24 returned to the scene; is that correct?
25 A Correct.

Page 40

1 Q Okay. So you are done at that point?
2 A Yeah.
3 Q So you were there about -- what? -- ten
4 seconds? Sound about right?
5 A Total time?
6 Q Yeah.
7 A No, more like closer to 10 minutes.
8 Q Okay. Well, see how --
9 A Or seven minutes. If it's 12:37 -- what
10 time was that when I was walking away?
11 Q Well, you are walking away at 12:37:14.
12 When you arrived, it's 12:36:55. She's just fallen
13 and you are approaching. See that?
14 A Yes.
15 Q My question was, initially when you first
16 approached I asked, first of all, about, let's -- what
17 was your conversation with her?
18 A "Are you okay?"
19 Q Okay. What did she say?
20 A She said, "I hurt my elbow, but other than
21 that I'm basically okay."
22 Q Okay. Did she say she struck her head?
23 A She didn't say anything about her head.
24 Q Did she tell you that her back hurt?
25 A No.

Page 41

1 Q Did she tell you that she was wet?
2 A No.
3 Q Did you point out to her or say anything to
4 her about something that you saw on the floor?
5 A No.
6 Q I want you to watch -- we're going from
7 12:37:05 and I'm just going to let it run until you
8 walk away. 12:37:13 you walk away.
9 Okay. So you would agree that's probably in
10 the 10-, 15-second range?
11 A Yeah, but I think I come back.
12 Q Okay. That's my -- I'm asking you what you
13 did at that point.
14 A I thought you're talking about the total
15 time I was at the scene.
16 Q No, I'm just -- I'm sorry, I didn't mean to
17 be confusing. So you left and what did you do at that
18 point?
19 A I contacted my manager, Chris Tonemah.
20 Q And what did Chris Tonemah do?
21 A I believe she notified surveillance or
22 security or both. I may have notified one or the
23 other. I just don't recall.
24 Q Okay. I'm just going to fast-forward until
25 you come back and I want you to just keep watching.

Page 42

1 Okay. So you arrived back at 12:37:48?
2 A Uh-huh.
3 Q See yourself there?
4 A Uh-huh.
5 Q Yes?
6 A Yes.
7 Q And you are bent over and you are speaking
8 with the plaintiff, the woman on the floor; correct?
9 A Yes.
10 Q Okay. Anything else that you recall about
11 her? Anything she told you at this time as you were
12 talking to her?
13 A Nothing that I can recall.
14 Q Okay. Again, the only thing you recall her
15 saying to you about what she injured was her left
16 elbow?
17 A Yes. She didn't use the word "left," she
18 just said "elbow."
19 Q Okay, it's still running. You are standing
20 there, that other gentleman is standing behind her.
21 What are you waiting for at this point?
22 A I believe I'm waiting for an EMT.
23 Q And just for the record, it's 12:38:45. It
24 zooms in and you are talking with the gentleman in the
25 dark suit, a large gentleman. He's got his back to

Page 43

1 the camera. I believe his name is Louie Calleros.
2 Does that refresh your recollection at all?
3 A No.
4 Q Not somebody you worked with?
5 A No.
6 Q Okay, so I'm going to back up. Okay.
7 A Uh-huh.
8 Q Now, at 12:38:47 that's you talking to
9 Mr. Louie Calleros, or at least who I represented to
10 be Louie Calleros.
11 A Okay.
12 Q All right. That is you; correct?
13 A Yes.
14 Q Okay. I want you to watch. I'm going to
15 start it now. 12:38:47, I want you to watch yourself.
16 Where are you standing? Okay. All right.
17 Do you see what you just did? I stopped at
18 12:38:54. Did you see what you did?
19 A Yeah, I made some type of gesture.
20 Q Okay, let me go back again. I want you to
21 watch where you go. Start at 12:38:48. I want you to
22 watch your feet. Watch where you go.
23 Okay. Stop it again at 12:38:53.
24 Would you agree that you -- you walked
25 through the area that you have marked where there

Page 44

1 was -- you said there was water on the floor?
2 A I don't -- half of that marble is cut out,
3 so I can't -- I don't recall.
4 Q Okay. Now, you were pointing back in the
5 area of the restrooms; correct?
6 A Yes.
7 Q And what are you pointing at; do you recall?
8 I stopped it at 12:38:52. You were pointing back to
9 the restroom. What are you pointing at?
10 A I believe I was waving over a PAD person.
11 They wear black and white -- black and red, I'm sorry.
12 Q Did you see someone at that point?
13 A Yes.
14 Q Looks like you are -- again, you are having
15 a conversation with who I'll represent is Louie as you
16 are pointing; right?
17 That's what it looks like?
18 A Okay.
19 Q Does it?
20 A I don't recall conversing with him, but I
21 could have.
22 Q Okay. Now, at 12:38:58, you leave the scene
23 and we just see Mr. Louie Calleros. And I'll
24 represent that it looks like you walked towards the
25 area of the restroom.

Page 45

1 A Okay.
2 Q Would you agree with that?
3 A Yeah.
4 Q Now, you were on a restroom break; correct?
5 A I don't remember if it was my normal break
6 or a restroom break. I'm starting to think that it
7 was a restroom break because our breaks are typically
8 on quarter after or quarter of the hour.
9 And you are saying I approached at 12:37 so
10 I was probably taking my own restroom break, which
11 we're allowed to do if we need a break.
12 Q And when you left the scene -- I stopped it
13 at 12:39:06 and you are gone. And, in fact, we see a
14 woman now who has appeared on the scene in the top
15 right.
16 Would that be your supervisor?
17 A Yes.
18 Q What was her name?
19 A Chris Tonemah.
20 Q Okay. So at this particular time you've
21 gone to the restroom. Did you use the restroom at
22 that time; do you recall?
23 A I don't recall.
24 Q I'm going to allow this to run until you
25 come back. I've stopped it here at 12:39:21 and I'm

Page 46

1 just going to let it run a little bit. You return to
2 the restroom area.
3 Do you remember having a conversation with
4 the PAD people or someone else?
5 A I -- I remember instructing a PAD person to
6 come over.
7 Q Okay. Now, at 12:39:35, you are bent over
8 talking with the woman on the floor. Do you remember
9 that?
10 A Yes.
11 Q I'm sorry. Do you see that?
12 A Yes.
13 Q Okay. Now, at 12:39:43, another gentleman
14 arrives from the left, also in a suit.
15 Do you know who that is?
16 A I don't know who it was. I believe I was
17 told it was a front desk person, a team member.
18 Q Okay, now I'm going to stop right here.
19 There's a -- at 12:39:56, there is a gentleman from
20 PAD who starts mopping. Okay.
21 Do you see that?
22 A Yes.
23 Q At 12:39:58, I want you to see -- look at
24 where he is standing. Do you see where he's standing?
25 A Yeah.

Page 47

Q Okay.
A Yes.
Q Is that in the area where you recall seeing water that you have marked on Exhibit 1 today?
A Yes.
Q Okay. And that's where he is standing, that's the only area where you saw something on the floor other than the dots --
A Right.
Q -- from there leading to the column?
A Correct.
Q Okay. Okay. So while this is going on, it looks like there's -- at 12:40:03, we saw three PAD people in there.
Do you remember any conversations that you heard among the PAD personnel?
A No.
Q Do you remember any conversations that you had with security personnel who later came to the scene?
A No. I don't remember what was said, if I had a conversation with them.
Q Did you ever have any conversation with anyone to determine how this substance got onto the floor and how long it had been there?

Page 48

A No.
Q In the course of your job as a table games supervisor, did you have any kind of supervisory responsibility for people working in the Public Area Department?
A Could you repeat that?
Q Yeah. Did you ever have any supervisory responsibility for people who worked in the PAD department?
A No.
Q And as I understand it, this is the first time that you responded to an incident like this; is that correct?
A No. Well, as far as a lady falling, yes, we had numerous -- I would say almost once a day we have spills where we need to call PAD.
Q Okay. Okay. These are --
A "We" meaning me and other supervisors who oversee it, especially when there's glass broken.
Q Sure. And this would be spills in the gaming table area?
A Yeah. Traditionally right outside the area where the people are sitting, or usually it's in the marble walkways that they recently -- well, not recently, but a few years ago they put in.

Page 49

That's where people seem to either slip or drop things all the time.
Q Okay. Have you testified about everything you can recall regarding your conversations with the woman who was on the floor?
A Yes.
Q Okay. One moment here. Okay. Let me go back about the timing, then. I want to make sure I understand your testimony today as it relates to why you were -- why you were terminated from the Venetian. Because I feel -- I get a sense from your testimony that you feel that I'm somehow connected to this.
Am I reading that wrong? Do you feel like I'm somehow connected to your having been terminated from the property?
A I don't know at this time.
Q Well, what does -- what do you feel like my meeting with you had to do with anything associated with your employment?
A I don't really know how to answer that. It was just a lot of -- a lot of things that went against me in the form of discipline, after I met you, that were just kind of unique to what they usually discipline people for.
Q Okay. So I want to make sure, because

Page 50

Counsel went through this with you and he established that I met with you and then within two months you were terminated.
A No.
Q I mean he said I met with you in November of 2018.
A Right.
Q And you were terminated in January of 2019?
A Right.
Q So within two months of my meeting with you, everything went south and you don't know what to think of that; right?
A No, I really don't.
Q Okay. And you are sure about the timing?
A I mean as far as what I think about it, it seems -- it leaves me feeling suspicious.
Q Okay.
A Okay -- that there is some ulterior motive to terminate me.
Q Okay. And again, ulterior motives, you think it has something to do with what you told me in a meeting about what you saw when you arrived at the scene?
A It could be.
Q Okay. I've never said anything like that to

Page 51

1 you; right?
2 A Say that again.
3 Q I have never said anything to you that would
4 give you the impression that your job could be in
5 jeopardy?
6 A No.
7 Q Would it surprise you to learn that you
8 actually met with me in June of 2018?
9 A I may have had the date wrong.
10 Q Well, you would have had it a lot wrong.
11 A Yeah.
12 Q That's a lot earlier than November 2018;
13 isn't it?
14 A Yeah, it's true. Yeah, it would be.
15 Q If you met with me in June 2018 and all this
16 stuff started within six months or so -- I don't
17 know -- 60 days is what I understood from your earlier
18 testimony.
19 A Uh-huh.
20 Q Does that at all influence your thinking
21 about this connection you think might occur between
22 your meeting with me and ultimately being terminated?
23 A I don't know.
24 Q Well, did things start going south in July
25 of 2018?

Page 52

1 A They started going south in May.
2 Q Okay. Before you met with me --
3 A Uh-huh.
4 Q -- right?
5 A Yes.
6 Q Okay. So what was started going south in
7 May of 2018?
8 A Well, that's when I received the three
9 written warnings in a two-week period.
10 Q I see, okay. So because -- with the timing
11 that you testified about on direct, I was confused
12 because I thought you said you got these three
13 warnings between November of 2018 and January when you
14 were let go in January of 2019.
15 Did I understand that incorrectly?
16 A Say that again.
17 Q Okay. I understood that your testimony on
18 direct with Mr. Galliher was that you met with me and
19 then, within a very short period of time after that,
20 you got these three written warnings and then a couple
21 other things were put in your file and then you were
22 terminated.
23 A That sounds about right.
24 Q That's what you testified to?
25 A Yes.

Page 53

1 Q You just now testified that everything
2 started to go south in May of 2018 before you even
3 knew who I was.
4 A Uh-huh.
5 Q Correct?
6 A Yes.
7 Q So if I met with you in June of 2018, you
8 would have already received three warnings by that
9 time --
10 A That's correct.
11 Q -- in 2018?
12 A Yeah.
13 Q Okay. And so I'm just -- I'm trying to
14 figure out this connection that you have made that I
15 somehow played a role in getting warnings -- you
16 getting warnings prior to you ever knowing who I was
17 or ever meeting with me.
18 A Well, we're still investigating as to the
19 real reason I was terminated.
20 I am convinced that the reason they gave me
21 has nothing to do with me being terminated. Whether
22 it pertained to me not supporting the Venetian with
23 the slip-and-fall or whether it was their anger at me
24 using my FMLA privileges, we're still investigating
25 that.

Page 54

1 Q You say "we're investigating," who is
2 investigating?
3 A Me and other attorneys.
4 Q Okay. What attorneys?
5 A Christian Gabroy. I haven't hired anyone
6 yet.
7 Q Tell me then, what have you had attorneys do
8 for you?
9 A He represented me at the unemployment
10 hearing.
11 Q I see. And so is he going to -- did you
12 talk -- strike that.
13 Is he representing you now on some other --
14 A No.
15 Q -- thing?
16 A No.
17 Q You already got your unemployment; right?
18 A I'm presently receiving unemployment.
19 Q Okay. Right. So you are receiving
20 unemployment, but you still feel like that the
21 Venetian did something improper, you are
22 investigating. I assume you are considering filing a
23 lawsuit against Venetian.
24 A Absolutely.
25 Q Okay. And that's something that is still in

Page 55

1 the works because you are investigating; correct?
2 A Yes.
3 Q Okay. At the time you met with me in June
4 of 2018, you weren't considering suing the Venetian;
5 right?
6 A No.
7 Q That didn't happen until when? When did you
8 first think: I've got to consider suing the Venetian?
9 When did that first come to your mind?
10 A It first came to my mind when I was
11 suspended pending investigation. It was Tuesday
12 before Thanksgiving, which I think was November 20th,
13 and also a couple days before that when they brought
14 me in and I had recently -- I basically gave them six
15 months of many, many different incidents of
16 harassment. And they chose to ignore that and just
17 talk about this innocent comment I made.
18 Q Did you ever -- did I ever get linked into
19 this harassment thing?
20 A Not that I'm aware of.
21 Q Okay. In other words, up until today I've
22 never heard anything about this. So this is -- as I
23 gather it, you've made some connection prior to the
24 deposition today that I might have something to do
25 with you having been fired or terminated; is that

Page 56

1 correct?
2 A That's correct.
3 Q And that's why you wouldn't meet with me;
4 correct?
5 A Well, I just felt uncomfortable meeting with
6 anyone at Venetian at that point.
7 Q Okay. Because you thought maybe I had
8 something -- I might have -- I don't know.
9 A I just knew the reason I got terminated was
10 not the ones that they are listing on their paperwork.
11 And so I didn't -- I don't have -- I don't trust
12 anyone associated with the Venetian.
13 Q Okay. All right. So it's your testimony
14 today that when you and I met in June of 2018, that
15 you told me, "I saw water on the floor as I approached
16 her," and I said something to the effect of, No, you
17 didn't, wink, wink.
18 Correct?
19 A Correct.
20 Q So you got the impression from our meeting
21 that I was intimidating you?
22 A Yeah, that you didn't want me to be
23 truthful.
24 Q Okay. I was -- so your opinion at that time
25 is I was trying to get you to lie under oath?

Page 57

1 A Yes.
2 Q Okay. What's your e-mail address?
3 A Vegasgary1@gmail.com.
4 Q Did you ever get an e-mail from me?
5 A Uh-huh.
6 Q Yes?
7 A Yes.
8 Q Did you feel that I harassed or intimidated
9 you by e-mail?
10 A I really can't answer that. I don't think
11 so.
12 Q I'm going to show you a document that I'm
13 going to mark as Exhibit A.
14 (Defendants' Exhibit A marked for
15 identification.)
16 BY MR. ROYAL:
17 Q Please look at that. Have you seen this
18 before?
19 A Yes.
20 Q Okay. That's your e-mail address; correct?
21 A Yes.
22 Q Do you see the date? What's it dated?
23 A June 29th.
24 Q 2018?
25 A 2018, the day after we met.

Page 58

1 Q Right. And do you recall receiving this
2 from me?
3 A Yes.
4 Q Okay. I would like to -- and when you
5 reviewed this, by the way, and received this, did you
6 see something in here that you felt was incorrect?
7 A I'm going to have to read it again.
8 Q Okay. That's fine, go ahead.
9 A The only thing that is incorrect is in the
10 last part on the first page. I didn't get to the
11 second page yet.
12 It says, "I went into the restroom area to
13 advise PAD personnel to have them come to clean as a
14 precaution."
15 I told them I noticed it was wet. I didn't
16 say anything "as a precaution."
17 Q Okay, and -- and that's fine. Go to the
18 next page. Let me know when you are done reading the
19 next page.
20 A Again in the second paragraph, very similar
21 to the first one, or the last paragraph on the first
22 page, it says I didn't see anything on the floor, but
23 I did.
24 Q Okay.
25 A I don't remember really saying anything

Page 59

1 about "something other than a dry marble floor may
2 have caused her to fall." I don't recall that.
3 Q Okay. So is it your testimony today that
4 what's depicted here does not reflect what you told me
5 during our meeting of June 28, 2018?
6 Is that your testimony?
7 A Yes.
8 Q And so you read this when you received it;
9 right?
10 A Yes.
11 Q And you can see, like for example on page 2
12 of Exhibit A, Number 6, in parentheses, I wrote,
13 "Note, this is something I inferred, but which I need
14 confirmation." That relates to plaintiff did not
15 state to you that she slipped on any substance.
16 Do you see that?
17 A Yes.
18 Q Okay. That indicates to you that I wanted
19 to follow up with you on that particular point;
20 doesn't it?
21 A Yes.
22 Q Okay. Because I needed confirmation from
23 you?
24 A Uh-huh.
25 Q Now, you received this and you read it and

Page 60

1 you and I had subsequent communications; correct?
2 A Yes.
3 Q And --
4 A -- by e-mail only I believe.
5 Q Well, we also spoke on the phone. Do you
6 recall?
7 A I don't recall. We could have.
8 Q Okay. And so if something in here that I
9 wrote is incorrect, you would have corrected me;
10 right?
11 Actually, if I said there was nothing
12 with -- my understanding was you said there was
13 nothing on the floor. That would have raised some red
14 flags and you would have said, No, no, that's not what
15 I said. I'm sure there must be some communication
16 from you to me related to that -- right? -- correcting
17 it?
18 A I don't know.
19 Q But you would expect that. Because you are
20 testifying today that what is here on Exhibit A
21 representing that you had told me that you didn't see
22 anything on the floor, that that's completely false.
23 So I assume that you would have written me
24 and corrected me, especially when I asked you for
25 confirmation.

Page 61

1 A Well, I told you at the time that the floor
2 was wet and so I know it wasn't.
3 So I said I called -- I got the PAD over to
4 clean it up because I thought it was wet. I saw it
5 was wet and you just kept refuting me, basically, "No,
6 you are mistaken. It wasn't wet."
7 Q Up until today during this deposition, after
8 having met with Mr. Galliher on this matter and having
9 gone out and retained or conferred with attorneys
10 about suing the Venetian, have you ever communicated
11 to me that you -- after receiving this e-mail that we
12 marked as Exhibit A, have you ever communicated that
13 the information I put in there was incorrect?
14 A No.
15 Q Okay. So today's the first day that you
16 have decided to tell me that what I put in the e-mail
17 of June 28 -- 29th, 2018, here has something that is
18 incorrect?
19 A I didn't decide to tell you. I was forced
20 to tell you. This is a deposition and I'm under oath.
21 Q Okay. All right, so you didn't correct me
22 previously. Even though you had months to do it and
23 we had other communications, you never corrected me
24 and told me that, what I understood from our initial
25 meeting, is that you saw nothing on the floor, until

Page 62

1 today; correct?
2 A I told you that day there was something on
3 the floor, and I'm telling you today there was
4 something on the floor that was wet.
5 Q Okay. But in between when we were having
6 discussions and I sent you something in writing
7 saying, This is what I understand, you never corrected
8 me and said, No, that's not true?
9 A That's true; I never corrected you.
10 Q Right, okay.
11 You did read it before today. You did
12 understand that that was my understanding, but you
13 never responded and corrected me until today at your
14 deposition after you met with Mr. Galliher; correct?
15 A That's correct.
16 Q Okay, see if there's anything else here.
17 Do you remember Ms. Sekera apologizing for
18 falling?
19 A No.
20 Q Of course, you don't remember anything about
21 the coffee she was carrying; right?
22 A No.
23 Q You think today's the first time that you
24 noticed, in looking at that surveillance, that she was
25 carrying coffee? Is today the first time you noticed?

