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EXHIBIT 14



1 **MAMC**

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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 ANGELICA BOUCHER, individually,

17 Plaintiff,

18 vs.

19 VENETIAN CASINO RESORT, LLC d/b/a
20 VENETIAN RESORT HOTEL CASINO
21 d/b/a THE VENETIAN d/b/a THE
22 VENETIAN/THE PALAZZO; LAS VEGAS
23 SANDS, LLC d/b/a VENETIAN RESORT
24 HOTEL CASINO / PALAZZO RESORT
25 HOTEL CASINO d/b/a THE VENETIAN
26 CASINO d/b/a VENETIAN CASINO
27 RESORT; LAS VEGAS SANDS CORP.;
28 DOES 1 through 100 and ROE
CORPORATIONS 1 through 100, inclusive,

Defendants.

Case No.: A-18-773651-C

Dept. No.: X

**PLAINTIFF'S MOTION TO AMEND
COMPLAINT TO INCLUDE PUNITIVE
DAMAGES**

HEARING REQUESTED

Plaintiff ANGELICA BOUCHER, by and through her attorneys of record, FARHAN R. NAQVI and SARAH M. BANDA of NAQVI INJURY LAW, hereby moves this Court pursuant to Nevada Rule of Civil Procedure 15 to amend the Complaint to include punitive damages

Responding Defendant reserves the right to supplement this response pursuant to the Nevada Rules of Civil Procedure.

RESPONSE TO REQUEST NO. 10:

Defendant objects to this request as overbroad, irrelevant, and to the extent it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, please see Defendant's First Supplemental Early Case Conference List of Witnesses and Production of Documents at Bates Nos. VEN1423-VEN1782. Discovery is continuing and ongoing. Responding Defendant reserves the right to supplement this response pursuant to the Nevada Rules of Civil Procedure.¹⁹

The Defendant disclosed thirty-one (31) slip and fall incidents on the marble flooring in the Venetian, twenty-eight (28) of which occurred within two years of the incident at issue.²⁰ In the five (5) months preceding the subject incident, the Venetian responded to at least eight (8) known incidents involving patrons slipping on a liquid substance and falling to the ground.²¹

After taking the highly evasive depositions of two current Venetian Employees who responded to the incident (i.e. Emily Whiddon and Patrick Overfield), Plaintiff suspected that the Defendant had not produced all prior incidents involving slip and falls on the marble tile in the Venetian. After further researching the issue, the results are alarming and concerning, as outlined below.

Undisclosed Prior Incidents

A large concern in this case is the Defendant's failure to produce relevant prior incidents, which appears to be the Defendant's modus operandi. For example, a very recent review of the court filings revealed numerous incidents that were not disclosed, a few of which are outlined below:

¹⁹ See Defendant Venetian Casino Resort, LLC's Responses to Plaintiff's First Request for Production, attached hereto as *Exhibit 8*.

²⁰ See Venetian Security reports (7/22/11 – 5/25/16), collectively attached hereto as *Exhibit 9*.

²¹ See Venetian Security reports (2/20/16 – 5/25/16), collectively attached hereto as *Exhibit 9*.

VENETIAN
CASINO
REVIEW

- 1 • Joan Gartner v. Venetian, A-13-689661-C, which alleges a slip and fall on clear liquid in
2 the Grand Lobby on September 18, 2012. Venetian was also represented by Messner
3 Reeves LLP in this case.²²
- 4 • Bertha Matz v. Sands d/b/a Venetian, A-15-719757, which alleges a slip and fall on
5 liquid in the lobby on June 23, 2013. Venetian was also represented by Messner Reeves
6 LLP in this case.²³
- 7 • Nancy Rucker v. Venetian, A-15-729566-C, which alleges a slip and fall on clear liquid
8 in the lobby on August 23, 2014. Venetian was also represented by Messner Reeves LLP
9 in this case.²⁴

10 Additionally, the recent review of public records demonstrates that Defendant's modus
11 operandi of hiding relevant prior incident reports has been raised in another matter, Sekera v.
12 Venetian, A-18-772761-C.²⁵ In Sekera, Plaintiff's counsel spoke with counsel in another
13 Venetian matter (the Smith case) and realized that Venetian was not producing all incident
14 reports in all cases. For example, upon information and belief, Venetian produced 4 incident
15 reports in the Smith case that were not produced in the Sekera case and, even more alarmingly,
16 *Venetian produced 36 incident reports in Sekera that were not produced in Smith.* The
17 Plaintiff in Sekera created and filed the following table with its Motion for Leave to Amend
18 Complaint:²⁶

19
20
21
22
23
24
25 ²² See Defendant Venetian Casino Resort, LLC's Motion in Limine to Preclude Any Arguments Regarding
Alleged Spoliation of Evidence, Case No. A-13-689661-C, attached hereto as *Exhibit 10*.

26 ²³ See JCCR, Case No. A-15-719757-C, attached hereto as *Exhibit 11*.

27 ²⁴ See Complaint, Case No. A-15-729566-C, attached hereto as *Exhibit 12*.

28 ²⁵ See Plaintiff's Motion for Leave to Amend Complaint, Case No. A-18-772761-C, pertinent parts attached
hereto as *Exhibit 13*.

²⁶ See Plaintiff's Motion for Leave to Amend Complaint, Case No. A-18-772761-C, pertinent parts attached
hereto as *Exhibit 13 (Exhibit 7, sub-exhibit 4 to said Motion)*.