Page 63

1 A Yeah, that's the first time I noticed.
2 Q So when you're talking about stuff on the
3 floor, you never made any kind -- you didn't give any
4 consideration as to whether or not it's something that
5 could have come from her coffee cup; right?
6 A Yeah, I didn't relate anything to that
7 because I didn't see her fall.
8 Q Okay.
9 A But by the time I got there, I believe the
10 cup was on the floor or was in the other lady's hand.
11 I probably just assumed at the time that that was the
12 other lady's cup.
13 No, I -- I didn't see the incident. I just
14 saw her down on the ground.
15 Q Okay. You never made a connection between
16 Ms. Sekera holding a coffee cup in her left hand at
17 the time she fell and you seeing something on the
18 floor, like some foreign substance?
19 A No. I don't know anything about the cup of
20 coffee. I didn't even know she had one in her hand
21 because I got there after it left her hand.
22 Q When you spoke with her, did she say
23 anything to you about what she thought caused her to
24 fall?
25 A She didn't say anything about what caused

Page 64

1 her to fall.
2 Q And she never said anything to you about her
3 clothing being wet?
4 A No.
5 Q And the only thing that you saw on the floor
6 of a foreign substance was in the area you've
7 indicated on Exhibit 1 on those two photographs;
8 correct?
9 A Correct.
10 Q You don't know how long this -- or strike
11 that.
12 What you saw on the floor, you don't know
13 what it was; correct?
14 A Correct.
15 Q You don't know how it got there; correct?
16 A Correct.
17 Q You don't know how long it was there?
18 A Correct.
19 Q You are not aware of any kind of patrolling
20 that was being done by the PAD personnel in that area
21 prior to your arrival; is that correct?
22 A Correct.
23 Q We just had a PAD employee, Maria Cruz,
24 testify just before you today that, just within a
25 couple of minutes prior to this fall, she had walked

Page 65

1 through the area and didn't see anything on the floor
2 where you said you saw something on the floor.
3 Would that surprise you?
4 A I don't know if it would surprise me. They
5 walk by a lot of areas and miss them, so, no, that
6 doesn't surprise me.
7 Q Okay. So you would think that if that --
8 you described it like eight ounces. Maybe it looked
9 like someone had spilled something on the floor.
10 A Uh-huh.
11 Q Right?
12 A Yeah.
13 Q So eight ounces of water. Is that right;
14 eight ounces? So once you spill that, it would splash
15 pretty good; right? Even more than just three or
16 four inches?
17 A Could have. Could have been more. I don't
18 really know. Once it's on the floor, I don't really
19 know how to measure it.
20 Q Right. So you drew this little circle which
21 I think you said it was three or four inches in
22 diameter.
23 A Yes.
24 Q And some drops leading to the column.
25 A Yes.

Page 66

1 Q You would have expected that, had that been
2 there for four or five minutes, somebody would have --
3 before the woman got there, somebody would have
4 stepped in that -- I mean slipped or something; right?
5 MR. GALLIHER: Objection, calls for
6 speculation.
7 You may answer.
8 THE WITNESS: What?
9 MR. GALLIHER: I said, "Objection, calls for
10 speculation." But you may answer it if you can.
11 THE WITNESS: Repeat that question again.
12 BY MR. ROYAL:
13 Q If that water was there or that substance as
14 you drew it on Exhibit 1 -- if that was there for,
15 let's say hypothetically, three or four minutes before
16 this occurred, you would have expected somebody to
17 step in it at some point?
18 MR. GALLIHER: Same objection.
19 You may answer.
20 THE WITNESS: Yeah. I don't know if I would
21 expect someone to fall or not.
22 BY MR. ROYAL:
23 Q Or slip.
24 A Yeah, or slip. I can't really speculate on
25 that.

Page 67

1 Q You've never seen anyone slip before when
2 they stepped on some foreign substance on the marble?
3 A At the Venetian? No.
4 Q Okay. So this is the first time?
5 A Most of the time when there's a spill, we
6 get chairs out there right away and make like a little
7 circle around it so people don't walk in it.
8 Q So this kind of event is pretty rare?
9 A Yes.
10 Q In fact, it's the only event that you can
11 recall ever being personally aware of?
12 A Of a slip-and-fall.
13 Q Yes.
14 MR. ROYAL: Okay. Thank you.
15 THE WITNESS: You're welcome.
16
17 FURTHER EXAMINATION
18 BY MR. GALLIHER:
19 Q Just a couple questions if I may. I'd like
20 to refer you to page 2 again of the e-mail that Mike
21 sent you, and the second paragraph and I'm going to
22 read what he said. He said, "Based on our discussion,
23 I understand you can affirmatively state the
24 following."
25 Then let's go to Number 5. It says, "You

Page 68

1 advised PAD personnel in the restrooms of the
2 incident, not because you saw anything on the floor,
3 but because you assumed something other than a dry
4 marble floor may have caused her to fall."
5 Is that accurate?
6 A Not really. I never mentioned the word
7 "precaution" or — yeah.
8 No, I don't know. I told him it was wet and
9 needs to be cleaned up. That's all I told him.
10 Q All right, so that's not what I'm reading.
11 A That's correct, that's a little different.
12 Q All right, so let's go to Number 7.
13 Number 7 says, "You did not see any substance on the
14 floor other than possibly some drops of liquid in
15 front of where Plaintiff was positioned on the floor,
16 that likely came from her coffee cup on the way down."
17 Again, is that an accurate statement?
18 Something that you said?
19 A No, that's not accurate because the liquid I
20 saw was in a -- like behind her. And the spill from
21 the coffee, if that was her coffee, was in front of
22 her.
23 Q You just saw the video surveillance again --
24 correct -- and you saw the fall?
25 A Yeah, on the video.

Page 69

1 Q And would it be fair to state what you see
2 in that fall, you see the plaintiff's feet go out from
3 under her when she's holding the coffee cup in her
4 left hand?
5 A Yes.
6 Q And she then falls. And do you notice
7 whether or not the top comes off the coffee cup?
8 A In the video?
9 Q Yes.
10 A I didn't look for that; no.
11 Q All right. Now, again you testified in
12 response to Mike's questions that the slip-and-fall
13 that you saw this day, that you observed this day, was
14 a rare event; is that right?
15 A Yes.
16 Q And --
17 A That doesn't mean it doesn't happen. It's
18 just that, you know, people don't slip -- I work in a
19 carpeted area and I don't remember seeing any
20 slip-and-fall.
21 Q All right. So what you are talking about,
22 when you talk about "rare event," you don't see
23 slip-and-falls occurring on the carpeted area?
24 A Correct.
25 Q And so if, for example, the Venetian's

Page 70

1 entire casino floor were carpeted, would you agree
2 with me you probably would see less slip-and-falls?
3 A Oh, definitely.
4 MR. ROYAL: Objection, form; calls for
5 speculation.
6 BY MR. GALLIHER:
7 Q All right. So your answer is?
8 A Yes.
9 Q All right. So and do you know if anybody,
10 to your knowledge, has ever complained to anyone at
11 the Venetian about the fact that they persist in
12 having marble floors as opposed to carpet?
13 A We've had people complain when -- not just
14 slips, but when someone actually dropped a glass or
15 bottle and it shatters and goes all over the place.
16 And, yeah, I've had people say, you know, "Why do you
17 have these marble floors? Everything's going to break
18 and really shatter on these things."
19 And, well, it makes a more convenient to go
20 back and forth from one property to the other when
21 you're hauling luggage and so forth. I think that's
22 why they put it in.
23 Q And also for an aesthetic effect?
24 MR. ROYAL: Objection.
25 /////

Page 71

1 BY MR. GALLIHER:
2 Q These are actually very attractive floors --
3 are they not -- the marble floors?
4 A Yes.
5 MR. GALLIHER: That's all I have.
6 Make it quick, I got an hour to get to
7 dinner.
8 MR. ROYAL: Okay.
9 We can continue this.
10 MR. GALLIHER: What more could you ask?
11 MR. ROYAL: In fact, you know what? I want
12 to -- I'm going to reserve my right to. What more I
13 want to ask?
14 MR. GALLIHER: Well, I don't think there's a
15 right necessarily.
16 MR. ROYAL: That's fine. You said you had
17 to be somewhere.
18 MR. GALLIHER: I do, I do. I have to be
19 somewhere in an hour, but I don't necessarily want to
20 continue on.
21 MR. ROYAL: I can continue on as long as I
22 want.
23 MR. GALLIHER: That's fine. Then, have at
24 it.
25 MR. ROYAL: Okay. If you are going to put

Page 72

1 limitations on me, then --
2 MR. GALLIHER: No, not at all, but you just
3 had an hour of questions. I want to know how much
4 more you have to ask him that you haven't asked him
5 already.
6 MR. ROYAL: Okay. Can I?
7 MR. GALLIHER: Yeah, please.
8
9 FURTHER EXAMINATION
10 BY MR. ROYAL:
11 Q Just so I'm clear, Counsel asked you, from
12 Exhibit A, went over these items "6" and "7."
13 MR. GALLIHER: "5" and "7."
14 MR. ROYAL: Oh, I'm sorry. Okay. Was it
15 "5" and "7"?
16 MR. GALLIHER: Yes.
17 BY MR. ROYAL:
18 Q He went over numbers "5" and "7" on page 2
19 of Exhibit A, which you claim today is completely
20 untrue.
21 MR. GALLIHER: Objection.
22 MR. ROYAL: Correct?
23 MR. GALLIHER: Objection, misstates
24 testimony.
25 You may answer.

Page 73

1 BY MR. ROYAL:
2 Q Well, how much of it is true? How much of
3 Number 5 is true?
4 A Hardly any of it. Only at the beginning
5 where it says, I advised PAD personnel in the
6 restrooms of the incident.
7 Q Okay. And again, for clarity sake, you
8 never responded to me, ever, correcting that
9 particular fact until today at your deposition after
10 you met with Mr. Galliher; correct?
11 A Right. And it's possible I never even read
12 this whole thing if it's a three-page e-mail.
13 Q Well, but if I have something in writing
14 from you indicating you did, you would -- I assume
15 that might refresh your recollection?
16 A Something in writing that I --
17 Q Yeah. You responded to me, we communicated
18 about the e-mail. You responded to this; correct?
19 A I don't recall.
20 Q In fact, you asked me if you could have a
21 copy of the video so you could show it to your wife.
22 A That, I remember.
23 Q Okay. And you did that by e-mail; correct?
24 A Yes.
25 Q Okay. And your testimony today is you

Page 74

1 didn't see anything on the floor in front of the
2 woman. Nothing, no liquid or anything on the floor?
3 A No.
4 Q Okay. Is that correct?
5 A Correct.
6 Q Okay. All right, thank you.
7 A You are welcome.
8
9 FURTHER EXAMINATION
10 BY MR. GALLIHER:
11 Q Gary, you met with me last week and we
12 discussed this deposition in this case; is that right?
13 A Yes.
14 Q At any time during the meeting, did I advise
15 you to do anything other than tell the truth at
16 today's deposition?
17 A No.
18 MR. GALLIHER: Thank you.
19 MR. ROYAL: Thank you.
20 MR. GALLIHER: All right. We're done.
21 Thank you, Gary.
22 THE COURT REPORTER: Mr. Royal, did you want
23 a copy of both of these depositions?
24 MR. ROYAL: Yes, please.
25 (The deposition concluded at 4:37 p.m.)

1 REPORTER'S DECLARATION

2 STATE OF NEVADA)
)
3 COUNTY OF CLARK)

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

6 That I reported the taking of the deposition of the
7 witness, GARY SHULMAN, commencing on Wednesday,
8 April 17, 2019 at the hour of 3:15 p.m.

9 That prior to being examined, the witness was by me
10 duly sworn to testify to the truth, the whole truth,
11 and nothing but the truth.

12 That I thereafter transcribed said shorthand notes
13 into typewriting and that the typewritten transcript
14 of said deposition is a complete, true and accurate
15 transcription of said shorthand notes taken down at
16 said time, and that a request has not been made to
17 review the transcript.

18 I further declare that I am not a relative or
19 employee of counsel of any party involved in said
20 action, nor a relative or employee of the parties
21 involved in said action, nor a person financially
22 interested in the action.

23 Dated at Las Vegas, Nevada this _____ day of
_____, 2019.

24

25 _____
Pauline C. May, CCR 286, RPR

A

A-18-772761-C 1:6
able 27:13 28:8 37:19 39:5
Abraham 20:17
Absolutely 27:25 54:24
account 27:13
accurate 68:5,17,19 75:14
accustomed 28:8
Act 28:5
action 27:15 75:20 75:21,22
address 3:10 57:2,20
administration 6:12
advise 13:24 58:13 74:14
advised 14:1 68:1 73:5
aesthetic 70:23
affiliated 30:22
affirmatively 67:23
ago 11:4 25:3 30:9 32:1 36:12 48:25
agree 41:9 43:24 45:2 70:1
ahead 39:12 58:8
allegations 17:22
allow 45:24
allowed 26:2 45:11
Alzheimer's 27:17
amount 25:4
anger 53:23
answer 22:10,12 49:20 57:10 66:7 66:10,19 70:7 72:25
anybody 12:4 30:23 70:9
apart 5:3
apologizing 62:17
apparently 10:18 13:19 28:23 29:5
appeal 29:6,10,12,16 29:18
appealed 29:11
appear 9:13 29:12,14 29:15
APPEARANCES 2:1
appeared 9:14 10:1 45:14
approach 13:14
approached 8:15 9:5 9:24 13:3,15,23 37:11 40:16 45:9 56:15
approaching 35:7 40:13
appropriate 8:14
approximately 4:11 10:1,24 24:15 25:2 32:5
April 1:18 75:8
area 8:3,11,24 10:9 12:15 19:5,8 20:16 22:2 33:23,24 34:5 37:15,19,21 38:8 39:4,8 43:25 44:5 44:25 46:2 47:3,7 48:4,21,22 58:12 64:6,20 65:1 69:19 69:23
areas 5:11 65:5
Arizona 4:10,11
arrival 64:21
arrive 11:23 12:12
arrived 14:4,7,18 35:13 39:7 40:12 42:1 50:22
arrives 46:14
arthritis 17:8
ashtrays 5:19
asked 8:17 19:13,14 22:22 23:9,14 31:9 31:11 40:16 60:24 72:4,11 73:20
asking 41:12
assist 8:6
assistant 19:8
associated 49:18 56:12
assume 39:15 54:22 60:23 73:14
assumed 63:11 68:3
attachments 32:15
attention 13:16
attorney 22:17
attorney-client 22:8 23:1
attorneys 54:3,4,7 61:9
attractive 71:2
Avenue 1:16 2:3
aware 25:7 33:9 55:20 64:19 67:11

B

bachelor's 6:9
back 16:17 18:21 20:24 22:2 27:11 28:1 31:10 34:12 40:24 41:11,25 42:1,25 43:6,20 44:4,8 45:25 49:8 70:20
background 4:2
bad 17:8
barely 36:20
Barry 18:3
base 8:9 12:3 37:23 39:11
Based 67:22
basically 5:10,14,19 8:13 9:2 10:9 12:15 13:12 23:9 27:18 36:11 40:21 55:14 61:5
bathroom 11:9,12,19 11:25 12:14
beginning 25:8 73:4
believe 11:2 15:2 16:21 17:20 19:3 19:19 21:14,25 28:3 30:15 31:1 32:1 34:5 36:17 41:21 42:22 43:1 44:10 46:16 60:4 63:9
belittling 17:21
benefits 15:25
bent 42:7 46:7
best 9:15 11:22
better 36:14
beverage 33:8,10
big 10:17
bit 8:2,9 10:4 16:4 19:20 39:11 46:1
black 8:24 10:8 14:20 37:21 39:8 44:11,11
blue 14:20
board 29:2
bottle 70:15
bottom 10:11 38:16
break 7:24 8:1 19:25 23:13 45:4,5,6,7,10 45:11 70:17
breaks 7:24 45:7
bring 12:17
broken 48:19
brother 4:15
brought 17:9 19:11 55:13
bucket 12:19
burn 28:10
busier 19:17
Business 6:12
busy 19:16

C

C 1:24 75:4,25
Cafe 8:4
California 4:7,16
call 20:12 25:11 48:16
called 4:9 8:12 11:2,3 11:6 23:19,20 25:25 26:1 61:3
Calleros 43:1,9,10 44:23
calls 66:5,9 70:4
camera 43:1
card 19:23
Career 25:11
carpet 70:12
carpeted 69:19,23 70:1
carries 3:18,24
carrying 32:24 33:7 33:10 62:21,25
case 1:6 74:12
cash 31:24
casino 1:8 4:9,10 6:18 19:9,10 20:21 20:23 21:16,17 70:1
casinos 25:10
catch 5:13 17:3 25:5
caused 59:2 63:23,25 68:4
CCR 1:25 75:4,25
certain 5:10
chairs 67:6
changed 5:21
check 31:20,24
children 4:24
chips 17:5,6 25:4 27:9,11,13
chose 17:4,12 55:16
Chris 11:5 41:19,20 45:19
Christian 54:5
cigarette 5:18
circle 10:12,14 37:25 38:4,5 39:9,14 65:20 67:7
circulate 5:10
circumference 10:13 10:15
claim 21:6,7,11 72:19
claiming 23:1
clarity 73:7
CLARK 1:2 75:3
clean 8:12 12:2,3,17 12:23 23:19,20 58:13 61:4
cleaned 68:9
clear 8:21,22,23 9:13 9:14,20 13:3 72:11
client 32:24
close 8:4
closed 17:5
closer 40:7
clothing 13:8 64:3
coaching 26:1 27:4
cocktail 5:18
coffee 9:1 32:24 33:3 34:18,22 62:21,25 63:5,16,20 68:16,21 68:21 69:3,7
collection 39:11
color 2:22 14:18
Colorado 6:9

colored 9:12
column 8:9 10:11,19 12:3 37:23 39:11 47:10 65:24
columns 8:3
come 4:6 5:20 7:3 8:12 14:15 20:4,5 28:8,20 41:11,25 45:25 46:6 55:9 58:13 63:5
comes 34:9 36:2 69:7
comfortable 30:22
coming 25:3
commencing 75:7
comment 15:17,19 15:20 16:7,8,12 18:2 20:3,20 55:17
communicated 61:10 61:12 73:17
communication 60:15
communications 30:25 60:1 61:23
Company 1:9,11
compensated 31:12 31:23
complain 18:11 70:13
complained 70:10
complaining 20:8
complaint 18:1
complete 75:14
completely 60:22 72:19
concern 9:22
concerned 9:2 23:24
concluded 74:25
conclusion 16:6
conferred 61:9
confirmation 59:14 59:22 60:25
confused 52:11
confusing 41:17
connected 49:12,14
connection 21:21 22:20,23 51:21 53:14 55:23 63:15
Connery 20:21
Connery(phonetic) 19:10
consider 55:8
consideration 63:4
considered 4:17
considering 54:22 55:4
constitute 16:9
contact 6:23 31:16
contacted 41:19
contested 29:21
context 16:8
continue 24:12 71:9 71:20,21
convenient 70:19
conversation 6:25 12:6,11 40:17 44:15 46:3 47:22 47:23
conversations 8:16 47:15,18 49:4
conversing 44:20
convinced 53:20
copy 73:21 74:23
correct 6:2,21 13:21 23:4 26:12 33:11 35:9 38:13,14 39:24,25 42:8 43:12 44:5 45:4 47:11 48:13 53:5 53:10 55:1 56:1,2,4 56:18,19 57:20 60:1 61:21 62:1,14 62:15 64:8,9,13,14 64:15,16,18,21,22 68:11,24 69:24 72:22 73:10,18,23 74:4,5
corrected 60:9,24 61:23 62:7,9,13
correcting 60:16 73:8
counsel 31:21 50:1 72:11 75:19
COUNTY 1:2 75:3
couple 17:13 18:2 25:1,23 35:16 37:22 52:20 55:13 64:25 67:19
course 23:6 48:2 62:20
court 1:1 3:19 74:22
cousins 4:15
create 21:5
creates 28:21
credit 5:15,16
Cruz 64:23
cup 9:6,8 33:3 34:17 34:25 35:20 63:5 63:10,12,16,19 68:16 69:3,7
currently 15:9
customer 25:5 27:6
customers 19:21 20:7
cut 44:2

D

D 2:15
d/b/a 1:8,10
dark 36:5 39:9 42:25
darken 38:5
darker 38:3
date 7:22 12:9 26:14 31:25 38:16 51:9 57:22
dated 57:22 75:23
daughter 4:25
day 7:25 19:18 20:15 25:11,14,14,15 48:15 57:25 61:15 62:2 69:13,13 75:23
days 4:8 17:25 18:2 24:11 51:17 55:13
dealer 25:3
dealers 5:13 19:21 20:7
decide 61:19
decided 61:16
Decision 25:11
DECLARATION 75:1
declare 75:4,18
Defendants 1:12 2:6
Defendants' 2:23 57:14
definitely 28:7 70:3
degree 6:9
department 8:12 15:6 16:5 29:8 48:5 48:9
depicted 37:16 39:3 39:23 59:4
deposition 1:15 3:12 6:19 7:1,4 30:11 55:24 61:7,20 62:14 73:9 74:12 74:16,25 75:6,14
depositions 74:23
Dept 1:7
described 17:17 65:8
desk 15:3 46:17
despite 29:20
determine 28:13 47:24
diameter 65:22
different 5:11 9:19 55:15 68:11
dinner 71:7
direct 52:11,18
disagreeing 23:25
disappointed 16:20 20:6
disciplinary 27:15
discipline 6:11 16:24 17:12 49:22,24
discuss 7:6
discussed 21:6,7,11 74:12
discussion 6:14 22:9 67:22
discussions 62:6
dishonest 31:2,4
dismissed 29:18
DISTRICT 1:1
document 57:12
doing 18:10 20:9 25:13 39:13
dots 39:15 47:8
doubt 13:2,5
drew 10:12 13:16 65:20 66:14
Drive 3:11
drop 49:2
dropped 70:14
drops 10:10 12:4 37:22 39:10,15 65:24 68:14
dry 23:20 59:1 68:3
duly 3:2 75:10

E

E 2:2,15
e-mail 2:23 57:2,4,9 57:20 60:4 61:11 61:16 67:20 73:12 73:18,23
e-mails 32:12
earlier 51:12,17
early 28:20
East 1:16 2:3
effect 56:16 70:23
effort 30:14
eight 9:9 10:2,5 19:11 65:8,13,14
either 49:1
elbow 8:18 40:20 42:16,18
Ellen 4:23
else's 17:3
employed 5:21,25 15:8,10 23:2
employee 1:11 11:19 22:9 64:23 75:19 75:20
employment 16:5 27:1 29:8 49:19
EMT 42:22
ended 29:19
entire 5:25 24:17 31:7 70:1
entries 26:25
equivalent 9:6
especially 48:19 60:24
ESQ 2:2,6
established 50:1
estimate 9:15 11:22
ethic 30:19
event 17:16 18:18 21:21 67:8,10 69:14,22
events 16:17
Everybody 36:13
Everything's 70:17
exact 9:10 36:12
exactly 8:25

Examination 2:18,18 2:19,19,20 3:6 30:5 67:17 72:9 74:9
examined 3:3 75:9
example 59:11 69:25
exchange 31:7
Excuse 6:7
exhibit 38:20,23 39:18,19 47:4 57:13,14 59:12 60:20 61:12 64:7 66:14 72:12,19
EXHIBITS 2:21
expect 60:19 66:21
expected 66:1,16
experienced 14:10 30:18
explained 23:11

F

fact 17:7 29:20 45:13 67:10 70:11 71:11 73:9,20
fair 5:24 27:22 69:1
fall 6:17,19 7:16,22 10:22 11:1 12:12 13:3,13,14,15,20 14:6 21:21 33:16 59:2 63:7,24 64:1 64:25 66:21 68:4 68:24 69:2
fallen 40:12
falling 48:14 62:18
falls 14:10 69:6
false 17:22 60:22
family 4:15,19,20 5:3 28:4
fans 18:5
far 6:6,8 25:17 26:6 39:22 48:14 50:15
fast-forward 41:24
father 27:17
feel 15:18 30:22 36:14 49:11,12,13 49:17 54:20 57:8
feeling 16:18 50:16
feet 43:22 69:2
fell 8:8 13:8 32:25 33:8,10 63:17
fellow 37:2
felt 18:3 56:5 58:6
female 11:16,19
figure 53:14
file 15:23 18:1 25:23 25:25 27:1,2,6 52:21
filing 54:22
fill 16:3
filling 17:6
financially 75:21
find 11:13 20:12
finding 29:7
fine 38:21 58:8,17 71:16,23
fired 55:25
Firm 1:16 2:2
first 3:2 4:2 16:3 30:16 31:1 35:13 39:7 40:15,16 48:11 55:8,9,10 58:10,21,21 61:15 62:23,25 63:1 67:4
five 66:2
flags 60:14
flareups 28:5
floor 8:7,16,21 9:5,16 9:23 10:2 12:22 13:3,6 23:14 31:4 34:11 35:14 36:19 36:21 37:10,12,13 37:20 38:1,9 39:7 41:4 42:8 44:1 46:8 47:8,25 49:5 56:15 58:22 59:1 60:13 60:22 61:1,25 62:3 62:4 63:3,10,18 64:5,12 65:1,2,9,18 68:2,4,14,15 70:1 74:1,2
floors 70:12,17 71:2 71:3
FMLA 53:24
follow 59:19
following 67:24
follows 3:4 75:5
forced 61:19
foreground 37:3
foreign 63:18 64:6 67:2
form 49:22 70:4
forth 16:11 17:18 24:3,5 70:20,21
found 11:18 19:18 25:23 27:12
four 10:14 65:16,21 66:2,15
frame 18:23 19:2 24:22 26:19,21 27:20
frequently 28:19
friend 18:4
front 15:2 17:21 36:21 37:9 46:17 68:15,21 74:1
frown 25:10
further 2:19,19,20 67:17 72:9 74:9 75:18

G

Gabroy 54:5
Galliher 1:16 2:2,2 2:18,19,20 3:7 6:13 6:15 22:11,14 30:3 30:8,13,17 31:16,23 31:25 32:11,16,19 32:23 37:1 38:20 39:20 52:18 61:8 62:14 66:5,9,18 67:18 70:6 71:1,5 71:10,14,18,23 72:2 72:7,13,16,21,23 73:10 74:10,18,20
game 5:11 19:7
games 5:8,9 6:1 48:2
gaming 48:21
Gary 1:15 2:17 3:1,9 3:12 74:11,21 75:7
gather 10:4 55:23
general 4:2
gentleman 18:3 21:8 27:10 36:1,1,5,24 37:2,4 42:20,24,25 46:13,19
gesture 43:19
getting 7:23 20:15 22:8 27:19 28:5 53:15,16
girl 5:19
give 9:15 10:6,13 11:22 27:9 51:4 63:3
given 25:11
glass 48:19 70:14
go 5:1,3 6:6,8 8:1 18:10 19:17 34:12 39:12 43:20,21,22 49:7 52:14 53:2 58:8,17 67:25 68:12 69:2 70:19
goes 34:19 70:15
going 18:21 19:13,14 22:7,10 23:7 33:18 33:19,20 34:3,4,7 34:12,13,19 35:11 35:25 37:24 41:6,7 41:24 43:6,14 45:24 46:1,18 47:12 51:24 52:1,6 54:11 57:12,13 58:7 67:21 70:17 71:12,25
Goldberg 18:3
good 14:8 65:15
Grand 8:4,4
ground 34:11 35:23 36:21 63:14
guess 16:4
guessing 10:4
guest 9:3
guests 5:12,19

H

half 9:6 11:4 44:2
hand 9:7 17:15 32:25 34:16 35:20 63:10 63:16,20,21 69:4
happen 17:14 55:7 69:17
happened 7:7 13:20 16:2 19:12 21:19 23:12 28:2
happening 25:13
happens 28:22 34:22
happy 4:16 31:5
harassed 57:8
harassment 16:22 17:17,21 18:22 19:3 24:2 55:16,19
hard 8:24 9:10
hauling 70:21
head 40:22,23
heading 23:12
health 28:17,18
heard 8:1 47:16 55:22
hearing 29:1,6,7,12 29:17 54:10
help 13:25 14:4 19:14,17 20:10,12 20:13 36:14
Henderson 2:7
higher 27:9
hip 17:8 28:6,11
hired 22:17 54:5
Hispanic 12:8
hit 8:18
Hold 22:7
holding 63:16 69:3
hope 18:12 36:14
host 5:12,17,19
Hotel 6:17
hour 17:4 32:5 45:8 71:6,19 72:3 75:8
hours 7:25
human 18:1
hurt 40:20,24
hypothetically 66:15

I

idea 10:6
identification 38:24 57:15
ignore 55:16
impression 51:4 56:20
improper 54:21
inches 10:14 65:16 65:21
incident 16:14 25:2 48:12 63:13 68:2 73:6
incidents 55:15
include 39:19
included 32:13

inclusive 1:11
incorrect 58:6,9 60:9 61:13,18
incorrectly 52:15
incredible 30:19
indicate 32:23 39:15
indicated 64:7
indicates 59:18
indicating 39:6 73:14
Individual 1:5
inferred 59:13
influence 51:20
information 18:7 22:8 61:13
initial 25:17 29:1,6,7 38:15 61:24
initially 40:15
initials 38:16
injured 42:15
innocent 55:17
instruct 22:10,11
instructing 46:5
instructs 22:12
integrity 30:20
interchange 30:25
interested 75:22
intimidated 57:8
intimidating 56:21
intimidation 16:22 18:22 19:4 24:5
investigating 53:18 53:24 54:1,2,22 55:1
investigation 16:5 17:25 55:11
involved 19:2 75:19 75:21
isolated 16:7
issues 28:17,18
items 72:12

J

Jamapa 3:11
January 15:13 26:15 50:8 52:13,14
jeopardy 51:5
Jersey 18:4 27:17
job 5:21 26:5 27:1 48:2 51:4
joint 38:20
joking 18:12
JOYCE 1:5
JR 2:2
judge 3:20
July 51:24
June 2:23 51:8,15 53:7 55:3 56:14 57:23 59:5 61:17
jury 3:20

K

keep 23:24 41:25
KEITH 2:2
kept 61:5
kind 8:24 10:3,10 18:9 20:11 23:23 25:17 36:23 48:3 49:23 63:3 64:19 67:8
knew 4:16 25:22 27:16 53:3 56:9
know 4:14 5:14,17 8:21 9:23 10:8 11:25 12:1,9 13:7 14:6 15:2 16:20 18:6,9,16 20:7,22 21:20 23:9 26:4 27:16 28:21 31:3,4 36:3,6 46:15,16 49:16,20 50:11 51:17,23 56:8 58:18 60:18 61:2 63:19,20 64:10,12 64:15,17 65:4,18,19 66:20 68:8 69:18 70:9,16 71:11 72:3
knowing 25:24 53:16
knowledge 70:10

L

L-y 20:17
lady 8:2,15 9:24 12:1 13:22 17:19 19:12 23:13 35:22,23 36:24 48:14
lady's 63:10,12
large 37:2 42:25
larger 36:1
Las 1:8,9,10,17 2:4 3:11 4:3,12,13 5:1 75:23
Law 1:16 2:2
lawsuit 54:23
lead 10:10
leading 47:10 65:24
learn 51:7
leave 15:12 28:5,20 36:9 44:22
leaves 50:16
led 10:19 31:1
left 8:14 27:11 34:4 34:16 36:15 38:16 41:17 42:15,17 45:12 46:14 63:16 63:21 69:4
let's 24:18 37:14 39:2 39:18 40:16 66:15 67:25 68:12
level 14:21,22 19:6
Liability 1:9,10
lie 56:25
limitations 72:1
Limited 1:9,10
line 5:16
linked 55:18
liquid 8:9,20 9:4,9,12 10:2 13:3,8 36:18 68:14,19 74:2
listing 56:10
little 4:2 6:2,4 8:2,9 9:21 10:4,12 16:4 21:3 26:18 39:11 46:1 65:20 67:6 68:11
lived 4:3
living 4:7,8
LLC 1:8,9
LLP 2:6
long 4:2 10:21 11:23 12:11 14:6,13 32:4 36:12 47:25 64:10 64:17 71:21
longer 23:2
look 9:1 13:10 16:17 28:1 32:9,11 34:17 39:2 46:23 57:17 69:10
looked 8:2 20:11 30:7 32:12 65:8
looking 35:22 38:12 62:24
looks 10:13 39:4 44:14,17,24 47:13
lot 4:15 11:10 23:11 27:18 49:21,21 51:10,12 65:5
lots 28:5
Louie 43:1,9,10 44:15,23
luggage 70:21
Lux 8:4,4
Ly 20:17

M

making 17:22 19:21 20:7
male 11:15,17,18 12:7,8,12
management 20:19 20:24
manager 11:5 19:7,9 19:10 20:21 41:19
managers 20:17
marble 8:3,24 10:9 44:2 48:24 59:1 67:2 68:4 70:12,17 71:3
March 16:16
Maria 64:23
Marietta 4:8
mark 37:24 38:19,21 39:6,17 57:13
marked 38:23 43:25 47:4 57:14 61:12
married 4:20
matter 12:13 61:8
mean 8:25 9:19 10:3 13:1 20:25 23:19 27:1 35:21 41:16 50:5,15 66:4 69:17
meaning 27:8 48:18
measure 65:19
Medical 28:4
meet 7:3 21:15,18 30:11,14,16,17 31:11,25 56:3
meeting 22:6 23:8 24:6,9,19 32:4 49:18 50:10,22 51:22 53:17 56:5 56:20 59:5 61:25 74:14
meetings 32:20
member 15:18 46:17
mentioned 8:20 15:8 68:6
met 21:13,16,20 22:16,25 24:21,23 25:18,20 26:10,19 27:21 28:15 31:1 49:22 50:2,5 51:8 51:15 52:2,18 53:7 55:3 56:14 57:25 61:8 62:14 73:10 74:11
MICHAEL 2:6
Mike 2:23 19:10 20:20 21:13 67:20
Mike's 69:12
Miles 2:6
mind 13:2,5 55:9,10
mine 18:4
minor 25:1
minutes 10:23,24 14:8,17 40:7,9 64:25 66:2,15
misconduct 16:9 29:9
misstates 72:23
mistake 16:25 17:3 21:4 25:4 27:10
mistaken 23:17 61:6
mistakes 5:13 19:21 20:7
moment 49:7
money 5:16 22:19
months 16:14 19:11 26:10 50:2,10 51:16 55:15 61:22
mop 12:19
mopping 46:20
motive 50:18
motives 50:20

N

N 2:15
name 3:8 4:22 11:5 12:9 17:19 20:4,4 20:17 27:8 43:1 45:18
named 18:3
near 4:8 8:3,8
nearby 11:20
necessarily 71:15,19
neck 28:6,10
need 5:18 35:4 36:14 37:6 45:11 48:16 59:13
needed 12:15 59:22
needing 20:12
needs 68:9
nerves 28:10
Nevada 1:2,9,10,17 2:4,7 3:11 75:2,23
never 17:23 21:11 23:20 39:23 50:25 51:3 55:22 61:23 62:7,9,13 63:3,15 64:2 67:1 68:6 73:8 73:11
New 18:4 27:17
noise 8:1 13:17,18
normal 45:5
note 25:25 27:6 59:13
notes 16:11 75:12,15
notice 8:6 69:6
noticed 8:2 23:14 58:15 62:24,25 63:1
notified 11:3,4,7 41:21,22
notify 11:1
November 6:18 21:14,25 22:16 24:20 26:20 50:5 51:12 52:13 55:12
number 8:25 16:13 22:4 59:12 67:25 68:12,13 73:3
numbered 22:3
numbers 72:18
numerous 48:15

O

o0o- 2:25
oath 3:16,18 56:25 61:20
objection 23:5 66:5,9 66:18 70:4,24 72:21,23
observe 12:23
observed 69:13
occur 51:21
occurred 6:17 66:16
occurring 69:23
office 6:23 7:3 21:7 32:2,2
officer 14:7,18
official 26:14
officially 15:13
Oh 18:9 25:19 70:3 72:14
okay 8:17,19 13:23 13:25 21:11 23:14 23:25 30:7,24 31:6 31:8,22 32:14 33:2 33:6,11,18,22 34:6 34:8,9,14,19,20,24 35:6,11,23,25 36:7 36:7,13,16,18,25 37:9,13,18,24 38:2 38:3,11,18,21 39:5 39:12,20,22 40:1,8 40:18,19,21,22 41:9 41:12,24 42:1,10,14 42:19 43:6,6,11,14 43:16,20,23 44:4,18 44:22 45:1,20 46:7 46:13,18,20 47:1,6 47:12,12 48:17,17 49:3,7,7,25 50:14 50:17,18,20,25 52:2 52:6,10,17 53:13 54:4,19,25 55:3,21 56:7,13,24 57:2,20 58:4,8,17,24 59:3 59:18,22 60:8 61:15,21 62:5,10,16 63:8,15 65:7 67:4 67:14 71:8,25 72:6 72:14 73:7,23,25 74:4,6
once 21:16 28:19,19 48:15 65:14,18
ones 56:10
online 16:3
opinion 19:25 28:2 28:14 56:24
opposed 70:12
opposing 31:20
ounces 9:8,9 10:2,5 65:8,13,14
outside 48:22
oversee 48:19

P

p.m 1:18 74:25 75:8
PAD 8:11 11:8,13,19 11:23 23:19,20 44:10 46:4,5,20 47:13,16 48:8,16 58:13 61:3 64:20 64:23 68:1 73:5
page 2:17,21 58:10 58:11,18,19,22 59:11 67:20 72:18
pages 2:22
paid 22:19 25:14
pants 14:21
paperwork 5:15 56:10
paragraph 58:20,21 67:21
parentheses 59:12
Parker 20:5
part 13:9 17:1,18 18:22 23:6 24:3,5 37:13 39:18 58:10
particular 35:12 37:18 39:6 45:20 59:19 73:9
parties 75:20
party 75:19
Pass 30:3
patrolling 64:19
pattern 18:22 24:2,4
Pauline 1:24 75:4,25
pay 9:22
Pechanga 4:9
peer 26:4
pen 39:5
penalties 3:24
pending 17:25 55:11
people 5:14 8:14 11:8 11:13,23 14:24 17:21 19:15 46:4 47:14 48:4,8,23 49:1,24 67:7 69:18 70:13,16
period 14:14 16:23 26:8 52:9,19
perjury 3:25
persist 70:11
person 15:5,6 19:16 44:10 46:5,17 75:21
personally 20:21 67:11
personnel 47:16,19 58:13 64:20 68:1 73:5
pertained 53:22
Philadelphia 18:5
phone 60:5
photo 37:14,14,19 38:12 39:2,6
photocopies 2:22
photographs 64:7
photos 32:9,13 39:14
picks 34:25
pissed 20:20
pit 17:5 19:7,19 20:2 20:2,15,16
place 70:15
plaintiff 1:6 2:2 35:14 42:8 59:14 68:15
plaintiff's 2:21 38:23 69:2
plan 25:12
play 5:14
played 53:15
player 27:7,8,12
players 19:23 20:3
playing 19:24
please 3:8 12:2 38:3 57:17 72:7 74:24
point 17:24 23:23 34:3,4 36:10,19 37:19 40:1 41:3,13 41:18 42:21 44:12 56:6 59:19 66:17
pointed 11:25 12:14 37:25
pointing 44:4,7,8,9 44:16
points 19:24
position 5:7 35:13
positioned 68:15
possible 73:11
possibly 68:14
potentially 16:25
precaution 58:14,16 68:7
predated 17:17 18:19
preliminarily 22:15
premier 4:17
presently 54:18
pretty 8:8,23 23:18 35:22 65:15 67:8
prevail 29:1
prevent 25:13
previously 61:22
prior 31:11 53:16 55:23 64:21,25 75:9
private 22:3
privilege 23:1
privileges 28:4 53:24
probably 10:14 22:4 41:9 45:10 63:11 70:2
problem 21:5
problems 16:10,13 16:18 27:16 28:22
procedures 28:9
process 5:15
progressive 17:12
property 4:17 49:15 70:20
provide 32:16
public 8:11 48:4
pursued 28:23
put 12:20,21 21:2 25:23 28:11 38:16 48:25 52:21 61:13 61:16 70:22 71:25

Q

quantify 9:4
quarter 45:8,8
question 22:15 23:7 28:12 40:15 66:11
questions 29:23 67:19 69:12 72:3
quick 71:6
quicker 11:10 14:15
quickly 11:24 27:11
quite 19:20

R

raised 60:13
range 41:10
rare 67:8 69:14,22
rated 19:24 27:7,12
reached 30:10
read 25:9 58:7 59:8 59:25 62:11 67:22 73:11
reading 49:13 58:18 68:10
ready 20:16
real 4:16 10:16 53:19
really 9:1,21 12:13 13:10 17:8 18:6 20:6,20 25:7,10 27:9 30:21 36:11 49:20 50:13 57:10 58:25 65:18,18 66:24 68:6 70:18
reason 4:13 5:2 15:15 53:19,20 56:9
recall 11:21 13:9,10 33:1,7 36:11 39:22 41:23 42:10,13,14 44:3,7,20 45:22,23 47:3 49:4 58:1 59:2 60:6,7 67:11 73:19
recalling 31:6
receive 15:25 25:21 26:22 28:24
received 16:21,23 17:20 25:22 27:23 52:8 53:8 58:5 59:8 59:25
receiving 28:14 29:19 54:18,19 58:1 61:11
recognize 33:23,24 37:15 39:3
recollection 43:2 73:15
record 6:13,14 23:6 39:13 42:23
recover 26:5
red 44:11 60:13
refer 67:20
reflect 59:4
refresh 43:2 73:15
refuting 61:5
regarding 16:19 27:4 28:2 49:4
relate 63:6
related 22:9 60:16
relates 49:9 59:14
relative 75:18,20
relieved 7:23
relocated 4:13 5:1
remember 7:21,23 11:15 12:21 14:18 15:6 23:10,10 30:10 31:13,15 32:10 33:2 35:12 35:16,19,21 45:5 46:3,5,8 47:15,18 47:21 58:25 62:17 62:20 69:19 73:22
repeat 28:12 29:25 48:6 66:11
rephrase 29:25
report 20:16
reported 1:24 75:6
REPORTER 74:22
REPORTER'S 75:1
represent 22:20,22 44:15,24
represented 43:9 54:9
representing 54:13 60:21
request 75:16
reserve 71:12
RESORT 1:8
resources 18:1
responded 48:12 62:13 73:8,17,18
responds 34:24,25
response 6:22 31:15 69:12
responsibility 48:4,8
restroom 44:9,25 45:4,6,7,10,21,21 46:2 58:12
restrooms 8:5 44:5 68:1 73:6
result 15:22 29:16
resulted 19:3
retained 61:9
retainer 22:19
retaliation 16:22
return 46:1
returned 39:24
review 26:4 32:7 75:17
reviewed 58:5
reviewing 32:6
Rhonda 17:20
rid 19:6
right 5:16 6:16,20 7:13,15 8:2 9:7 10:15,16 22:25 23:3,5 26:18 27:19 30:3 33:4 35:3,11 35:20 37:21 38:12 39:2,19 40:4 43:12 43:16 44:16 45:15 46:18 47:9 48:22 50:7,9,12 51:1 52:4 52:23 54:17,19 55:5 56:13 58:1 59:9 60:10,16 61:21 62:10,21 63:5 65:11,13,15,20 66:4 67:6 68:10,12 69:11,14,21 70:7,9 71:12,15 73:11 74:6,12,20
Road 2:7
rocks 9:20
role 53:15
rooms 22:3,3
roughly 9:9 18:23 27:20
Royal 2:6,6,18,19,23 21:8,13,15 22:7,16 24:7,10,19,21,23 25:18,20 26:11,20 27:21 28:15 30:6 37:4,6,8 38:19,21 39:1,21 57:16 66:12,22 67:14 70:4,24 71:8,11,16 71:21,25 72:6,10,14 72:17,22 73:1 74:19,22,24
RPR 1:25 75:25
run 41:7 45:24 46:1
running 42:19
Ryan 20:5,5