VEN 1649

Incident Reports From Joyce Sakera v. Venetian Compared With Carol Smith v. Venetian

<u>Date of Incident</u>	<u>Incident Report ID</u>	<u>Location at Venetian</u>	<u>Disclosed in Smith case?</u>
1 11/24/2013	1311V-5502	Grand Lux Café	No
2 11/24/2013	1311V-5588	Grand Hall	No
3 1/26/2014	1401V-5539	Lobby 1	No
4 5/2/2014	1405V-0423	Grand Hall	No
5 5/3/2014	1405V-0687	Grand Hall	No
6 5/3/2014	1405V-0704	Lobby 1	No
7 5/24/2014	1405V-5900	Lobby 1	No
8 6/28/2014	1405V-6937	Grand Lux Café	No
9 7/5/2014	1407V-1121	Lobby 1	No
10 7/10/2014	1407V-2272	Grand Lux Café	Yes
11 7/10/2014	1407V-2142	Grand Hall	No
12 7/13/2014	1407V-3057	Lobby 1	Yes
13 7/18/2014	1407V-4386	Lobby 1	No
14 7/25/2014	1407V-6125	Lobby 1	No
15 7/25/2014	1407V-5151	Grand Hall	No
16 7/29/2014	1407V-7161	Lobby 1	Yes
17 7/30/2014	1407V-7375	Lobby 1	No
18 8/4/2014	1408V-0843	Lobby 1	No
19 8/5/2014	1408V-1088	Lobby 1	No
20 8/26/2014	1408V-7104	Venetian Tower	Yes
21 8/31/2014	1408V-7791	Lobby 1	Yes
22 9/13/2014	1409V-2807	Lobby 1	No
23 9/15/2014	1409V-3261	Lobby 1	No
24 9/30/2014	1409V-6750	Grand Hall	No
25 10/11/2014	1410V-2293	Lobby 1	No
26 12/23/2014	1412V-4685	Lobby 1	No
27 1/17/2015	1501V-3857	Lobby 1	Yes
28 1/31/2015	1501V-5887	Lobby 1	No
29 2/9/2015	1502V-1803	Lobby 1	Yes
30 2/10/2015	1502V-4922	Lobby 1	Yes
31 3/8/2015	1503V-1551	Grand Hall	No
32 3/23/2015	1503V-5040	Lobby 1	No
33 4/24/2015	1504V-5395	Grand Hall	Yes
34 5/3/2015	1505V-0844	Grand Hall	No
35 5/22/2015	1505V-5319	Lobby 1	Yes
36 5/29/2015	1505V-7253	Lobby 1	No
37 5/30/2015	1505V-7506	Lobby 1	Yes
38 6/12/2015	1506V-2824	Lobby 1	No
39 6/30/2015	1506V-7480	Lobby 1	Yes
40 7/5/2015	1507V-1236	Venezia Tower	Yes
41 7/19/2015	1507V-5024	Grand Hall	No
42 7/19/2015	1507V-5121	Venetian Tower	Yes
43 7/20/2015	1507V-5392	Entrance/Lobby	No
44 8/2/2015	1508V-0357	Lobby 1	No
45 8/8/2015	1508V-1866	Grand Hall	No
46 8/8/2015	1508V-1889	Lobby 1	Yes
47 8/29/2015	1508V-7246	Lobby 1	Yes
48 9/6/2015	1509V-1497	Lobby 1	Yes
49 9/13/2015	1509V-3312	Grand Hall	No
50 12/27/2015	1512V-5875	Lobby 1	No
51 2/20/2016	1602V-4290	Lobby 1	Yes
52 3/6/2016	1603V-1233	Lobby 1	Yes
53 3/25/2016	1603V-5018	Lobby 1	Yes
54 4/9/2016	1604V-1850	Grand Hall	No
55 4/9/2016	1604V-1926	Lobby 1	Yes
56 4/10/2016	1604V-2136	Grand Hall	No
57 4/12/2016	1604V-2459	Lobby 1	Yes
58 5/5/2016	1605V-0952	Lobby 1	Yes
59 5/25/2016	1605V-5089	Lobby 1	Yes
60 7/7/2016	1607V-1506	Lobby 1	Yes

36 Total Not Disclosed in Smith

INNOVATIVE
LAW

1 From this table, the Defendant has not produced the following 32 incident reports in the instant
2 case: 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 18, 19, 22, 23, 24, 25, 26, 28, 31, 32, 34, 36, 41,
3 43, 45, 49, 54, and 56. Also, of note, is that the Defendant did not disclose the instant case in
4 Sekera even though the instant case occurred merely a month before said incident.

5
6 Plaintiff's counsel sent an email to defense counsel on June 12, 2019 at 4:43 p.m. which
7 stated as follows: "In the meantime, I wanted to request that you also check with your client and
8 confirm that there are not any additional incident reports related to slip and falls on the marble
9 that have not been disclosed. I believe you produced 31 prior incidents in your First
10 Supplement."²⁷ Rather than confirming that all incident reports have been produced, Defendant
11 makes veiled allegations of impropriety against Plaintiff's counsel through the following
12 email,²⁸

13
14 I am writing to follow up with you regarding an additional issue you raised during our telephone conference yesterday. As we discussed Defendant's
15 responses to Plaintiff's Requests for Production of Documents in the *Baethers v. Venetian* case, you stated that you have Venetian incident reports or documents
16 produced by Venetian in several different, active lawsuits currently pending against Venetian. Specifically, you claimed that by comparing Venetian's
17 production of these incident reports among the various cases, you identified inconsistencies among Venetian's disclosures – the context of your statement
18 seemed to imply some degree of impropriety by Venetian that could be at issue in this case.

19
20 Considering the substance of your statements during our June 11, 2019 telephone conference, it appears that you – or your law firm – have obtained Venetian's
21 private/protected documents and information from unrelated, third-party sources, which is quite concerning to say the least.

22
23 In light of your claim that you contrasted Venetian's production of private/protected documents in extraneous, unrelated cases, further claiming that you
24 identified inconsistencies among Venetian's documents produced among the various cases, we request that you immediately contact our office in writing,
25 and provide the following information with respect to Venetian Casino Resort (including Palazzo, Las Vegas Sands Corp., and any related company)

- 26
27 (1) Specifically identify each and every document produced by Venetian, Palazzo, or any subsidiary of Las Vegas Sands Corp. in any other civil action, that
28 was obtained by you (or your law firm obtained, received or reviewed that was provided by any source other than the Venetian or its representative(s), or
that was obtained by you or your law firm from any source other than the Venetian outside of a civil action in which your firm actively appeared;
- (2) Specifically identify all attorneys, law firms, or third-parties from whom you received such documents or protected information; and
- (3) Identify the date each document was received and the format in which it was received (paper, mail, email, electronically, etc.).

29 Please let me know if you have any questions.

30 Truly,

31 David Pritchett

32
²⁷ See Email from Sarah M. Banda, Esq. (6/12/19), attached as *Exhibit 14*.

²⁸ See Email from David P. Pritchett, Esq. (6/12/19), attached as *Exhibit 15*.

VENETIAN
RESORT HOTEL CASINO

1 The email, in addition to misquoting Plaintiff's counsel as Plaintiff's counsel merely said that
2 she believes there are other incidents that have not been disclosed, indirectly acknowledges that
3 the Defendant has other incident reports and/or prior incident information that it has
4 intentionally withheld. However, instead of disclosing the same, Defendant makes allegations
5 that Plaintiff somehow obtained Venetian's private/protected documents. This too is untrue, as
6 all the information attached to this Motion and all information Plaintiff is aware of was obtained
7 through a recent search of public records and cases on the Court website.
8

9 To date, Defendant Venetian has engaged in a deliberate pattern of evasive discovery
10 abuse. For example, on June 14, 2019, the Discovery Commission heard the Plaintiff's Motion
11 to Compel Production of Documents, which was largely granted, and requested that the Court
12 compel items, such as the insurance policies, which the Defendant has yet to produce even
13 though this case has been pending for over a year.²⁹ The gamesmanship that has ensued thus far
14 in the discovery process leads the Plaintiff to believe that the failure to produce prior incident
15 reports is deliberate and further evidence of Defendant's belief that the rules do not apply to the
16 Venetian. Therefore, Plaintiff has reason to believe Defendant Venetian is withholding
17 additional highly relevant documents regarding prior similar incidents.
18

19
20 **The Incident at Issue**

21 This matter arises from an incident that occurred on June 11, 2016 at approximately 2:36
22 p.m. on the premises of the Venetian Resort Hotel Casino located at 3355 S. Las Vegas
23 Boulevard, Las Vegas, Nevada 89109.³⁰ On said date, Plaintiff was visiting the subject location
24 when she slipped and fell on a wet and slippery walking surface in the lobby area. The Venetian
25
26
27

28 ²⁹ See Plaintiff's Motion to Compel Production of Documents, pleading only, attached hereto as *Exhibit 16*.

³⁰ See Venetian Incident Report related to the instant case, attached hereto as *Exhibit 17*.

EXHIBIT 15

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 KECIA POWELL

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

On Friday, July 12, 2019
At 3:33 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

Canyon Court Reporting, Inc.
6655 West Sahara Avenue, Suite B200
Las Vegas, NV 89146 (702) 419-9676

1 A Yes.

2 Q So the supervisors basically give you a
3 protocol that you've described?

4 A Yes.

5 Q And the purpose of that protocol, I assume,
6 was to ensure the safety of the guests.

7 A Yes.

8 Q To make sure that the guest did not impact
9 whatever liquid was on the floor --

10 A Well, it's not --

11 Q Let me finish -- and slip and fall?

12 A Yes.

13 Q All right.

14 A It's not just the floors, it's the carpet
15 too. If we have something spilt on the carpet, we
16 have to stand there until someone comes with the "Wet
17 Floor" sign. Or if it's a bio, we have to stand there
18 until the specialists do come.

19 It's not just the casino floor, the marble;
20 it's the whole entire casino.

21 Q But I guess my question is this, then. When
22 we talk about the marble floors when wet, versus the
23 carpeted floors when wet, which one is the most
24 slippery?

25 MR. ROYAL: Objection; form.

*Canyon Court Reporting, Inc.
6655 West Sahara Avenue, Suite B200
Las Vegas, NV 89146 (702) 419-9676*

1 **BY MR. GALLIHER:**

2 Q If you know.

3 A Excuse me?

4 Q If you know.

5 A If I know?

6 Q Yeah.

7 A It's the same, basically.

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

10 A Yeah.

11 Q But not more slippery than a marble floor
12 when wet; is that right?

13 **MR. ROYAL:** Objection, form.

14 **THE WITNESS:** I really don't know the
15 question, but our procedure is if we see something,
16 clean it. That's our terms in our department. If you
17 see paper, pick it up. If you see a wet floor, mop
18 it.

19 **BY MR. GALLIHER:**

20 Q So if you see a wet carpeted floor, you
21 wouldn't mop that?

22 A No. They have to send a specialist too.

23 Q So has your supervisor told you why you
24 would secure the wet floor and then mop it?

25 A "Secure the wet floor," what do you mean by

EXHIBIT 16

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 PETE A. KRUEGER

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

On Friday, July 12, 2019
At 2:00 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

Canyon Court Reporting, Inc.
6655 West Sahara Avenue, Suite B200
Las Vegas, NV 89146 (702) 419-9676

1 A No.

2 Q Do you understand that to be the case?

3 A I couldn't really agree with that or
4 disagree with that.

5 Q All right. So you have no opinion, as you
6 testify here today, concerning whether or not the
7 marble floors at the Venetian are dangerous to
8 customers or people walking through them when wet?