S

Sahara 1:16 2:3
sake 73:7
Salinas 17:20
salon 20:2 22:2
SANDS 1:9
sat 17:8
saw 8:8,20 9:16 13:7 13:22 20:1 23:13 31:4,24 36:19,23 37:12,21 38:8,10 39:6 41:4 47:7,13 50:22 56:15 61:4 61:25 63:14 64:5 64:12 65:2 68:2,20 68:23,24 69:13
saying 31:5 35:5 42:15 45:9 58:25 62:7
says 23:21 58:12,22 67:25 68:13 73:5
scattered 39:10
scene 10:21 11:23 12:12 13:4,17,19 32:9 35:13 39:24 41:15 44:22 45:12 45:14 47:20 50:23
schedule 25:9
school 6:6,8
Scottsdale 4:11
second 22:7 58:11,20 67:21
seconds 12:13 40:4
section 19:15,16,20 20:9 22:5
sections 5:11,11
security 8:13 11:1,3 11:3,6 14:7,17,22 41:22 47:19
see 7:18 9:2,12 11:18 13:13 19:16 23:17 34:3,9,15,22,25 37:9 38:11 40:8,13 42:3 43:17,18 44:12,23 45:13 46:11,21,23,24 52:10 54:11 57:22 58:6,22 59:11,16 60:21 62:16 63:7 63:13 65:1 68:13 69:1,2,22 70:2 74:1
seeing 13:10 35:19 47:3 63:17 69:19
seen 7:16 14:10 17:14 30:18 57:17 67:1
Sekera 1:5 32:24 33:7 62:17 63:16
sending 25:4
sense 49:11
sent 32:12 62:6 67:21
serious 26:7
service 19:22 20:8
seven 19:19 40:9
shatter 70:18
shatters 70:15
shirt 14:20
shit 18:15
short 52:19
shorthand 75:12,15
shortly 13:20
show 7:9 25:10 29:4 33:18 37:14,14,18 57:12 73:21
showed 7:12
shown 14:24
Shulman 1:15 2:17 3:1,9 75:7
sign 12:21 39:12
signs 12:20
similar 58:20
sit 17:4 33:6
sitting 48:23

situation 19:18 28:1
six 16:13 51:16 55:14
six-month 18:23 19:2
size 10:6,8
skip 17:12
slap 17:15
slip 49:1 66:23,24 67:1 69:18
slip-and-fall 53:23 67:12 69:12,20
slip-and-falls 69:23 70:2
slipped 12:1 59:15 66:4
slipping 12:5
slips 70:14
small 10:9
solemnity 3:19
somebody 43:4 66:2 66:3,16
someone's 18:14
soon 24:9
sorry 21:23 41:16 44:11 46:11 72:14
sort 39:15
Sound 40:4
sounds 13:12 25:16 52:23
south 50:11 51:24 52:1,6 53:2
speaking 42:7
speculate 66:24
speculation 66:6,10 70:5
spelled 20:17
spent 10:24
spill 9:21 10:7,8 12:18,24 36:22,23 65:14 67:5 68:20
spilled 65:9
spills 48:16,20
splash 39:17 65:14
spoke 60:5 63:22
spot 23:20 38:6
spots 10:19
Springs 2:7
sprinkles 10:18
staff 20:23
staffing 28:22
standing 17:4 35:17 36:20 42:19,20 43:16 46:24,24 47:6
stands 36:2
start 7:21 16:15 24:10,18 33:23 34:7,19 35:25 43:15,21 51:24
started 5:6 16:16 28:14 51:16 52:1,6 53:2
starting 33:19 45:6
starts 46:20
state 3:8 5:24 6:10 27:22 59:15 67:23 69:1 75:2
statement 68:17
stay 13:24 14:2
step 66:17
stepped 66:4 67:2
steps 17:13
steroids 28:11
stop 34:13 35:11 43:23 46:18
stopped 34:12 36:2 36:20 43:17 44:8 45:12,25
stress 27:18
stressful 18:9
strike 54:12 64:10
struck 40:22
stuff 51:16 63:2
subject 23:5
subpoena 6:22
subpoenaed 6:19
subsequent 60:1
substance 47:24 59:15 63:18 64:6 66:13 67:2 68:13
suggesting 20:22
suing 55:4,8 61:10
suit 14:22 36:2,5 42:25 46:14
Suite 1:16 2:3
suits 14:25
supervise 5:13
supervisor 5:8,9 6:1 19:5,6,7,8 20:1 45:16 48:3
supervisors 20:2,9 48:18
supervisory 14:22 48:3,7
supporting 53:22
supposed 20:10
sure 13:23,25 22:4 23:18 26:3 48:20 49:8,25 50:14 60:15
surfaced 16:18
surprise 51:7 65:3,4 65:6
surveillance 7:10,16 7:19 11:2 41:21 62:24 68:23
suspended 17:25 55:11
suspicious 50:16
sworn 3:2 75:10

T

table 5:8,9,11,17 6:1 17:5 19:7 27:7 48:2 48:21
tables 17:6 19:13,19
take 5:16 7:23 19:23 25:14
taken 1:16 3:13,18 16:8 75:15
takes 20:21
talk 4:20 6:16 7:15 54:12 55:17 69:22
talked 18:5,21 24:2 27:14
talking 18:16,18 31:7 35:13 37:2 41:14 42:12,24 43:8 46:8 63:2 69:21
team 15:18 46:17
tell 3:2 5:9 8:25 14:25 16:2 19:12 22:6 23:7 30:13 32:19 36:10 40:24 41:1 54:7 61:16,19 61:20 74:15
telling 26:3 28:16 62:3
Temecula 4:8
ten 40:3
term 19:7
terminate 50:19
terminated 15:13,22 16:4,12 18:24 24:13 26:11,13 27:22 49:10,14 50:3,8 51:22 52:22 53:19,21 55:25 56:9
termination 15:16 18:19 26:14
testified 3:4 32:21 49:3 52:11,24 53:1 69:11
testify 13:1 64:24 75:10
testifying 3:19 60:20
testimony 10:25 49:9 49:11 51:18 52:17 56:13 59:3,6 72:24 73:25
thank 67:14 74:6,18 74:19,21
Thanksgiving 55:12
thing 21:3 25:6 42:14 54:15 55:19 58:9 64:5 73:12
things 8:25 9:19 16:24 17:14,22 18:10 21:19 25:1 30:19 49:2,21 51:24 52:21 70:18
think 11:4,6 12:20 14:20 15:5 20:4 26:8 30:19 41:11 45:6 50:11,15,21 51:21 55:8,12 57:10 62:23 65:7 65:21 70:21 71:14
thinking 51:20
thinks 8:19
thought 9:16 20:10 21:18 41:14 52:12 56:7 61:4 63:23
thousand-dollar 27:9
threat 15:21
threatened 15:18
threats 24:3,5
three 4:11 7:12,24 10:14 16:23,25 17:11,24 20:1,8 24:25 25:2,9,22 26:7,8,23 47:13 52:8,12,20 53:8 65:15,21 66:15
three-page 73:12
tie 14:22
ties 14:25
time 4:7,17 5:20 7:25 14:14 18:3,16,23 19:2 21:12 22:10 22:16 23:16 24:12 24:18,18,19,22,23 25:15,18 26:11,19 26:19,21 27:15,16 27:20,20,21,23 30:7 30:25 32:25 33:8 33:10 36:20 40:5 40:10 41:15 42:11 45:20,22 48:12 49:2,16 52:19 53:9 55:3 56:24 61:1 62:23,25 63:1,9,11 63:17 67:4,5 74:14 75:16
times 7:12 24:15,24
timing 49:8 50:14 52:10
title 5:21
today 3:15 6:16 13:1 21:22 29:23 32:1 32:21 33:6 47:4 49:9 55:21,24 56:14 59:3 60:20 61:7 62:1,3,11,13 62:25 64:24 72:19 73:9,25
today's 6:19 7:1,4 38:16 61:15 62:23 74:16
told 12:15 20:6 42:11 46:17 50:21 56:15 58:15 59:4 60:21 61:1,24 62:2 68:8,9
Tonemah 11:5 41:19 41:20 45:19

top 34:4 45:14 69:7
total 40:5 41:14
town 5:3
traditionally 7:25 48:22
transcribed 75:12
transcript 75:13,17
transcription 75:15
trouble 23:24 31:6
true 51:14 62:8,9 73:2,3 75:14
trust 56:11
truth 3:2,3,3 74:15 75:10,10,11
truthful 56:23
try 5:13 20:13 26:5 30:11
trying 5:12 20:3 28:13 53:13 56:25
Tuesday 55:11
two 2:22 7:12,25 11:4 19:15 25:8 26:25 28:19 50:2,10 64:7
two-month 26:19,21
two-week 16:23 26:7 52:9
type 43:19
typewriting 75:13
typewritten 75:13
typically 45:7

U

uh-huh 7:17 18:25 30:12 33:12,25 34:21 35:1,8 37:5 42:2,4 43:7 51:19 52:3 53:4 57:5 59:24 65:10
ulterior 50:18,20
ultimately 51:22
uncomfortable 56:5
understand 3:15,22 3:25 10:25 48:11 49:9 52:15 62:7,12 67:23
understanding 60:12 62:12
understood 29:23 51:17 52:17 61:24
unemployment 15:23 15:25 28:23 29:2 29:20 54:9,17,18,20
uniforms 14:19
unique 49:23
University 6:10
UNKNOWN 1:11
unpaid 25:15
untrue 72:20
unusually 14:13
upset 16:21 19:21 28:3,21
upsetting 17:13
use 17:12 31:3 42:17 45:21
usually 14:15,22 17:15 48:23 49:23

V

vacation 25:15
Vegas 1:8,9,10,17 2:4 3:11 4:3,12,13 5:1 75:23
Vegasgary1@gmai... 57:3
VEN0140 37:15
VEN019 33:20
VEN040 37:25
VEN041 39:3
Venetian 1:8,8,10 4:17 5:2,4,6,21,25 6:17 14:11 15:9,10 15:12,23 16:11,19 16:21 17:18 18:19 18:23 23:3 24:3,6 24:16,24 25:21 27:24 29:10,11,14 29:20 30:23 49:10 53:22 54:21,23 55:4,8 56:6,12 61:10 67:3 70:11
Venetian's 69:25
verbal 26:1 27:4
version 7:6
video 7:9,16,18 14:24 30:8 32:6 33:11,15 33:18,19 36:8 39:23 68:23,25 69:8 73:21
view 14:14 19:1
violations 30:20
vodka 9:1,20
voiced 19:25
volunteer 18:7
vs 1:7

W

waited 8:13
waiting 17:5 21:4 42:21,22
waitress 5:18 19:23
walk 9:21 41:8,8 65:5 67:7
walked 43:24 44:24 64:25
walking 34:5 40:10 40:11
walkways 48:24
want 7:15 12:4 21:20 22:12 29:25 31:3 37:25 38:4,5 41:6 41:25 43:14,15,20 43:21 46:23 49:8 49:25 56:22 71:11 71:13,19,22 72:3 74:22
wanted 4:14 19:12 59:18
wants 5:16
Warm 2:7
warning 16:10 17:9 25:6
warnings 16:23 17:2 17:11 25:16,21,25 26:6,22 27:23 52:9 52:13,20 53:8,15,16
wasn't 4:16 10:16 18:13 23:16 61:2,6
watch 19:13 33:11,16 33:19,21 41:6 43:14,15,21,22,22
watched 21:3 33:15
watching 20:24 41:25
water 9:1,17,18 10:19 13:2,7 37:20 44:1 47:4 56:15 65:13 66:13
waved 12:14
waving 44:10
way 5:22 15:21 19:25 20:14 21:2 30:22 31:2,9 58:5 68:16
We'll 20:13 38:19 39:19
we're 21:21 27:15 41:6 45:11 53:18 53:24 54:1 74:20
We've 70:13
wear 14:19 44:11
wearing 14:25
Wednesday 1:18 75:7
week 7:4 28:19 30:9 32:1 74:11
weeks 28:19
welcome 67:15 74:7
well-known 17:7
went 8:6,11 11:9,12 11:24 12:13,16 18:1 20:13,15 23:12,13 49:21 50:1,11 58:12 72:12,18
weren't 25:24 55:4
West 2:7
wet 8:7,7 9:24 12:2 12:22 13:6,11 23:15,16,17,22 31:4 37:12,13 41:1 58:15 61:2,4,5,6 62:4 64:3 68:8
white 44:11
wife 73:21
wife's 4:22
win 29:3
wink 56:17,17
witness 2:17 30:3 37:5,7 66:8,11,20 67:15 75:7,9
woman 13:8 34:25 35:19 36:2,21 37:10 42:8 45:14 46:8 49:5 66:3 74:2
women 35:17
won 29:4
word 31:3 42:17 68:6
words 24:22 29:2 36:12 38:11 55:21
work 4:18 5:2,3 14:25 22:5 28:9 69:18
worked 4:9 15:2,7 43:4 48:8
working 7:25 48:4
workplace 16:9
works 55:1
world 18:15
worth 10:2
wouldn't 28:8 30:16 56:3
write 25:12
writeups 16:25 28:15
writing 62:6 73:13 73:16
written 16:23 17:9 17:11 24:16,24 25:5,16,21,24 26:6 26:22 27:23 32:17 52:9,20 60:23
wrong 25:4,9,12 49:13 51:9,10
wrote 59:12 60:9

X

X 1:11 2:15

Y

yeah 4:14 9:10,19 10:16 12:19,19,25 12:25 13:18,24 14:16 18:20 19:5 21:9,16 25:19 29:4 30:15 33:17 35:24 36:17 37:12,21 39:17 40:2,6 41:11 43:19 45:3 46:25 48:7,22 51:11,14,14 53:12 56:22 63:1,6 65:12 66:20,24 68:7,25 70:16 72:7 73:17
years 4:4,5,11 5:25 6:3,4 11:4 15:9 17:14 23:20 24:17 24:25 25:3,9,18

26:9,9 27:24 48:25
yellow 12:20,21
Yep 34:23
young 17:19

Z

zeroed 13:19
zooms 42:24

0

1

1 2:22 22:4 38:22,23 39:18,19 47:4 64:7 66:14
10 10:23,24 14:8,17 40:7
10- 41:10
10263 3:11
107 1:16 2:3
11:45 20:16
12 26:9
12:36:46 33:20
12:36:49 34:13
12:36:54 34:12
12:36:55 40:12
12:36:57 35:7
12:37 40:9 45:9
12:37:01 35:12
12:37:05 36:3 41:7
12:37:12 36:8
12:37:13 41:8
12:37:14 39:23 40:11
12:37:48 42:1
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12:40:03 47:13
13 4:4,4 5:25 6:2,4 15:9 17:14 23:19 24:17 26:8 27:24
15 14:9,17
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1522 2:7
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2016 6:18
2018 2:24 16:16 21:14,25 22:16 24:20 26:20 50:6 51:8,12,15,25 52:7 52:13 53:2,7,11 55:4 56:14 57:24 57:25 59:5 61:17
2019 1:18 15:14 26:16 50:8 52:14 75:8,23
20th 55:12
23rd 15:13 26:15
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28 21:25 59:5 61:17
286 1:25 75:4,25
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30-minute 7:24,24
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57 2:23

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60-day 27:20
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702)735-0049 2:4
72 2:19
74 2:20

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89014 2:7
89104 1:17 2:4
89178 3:11

9

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90 4:8

EXHIBIT 2

PAIN INSTITUTE OF NEVADA
7435 W. Azure Drive, Ste 190
Las Vegas, NV 89130
Tel 702-878-8252
Fax 702-878-9096

OFFICE VISIT

Date of Service: July 10, 2019

Patient Name: Joyce P Sekera
Patient DOB: 3/22/1956

PAIN COMPLAINTS
Neck
Low back

Mrs Sekera returns for follow up. She saw Dr. Smith yesterday and his notes say she got no relief from the RFA. She tells me this must be an error as she feels about 70% relief in her low back pain. Her memory isn't too good she tells me so can't remember exactly what he told her but that she would need surgery at some point. She has mild pain now, improved range of motion, has less AM pain, and walks longer / farther now.
Activities that aggravate the pain: Sitting and walking for prolonged periods
Activities that relieve the pain: Stretch and exercise
Description of the pain: Ache
Least pain throughout day (0-10): 3/10
Most pain throughout day (0-10): 3/10

Neck stiffness comes/goes and isn't too bothersome. She denies arm symptoms.
Activities that aggravate the pain: Turning to the left
Activities that relieve the pain: Heat
Description of the pain: Dull
Least pain throughout day (0-10): 0/10, no pain.
Most pain throughout day (0-10): 3/10

INTERIM HISTORY
Hospitalizations or ER visits: None
Changes in health: None
Problems with medications: None
Obtaining pain meds from other physicians: Patient denies.
New injuries or MVA's: No
Work Status: Unemployed
Therapy: Pt is not currently receiving physical or chiropractic therapy.

IMAGING/TESTING
MRI brain without contrast: Report dated 12/16/2016
Brain normal for age.

MRI cervical spine without contrast: Report dated 12/21/2016
Mild dextrocurvature with straightening of cervical lordosis.
C3-4: Mild bilateral facet hypertrophy.
C4-5: Mild bilateral facet hypertrophy. Mild left uncovertebral arthropathy.
C5-6: Mild disc protrusion with mild bilateral facet hypertrophy. Bilateral uncovertebral arthropathy with mild left greater than right neural foraminal stenosis.
C6-7: Mild broad disc protrusion AP diameter spinal canal 10 mm.

MRI lumbar spine without contrast: Report dated 12/21/2016
L1-2: Mild disc bulge.
L2-3: Minimal spondylosis and disc bulge.
L3-4: Mild disc bulge with mild facet and ligamentum flavum hypertrophy bilaterally. AP dimension of the spinal canal 11 mm.
L4-5: Left paracentral disc bulge with annular fissuring. Assessment and ligamentum flavum hypertrophy bilaterally, AP dimension spinal canal 11 mm.
L5-S1: Central disc bulge with facet hypertrophy bilaterally. AP dimension spinal canal 10 mm.

XRAYS cervical spine with Flex/Ext : Report dated 7/31/2018
Cervical spine straightening with mild degenerative disc disease at C5, there is 6 to a lesser degree. C4-C5. Multilevel mild spondylosis. Flexion and extension views demonstrate no ligamentous laxity or instability.

AP and lateral thoracic and lumbar spine with right and left lateral bending: Report dated 7/31/2018
Mild endplate osteophytosis of the mid thoracic and lumbar spine. Equal excursion of right and left lateral bending. No significant scoliosis measured on chronic exam.

X-ray lumbar spine with flexion and extension: Report dated 7/31/2018
Mild degenerative disc disease at L1-L2 mL, 2-3 with multilevel mild spondylosis, most evident at L4-S1. Vascular calcifications noted with slight levoconvex curvature. No evidence of subluxation with flexion extension views.

CT lumbar spine: Without contrast: Report dated 7/31/2018
Mild levoscoliosis of the lumbar spine with anterior osteophyte formation at L1-L3 Moderate facet hypertrophy is seen at right L4-S1 levels and mild facet hypertrophy seen within the remainder of the lumbar spine.
Disc bulges causing mild spinal canal narrowing at L2-L3, L3-L4, and L4-L5 with bilateral lateral recess narrowing at L4-L5.