9 **MR. ROYAL:** Objection, form.

10 **THE WITNESS:** I would have to say that any
11 floor, no matter what surface it is, if it's wet
12 should be cleaned up.

13 **BY MR. GALLIHER:**

14 Q And why is that?

15 A Because it's wet.

16 Q And is it just because it poses some type of
17 a danger to someone that's walking through it?

18 **MR. ROYAL:** Objection, form.

19 **THE WITNESS:** Like I said, any surface wet
20 should be cleaned up.

21 **BY MR. GALLIHER:**

22 Q And do you distinguish between any surface
23 and a marble surface when you talk about that concern?

24 A No.

25 Q So as you testify here today, do you think

1 that a marble floor when wet is any more dangerous
2 than any other surface when wet?

3 **MR. ROYAL:** Objection, form.

4 **THE WITNESS:** I would have to say no.

5 **BY MR. GALLIHER:**

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

9 A No.

10 **MR. ROYAL:** Objection, form.

11 **BY MR. GALLIHER:**

12 Q Right. We're doing double negatives.

13 A I got you.

14 Q So the answer to my question is you do not
15 believe that a marble floor, when wet, is any more
16 dangerous than any other surface when wet; is that
17 right?

18 A Correct.

19 **MR. ROYAL:** Objection, form.

20 **BY MR. GALLIHER:**

21 Q Do you work five days a week?

22 A I do.

23 Q And have you worked five days a week from
24 the time since you were employed at the Venetian up to
25 the present?

*Canyon Court Reporting, Inc.
6655 West Sahara Avenue, Suite B200
Las Vegas, NV 89146 (702) 419-9676*

EXHIBIT 17

1 TRAN
2 CASE NO. A-18-772761-C
3 DEPT. NO. 25
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 * * * * *

9 JOYCE SEKERA,)
10 Plaintiff,)
11 vs.)
12)
13 VENETIAN CASINO RESORT,)
14 Defendant.)
15

REPORTER'S TRANSCRIPT
OF
DEFT'S MOTION FOR
RECONSIDERATION ON OST

16
17 BEFORE THE HONORABLE KATHLEEN DELANEY
18 DISTRICT COURT JUDGE

19 DATED: TUESDAY, JULY 30, 2019
20
21
22
23

24 REPORTED BY: SHARON HOWARD, C.C.R. NO. 745
25

1 The motion pending Friday, they were motioning for an
2 order to tell us to produce what they call 46 undisclosed
3 prior incident reports for the 3 year period or whatever
4 we produced previously. We had to investigate that. It
5 turns out that that's not true. And they had to withdraw
6 that. So I'm just saying the numbers they are constantly
7 throwing at the Court, which they've done again with
8 respect to this particular motion -- 466 to 700, or 1,000
9 or whatever they flow out to influence the Court -- should
10 not be -- really should not play into the Court's decision
11 as relates to the punitive damages. It's a simple
12 negligence case. That's our position, your Honor.

13 THE COURT: I hear you, Mr. Royal. I agree, and
14 you cited some case law of the general proposition that if
15 it's a simple, ordinary negligence case, you're not going
16 to get punitives. I agree with that. I feel strongly
17 about that, depending on where the evidence goes.

18 Where we are at, of course, is a stage where there
19 was a request to amend to put a claim in to attempt to
20 prove it. I know that your client would like to avoid
21 the, perhaps, breadth of discovery that would entail
22 making that discovery. But in order for me to deny it,
23 the arguments I'm hearing are primarily fact finder based
24 type arguments that really isn't the same place. This
25 isn't the same situation. There are other facts that are

1 divergent from what we would expect to see if we should
2 believe that there was something more than ordinary
3 negligence here. And that's really the fact finder's
4 purview, not the Court.

5 I don't quibble with the fact that you based your
6 motion for reconsideration on this analysis of the Elliot
7 deposition, because it is very possible and likely the
8 Court consider all the arguments that were being made at
9 that time, including what the Elliot deposition would
10 purport to show us.

11 I agree ultimately with Mr. Galliher that the Court's
12 ultimate decision was based on, again, not a situation of
13 numbers and not a situation of certainty of proof of
14 anything, but just this idea that there's enough here
15 showing historical information and potential testimony
16 from folks that would indicate there was a known hazardous
17 condition that there was enough here to get over that
18 hurdle, relatively low, to keep it in the case for
19 discovery purposes.

20 Mr. Galliher just indicated that perhaps the Court
21 would revisit it at trial. The Court could very well
22 revisit it on dispositive motion, once discovery has taken
23 place. It really just depends on what's there. I think
24 there is enough here for Mr. Galliher to survive. I don't
25 think the Court would be properly exercising its

EXHIBIT 18

Steven D. Grierson

OBJ
FARHAN R. NAQVI
Nevada Bar No. 8589
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NAQVI INJURY LAW
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naqvi@naqvilaw.com
sarah@naqvilaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ANGELICA BOUCHER, individually,

Plaintiff,

Case No.: A-18-773651-C
Dept. No.: X

vs.

**PLAINTIFF'S LIMITED OBJECTION
TO THE DISCOVERY
COMMISSIONER'S REPORT AND
RECOMMENDATION ON
PLAINTIFF'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS**

VENETIAN CASINO RESORT, LLC d/b/a
VENETIAN RESORT HOTEL CASINO
d/b/a THE VENETIAN d/b/a THE
VENETIAN/THE PALAZZO; LAS VEGAS
SANDS, LLC d/b/a VENETIAN RESORT
HOTEL CASINO / PALAZZO RESORT
HOTEL CASINO d/b/a THE VENETIAN
CASINO d/b/a VENETIAN CASINO
RESORT; LAS VEGAS SANDS CORP.;
DOES 1 through 100 and ROE
CORPORATIONS 1 through 100, inclusive,

Defendants.

COMES NOW, Plaintiff ANGELICA BOUCHER, by and through her attorney of
record, FARHAN R. NAQVI of NAQVI INJURY LAW, and hereby submits the following
PLAINTIFF'S LIMITED OBJECTION TO THE DISCOVERY COMMISSIONER'S REPORT
AND RECOMMENDATION ON PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF
DOCUMENTS.

1 This Objection is made and based upon the following Memorandum of Points and
2 Authorities, the Affidavit of Sarah M. Banda, Esq., the papers and pleadings on file herein, and
3 any oral argument as may be heard by the Court.

4 DATED this 23rd day of July, 2019.

5 NAQVI INJURY LAW

6
7 By: /s/ Sarah M. Banda
8 FARHAN R. NAQVI
9 Nevada Bar No. 8589
10 SARAH M. BANDA
11 Nevada Bar No. 11909
12 9500 W. Flamingo Road, Suite 104
13 Las Vegas, Nevada 89147
14 *Attorneys for Plaintiff*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **INTRODUCTION**

18 Plaintiff was forced to file the underlying Motion to Compel after Defendant
19 VENETIAN CASINO RESORT, LLC ("Venetian") refused to produce relevant and pertinent
20 information in this matter, including the applicable insurance policies, claims information, and
21 other documentation.¹ Plaintiff's Motion was granted almost in its entirety. This Limited
22 Objection is being filed to address one finding of the Honorable Discovery Commissioner,
23 which was made without support in the record and/or request of the Plaintiff. Specifically, the
24 Plaintiff *only* objects to the Discovery Commissioner's Finding that, "liquid on a walkway is a
25
26
27

28 ¹ See December 10, 2018 letter from Sarah M. Banda, attached as *Exhibit 2* to the underlying Motion to Compel; see April 3, 2019 letter from Sarah M. Banda, attached as *Exhibit 3* to the underlying Motion to Compel; see also Plaintiff's First Set of Requests for Production, attached as *Exhibit 4* to the underlying Motion to Compel.

NOV 14 2019

1 transient condition.¹² The issue of whether this case involves a transient/transitory condition was
2 not before the Discovery Commissioner.

3 II.

4 **STATEMENT OF FACTS**

5 This matter arises from an incident that occurred on June 11, 2016 on the premises of the
6 Venetian Resort Hotel Casino located at 3355 S. Las Vegas Boulevard, Las Vegas, Nevada
7 89109. On said date, Plaintiff ANGELICA BOUCHER ("Plaintiff") was visiting the subject
8 location when she slipped and fell on a wet and slippery walking surface. As a direct result,
9 Plaintiff sustained significant injury, particularly as it relates to her lower back and extremities,
10 which has resulted in numerous surgical operations.
11

12 III.

13 **LEGAL ARGUMENT**

14 The Plaintiff objects to the finding in the DCRR filed July 9, 2019 that states that "liquid
15 on a walkway is a transient condition."³ Nothing contained in Plaintiff's Motion to Compel
16 required a determination whether the case at hand dealt with a transient or permanent condition.
17 Yet, the Discovery Commissioner erroneously, and without basis in the facts of the case and/or
18 law, made the determination that the water on the floor was a transient condition. This erroneous
19 determination will now be utilized by the Defendant to object to the Plaintiff's attempt to gather
20 relevant and discoverable information in this case, such as information on prior incidents. Given
21 that Plaintiff did not raise the issue of transient versus permanent condition in her Motion to
22 Compel, nor did Plaintiff's Motion argue any issue that required a determination whether this
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28 ² See DCRR filed July 9, 2019, at page 3, enclosed as *Exhibit 1*.

³ See DCRR filed July 9, 2019, at page 3, enclosed as *Exhibit 1*.

1 case involves a permanent or transient condition, the Plaintiff requests that this finding be
2 removed from the DCRR as it is an erroneous finding.

3 Additionally, had the Discovery Commissioner considered the specific facts of this case,
4 including the volumes of prior slip and falls on the marble flooring at the Venetian (some of
5 which have been disclosed by Defendant and some of which have not been disclosed – which
6 will be the subject of a forthcoming Motion to Compel), the matter of transient versus
7 permanent condition is not as clear cut as the Discovery Commissioner appeared to believe it to
8 be. The specific facts of this case, as it relates to whether the condition was transient or
9 permanent, were not presented as said facts were irrelevant to the issues before the Court in
10 Plaintiff's Motion. As former Discovery Commissioner Bonnie Bulla determined in another,
11 similar, and ongoing slip and fall case against the Venetian,⁴
12
13

14 Discovery Commissioner: But I think what you are not
15 understanding is that this case is not as simple as it looks at first
16 glance. There is a difference between a permanent condition and a
17 transitory condition... Here's the small, little, tiny problem that the
18 Venetian has – you have a floor that, in and of itself, isn't apparently
19 a problem, but every time water goes on that floor, which is
20 foreseeable – the people will bring in water bottles, or the drinks
21 will be shared on the casino floor and end up on the tile – then your
22 floors turns into something different. It turns into a fall hazard. And
23 if you didn't have that big, thick notebook sitting in front of you to
24 show all the slip and falls you've had on this flooring, we might be
25 able to argue something differently.