X-rays lumbar spine: Report dated 6/22/2018
Spurring seen mildly throughout lumbar spine, or focal involving L2-L3. Mild sclerosing of left SI joint.

PROCEDURES
03/09/2017
FJI B L5S1
Post Injection: Complete resolution of usual pain
Sustained: No relief of usual pain.

05/08/2017
MBB B L5S1
Post Injection: Complete Resolution of usual pain.
Sustained: 2 days at 100% relief and pain eventually returned

11/30/2017
RFA B L5S1
Sustained: ROM has improve significantly, 80% resolution of usual pain. Tender ache with right side more than left.

06/20/2019
RFA B L5S1
Sustained: 70% reduction of usual pain with improved ROM again

MEDICAL HISTORY
Diabetes.type 2, HbA1C 6.5
Memory impairment from mild TBI
Low back pain

ALLERGIES
No known drug allergies

MEDICATIONS
Metformin 500mg qd

NV & CA PMP REVIEWED 6/5/17-6/5/19 NO MEDS FOUND

SURGICAL HISTORY
No prior surgeries reported.

FAMILY HISTORY
Lung Cancer

SOCIAL HISTORY
Family Status: Single / not married , has children , lives with family
Occupation: Customer service / Unemployed
Habits: The patient smokes rarely. The patient does not drink. The patient denies recreational drug use.

SYSTEMS REVIEW
Constitutional Symptoms: Negative
Visual: Negative
ENT: Negative
Cardiovascular: Negative
Respiratory: Negative
Gastrointestinal: Negative
Genitourinary: Negative
Endocrine: Negative
Musculoskeletal: See HPI
Neurological: Negative
Hematologic: Negative
Integumentary: Negative
Psychological: Negative

VITAL SIGNS
Height: 66.00 Inches
Weight: 205.00 Pounds
Blood Press: 134/78 mmHg
Pulse: 82 BPM
BMI: 33.1
Pain: 03

PHYSICAL EXAMINATION
GENERAL APPEARANCE
Appearance: Mild discomfort
Transition: Slight limited
Ambulation: Patient can ambulate without assistance.
Gait: Gait is normal

LUMBAR SPINE
Appearance: Grossly normal. No scars, redness, lesions, swelling or deformities.
Tenderness: Mild tenderness noted bilateral lower lumbar spine
Trigger Points: None noted.
Spasm: Mild spasm is noted in the paravertebral musculature.

JS991

Facet Tenderness: Facet joint tenderness is noted.
Spinous Tenderness: Spinous processes are non-tender.
ROM: Full ROM with mild pain on extension only
Straight Leg Raising: Negative at 90 deg bilaterally. Does not produce radicular pain.

PSYCHOLOGICAL EXAMINATION
Orientation: The patient is alert and oriented x3. No sign of impairment.
Mood / Affect: Mood is normal. Full affect.
Thought Process: Intact.
Memory: Intact.
Concentration: Intact.
Suicidal Ideation: None.

DIAGNOSIS
M47.817 LUMBOSACRAL FACET JOINT ARTHROPATHY / SPONDYLOSIS
M51.27 LUMBOSACRAL DISCOPATHY
M62.838 MUSCLE SPASM

PRESCRIPTIONS
None

PLAN
** RETURN: As needed when her pain returns

Katherine D Travnicek MD

Copy to: William Smith MD

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

EXHIBIT 3

William D. Smith, MD

Western Regional Center for Brain & Spine Surgery
Comprehensive Neurosurgical Care

Street: 3061 S. Maryland Parkway, Suite 200
City/State/Zip: Las Vegas, NV 89109
Phone: (702) 737-1948
Fax: (702) 737-7195

Patient: Joyce P. Sekera **Patient #: 379090** **DOB: 03/22/1958 (63 years)**

Date of Encounter: 07/08/2019

History of Present Illness

The patient is a 63 year old female who presents for a follow-up visit. Note for "Follow-up visit": This woman continues to complain of back pain. She had a rhizotomy done I believe a week or two ago. It gave her some temporary improvement, but the pain returned.

Additional reasons for visit:

Transition into care is described as the following:
The patient is transitioning into care and a summary of care was reviewed.

Allergies

No Known Allergies 02/26/2018
No Known Drug Allergies 02/26/2018

Past Medical History

Cervical spondylosis with myelopathy
Other secondary scoliosis, lumbosacral region
Back pain, sacroiliac
Lumbar spondylosis with myelopathy

Family History

Mother: In good health
Father: Deceased
Brother 1: In good health
Sister 1: In good health

Social History

Occupation/Work Status: Retirement (Health Related)
Marital Status: Single
Children: 1.
Living situation: Lives with his mother.
Tobacco use: Current some day smoker: Smokes 1-2 cigarettes a week.
Alcohol Use: No alcohol use
Illicit drug use: Never
HIV risk factors: None
Highest recreation level prior to spine condition: No Response.

Other Problems

Unspecified Diagnosis

Past Surgical

None (02/26/2018)

Diagnostic Studies

Chiropractor
Exercise Therapy
MRI Brain, Brain Stem
MRI, Cervical Spine
MRI, Lumbar Spine
Lumbar Spine X-ray

Vitals

07/08/2019 06:27 AM
Weight: 200 lb **Height:** 68 in
Body Surface Area: 2 m² **Body Mass Index:** 32.28 kg/m²

Assessment & Plan

Back pain, sacroiliac 724.6 | M53.3

- Patient Education: Smoking: Ways to Quit: smoking cessation
- **Review of Diagnostic Test**
  Comments: Once again, I have reviewed her CT scan. The CT scan not only showed the rotatory scoliosis, but the left L5-S1 facet appears to have a fracture. This certainly is consistent with a work injury.

- How to access health information online
- Instructed / counseled on smoking cessation including modes of cessation. Readiness to quit and motivation assessed.

Lumbar spondylosis with myelopathy 721.42 | M47.16

- Patient Education: Low Back Pain: low back

With this in mind, once again, I do not see how this woman will be able to avoid surgical treatment for this. Rhizotomies in my opinion will give her some temporary relief, but certainly not long-term. Please do not hesitate to call me with questions. I will continue to see this woman as required.

Cc: Farmers W/C (702) 436-1189 (faxed)
Walter M. Kidwell, MD (702) 878-9096
Jeffrey Webb, Dc (702) 457-7083
Katherine Travnicek, MD (702) 878-9096
Edson Erkvwater, MD (702) 259-5554
Galliher Law (702) 735-0204

William D. Smith, MD

JS995

EXHIBIT 4

MPOR
Michael A. Royal, Esq.
Nevada Bar No. 4370
Gregory A. Miles, Esq.
Nevada Bar No. 4336
ROYAL & MILES LLP
1522 West Warm Springs Road
Henderson Nevada 89014
Tel: (702) 471-6777
Fax: (702) 531-6777
Email: mroyal@royalmileslaw.com
Attorneys for Defendants
VENETIAN CASINO RESORT, LLC and
LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual; Plaintiff, v. VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; YET UNKNOWN EMPLOYEE; DOES I through X, inclusive, Defendants.	CASE NO.: A-18-772761-C DEPT. NO.: XXV ***Before the Discovery Commissioner***

DEFENDANTS' MOTION FOR PROTECTIVE ORDER

COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL & MILES LLP, and hereby submits the following Motion for Protective Order.

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///

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

DECLARATION OF MICHAEL A. ROYAL, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

2. I further declare that the exhibits identified in Venetian' Motion For Protective Order, as outlined below, are true and correct copies of documents produced in this matter.

3. This action arises out of an alleged incident involving a floor in a lobby area of the Venetian hotel on November 4, 2016.

4. That on or about August 16, 2018, Plaintiff served Plaintiff's Request for Production of Documents and Materials to Defendant in which Plaintiff requested reports related to slip and falls occurring within three years preceding the subject incident. (*See* Exhibit A, attached hereto, No. 7.)

5. That on or about December 17, 2018, I sent email correspondence to Mr. Galliher advising that documents were ready for production, but that Venetian would like an NRCP 26(c) protection order associated with the production to limit its use to the pending litigation. (*See* Exhibit B, *Email Correspondence Between Michael Royal, Esq., and Keith Galliher, Esq.*, dated December 18, 2018, with enclosure.)

6. That Mr. Galliher and I shortly thereafter discussed Venetian' proposal in a telephone conference, which was rejected by Mr. Galliher.

7. That Venetian produced a total of sixty-four (64) prior incident reports in response to Plaintiff's request on or about January 4, 2019, with names, contact information, personal information

(*i.e.* DOB/SSN), and scene photographs redacted to protect the privacy of prior guests involved in these incidents since Plaintiff would not agree to a protective order.

8. That Mr. Galliher thereafter contacted me to discuss his objection to Venetian having provided redacted reports, and we once again discussed Venetian's agreement to provide unredacted documents with a Rule 26(c) stipulation. Mr. Galliher explained that, in his view, any person involved in one of the disclosed prior incidents on Venetian property is a potential witness in this case. He further stated his intention to contact any or all of the persons involved in the prior incidents. I expressed concern that the information relating to these non-party patrons could not only be improperly used in this litigation, but that it could also be passed along to other counsel or persons wholly unrelated to this action and used for other purposes (subjecting these guests to further intrusions into their privacy). After respectfully considering my stated concerns, Mr. Galliher and I were unable to reach an agreement.

9. That on January 23, 2019, I sent correspondence to Mr. Galliher again outlining Venetian's position and offering to resolve this dispute by requesting a phone conference with the Discovery Commissioner. (*See* Exhibit C, *Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*, dated January 23, 2019.) Shortly thereafter, Mr. Galliher contacted me by phone and agreed to have my office reach out to the Discovery Commissioner's office as suggested in an effort to resolve this dispute expeditiously.

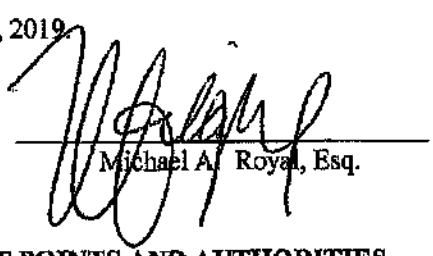
10. That my office was subsequently advised by the Discovery Commissioner's office that a phone conference to resolve this dispute could not be arranged, but that a motion would need to be filed.

11. That on January 29, 2019, I advised Mr. Galliher that a motion would need to be filed, and that the sole issue from Venetian's perspective is its desire for a Rule 26(c) protective order.

(*See* Exhibit D, *Email Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*, dated January 29, 2019.)

12. That I have complied with the requirements of EDCR 2.34 in good faith and that, despite meaningful discussions held with Mr. Galliher, the parties were unable to resolve this discovery dispute regarding the subject non-party identification information.

Executed on 1 day of February, 2019.



Michael A. Royal, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

This litigation arises from a November 4, 2016 incident occurring when Plaintiff slipped and fell in a lobby area of the Venetian while taking a break from her work station where she was employed as a salesperson for a vendor leasing space in the Grand Canal Shops. The cause of Plaintiff's fall is in dispute, as Venetian denies that there was any foreign substance on the floor at the time the incident occurred.

In the course of discovery, Plaintiff requested that Venetian provide three (3) years of prior incident reports. (*See* Exhibit A, attached hereto.) Venetian produced sixty-four (64) incident reports in redacted form (nearly 650 pages of documents), as Plaintiff would not agree to execute a stipulation and order to protect the information pursuant to NRCP 26(c). Plaintiff now demands that all of the nearly 650 pages produced responsive to her request be unredacted without providing the requested protection by Venetian.

of Civil Procedure, at 388-90). Pursuant to the Nevada Rules of Civil Procedure, the court in which the action is pending may make any order/recommendation which justice requires to protect a party so that certain discovery abuses do not occur. (*See* NRCP 26). The compulsion of production of irrelevant information is an inherently undue burden. (*See Jimenez v. City of Chicago*, 733 F. Supp. 2d 1268, 1273 (W.D. Wash. 2010) (*citing, Compaq Computer Corp. v. Packard Bell Elecs.*, 163 F.R.D. 329, 335-336 (N.D.Cal.1995)).

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

In the instant case, Plaintiff is using discovery in a manner that is unduly burdensome by requesting the production of personal and sensitive information from non-parties to this action; information which is not otherwise relevant to any claims or defenses of this case. Plaintiff is demanding the production of personal identification information, including Social Security numbers, dates of birth, driver's license numbers, home addresses, and telephone numbers of individuals who do not have any personal knowledge of the incident at issue. Once produced, this identification information would be used to correlate non-parties with sensitive health information included in the previously produced incident reports. It is not disputed by Plaintiff that the individuals involved in the prior incidents are not parties to this action, and are not percipient witnesses to Plaintiffs alleged accident.

Plaintiff cannot reasonably articulate how the identity of individuals involved in prior incidents on Venetian's premises, with no relation to Plaintiffs case, could be relevant to any issue of Plaintiff's claim. Plaintiff's personal injury litigation stems from the allegation that Plaintiff slipped and fell on a marble floor. Individuals involved in prior slip-and-fall incidents would be unable to provide any information regarding the alleged hazard which Plaintiff contends caused her fall. Reports of prior slip and fall incidents, which occurred on different circumstances, and on different dates, in different areas of the property have no relevancy to the issue of whether Venetian had notice of any condition

contributing to Plaintiff's fall on November 4, 2016. (*See Eldorado Club, Inc. v. Graff*, 78 Nev. 507 (1962); *Southern Pac. Co. v. Harris*, 80 Nev. 426, 431 (1964).)

All that stated, it is important to note that **Venetian is not objecting to providing Plaintiff with unredacted copies of prior incident reports, despite the fact that Venetian insists the personal information of prior guests is not at all relevant to any issues regarding the subject incident.[1] Venetian simply wants to keep all such information protected by order of the court under NRCP 26(c) to ensure that it remains solely within the scope of this litigation.** Venetian's concern is that such information can be disseminated to the public in a multitude of ways, and passed onto other persons having nothing to do with this litigation, thereby subjecting the persons identified herein to multiple contacts by persons, who have access to their personal information, including events, injuries, care provided, etc.

B. **The policy interests of protecting the confidential personal information outweigh the alleged need for discovery in this case**

Even where inquiries could reasonably lead to the discovery of admissible evidence, courts must still balance the proponent's interest in discovery of the information against any legitimate interest of the other party. Further, discovery requests should be specifically tailored to result in the production of materials relevant to the claims at issue, rather than broadly drafted in the hopes of uncovering relevant information. "*[Nevada's] discovery rules provide no basis for [a carte blanche] invasion into a litigant's private affairs merely because redress is sought for personal injury.*" *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189, 192 (1977). "*[T]he initiation of a lawsuit, does not, by itself, grant plaintiffs the right to rummage unnecessarily and unchecked* through the private affairs of anyone they choose. A balance must be struck." (*Ragge v. MCA/Universal Studios*, 165 F.R.D. 601, 605 (C.D.

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[1]Recall that Venetian contends that Plaintiff's fall had nothing to do with a foreign substance being on the floor; regardless, Venetian provided Plaintiff with sixty-four (64) prior incidents involving a foreign substance on the floor.

EXHIBIT 5

Electronically Filed
4/4/2019 11:23 AM
Steven D. Grierson
CLERK OF THE COURT

DCRR
Michael A. Royal, Esq.
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Gregory A. Miles, Esq.
Nevada Bar No. 4336
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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual; Plaintiff, v. VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; YET UNKNOWN EMPLOYEE; DOES I through X, inclusive, Defendants.	CASE NO.: A-18-772761-C DEPT. NO.: XXV **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION** Hearing Date: March 13, 2019, 9:00 am

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

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

I.

FINDINGS

1. Defendant Venetian filed *Defendants' Motion for Protective Order* on February 1, 2019 related to the production of redacted prior incident reports in response to an NRCP 34 request by Plaintiff. Plaintiff filed an *Opposition to Defendants' Motion for Protective Order* on February 13, 2019, arguing that there is no basis to redact information in prior incident reports (other than Social Security numbers) or otherwise to afford them protection under NRCP 26(c). Defendant filed a *Reply to Opposition to Defendants' Motion for Protective Order* on March 5, 2019 and an *Addendum to Reply to Opposition to Defendants' Motion for Protective Order* on March 6, 2019 noting, among other things, that Plaintiff's counsel had already been sharing prior incident reports with other attorneys not involved in the present litigation.

2. A hearing on motion was held on March 13, 2019.

3. Venetian counsel argued that prior incident reports have been produced, which represent slip and falls occurring on marble floors in the common areas of the Venetian casino level.

4. Plaintiff's counsel argued that after comparing a production by Venetian in the case of *Smith v. Venetian*, Case No. A-17-753362-C, he discovered four incident reports produced in that case which were not produced by Venetian in this litigation. Defense counsel related that he is unaware of that issue and that he will investigate.

After reviewing the papers and pleadings on file, and consideration of arguments presented by counsel for the parties, the following recommendations are made.

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///

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II.

RECOMMENDATIONS

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

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

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

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

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

///

///

A-18-772761-C
SEKERA V. VENETIAN

IT IS FURTHER RECOMMENDED that the motion is otherwise denied.

DATED this 2nd day of April, 2019.

DISCOVERY COMMISSIONER

Submitted by:

Royal & Miles LLP

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

Reviewed by:

THE GALLIHER LAW FIRM

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

IT IS FURTHER RECOMMENDED that the motion is otherwise denied.

DATED this _____ day of _____, 2019.

DISCOVERY COMMISSIONER

Submitted by:

Royal & Miles LLP

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

Reviewed by:

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1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorney for Plaintiff

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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 April 18 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 April 4, 2019, Pursuant to N.E.F.C.R. Rule 9.

The Commissioner's Report is deemed received three (3) days after mailing or e-serving to a party or the party's attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. E.D.C.R. 2.34(f).

By: Natalie Lee
COMMISSIONER DESIGNEE

EXHIBIT 6

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **May 14, 2019**

A-18-772761-C Joyce Sekera, Plaintiff(s)
vs.
Venetian Casino Resort LLC, Defendant(s)

May 14, 2019 **09:00 AM** **Objection to Discovery Commissioner's Report**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15B

COURT CLERK: Boyle, Shelley

RECORDER:

REPORTER: Silvaggio, Renee

PARTIES PRESENT:

Keith E. Galliher, Jr. **Attorney for Plaintiff**

Michael A Royal **Attorney for Defendant**

JOURNAL ENTRIES

Kathleen Galligher, Esq. present on behalf of Pltf.

Extensive colloquy and argument regarding Pltf's. request for production of disclosures regarding people slipping and falling on the marble flaws at the business premises, the redacted reports received, Pltf's. request for unredacted reports, Deft's. request Pltf. stipulate to a privacy order, and if the parties listed in the reports would be willing to cooperate with Pltf. COURT ORDERED, the Discovery Commissioner's FINDINGS REVISITED. COURT STATED FINDINGS. To the extent unredacted incident reports are to be provided, Pltf. should not be precluded from knowing who these people are and from getting all of this information. Redaction should only apply to social security numbers and personal identifying information only if anything is filed. COURT thinks Commissioner Truman made an error here, it is relevant discovery. Court does not see any legal basis upon which this should have been precluded.

COURT STRONGLY CAUTIONED, how this information is shared and who gets hold of it doesn't necessarily stop people from being upset as to how it is being shared. The Discovery Commissioner's FINDINGS REVERSED; unredacted incident reports are to be provided with no technically no limitation on how Pltf. utilizes them. COURT FURTHER ORDERED, the three Counter Motions DENIED on substantive grounds. COURT is not DENYING the Counter Motions on procedural grounds. Mr. Galliher to prepare the Order, provide a copy to opposing counsel for review as to form and content, and return it back to the Court within 10 days.

EXHIBIT 7

RFP
Michael A. Royal, Esq.
Nevada Bar No. 4370
Gregory A. Miles, Esq.
Nevada Bar No. 4336
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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual; Plaintiff, v. VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; YET UNKNOWN EMPLOYEE; DOES I through X, inclusive, Defendants.	CASE NO.: A-18-772761-C DEPT. NO.: XXV

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

TO: Plaintiff JOYCE SEKERA; and

TO: Keith E. Galliher, Jr., Esq.; her attorney:

Pursuant to Rules 26 and 34 of the Nevada Rules of Civil Procedure, Defendant VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel, ROYAL & MILES LLP, responds to Plaintiff's first requests for production of documents and materials as follows:

REQUEST NO. 12:

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

RESPONSE NO. 12:

Defendants object to the extent this request lacks foundation and assumes facts not in evidence, is overly broad, vague and ambiguous (*i.e. "ground floor"* would refer to the basement which has a different floor surface, and *"Bouchon restaurant floor"* as Defendants did not own, manage, maintain or control the premises of the Bouchon restaurant nor is there any evidence that Plaintiff ever in the Bouchon restaurant at any time), is unduly burdensome and presupposes Defendants are in possession of all information requested, further to the extent that it seeks information protected by attorney/client privilege and/or attorney work product privilege, further to the extent it seeks information surrounding expert consultants or seeks information related to the disclosure of experts prior to the time set forth in the Joint Case Conference Report, and also to the extent it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to said objection, Defendants respond as follows: As to any such reports obtained from November 3, 2013 to November 4, 2016 on the main casino floor level where the subject incident occurred, Defendant has no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1 and all supplements thereto. Discovery is continuing.

REQUEST NO. 13:

Any and all documents invoices, work orders or communications with respect to the purchase and/or application of any coating placed on the marble floors located on the ground floor and Bouchon

restaurant floor of the Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas from three years before the fall, November 4, 2013, to the present.

RESPONSE NO. 13:

Defendants object to this request as vague, ambiguous and overly broad as to *"any coating placed on the marble floor"* (*i.e.* this conceivably would include water used to clean), *"ground floor"* (as this refers to the basement area, which has an entirely different floor surface), and *"Bouchon restaurant floor"* (Defendants did not own, manage, maintain or control the premises of the Bouchon restaurant nor is there any evidence that Plaintiff ever in the Bouchon restaurant at any time), lacks foundation and assumes facts not in evidence (*i.e.* that Plaintiff was ever in and around the Bouchon restaurant at any time prior to the subject incident or that there was a foreign substance on the floor at the time of Plaintiff's fall, which Defendants deny), to the extent it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to said objection, Defendants respond as follows: As to the area where Plaintiff fell, from the time period of November 4, 2013 to November 4, 2016 on the main casino floor level where the subject incident occurred, please see Defendants' disclosures pursuant to NRCP 16.1, including but not limited to VEN 1078-VEN 1097. Discovery is continuing.

REQUEST NO. 14:

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

RESPONSE NO. 14:

Defendants object to the extent this request lacks foundation and assumes facts not in evidence (*i.e.* that there was a foreign substance on the floor at the time of Plaintiff's fall, which Defendants deny), is overly broad, vague and ambiguous, unduly burdensome and presupposes Defendants are in

possession of all information requested, to the extent that it seeks information protected by attorney/client privilege and/or attorney work product privilege, to the extent it seeks information surrounding expert consultants or seeks information related to the disclosure of experts prior to the time set forth in the Joint Case Conference Report, and to the extent it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to said objection, Defendants respond as follows: *See* documents previously identified by Defendants as VEN 269 - 928, and all supplements thereto, which relate to the common areas of flooring on the casino floor area where the subject incident occurred. Discovery is continuing.

DATED this 15 day of April, 2019.

ROYAL & MILES LLP

By: _____

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of April, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS AND MATERIALS TO DEFENDANT** to be served as follows:

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

_____ to be served via facsimile; and/or

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

_____ to be hand delivered;

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

Keith E. Galliher, Jr., Esq.
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sray@galliherlawfirm.com

Ashley Schmitt
An employee of ROYAL & MILES LLP

EXHIBIT 8

RFP
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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual; Plaintiff, v. VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; YET UNKNOWN EMPLOYEE; DOES I through X, inclusive, Defendants.	CASE NO.: A-18-772761-C DEPT. NO.: XXV

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

TO: Plaintiff JOYCE SEKERA; and

TO: Keith E. Galliher, Jr., Esq.; her attorney:

Pursuant to Rules 26 and 34 of the Nevada Rules of Civil Procedure, Defendant VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel, ROYAL & MILES LLP, responds to Plaintiff's sixth requests for production of documents and materials as follows:

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.

RESPONSE NO. 23:

Defendants object to the extent this request lacks foundation and assumes facts not in evidence, is overly broad, vague and ambiguous, is unduly burdensome and presupposes Defendants are in possession of all information requested. Defendants further object to the extent that this request seeks information equally accessible by Plaintiff and in the possession of her counsel (*i.e.* testing by experts exchanged in the present litigation in accordance with NRCP 16.1), or that it is protected by attorney/client privilege and/or attorney work product privilege (*i.e.* use of expert consultants as contemplated by NRCP 26(b)(4)), further to the extent it seeks information surrounding expert consultants or seeks information related to the disclosure of experts used in a consulting capacity protected by NRCP 16.1(b), and further to the extent it seeks information not reasonably calculated to lead to the discovery of admissible evidence, such as any testing performed following the subject incident beyond what has been exchanged pursuant to NRCP 16.1. (Defendants contend that the subject incident occurred on a dry marble floor, which is clearly established from surveillance footage identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the kind of *"fishing expedition"* contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189, 192 (1977), which it determined to be without reasonable justification. Without waiving and subject to the above stated objection, Defendants respond as follows: *See* Defendants' Responses to Plaintiff's Second Requests for Production of Documents and Materials to Defendant (12.07.18); *see also* Defendants' NRCP 16.1 disclosure and all supplements thereto, including but not limited to documents identified as follows: Tom Jennings April 23, 2018 Report (VEN 107 - 119); Joseph Cohen, Ph.D,

August 8, 2018 (VEN 120 - 132); Tom Jennings October 23, 2018 Report (VEN 133 - 134); Tom Jennings December 28, 2018 report (produced by Plaintiff pursuant to NRCP 16.1); Toby Hayes, Ph.D. May 17, 2019 report (produced by Defendants pursuant to NRCP 16.1). Defendants reserve the right to supplement this response if additional information becomes available. Discovery is continuing.

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.

RESPONSE NO. 24:

Defendants object to this request as vague and ambiguous (*i.e. "safety of the marble floors"*), is overly broad in scope and time, is unduly burdensome, seeks information protected by attorney/client privilege and/or attorney work product privilege (*i.e.* disclosure of information protected by NRCP 26(b)(4)), lacks foundation, and seeks information which is not reasonably calculated to lead to the discovery of admissible evidence, but is intended to vex, harass and annoy. (Defendants contend that the subject incident occurred on a dry marble floor, which is clearly established from surveillance footage identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the very kind of *"fishing expedition"* contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189, 192 (1977), which it determined to be without reasonable justification. Without waiving and subject to the above stated objection, Defendants respond as follows: Defendants have no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1, NRCP 34, and all supplements thereto. *See also* Response to Request No. 23. Discovery is continuing.

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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.

RESPONSE NO. 25:

Defendants object to this request as vague and ambiguous (*i.e. "safety of the marble floors"*), is overly broad in scope and time, unduly burdensome, seeks information protected by attorney/client privilege and/or attorney work product privilege (*i.e* information protected by NRCP 26(b)(4)), lacks foundation, and seeks information which is not reasonably calculated to lead to the discovery of admissible evidence, but is intended to vex, harass and annoy. (Defendants contend that the subject incident occurred on a dry marble floor, which is clearly established from surveillance footage identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the very kind of *"fishing expedition"* contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189, 192 (1977), which it determined to be without reasonable justification. Without waiving and subject to the above stated objection, Defendants respond as follows: Defendants have no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1, NRCP 34, and all supplements thereto. *See also* Response to Request No. 23. Discovery is continuing.

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.

RESPONSE NO. 26:

Defendants object to this request as vague and ambiguous (*i.e. "safety of the marble floors"*), is overly broad in scope and time, unduly burdensome, seeks information protected by attorney/client privilege and/or attorney work product privilege (*i.e.* information protected by NRCP 26(b)(4)), lacks foundation, and seeks information which is not reasonably calculated to lead to the discovery of admissible evidence, but is intended to vex, harass and annoy. (Defendants contend that the subject incident occurred on a dry marble floor, which is clearly established from surveillance footage identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the very kind of *"fishing expedition"* contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189, 192 (1977), which it determined to be without reasonable justification. Without waiving and subject to the above stated objection, Defendants respond as follows: Defendants have no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1, NRCP 34, and all supplements thereto. *See also* Response to Request No. 23. Discovery is continuing.

REQUEST NO. 27:

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

RESPONSE NO 27:

Objection, this request is incomplete as drafted. It is vague and ambiguous, lacks foundation, and cannot be responded to as phrased.

REQUEST NO. 28

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

RESPONSE NO. 28:

Defendants object to the extent this request lacks foundation, assumes facts not in evidence, is overly broad, vague and ambiguous. This request lacks foundation and seeks information not reasonably calculated to lead to the discovery of admissible evidence (*i.e.* documents created after the subject incident). Without waiving said objection, Defendants respond as follows: *See* documents identified pursuant to NRCP 16.1, bates numbers VEN 044-106, and all supplements thereto. Discovery is continuing.

REQUEST NO. 29:

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

RESPONSE NO. 29:

Defendants object to extent this is vague, ambiguous and overly broad as to *"submitted by guests or other individuals"*, *"regarding the safety"* and as to timing (*i.e.* information presumably dating from Venetian's opening in 1999 to the present), is unduly burdensome, seeks information that cannot possibly be known (*i.e.* *"complaints submitted"* to whom?), lacks foundation, and seeks information not reasonably calculated to lead to the discover of admissible evidence, but is instead intended to vex, harass and annoy. Without waiving and subject to said objection, Defendants respond as follows: *See* documents previously produced by Defendants pursuant to NRCP 16.1, including but not limited to those identified as VEN 269 - 928; VEN 1104 - 1122, and all supplements thereto. Discovery is continuing.

REQUEST NO. 30:

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

RESPONSE NO. 30:

Defendants object to this request as vague, ambiguous and overly broad as to *"the marble floors"* and *"modification"* and further as to scope in location and time, lacks foundation, assumes facts not in evidence, seeks information protected by attorney/client privilege and/or attorney work product privilege, further seeks information regarding protected communications pursuant to NRCP 26(b)(4), and generally seeks information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection, Defendants respond as follows: Defendants cannot respond to this request as phrased. Discovery is continuing.

DATED this 27 day of June, 2019.

ROYAL & MILES LLP

By: _____

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of June, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS AND MATERIALS TO DEFENDANT** to be served as follows:

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

_____ to be served via facsimile; and/or

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

_____ to be hand delivered;

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

Keith E. Galliher, Jr., Esq.
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Ashley Schmitt
An employee of ROYAL & MILES LLP

EXHIBIT 9

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

/

DEPOSITION OF CHRISTOPHER JOHNSON

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

On Monday, May 6, 2019
At 2:00 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

Page 15

Q And how about any physical observation at the scene, would you have readiness of that?
A I don't believe so. That's not my duty to actually make on the scene. We have engineers that come out and they do accident checks and stuff like that.
Q So would it be fair to state that the only thing that would have been on your notepad would have been your summary of any conversations you had with my client?
A Yes, sir.
Q Nothing else you can think of?
A No.
Q Is that right?
A Uh-huh.
Q Have you understood all my questions today?
A Pretty much. Yeah, kind of going back and forth there for a minute.
Q Anything you want me to repeat or rephrase?
A Not at this time. No, sir.
Q Thank you. Pass the witness.
MR. ROYAL: Off the record for a second.

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Page 16

EXAMINATION
BY MR. ROYAL:
Q Okay. Now, I just wanted to verify a couple of things that you testified to, one of which was when you started watching this video.
A Uh-huh.
Q Okay. So one of the things that Counsel asked you is whether you saw the video before -- and I'm showing you right now the video at 12:40:53. And it's just a still shot, and it has a woman on the floor and an Asian male who is kind of kneeling down in front of her.
A Yes, sir.
Q See that?
A Yes, sir.
Q Are you saying that you saw a video before there was a woman sitting on the floor?
A Yes.
Q Okay. You just don't remember actually seeing the event that caused her to fall?
A I don't recall the event, no.
Q Doesn't mean you didn't see it, you just don't recall it?
A Exactly.
Q Okay. I'm going to advance this, okay, to

Page 17

the point of your arrival.
MR. GALLIHER: Can you give me the time?
MR. ROYAL: Yeah, I'm going to. Okay. All right. It's not cooperating with me.
BY MR. ROYAL:
Q Okay. We're at 12:41:36, and do you see yourself walk into the frame?
A Yes.
Q And you are in blue?
A Yes.
Q And then as you -- now I'm going to go back. Then what you did is, you walked in, you walked through an area and then you sort of -- I'll call it kneeling down.
You kind of squat down and have a conversation with the plaintiff, the woman on the floor. Right?
A Yes.
Q All right. So I'm going to go back to the point of your entry or arrival at the scene again. I'm going to stop it at 12:41:37. At this point, there's -- there's someone to the left as you are approaching.
Do you -- can you recognize or identify the uniform?

Page 18

A That is a PAD employee.
Q Okay. Now, you didn't -- you testified you didn't have any recollection of any conversations you had with anybody wearing that kind of uniform near the scene.
A I didn't have any, no.
Q Do you remember them being there?
A No.
Q All right. So as you -- I'm going to continue it now from 12:41:37 and I'm going to stop it at 12:41:40.
Okay. Before you kneel down or squat down and talk to the plaintiff, as you walked through that particular area at that time, do you remember seeing anything on the floor?
A No, I don't recall.
Q Do you remember having any trouble walking through that area?
A No, I didn't have any trouble walking through.
Q Do you remember anyone telling you to stop, don't walk through that area?
A No, no one told me.
Q All right. Now, as you kneel down at 12:42 -- I'm sorry -- 12:41:42, as you squat down,

EXHIBIT 10

1
2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**
4
5 JOYCE SEKERA, an Individual,
6 Plaintiff,
7 vs. Case No. A-18-772761-C
Dept. 25
8 VENETIAN CASINO RESORT, LLC,
9 d/b/a THE VENETIAN LAS VEGAS,
a Nevada Limited Liability
10 Company; LAS VEGAS SANDS, LLC
d/b/a THE VENETIAN LAS VEGAS,
11 a Nevada Limited Liability
Company; YET UNKNOWN EMPLOYEE;
12 DOES I through X, inclusive,
13 Defendants.
14 _____/
15
16 **DEPOSITION OF CHRISTINA TONEMAH**
17 Taken at the Galliher Law Firm
1850 East Sahara Avenue, Suite 107
18 Las Vegas, Nevada 89104
19 On Friday, July 12, 2019
At 2:44 p.m.
20
21
22
23
24
25 Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

2 For the Plaintiff: **KEITH E. GALLIHER, JR., ESQ.**
3 - And -
KATHLEEN H. GALLAGHER, ESQ.
4 - And -
GEORGE J. KUNZ, ESQ.
5 Galliher Law Firm
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7 (702)735-0049

8 For the Defendants: **MICHAEL A. ROYAL, ESQ.**
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18 I N D E X
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20 WITNESS PAGE
CHRISTINA TONEMAH
21 Examination By Mr. Galliher 3
Examination By Mr. Royal 17
22 Further Examination By Mr. Galliher 24
23
24
25 -oOo-

1 **CHRISTINA TONEMAH,**
2 having been first duly sworn to tell the truth, the
3 whole truth and nothing but the truth, was examined
4 and testified as follows:
5
6 **EXAMINATION**
7 ***BY MR. GALLIHER:***
8 Q Would you state your name, please.
9 A Christina Tonemah.
10 Q And where do you work?
11 A I'm retired. I worked at the Venetian
12 Palazzo as a pit manager for 17 and a half years.
13 Q All right, you answered my next question.
14 So tell me what a pit manager does.
15 A My responsibilities in this particular area
16 is all the table games outside the baccarat pit. So I
17 cover, like, anywhere from -- when I first go in maybe
18 30 games and by 1:30, 2:00, I have probably 75 games
19 on the main floor that I coordinate. I supervised all
20 floor supervisors, dealers, pit clerks.
21 Q So did you supervise Gary Shulman?
22 A Yes, I did.
23 Q And how do you know him?
24 A I worked with him for 17 and a half years.
25 Q How would you describe him as an employee?

1 A He was very good at what he does. He's
2 temperamental and pouty.
3 Q When you say "temperamental and pouty," tell
4 me.
5 A Well, he doesn't -- in my opinion, he's
6 not -- he didn't particularly like smoke very well,
7 manager suggestions that I would give him.
8 Q So did he have any type of open rebellion?
9 A No, not with me.
10 Q So it appears, at least, there were times
11 where he might have disagreed with your instructions.
12 A Correct.
13 Q But you supervised him for how long?
14 A For eight hours a day.
15 Q Over how many years?
16 A 17 years.
17 Q And during that time frame, did you issue
18 any disciplinary action against him?
19 A To the best of my ability to remember,
20 actual written down incidents, no. Verbal coaching,
21 yes.
22 Q Did you give verbal coaching to other
23 employees?
24 A Yes.
25 Q Was he worse or better?

1 A No, no. I mean average.
2 Q All right. So he was basically an average
3 employee from a disciplinary standpoint?
4 A Correct.
5 Q But you indicated that apparently he was
6 skilled in terms of his position?
7 A Yes.
8 Q And could you tell me what you base that on,
9 because I don't know what he does.
10 A Well, he would supervise dealers and games
11 up to six, eight games at a time. And what we call
12 the novelty pit which is like Texas Hold 'Em,
13 Caribbean Stud, three-card poker, whatever other crazy
14 game war that they come up with, plus roulette, plus
15 blackjack, and he was a dice floorman also.
16 Q A "dice" what?
17 A "Floorman." Supervisor they call them
18 nowadays.
19 Q All right, so sounds like he supervised
20 numerous different games.
21 A Yes.
22 Q And at least it's your opinion that he did
23 that competently?
24 A Yes.
25 Q Did you have any other personal

1 disagreements with Mr. Shulman, other than what we
2 have talked about, in terms of having to verbally
3 coach him?
4 A Not really. I don't talk politics or
5 religion at work.
6 Q Smart. All right. Now, the only thing we
7 know about you is you were named as a witness in this
8 case. Do you have any idea why?
9 A Probably because I was the manager of the
10 whole floor area, and floor supervisors would call me
11 if there was an incident anywhere on the floor in
12 their area that they dealt with.
13 Q And do you recall receiving a call from
14 Mr. Shulman on the date of this fall?
15 A This particular date and time, no, but it
16 was not unusual in a year to get four to six calls of
17 someone slipping, falling, drinks spilled, things like
18 that.
19 Q And when you talk about slipping, falling,
20 drinks spilled, are we talking about the marble floor?
21 A Or carpet. Wherever. Wherever it is, I
22 have to supervise and report that. That's why I carry
23 a cell phone. It's automatically at surveillance,
24 notify security, notify EMT and film the incident.
25 Q And is that when someone from the casino is

1 the person who notices either the spill or the fall?
2 A If anybody reports it to a floorman, which
3 myself -- those are the steps I have to take.
4 Q So as I understand you are telling me, if
5 there's a fall, if there is a spill, it would be the
6 obligation of your underlings in the casino to notify
7 you of that event?
8 A Uh-huh.
9 Q Is that yes?
10 A Yes.
11 Q And then your obligation at that point in
12 time is to notify whom?
13 A I would notify surveillance.
14 Q And after you notify surveillance, would you
15 notify anyone else?
16 A No, they usually -- the steps that are in
17 place is, because I cover such a large area, I would
18 call surveillance, zero in on the area and I would
19 say, Call the EMT or security.
20 Those are the ground rules which I worked
21 under in the casino business for over 40 years.
22 Q So during -- you were at the Venetian, you
23 said, for 17 and a half years?
24 A Yes.
25 Q And during your 17 and a half years, can you

1 give me your best estimate of how many times you made
2 that call to surveillance?
3 A I'd say probably four to six times a year,
4 maybe.
5 Q Is that your best estimate?
6 A That's my best estimate.
7 Q We have some video surveillance in this
8 case; do you understand that?
9 A Uh-huh.
10 Q Is that yes?
11 A Yes.
12 Q By the way, when I --
13 A I understand.
14 Q We're just making the record so don't -- I'm
15 not being rude. Let's go back to the video
16 surveillance.
17 I saw -- Mr. Royal showed it to me before
18 the deposition. I see you are on the video
19 surveillance for about four seconds.
20 A Correct.
21 Q And it looks like you had a phone in your
22 hand and you walk over to someone on the floor.
23 A Correct.
24 Q And do you remember whether you had a
25 conversation with that person or not?

1 A I do not remember having a conversation.
2 All's I usually say is -- look at the situation, say,
3 "Don't move, stay right there, security is on the
4 way."
5 Q Is that what you probably would have done in
6 this case?
7 A Absolutely.
8 Q And then you are on the phone, so are you
9 phoning someone at the same time that you are over at
10 the scene of the fall?
11 A In this particular incident, as soon as it
12 was reported to me by Gary, I get on the phone. My
13 phone rings constantly because at this particular
14 time -- he was surprised I knew that it happened on a
15 Friday, and it had to be before 1:00 because I'm busy
16 opening games from 12:30 to 1:00 in an area that's
17 further away. That's why it took me longer to get
18 there.
19 Q Do you have an idea how long it took you to
20 get there after you received a phone call from
21 Mr. Shulman?
22 A Maybe a minute and a half. Maybe. I'm not
23 positive of that time. If I could recall exactly
24 where I was when I got that call, it would be get
25 better, but I only see myself very quickly on that.