26
27 Thus, this is a unique set of facts that are distinguishable from the transient case of water on a
28 walking surface. This is a case of continuing condition and/or permanent condition.

⁴ See Recorder's Transcript of Hearing Plaintiff's Notice of Motion and Motion to Compel Further Responses from Defendant Venetian Casino Resort LLC to Plaintiff's Requests for Production of Documents Set 4, at pages 4-5, enclosed as *Exhibit 2*.

1 As the issue of transient versus permanent condition was not before the Discovery
2 Commissioner, the finding making such a determination should not be upheld by the District
3 Court as the finding is erroneous.

4
5 **IV.**

6 **CONCLUSION**

7 Based on the foregoing, Plaintiff respectfully requests that the Court overrule the finding
8 of the Discovery Commissioner that the case at hand involves a transient condition given that the
9 issue was not before the Discovery Commissioner and, thus, the Discovery Commissioner made
10 an erroneous determination based upon limited facts and information.

11 DATED this 23rd day of July, 2019

12
13 NAQVI INJURY LAW

14
15 By: /s/ Sarah M. Banda
16 FARHAN R. NAQVI
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2000 NATIONAL INDUSTRY AWARD

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Venetian Casino Resort, LLC

/s/ Rachel Bounds

EXHIBIT 19



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 CAROL SMITH,

8 Plaintiff,

CASE NO.: A-17-753362

DEPT. X

9 vs.

10 VENETIAN CASINO RESORT
11 LLC,

12 Defendant.

13
14 BEFORE THE HON. BONNIE A. BULLA, DISCOVERY COMMISSIONER
15 WEDNESDAY, OCTOBER 31, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL**
18 **FURTHER RESPONSES FROM DEFENDANT VENETIAN CASINO**
19 **RESORT LLC TO PLAINTIFF'S REQUESTS FOR PRODUCTION OF**
20 **DOCUMENTS SET 4**

21 APPEARANCES:

22 For the Plaintiff: PETER GOLDSTEIN, ESQ.

23 For the Defendant: RYAN LOOSVELT, ESQ.

24 RECORDED BY: FRANCESCA HAAK, COURT RECORDER
25

1 Las Vegas, Nevada, Wednesday, October 31, 2018

2 * * *

3 [Case called at 10:09 a.m.]

4 DISCOVERY COMMISSIONER: Smith.

5 MR. LOOSVELT: Good morning, Your Honor. Ryan Loosvelt,
6 for Defendant Venetian, 8550.

7 DISCOVERY COMMISSIONER: Good morning.

8 MR. GOLDSTEIN: Good morning, Your Honor. Peter
9 Goldstein, for the Plaintiff.

10 DISCOVERY COMMISSIONER: Good morning. This is
11 Plaintiff's motion to compel further response from Defendant for requests
12 production of documents set 4, and typically how I handle this is if
13 there's a video that goes with the incident report, it needs to be turned
14 over, so I'm not really sure what happened here.

15 If it's a matter of the Plaintiff requesting you to go back and
16 look through all your videos, that's a different issue. I probably won't
17 require you to do that. But if there's video attached with an incident
18 report, the video needs to be turned over, and whether or not it's
19 admissible will be up to the department at the time of trial or before trial
20 based on a proper motion in limine.

21 I'm not really sure we have a whole lot to discuss today.

22 MR. LOOSVELT: Okay. So I appreciate that, Your Honor.
23 My understanding of the prior orders was to produce -- that the Plaintiff
24 was entitled to the number of incidences in these kinds of other areas
25 around -- in the surrounding lobbies, and so --

1 DISCOVERY COMMISSIONER: Didn't I require you to turn
2 over the incident reports too, or was that not part of our discussion?

3 MR. LOOSVELT: We did, Your Honor. These are what we
4 turned over [indicating], this much, includes the witness reports, the
5 Venetian reports, color photographs.

6 DISCOVERY COMMISSIONER: Were there videotapes on
7 some of those incident reports?

8 MR. LOOSVELT: Not attached to the actual incident reports,
9 but some of 'em reference that at one time video may have been
10 available for those, and some say that they were not available.

11 DISCOVERY COMMISSIONER: Didn't they have the video in
12 the file with the incident report?

13 MR. LOOSVELT: The reports say the videos are -- were
14 available when these reports were generated, so the videos may still be
15 in existence. They're not with the written files and things of that nature.

16 But our argument is that, you know, the argument that Plaintiff
17 is making is that it's these other falls, and my understanding in the
18 transcript he attached from another case of yours, Your Honor, is about
19 the number of falls, and you even said the only things you typically
20 require are the incident reports themselves, if that, if it's not just the list
21 of the incidents themselves.

22 DISCOVERY COMMISSIONER: Well, generally I'll say
23 though if the, you know, incident report has video -- usually it's kept
24 together, not always apparently, but usually it is -- then turn it over. I
25 mean, this is not rocket science here. It's not that difficult. If they keep

1 the video in a separate location from the incident report so it wasn't
2 readily available with the incident report, that's a different issue. But if
3 it's maintained separately that they can just pull all the video, make a
4 copy of it and turn it over.

5 MR. LOOSVELT: I appreciate that, Your Honor. Our position
6 is that it's not relevant, and that it's cumulative of other things, and
7 Plaintiff's motion basically admits that he wants to use these videos. He
8 actually states it in the motion. He wants to use these videos to prove
9 notice, foreseeability, duty, and breach of causation. He wants to use
10 these videos, put together a little montage of America's Funniest Home
11 Videos of slip and falls and show it to a jury, and we don't think that's
12 appropriate or even necessary, especially --

13 DISCOVERY COMMISSIONER: Well, I'm sure --

14 MR. LOOSVELT: -- since we've produced the incidents.

15 DISCOVERY COMMISSIONER: -- Judge Jones can handle
16 that in a proper motion in limine.

17 MR. LOOSVELT: All right. Thank you, Your Honor.

18 DISCOVERY COMMISSIONER: But I think what you are not
19 understanding is that this case is not as simple as it looks at first glance.
20 There is a difference between a permanent condition and a transitory
21 condition. And I agree with you. If it is transitory in nature, i.e. you're in
22 a pet store, and there's water on the floor, there's an expectation you go
23 in a pet store, you may have water on the floor, we know that. The issue
24 is whether or not the employees had notice of the water on the floor,
25 reasonable notice, to clean it up. Apparently, there's a Federal Court

1 case out there that says two-and-a-half minutes is reasonable notice.

2 But, having said that, that's the issue, so all the other slip and
3 falls are not relevant to the notice in this case.

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

12 Now, whether that rises to the level of admissibility or not as
13 evidence at trial will be up to the Judge. But this is a very novel concept.
14 It's not at first blush what one would necessarily think of as a permanent
15 condition because the floor itself is not a fall hazard, but combined with
16 something, i.e. water -- and apparently you can't always distinguish
17 there's water on the floor, which cuts both ways, gentlemen -- the
18 problem is it becomes something different. It becomes a different
19 flooring.

20 Now, that's the argument. Whether or not the Judge will allow
21 or disallow the evidence will be up to the District Court Judge, and I
22 would defer to the Judge. This Judge will figure out what is proper. I
23 have no doubt. But this is discovery, so on all those incident reports
24 where there is a video, they need to be turned over.

25 I will put the video under a Rule 26(c) protective order --

1 MR. LOOSVELT: I'd appreciate that, Your Honor.

2 DISCOVERY COMMISSIONER: -- which means this -- we're
3 not doing America's Funniest Home Videos on the Internet. If I find out
4 that any of them get on the Internet, there will be consequences. They
5 will be protected and will remain protected until the Judge otherwise
6 orders, which means after the motions in limine are resolved.

7 MR. LOOSVELT: And there --

8 DISCOVERY COMMISSIONER: And if the Judge says you
9 can use them, then they can be used.

10 MR. LOOSVELT: I appreciate, Your Honor, and there was an
11 issue with -- there was a prior order of the protection of the guests or the
12 patrons that were in there. Their faces have been redacted from the
13 pictures, and so under the protective order, that should be okay.

14 DISCOVERY COMMISSIONER: Okay. So you'll get the
15 information. You'll get the videos if they still exist, the ones that go with
16 those incident reports to the extent that they had video, you'll have them,
17 you'll have them available, and then you'll have to decide whether to use
18 them.

19 I'm not going to have him redact any of the faces or anything
20 right now. I don't know how visible they are. If it turns out that the Court
21 does allow you to use them in order to maintain the privacy of the
22 individual involved, you may want to figure out how to redact facial
23 recognition so that they can be used. I would put that in as a caveat,
24 and then the Judge will be aware of my thought process on that.

25 MR. LOOSVELT: I appreciate the Rule 26 protections, Your

1 Honor.

2 DISCOVERY COMMISSIONER: So the motion's granted
3 within the parameters discussed; specifically you're going to turn over
4 the video without redaction to the extent that a video does exist and
5 correspond with an incident report; it will remain protected under 26(c)
6 until such time as the District Court Judge otherwise orders.

7 MR. GOLDSTEIN: Thank you, Your Honor.

8 DISCOVERY COMMISSIONER: All right. Let me know
9 when -- oh, trial's 5/28. Maybe I'll come watch.

10 MR. GOLDSTEIN: Would you like another Report and
11 Recommendation?

12 DISCOVERY COMMISSIONER: Yes, I would.

13 MR. GOLDSTEIN: Okay.

14 DISCOVERY COMMISSIONER: And if you would prepare it,
15 sir, and run it by Defense counsel to approve as to form and content, I
16 would appreciate it.

17 MR. GOLDSTEIN: Certainly.

18 DISCOVERY COMMISSIONER: I'll need it in ten days.

19 MR. GOLDSTEIN: Thank you.

20 [Hearing concluded at 10:18 a.m.]

21 * * * * *

22

23 ATTEST: I do hereby certify that I have truly and correctly transcribed the
24 audio-video recording of this proceeding in the above-entitled case.

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FRANCESCA HAAK
Court Recorder/Transcriber

EXHIBIT 20



1 **OBJ**
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Attorneys for Defendant
9 *Venetian Casino Resort, LLC*

10
11 DISTRICT COURT
12 CLARK COUNTY, NEVADA
13

14 CAROL SMITH, an individual,
15
16 Plaintiff,

17 vs.

18 VENETIAN CASINO RESORT, LLC; and
19 DOES 1 through 50, inclusive,
20
21 Defendant(s).

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

**DEFENDANT'S OBJECTION TO
DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS**

Date: October 31, 2018
Time: 9:00 a.m.

22 COMES NOW, Defendant, VENETIAN CASINO RESORT, LLC ("Venetian"), by and
23 through its attorneys of record of the law firm MESSNER REEVES LLP, hereby objects to the
24 Discovery Commissioner's Report and Recommendations with regard to the October 31, 2018 hearing
25 on Plaintiff's Motion to Compel Further Responses from Defendant Venetian Casino Resort, LLC to
26 Plaintiff's Requests for Production of Documents Set 4.
27
28

1 This Objection is made and based upon the pleadings and papers on file herein, together with
2 the attached Memorandum of Points and Authorities, and such argument as the Court may hear at the
3 time of the hearing on this matter.