1 Q Do you know whether or not the woman that
2 was on the floor said anything?
3 A No.
4 Q You don't know or she didn't?
5 A I don't know if she said anything to me
6 because I know at this particular time, not only was I
7 opening games, assigning dealers and answering phone
8 calls -- and I don't stick around after I report it to
9 security and surveillance to get a name and everything
10 unless it's a bad accident, like if someone's
11 unconscious, passes out, heart attack. Then I'm more
12 attentive and on top of that.
13 Q And you mentioned reporting to security and
14 surveillance. Are those two separate calls?
15 A No, it's one call. Because when you are a
16 pit manager and you have that cell phone, when you
17 call surveillance, they know you need an area covered
18 and you need help sent to that area.
19 Q So would it be fair to state that your
20 initial call -- when you talk about surveillance, are
21 we talking about the surveillance within the security
22 department?
23 A The eye in the sky. It covers everything.
24 Q So when you're making that call, you are
25 making a call to the eye in the sky?

1 A Correct.
2 Q When we talk about the term security and
3 surveillance, that would be one in the same; that
4 would be the eye in the sky?
5 A Correct.
6 Q So the call you made in this case would have
7 been to the eye in the sky?
8 A Correct.
9 Q So would you have made more than one call?
10 A Just the one. Had she been unconscious, I
11 would have made more.
12 Q If she would have been unconscious, who
13 would you have called?
14 A I would have called surveillance, they would
15 have called security. I would have gotten on the
16 phone with EMTs.
17 Q And I think we have earlier established
18 that, you recall during your tenure at the Venetian --
19 and, by the way, you worked strictly at the Venetian?
20 A I worked both Venetian and Palazzo.
21 Q So when we talk about the four to six calls
22 that you remember, is that when you were employed at
23 both places, the Venetian and Palazzo, or just the
24 Venetian?
25 A Just the Venetian.

1 Q So divide it up for me. How much time did
2 you spend employed at the Palazzo and versus Venetian?
3 A Well, when you are assigned there, you are
4 working both casinos.
5 Sometimes I would be relief and relieve two
6 pit managers over here and two over at the Palazzo,
7 and I would be going back and forth between the
8 atrium, the waterfall sometimes, moving.
9 Q So it sounds like most of your time is spent
10 at the Venetian.
11 A The last two years I was there, yes.
12 Q Now, give me an idea of the hierarchy. You
13 supervise the table supervisors. You are a pit --
14 A Pit manager. At the time I was called pit
15 manager.
16 Q And who supervises you?
17 A Shift manager.
18 Q And who supervises the shift manager?
19 A Casino manager.
20 Q And when you talk about shift manager, is
21 that like one person per shift that's in charge?
22 A There's one person on the Venetian side and
23 one shift manager on the Palazzo side.
24 Q And how many of your capacity -- we used to
25 call them pit bosses.

1 A That's what I was, pit boss.
2 Q So how many pit bosses?
3 A There were only two. They had one outside,
4 which was me, and one inside the baccarat room which
5 is someone else.
6 Q So there's one shift manager, two pit bosses
7 per shift?
8 A Correct.
9 Q And how many floor supervisors, table
10 supervisors?
11 A It could vary between -- on weekends we
12 usually -- now, this was an estimate only. Sometimes
13 up to 35.
14 Q And that would be strictly the Venetian?
15 A Correct.
16 Q Now, during your time at the Venetian, has
17 anyone ever told you or have you been made aware of
18 the fact that the marble floors at the Venetian are
19 dangerous when wet?
20 ***MR. ROYAL:*** Objection, form.
21 ***BY MR. GALLIHER:***
22 Q You can answer.
23 A Oh. Yes.
24 Q And who is it that made you aware of this or
25 did you -- were you aware of it yourself?

1 A I'm aware of it myself because of working in
2 the business for 40 years. I know the difference
3 between carpet areas and marble areas.
4 Q So would you agree with me that a marble
5 floor, when wet, is more dangerous than a carpeted
6 area when wet?
7 ***MR. ROYAL:*** Objection, form.
8 ***THE WITNESS:*** That's hard to say.
9 ***BY MR. GALLIHER:***
10 Q Well, how about more slippery?
11 A It could be slippery because of your shoes
12 or -- heels are slipperier than tennis shoes, you
13 know, those apples-and-oranges type things.
14 Q I understand. But is it your understanding
15 that the marble floors at the Venetian were slippery
16 when wet?
17 A Can be.
18 Q And have you ever witnessed a fall yourself
19 on the marble floors at the Venetian?
20 A Yes.
21 Q On how many occasions?
22 A That I can -- probably three or four.
23 Q And when did those occur on the marble
24 areas?
25 A Either -- we call them the pathways. The

1 pathways between the games, whichever direction you
2 are going, or in front of that circular area.
3 Q But the pathways are marble?
4 A Yes.
5 Q And then from what I understand, the
6 pathways separate carpeted areas because the casino
7 itself is carpeted and the poker room is carpeted.
8 A Well, the casino -- the casino floor
9 consists of carpet, pathway, carpet. All of that is
10 our casino floor. We don't distinguish, you know,
11 carpet you stay on, marble you don't. You know, it's
12 all my area.
13 Q How about where the tables are located? Are
14 they located on a carpeted area or are they also
15 located on marble?
16 A They are located on carpet.
17 Q And would that also be true of the poker
18 rooms?
19 A Yes.
20 Q And the baccarat room as well?
21 A Yes.
22 Q Are there other rooms where there are table
23 games located where marble floors are located?
24 A Just what you see when you walk in and the
25 baccarat area. But it -- quote, unquote, where the

1 table games sit, it's usually carpeted.
2 Q And do you know why that's the case?
3 A Yes. It's for cushion and comfort for
4 people who stand for six hours to eight hours a day.
5 Q Is there any -- are there any safety
6 concerns in terms of having carpet in those locations
7 versus marble?
8 A No.
9 Q So no one's ever made you aware or ever told
10 you that, Hey, we carpet the casino area -- I'm
11 talking about where the table games are located --
12 because we feel they're safer for the customers?
13 A No.
14 Q So the same for the baccarat room and poker
15 room?
16 A Uh-huh.
17 Q Is that yes?
18 A Yes.
19 Q Okay. So did you actually see the fall in
20 this case?
21 A No.
22 Q So the only thing you know about the fall is
23 the four seconds of video that you were shown?
24 A Correct.
25 Q And that will take you through what we

1 talked about already?
2 A Correct.
3 Q Have you understood all my questions today?
4 A Yes.
5 Q Anything you want me to repeat or rephrase
6 for you?
7 A No.
8 Q Thank you.
9 ***MR. ROYAL:*** I'm going to ask you a few
10 questions. I'm going to show you the video and I'm
11 going to start it --
12
13 **EXAMINATION**
14 ***BY MR. ROYAL:***
15 Q Okay. I'm going to start it -- I'm going to
16 start it at 12:39:03 and make a reference to VEN019.
17 At 12:39:04, you walk into the scene from
18 the -- into the camera I should say, at the top right.
19 A Yeah. I'm coming from Pit 8.
20 Q Okay. And is that you -- your right hand
21 has a phone up to your ear?
22 A Yes.
23 Q Okay. By that time, you are on the phone --
24 or strike that. Let me just show you the rest of
25 this.

1 Okay. I'm going to stop it at 12:39:08.
2 What are you doing at that point?
3 A I'm pointing at her, asking her to stay
4 where she is, that I have alerted surveillance --
5 surveillance, security. To me they're the same. So
6 that's -- you know, and I believe I asked her, "Are
7 you okay?" And she nodded.
8 Q Okay.
9 A This person I don't know, other than I
10 believe he's either head of housekeeping or -- they
11 dress them different. That's a uniform, I can tell
12 you that.
13 Q Okay. You are talking about the large
14 man --
15 A Yeah.
16 Q -- standing between -- he's standing, kind
17 of blocking the woman on the ground?
18 A Correct.
19 Q Okay. Then you walk out of the scene at
20 12:39:12.
21 A Correct.
22 Q All right, and we don't see you again. At
23 this point, do you just go back to your shift?
24 A I go back over, yes. I'm always on the
25 clock, always. That's even considered on the clock.

1 From that, after I asked her if she is okay, told her
2 not to move, surveillance arrives and stuff, I go back
3 over to my other area, which is called Pit 1, because
4 I'm opening games at quarter to 1:00.
5 Q Okay, so we just had you leave the area.
6 Now I'm back at 12:39:28. Do you recognize Gary
7 Shulman?
8 A Yes.
9 Q Okay. So tell me what is -- Gary Shulman,
10 when the incident occurred, I'll represent to you that
11 he was one of the first people to come and talk to the
12 woman on the floor. Okay?
13 A Correct.
14 Q So what is the responsibility -- or what was
15 the responsibility at this particular time of a table
16 games supervisor like Gary Shulman when he comes upon
17 a scene like this?
18 A He would call me.
19 Q And then what?
20 A And then he's free to move on because I know
21 his name. I recognize him in case I need his name for
22 anything, or if the security or surveillance calls me,
23 I can tell them which floorman was there.
24 Q Okay. Does he -- if there's no one on
25 the -- strike that.

1 If there's no one around the person who is
2 on the floor in this case, I mean is there -- what
3 responsibility would he have, if any, any table
4 supervisor, to stay at the scene until you arrive?
5 A They really are not required to stay at the
6 scene unless they are -- to my knowledge, unless they
7 are severely hurt, knocked out, whatever.
8 Q Okay. And in this particular case, you
9 don't remember that being the case --
10 A No --
11 Q -- is that correct?
12 A -- no.
13 Q Anything about what you observed in your
14 interaction with the woman in the tape that she was
15 unconscious?
16 A No.
17 Q Okay. Are you aware of when -- you don't
18 remember the call you got from Gary Shulman?
19 A No, per se I do not, other than obviously
20 you see me walking to the scene. So he had to make me
21 aware that someone had fallen.
22 Q Okay. If he had come upon the scene and
23 just ignored it and didn't call you and you found out
24 about it later, would there be --
25 A I would ask him why.

1 Q Why would you ask him that?
2 A Because our -- when you work in the casino,
3 you don't just watch the games. You observe
4 everything around your area.
5 From what I see there, I'm -- I can assume
6 Gary is either going on break because he started at
7 five until 12:00. He's probably going on his break
8 since it's after 12:30, 12:25. So I don't know if
9 that's his break time, but it looks like he walks onto
10 this.
11 Because where that is, it's a round circular
12 area with pillars here and here and over here and
13 here, and the restrooms are here. And this pathway
14 that you see him coming there is by the roulette pit
15 and pit -- they keep moving the pits. So that would
16 have been Pit 5, I believe. Yeah, I think.
17 Q So if he came upon the scene and he doesn't
18 make a phone call, just goes to the bathroom and lets
19 someone else handle it, is that --
20 A Well, they have been told that -- the
21 Venetian's very careful to tell floormen to observe
22 and report: See something, say something.
23 It's been that since the day the Venetian
24 opened its doors. It's you are trained to -- there
25 used to be things on the wall that states that: See

1 something, say something. So if you see somebody,
2 call. You need to report it.
3 Q So if he didn't on this particular occasion
4 report it, is that something that would initiate some
5 kind of coaching from you?
6 A If it was reported to me that he didn't do
7 that, probably. Either I would have to or they would
8 have called a shift manager.
9 Q Are you aware that Gary Shulman was
10 terminated?
11 A I have heard that since I left there. Like
12 I said, I left in January -- January 23, 2017, when I
13 left.
14 Q Do you know anything related to the --
15 A No, I don't.
16 Q -- circumstances of his termination?
17 A No, I don't. I have not spoken to him since
18 I left.
19 Q And just to go back. I want to make sure
20 I'm clear on those four or six falls a year that you
21 recall on floors.
22 Are those solely on marble floors?
23 A No. One was on carpet where she slipped by
24 a slot machine. Intoxication. But she wasn't knocked
25 unconscious or anything, she just misstepped, slipped,

1 got up. I don't know what she did because I was never
2 questioned about it. My thing is you go over, you
3 ask, "Are you okay? Please don't move. Security is
4 on the way."
5 Q All right. So when you said four to six
6 falls a year --
7 A Within a 12-month period.
8 Q But are those falls any kind of falls? You
9 said intoxication, is why I ask.
10 A It's very -- some people will drop their
11 drink and just keep on walking and not worry about it.
12 The next person comes along and steps in it. Some
13 people catch themselves on a chair, some people fall.
14 But, you know, very few do -- in a year's
15 period did I really deal with. I cleaned up a lot of
16 spills as in seeing it dropped and then pulling chairs
17 to cover it or putting down towels and immediately
18 getting on my little cell phone and calling PAD.
19 That's our process.
20 Q The reason I ask is these four to six falls
21 a year, you said one was on carpet. I'm just asking
22 about -- this is an estimate, four to six falls a year
23 on floors. I'm trying to make sure I understand what
24 floors are we talking about.
25 A I've only dealt with the one in the slot

1 area one time in 17 years. The others are in the
2 pathways which are the marble areas.
3 ***MR. ROYAL:*** Okay. That's all I have.
4
5 **FURTHER EXAMINATION**
6 ***BY MR. GALLIHER:***
7 Q I have a few more. The questions about what
8 would happen if Gary Shulman didn't call you, do you
9 remember those questions?
10 A Yes, uh-huh.
11 Q But in this case, Gary Shulman did call you.
12 A Yeah, because you see me coming into the
13 area. Therefore, he had to have called me. I'm
14 assuming because I --
15 You have to understand that I walk the area
16 a lot because this is the beginning of my shift. I'm
17 opening games and assigning. I'm running for at least
18 the first hour and a half like a chicken with my head
19 cut off, trying to make sure all the floormen are in
20 their spots. I'm covering all that.
21 When that first break comes, that first
22 break they get -- and they have changed their breaks,
23 so I don't know if it was quarter to or quarter after.
24 You know, those things have changed.
25 From what I saw, I'm assuming that Gary's

1 walking down the pathway because he's going on break.
2 Which, either he's going to the bathroom, then on his
3 break and going to the food court. Because the
4 floormen in their suits can have lunch in the food
5 court area.
6 I don't know what Gary was doing, but, yes,
7 Gary must have called me. I'm assuming he did.
8 That's the only way I probably knew about it.
9 Q Okay. During the time that you were
10 employed at the Venetian in the casino, was there a
11 time where the entirety of the casino was carpeted?
12 A Wow. I believe when we first opened, the
13 first five years, everything was carpeted.
14 Q And was there a time when --
15 A Everything but the grand hallway.
16 Q I'm talking specifically about the casino.
17 We talked about the marble walkway.
18 A Correct.
19 Q Do you remember when the marble walkways
20 were installed?
21 A During their refurbishing probably after we
22 had been open -- probably the year after or the year
23 of the Palazzo opening, I would assume.
24 Q Do you remember what year that would be?
25 A No.

1 Come on, give me a break. I'm 68 years old.
2 Q That's okay, I understand. But what I'm
3 getting at, basically, there was a time at least where
4 the carpeted portion of the casino, which is now the
5 marble walkway portion of the casino, was replaced.
6 In other words, the carpet --
7 A To the best of my recollection; yes. Yes.
8 Q And you mentioned in your testimony that you
9 would take it on your own volition to secure an area
10 where there was a spill that you saw.
11 A Correct.
12 Q And how many times did that happen? Your
13 best estimate.
14 A Probably on holiday weekends three, four
15 times. During the week, not that often.
16 Q So three or four times you would spot the
17 spill yourself --
18 A Correct.
19 Q During the weekends, you would spot it and
20 then you would secure it?
21 A Correct.
22 Q And tell me how you do that.
23 A If it's in the middle of the pathway, I
24 would put chairs around it and put paper towels or
25 towels down to soak it up.

1 Q Did you put up cones or anything like that?
2 A I didn't have access to cones. That's why I
3 used table game chairs.
4 Q So you would basically surround the spill
5 area with the chairs from the table games?
6 A Correct, or stand there and have people
7 around me.
8 Q And that would happen, as your best
9 estimate, three or four times on holiday weekends and,
10 rather, not too often during the week?
11 A Correct.
12 Q That be correct?
13 A Correct.
14 Q As a pit boss, did you -- were you required
15 to go to the scene of a fall if there was no injury
16 claimed?
17 A Well, every -- I mean if I got a call on one
18 from a floorman, of course I had to go.
19 Q Did the floormen, were they instructed to
20 call you if there was any fall or if there was an
21 injury fall?
22 A If there was an injury fall or -- or, well,
23 a fall, you know.
24 Q All right. So do you know?
25 A I'm trying to think. They always call me

1 with everything. It was like being a mom of 38 to 40
2 kids plus 150 dealers, so...
3 Q So there wasn't really any protocol. It
4 would be up to the table supervisor that he was to
5 call you regarding the call?
6 A Most were very diligent about doing their
7 jobs, you know. We are encouraged to watch out for
8 our guests.
9 Q You are talking about the people who were
10 diligent doing their job. Gary Shulman would have
11 been diligent because he called you?
12 A Yes.
13 Q Thank you.
14 ***MR. ROYAL:*** Nothing further.
15 ***MR. GALLIHER:*** All right. Chris, thank you.
16 (The deposition concluded at 3:11 p.m.)
17
18
19
20
21
22
23
24
25

1 **REPORTER'S DECLARATION**

2 STATE OF NEVADA)
3)
COUNTY OF CLARK)

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

6 That I reported the taking of the deposition of the
7 witness, **CHRISTINA TONEMAH**, commencing on Friday,
8 July 12, 2019 at the hour of 2:44 p.m.

9 That prior to being examined, the witness was by me
10 duly sworn to testify to the truth, the whole truth,
11 and nothing but the truth.

12 That I thereafter transcribed said shorthand notes
13 into typewriting and that the typewritten transcript
14 of said deposition is a complete, true and accurate
15 transcription of said shorthand notes taken down at
16 said time, and that a request has not been made to
17 review the transcript.

18 I further declare that I am not a relative or
19 employee of counsel of any party involved in said
20 action, nor a relative or employee of the parties
21 involved in said action, nor a person financially
22 interested in the action.

23 Dated at Las Vegas, Nevada this _____ day of
_____, 2019.
24

25 _____
Pauline C. May, CCR 286, RPR

EXHIBIT 11

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

DATED this 2 day of May, 2019.

ROYAL & MILES LLP

By_____

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

DECLARATION OF MICHAEL A. ROYAL, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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.

3. 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 A, *Venetian Security Narrative Report* (IR 1611V-0680), November 4, 2016, VEN 008-09.)

25. Mr. Larson also estimated in deposition that of the prior slip and falls to which he responded in his nine (9) years as a Venetian security EMT, he could only think of perhaps *"a handful of those"* which falls he said were *"usually related to footwear or somebody not being cautious about where they are stepping."* (*See id.* at 81, ln 19-25; 82, ln 1-9.) Mr. Larson that he took pictures of Plaintiff's shoes to demonstrate their worn nature. (*See id.* at 70, ln 22-25; 71, ln 1-7; *see also* Exhibit I, *Photos of Plaintiff's Shoes* (VEN 037-038).)

26. Of the sixty-four (64) prior incident reports provided to Plaintiff in this matter by Venetian, none involve a guest slipping on a dry floor, such as the case here.

27. In addition to the sixty-four (64) prior incident reports provided to Plaintiff, she now claims on pages 4-5 of the pending Motion for Leave to Amend the Complaint, that Venetian did not provide reports of certain prior incidents which went into litigation. As for each, I offer the following by way of response:

a. ***Ceja v. Venetian Casino Resort, LLC*** (A-16-737866). I represented Venetian in this action. It was a slip and fall occurring in the Grand Canal Shops, which is not property owned by Defendants. It, therefore, has no relevance to this matter.

b. ***Lim v. Venetian Casino Resort, LLC*** (A-15-728316). I am advised that there is no corresponding security report related to this matter, that Venetian was unaware of the claim until the Complaint was filed, and that Venetian was unable to ever confirm the incident location and facts surrounding the occurrence. Defendants cannot state even today when, where and how this alleged incident occurred.

c. ***Nguyen v. Venetian Casino Resort, LLC*** (A-17-749115-C). This incident occurred at the upper mall level valet area and involved a guest who fainted after presenting a ticket to valet. There was no evidence of a slip of any kind causing the fall. This incident is clearly not remotely similar to the subject incident location or description.

d. ***Rucker v. Venetian Casino Resort, LLC*** (A-15-729566-C). This incident involves a slip and fall on liquid in the main Venetian hotel lobby area. This incident should have been included by Venetian in its response to the request for prior incident reports. Failure to include it was inadvertent. I did not represent Venetian in this matter and was unaware of it. Defendants will supplement NRCP 34 responses to provide this incident report.

e. ***Rowan v. Venetian Casino Resort, LLC*** (A-17-751293-C). This incident occurred in the breezeway area of the Venetian after unknown guests jumped into a water fountain then out, spilling large amounts of water onto the floor, leading to guest incident within the following two minutes. This incident should have been included by Venetian in its response to the request for prior incident reports. Failure to include it was inadvertent. I did not represent Venetian in this matter and was unaware of it. Defendants will supplement NRCP 34 responses to provide this incident report.

28. Venetian has not withheld any of the above matters in some kind of calculated manner to prevent her from being able to establish up to sixty-six (66) prior incident reports.

29. I further declare that the exhibits identified herein below are true and correct copies of documents produced in or otherwise related to this matter.

EXHIBIT	TITLE
A	Venetian Security Narrative Report (IR 1611V-0680) (10.04.16) (VEN 008-09)
B	Transcript of Joyce Sekera Deposition (03.14.19) pp. 19-21, 75-79, 109
C	Surveillance Footage of Subject Incident (VEN 019)
D	Marked Venetian security scene photo (VEN 043) for demonstrative purposes
E	Correspondence from Michael Royal to Keith Galliher, Esq., dated 04.19.19
F	Correspondence from Keith Galliher, Esq., to Michael Royal, Esq., dated 04.23.19
G	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated 03.25.19
H	Transcript of Joseph Larson Deposition (10.11.18), pp. 48-55, 69-83

EXHIBIT	TITLE
I	Photos of Plaintiff's Shoes (VEN 037-038)

Executed on 2 day of May, 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 12:36 pm, as Plaintiff was en route to the women's bathroom located on the Venetian casino level near the Grand Lux Café, while carrying a covered beverage in her left hand, Plaintiff stepped with her left foot, then slipped and fell to the floor. (*See* Exhibit C at 12:36:50.) Plaintiff testified that she had walked that same path hundreds of previous times without ever seeing evidence of any foreign substance on the floor. (*See* Exhibit B at 19-21, 75-79, 109.)

The cause of Plaintiff's fall is in dispute, as Venetian denies that there was any foreign substance on the floor at the time the incident occurred. This is very clear from surveillance footage of the incident and related testimony by responders. (*See id.*; *see also Declaration of Michael A. Royal, Esq.* paragraphs 2-12.) Regardless, Venetian produced sixty-four (64) prior incident reports from November 4, 2013 through November 4, 2016 related to incidents occurring in the common area of the Venetian casino level area where the subject incident occurred.

EXHIBIT 12

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7/12/2019 11:50 AM
Steven D. Grierson
CLERK OF THE COURT

OPPS
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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual; Plaintiff, v. VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; YET UNKNOWN EMPLOYEE; DOES I through X, inclusive, Defendants.	CASE NO.: A-18-772761-C DEPT. NO.: XXV ***Before the Discovery Commissioner*** Hearing Date: August 2, 2019 Hearing Time: 9:00 am

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

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

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

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

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

---

[6]Mr. Jennings could not confirm whether the prior incident reports were in redacted form, 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.

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

IV.

CONCLUSION

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

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

DATED this 12 day of July, 2019.

ROYAL & MILES LLP

By _____

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

EXHIBIT 13

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2/13/2019 1:36 PM
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CLERK OF THE COURT

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CAROL SMITH

DISTRICT COURT

CLARK COUNTY, NEVADA

CAROL SMITH, an individual, Plaintiff, vs. VENETIAN CASINO RESORT, LLC; and DOES 1 through 50, inclusive, Defendants.	Case No.: A-17-753362-C Dept. No.: X Discovery Commissioner Date of Hearing: Time of Hearing:

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR TERMINATING SANCTIONS, MONETARY SANCTIONS FOR WILLFUL SUPRESSION OF EVIDENCE PURSUANT TO NRCP RULE 37

NOTICE OF MOTION

TO: ALL PARTIES and their ATTORNEYS:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Plaintiff, CAROL SMITH, will bring the foregoing MOTION FOR TERMINATING SANCTIONS FOR WILLFUL SUPRESSION OF EVIDENCE, TO STRIKE DEFENDANT'S ANSWER AND FOR MONETARY SANCTIONS FOR EXPERT FEES AND ATTORNEY FEES PURSUANT TO NRCP 37 on for decision on the 20 day of March, 2019, at 9:00 o'clock a.m. or soon thereafter, in _____ of the above-entitled Court, as counsel may be heard.

DATED:_____ LAW OFFICES OF PETER GOLDSTEIN

BY:_____
PETER GOLDSTEIN, ESQ.
ATTORNEY FOR PLAINTIFF

MEMORANDUM OF POINTS AND AUTHORITIES

I. Background – Statement of Facts

This is a personal injury case arising from an incident at the Venetian Hotel Resort Casino in Las Vegas on July 7, 2016. There was a large spill of water on the marble floor in Lobby 1 that Defendant failed to timely discover and clean up, causing Plaintiff to slip and fall. Plaintiff suffered injuries requiring four knee surgeries and diminution to her quality of life, including the inability to return to her job as an instructional assistant for Irvine Unified School District, necessitating an early retirement. Plaintiff alleges that the marble flooring is inherently unreasonable and dangerous because it is extremely slippery when wet. Defendant's own expert testing of the flooring wet found a mean average of 0.15 as the friction coefficient. Plaintiff's expert testing of the floor found it was significantly below the 0.5 standard for safe walking surfaces. Although Defendants attempt to couch this case as one of notice and focused on the 6 minute gap between the spill and the fall, Plaintiff's theory of liability encompasses not only the fact that the floor is unsafe because when it mixes with water it becomes extremely slippery, but also proffers the mode of operation theory of liability, essentially alleging that it is foreseeable that the marble floor will become wet that water is extremely difficult to decipher and that Defendants have chosen not to use any treatment to increase the friction coefficient of the marble floor. In an effort to prove Plaintiff's case Plaintiff requested prior incident reports which Defendant has not produced resulting in extreme prejudice to Plaintiff, and Plaintiff recently discovered Defendant committed fraud on Plaintiff and this court.

II. Discovery Commissioner's Orders

This case concerns a marble floor that when wet, causes serious injuries to customers and patrons due to frequent slip and fall events. Plaintiff alleges, among other things, that the marble floor itself,

when wet, constitutes an unreasonably dangerous condition. That the Venetian knows this and is negligent in maintaining the floor (as products are available to make the floor more slip resistant when wet) and is negligent in the training of Casino employees to mitigate the substantial risk that exists to patrons when liquid is spilled on the marble flooring. The videos and the prior incidents go to notice and Defendants have refused to stipulate to the admission of the prior incident reports, or even to discuss the subject of admissibility nor has it produced the videos pertaining to the prior incidents. Plaintiff filed two previous motions to compel prior incident reports and the videos that pertain to those reports. In the Discovery Commissioner Report and Recommendation filed 12/27/2018, (see Exhibit 2) the Discovery Commissioner made the following findings:

"there is a difference between a permanent condition and a transitory condition. If it is transitory, the issue is whether or not the employees had reasonable notice of water on the floor to clean it up, so other slip and falls are not relevant to the notice in that case. Here, Plaintiff is making the argument that the Venetian's marble floor, in and of itself is not a problem, but turns into a fall hazard every time water goes on the flooring, and that it is foreseeable people will bring in water bottles or drinks on the casino floor which will end up on the tile, so the Discovery Commissioner finds the video is discoverable, with certain protections."

On July 2, 2018, the Discovery Commissioner ordered Defendant to produce:

(i) Incident reports from five years prior to the incident (2011 – 2016) of slip and falls on the marble floors located in Lobby 1, and

(ii) Incident reports from three years prior to the incident (2013 – 2016) of slip and falls on marble floors anywhere on the property.

See EXHIBIT 1 (July Discovery Commissioner's Order)

On November 29, 2018, the Discovery Commission ordered Defendant to produce video footage. *See* EXHIBIT 2 (November Discovery Commissioner's R&R).

Defendant has repeatedly acted in bad faith and engaged in misleading and fraudulent discovery tactics. Plaintiff has had to file two separate motions to compel, on March 28, 2018, and September 27, 2018, respectively. *See* Docket.

III. Willful Failure to Produce Evidence and Cooperate

Defendant has failed to comply with any of the above orders. Defendant produced prior reports of slip and falls on the marble floor in lobby one from 2014 to 2016, and zero reports from 2011 to 2014.

Defendant produced 25 incident reports to Plaintiff, ranging from 7/10/2014 – 5/25/2016, of slip and falls on marble floors in both the lobby and other lobbies with marble floors. *See* EXHIBIT 3 (excel spreadsheet of incident reports produced in Smith Case). Plaintiff recently became aware that **The incident reports produced are incomplete and deficient and Defendant failed to produce 35 reports from the same time period that they did produce in a different case, all those reports also deal with slip and falls on wet marble floors.** It is shocking that Defendants violated court orders and selectively produced what they deemed to be discoverable to the Plaintiff. Moreover Defendant has failed to produce any video footage that comply with the Discovery Commissioner's report and recommendation, even though the District Court affirmed that recommendation on January 22, 2019. *Goldstein Decl* at 3, 4. Furthermore, Defendant has failed to supplement its disclosures and produce additional reports knowing full well that the production to the Plaintiff in this case was grossly deficient. One can only discern that Defendant intended to mislead Plaintiff and the Court by producing less than half of the slip and fall incidents relevant to the discovery requests. Plaintiff requests that Defendants be punished for this egregious conduct as enumerated below.

IV. Discovery of Additional Incident Reports, Intentionally Omitted and Willfully Suppressed by Defendant

Keith Galliher, Esq. represents the Plaintiff in the pending case *Joyce Sekera v. Venetian Casino Resort*, case no. A-18-772761-C, another slip and fall case against the same Defendant(filed subsequent to *Smith v Venetian*). Mr. Galliher and Mr. Goldstein discussed their respective cases and what the Venetian produced with regard to prior slip and fall incident reports on February 7, 2019. Mr. Goldstein learned that Venetian produced twice as many prior incident reports to Mr. Galliher in *Sekera* than what was produced in *Smith*. Mr. Galliher produced those prior reports to Mr. Goldstein's office on February 7, 2019. They contain 660 pages of PDF documents of prior slip and falls on wet marble floors.

Moreover, Mr. Gallagher took the deposition of a former EMT/security officer whose testimony suggested that there may have been as many as 300 to 400 falls on marble floors at the Venetian within the last eight years. Goldstein Decl. at 5, 6, 7, 8.

After comparing and compiling the prior incident reports from both cases it was clear that Venetian produced **35 additional** incident reports to Keith Gallaher in *Joyce Sekera v. Venetian* of slip and falls on marble floors in both Lobby 1 and other lobbies with marble flooring on the property from 2013-2016 that were produced by the Venetian yet were **not produced** in this case. *See* EXHIBIT 4 (list of incident reports produced in *Sekera* case containing 61 prior reports in a spreadsheet with a column indicating which incidents were not produced in Smith). More than half of the Sekera reports were intentionally omitted and not produced in the Smith case.

V. Plaintiff Has Been Harmed and Prejudiced by Defendant's Deceit

This case has been ongoing since March 2017 and discovery has been conducted with incomplete and misleading information. **Discovery closes** on February 14, 2019. Depositions of expert witnesses have been conducted based upon false and incomplete information. All previous discovery has been severely tainted and compromised as result of Defendants deceitful discovery tactics.

Plaintiff has relied on the incomplete and misleading reports produced by Defendant, and has been severely prejudiced due to Defendant's willful and intentional suppression of evidence. If Defendant's Answer is not striken as a sanction for abusive litigation tactics, Plaintiff must re-conduct its expert witness depositions and further discovery must be performed in light of this new information. This is an extreme burden to Plaintiff in both time and expense, resulting in severe prejudice. Should this motion be granted Plaintiff will submit a memorandum of fees and costs for the experts' retention fees, expert depositions and attorney's fees incurred by conducting discovery based on misleading and incomplete prior reports. Strikingly, during the depositions of Plaintiff's experts, one of defense counsel's main lines of examination consisted of asking whether falls once or twice per month, rather than nine or more per month constitute a danger knowing that his questions were based on false and fraudulent discovery.

VI. Plaintiff Requests Terminating Sanctions

Defendant had these additional incident reports in its possession yet failed to produce them in Discovery. Defendant has also completely failed to make any attempts to provide the ordered video footage, to review and approve the proposed order after it objected to the discovery Commissioner's report and recommendation or to engage in a good faith discussion of how to admit the prior falls into evidence since the names of the victims of the prior falls were redacted. We can infer the bad intent in this case. Defendant clearly found that it was better to be deceitful and attempt to hide evidence that would harm their case than comply with discovery orders or to produce required documents in discovery. It is impossible to know whether or not the *Sekera* case contains all the prior reports. At this point, nothing the Defendant produced in this case can be relied upon as true and correct. Defendant's deceit should not go unpunished. Even Defendants rationale and argument for redacting the names of the victims of the prior falls is specious. Plaintiff believes that Defendant never obtained or attempted to obtain medical records pursuant to the HIPAA requests that it had prior fall victims of the dangerous slippery floor sign in order to shield providing the names of the victims in discovery. This is another example of the subterfuge that Defendant has engaged in to hide its clear liability and justify the following findings against Defendant:

(i) a willful suppression of evidence occurred; and
(ii) strike Defendant's Answer and affirmative defenses on liability and allow the case to proceed to trial on damages only;
(iii) In absence of striking Defendant's Answer, allow for the additional incident reports produced in the *Sekera* case to be admitted into evidence in this case and require Defendant to produce videos associated with those omitted incident reports.
(iv) award costs for expert witness fees, both past and prospective;
(v) issue monetary sanctions for attorney fees against Defendant for its willful violation of multiple Discovery Orders and violations of relevant discovery rules.

VII. Willful Violation of Discovery Order

NRCP 37 provides for discovery sanctions for a party's willful violation of a discovery order and it is within the district court's "inherent equitable powers" to dismiss a defense for abusive litigation practices. *Young v. Johnny Ribeiro Bldg, Inc.*, 109 Nev. 88, 92, 787 P.2d 777, 779 (1990)

(quotation omitted).

It is undisputed that Defendant has willfully violated multiple discovery orders. Defendant failed to produce video footage and has attempted to mislead this Court in its selective production of incident reports and failed in its duty to supplement its disclosures in discovery.

A. **Legal Standard.**

NRCP 37(c)(1) sets forth the appropriate sanctions for parties who fail to disclose and/or to supplement disclosures of information required by NCRP 16.1 and 26(e)(1) ad (2). NRCP 37(c)(1) provides in pertinent part:

> **(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.**
>
> (1) A party without substantial justification fails to disclose information required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion or after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include information the jury of the failure to make the disclose.

In addition to informing the jury of the failure to make a disclosure, pursuant to NRCP 37(c)(1), the following sanctions are authorized under NRCP 37(b)(2):

> (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim or the party obtaining the order;
>
> (B) ***An order refusing to allow the disobedient party to support or oppose designated claims or defenses***, or prohibiting that party from introducing designated matters in evidence;
>
> (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgement by default against the disobedient party;

NRCP 37(b)(2)(A), (B), and (C) (emphasis added).

Discovery sanctions are within the power of the district court, and the Supreme Court will not reverse particular sanctions imposed absent a showing of abuse of discretion. *GNLV Corp v. Service*

Control Corp., 111 Nev. 866, 869, 900 P.2d 323, 325 (1995). While Nevada case law specific to NRCP 37(c)(1) is limited, the Nevada Supreme Court has a long-standing history relying on case law interpreting its Federal counterpart, when interpreting the Nevada Rules of Civil Procedure. *See e.g. Dougan v. Gustavason*, 108 Nev. 517, 835 P.2d 795 (1992); *Bowyer v. Taack*, 107 Nev. 625, 817 P.2d 1176 (1991). Federal courts have consistently held that Rule 37(c)(1) gave "teeth" to the disclosure requirements mandated by the Rules of Civil Procedure. *Yeti by Molly Ltd. V. Deckers Outdoors Corp.*, 259 F.3d 1101, 1106 (9th Cir.2011). The rule was "explicitly designed to punish negligent or elusive behavior during discovery and to prevent any party from gaining an advantage as a result of discovery antics." *Sanchez v. Stryker Corp.*, 2012 WL 1570569, at *2 (C.D. Cal. May 2, 2012) quoting (*Yeti by Molly Ltd. V. Deckers Outdoor Corp.*, 259 F.3d at 1106).

Further, the Ninth Circuit has held that the burden is on the party who failed to comply with its discovery obligations to demonstrate that it meets on of the two exceptions to sanctions. *Id.* At 1107 ("Implicit in Rule 37(c)(1) is that the burden is on the party facing sanctions to prove harmlessness."). Indeed, the burden is on the proponent of the evidence to demonstrate that the failure to disclose was either substantially justified or harmless. *Id.* Moreover, according to the Ninth Circuit, a district court need not find willfulness or bad faith to impose sanctions pursuant to Rule 37(c)(1). *Hoffman v. Contr. Protective Servs.*, Inc., 541 F.3d 1175, 1179 (9th Cir. 2008).

B. Willful Suppression of Evidence

Alternatively, Plaintiff is requesting that a rebuttable presumption be granted against Defendant for willfully and intentionally omitting the additional incident reports as well as the surveillance video. Pursuant to NRS 47.250, it shall be a disputable presumption that "evidence willfully suppressed would be adverse if produced and a recommendation that all the prior incident reports be admitted into evidence.

In *Bass-Davis v Davis, 134 P.3d 103*, the court clarified the distinction that must be drawn between awarding a party a "rebuttable presumption" versus an "adverse inference." The court noted

that NRS 47.250(3) creates a rebuttable presumption when evidence is willfully suppressed or destroyed with an intent to harm. *See Bass-Davis*, 134 P.3 at 107.

In this case, the evidence indicates that Defendant willfully omitted the inclusion of additional incident reports that it actually had in its possession. This is worse than destroying evidence through the general course of business. Defendant had the information and failed to produce it.

VIII. Conclusion

In summary, Defendant had these additional incident reports in its possession yet failed to produce them in Discovery. Defendant has also completely failed to make any attempts to provide the ordered video footage. We can infer the bad intent in this case. Defendant clearly found that it was better to be deceitful and attempt to hide evidence that would harm their case than comply with discovery orders or to produce required documents in discovery. It is difficult to know whether or not the *Sekera* case contains all the prior reports. At this point, nothing the Defendant produced can be relied on, accordingly Plaintiff respectfully requests that this court grant her Motion and find:

(i) a willful suppression of evidence occurred; and
(ii) recommend the District Court strike Defendant's Answer and affirmative defenses on liability and allow the case to proceed to trial on damages only;
(iii) recommend allowing for the additional incident reports produced in the *Sekera* case to be admitted into evidence in this case and require Defendant to produce videos associated with those omitted incident reports.
(iv) award costs for expert witness fees, both past and prospective;
(v) issue monetary sanctions for attorney fees against Defendant for its willful violation of multiple Discovery Orders and violations of relevant discovery rules.

Dated: February 13, 2019

PETER GOLDSTEIN LAW CORPORATION

Signed: _____

PETER GOLDSTEIN, SBN 6992

Attorney for Plaintiff

DECLARATION OF PETER GOLDSTEIN

I, Peter Goldstein, declare as follows:

1. I am an attorney duly licensed to practice law in Nevada and am counsel of record for Plaintiff. I have personal knowledge of all matters stated herein that I know to be true.

2. The exhibits attached hereto are true and correct copies of the originals of those documents that I have kept in my office file for this matter in the ordinary course of business.

Exhibit 1 is the Discovery Commissioner's Report and Recommendations from May 2, 2018.

Exhibit 2 is the Discovery Commissioner's Report and Recommendations from October 31, 2018.

Exhibit 3 is a spreadsheet documenting the incident reports disclosed to Plaintiff in the Smith v. Venetian case.

Exhibit 4 is a spreadsheet documenting incident reports from Sekera v. Venetian and a column of what was not disclosed in Smith v. Venetian.

Exhibit 5 is Plaintiff's proposed Order regarding the Defendant's Objection to the Discovery Commissioner's Report and Recommendation, as well as correspondence with my office and the Defense, which has gone unanswered.

3. Defendant has failed to produce any video footage.

4. Defendant has failed to produce any incident reports from 2011 – 2013.

5. Mr. Keith Gallagher provided additional incident reports of slip and falls on marble floors on property, produced by the Venetian in the case Sekera v. Venetian, Case No. A-18-772761-C, on February 7, 2019.

6. I can provide PDF copies of all incident reports disclosed in the Smith v. Venetian and Sekera v. Venetian cases, if required by the Court.

7. Defendant has refused to discuss the admissibility of prior reports.

8. Defendant has refused to respond to the proposed order, submitted to them on February 4, 2019.

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

Dated February 13, 2019 at Las Vegas, Nevada.

Signed: _____

Peter Goldstein, Declarant

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure and [N.E.F.R. 9(b) I certify that I am an employee of Peter Goldstein Law Corporation and that on February 13, 2019, I served a true and correct copy of the foregoing document entitled **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR TERMINATING SANCTIONS, MONETARY SANCTIONS FOR WILLFUL SUPPRESSION OF EVIDENCE PURSUANT TO NRCP RULE 37** upon all parties listed below, via the following means:

_____ Via U.S. Mail by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(B)]

_X__ Via Electronic Filing [N.E.F.R. 9(b)]

_X_ Via Electronic Service [N.E.F.R. 9]

_____ Via Facsimile [E.D.C.R. 7.26(a)]

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Attorney for Venetian Casino Resort, LLC

2/13/19
Date

Jocelynn Jordan
An employee of the Law Office of Peter Goldstein