4 DATED this 7th day of December, 2018.

5 MESSNER REEVES LLP

6
7 By 

8 MARK B. SCHEULER
9 Nevada Bar No. 7170
10 MICHAEL M. EDWARDS
11 Nevada Bar No. 6281
12 RYAN A. LOOSVELT
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18 Attorneys for Defendant
19 Venetian Casino Resort, LLC

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 According to video evidence, Plaintiff slipped on water in one of the lobbies of the Venetian
23 that was spilled by another patron a few minutes beforehand. Plaintiff asserts a claim for negligence.
24 Because it was not an employee that spilled the water, Plaintiff must demonstrate that the Venetian
25 had actual or constructive notice of this particular condition.

26 However, Plaintiff seeks to relax that burden by *arguing* the floor at the Venetian is itself too
27 dangerous, because, despite being built within building codes with approved flooring material,
28 Plaintiff *argues* the floor, which is made of marble, is too slippery when wet as to constantly be an
inherently dangerous condition of which the Venetian is on notice of already.

Under Plaintiff's theory—she argues the 'mode of operation' approach to premises liability
applies here—the notice standards are relaxed, and she would not have to otherwise meet the
traditional rules of premises liability law to show actual or constructive notice of this particular
condition, but rather, as Plaintiff's argument goes, the Venetian was already on notice because marble,
in and of itself, when wet, is very slippery. Put another way, Plaintiff essentially argues hotels with

1 marble floors should be strict liability insurers of patrons who fall anywhere on marble floors from
2 any spill by anyone on their premises under any circumstances. But this is not a situation where the
3 narrowly applied mode of operation has any application to relax the notice rule.

4 Plaintiff initially sought the production of prior falls *anywhere* at the Venetian arguing "slip
5 and falls anywhere in the hotel are relevant to Defendant's notice that marble floors are dangerous."
6 Marble floors are not inherently dangerous and comply with building codes. The Discovery
7 Commissioner's initial Report and Recommendation compelling production of the incident reports
8 stated Plaintiff could have the *number* of falls in the lobbies, and ordered production of 3 years of all
9 prior falls anywhere at the Venetian on marble flooring, and for 5 years of all fall history anywhere in
10 the main lobby at issue.

11 This order resulted in production of incident report files, over 5 years, that occurred anywhere
12 on marble flooring throughout the hotel; some were in different lobbies; some in elevator banks; some
13 were near the food court; at least one was in a parking garage, etc. And they generally involve
14 differing circumstances and locations other than that there was a form of liquid on the floor that a
15 patron slipped on.

16 Defendant produced the detailed incident reports for the 5 years of incidents. The reports
17 themselves contained a lot of descriptive information and records, consisted anywhere from a few
18 pages to a dozen or so for each incident, had colored pictures of the people, floors, shoes, and
19 substances involved, medical statements, and witness and security statements, among other things, for
20 each incident. These documents also referenced whether or not a video of the incident was available
21 at the time.

22 Emboldened by the Discovery Commissioner's order of production (despite the limiting
23 language of entitlement to the *number* of other falls), Plaintiff served a follow up request for
24 production, seeking the production of approximately 29 videos (to the extent they exist, some do not)
25 from the 5 years of incidents anywhere in the hotel. Defendant objected, and the matter was again
26 presented to the Discovery Commissioner.

27 Plaintiff filed a motion to compel the video arguing the 'mode of operation' approach to
28 premises liability applied, so he was entitled to the video to show notice. Defendant opposed the

1 motion arguing the mode of operation approach does not apply, analyzing the history of the doctrine,
2 Nevada's limited adoption and narrow application of it, as well as cases to which the Nevada Supreme
3 Court looked for guidance.

4 The mode of operation approach evolved specifically out of the grocery store context, where
5 grocery stores began having customers perform duties that grocery clerks traditionally performed, for
6 example, the hand selection of fruit in a produce department, where the produce might fall and be
7 slipped upon. The rationale was that grocery stores knew of and created the increased risk of produce
8 falling on the floor by having customers now performing tasks traditionally assigned to employees;
9 their duty was akin to that of an employee who had caused the danger—the grocery store, undergoing
10 a mode of operation of having customers perform tasks previously the province of employees, were
11 deemed on notice of the increased danger of customers dropping and slipping on produce, and thus
12 might have a duty to put a mat down, for example, in those areas, to reduce the risk.

13 The Nevada courts, while adopting the approach, have stated it is very narrowly applied and
14 limited to those types of specific situations where it is a business' mode of operation to have
15 customers perform tasks previously assigned to employees that increase the risk of danger; under
16 those limited circumstances, the company is said to already have notice of the increased risk and
17 condition, and must therefore undertake further precautions. The mode of operation approach has no
18 application here however.

19 Here, one patron walking through a lobby dropped a water bottle that spilled. Several other
20 guests walked by it or through it without noticing it apparently. Then, just a few minutes after it was
21 spilled, Plaintiff unfortunately slipped and fell on it. There is no basis for the application of the mode
22 of operation approach here because the guest who spilled a water bottle was not performing a job
23 traditionally assigned to an employee such that the business can be said to have increased a risk of
24 falling by letting patrons perform functions formerly the province of an employee. Rather, a guest just
25 walked through the lobby.

26 Thus, under the circumstances here, Plaintiff must show actual or constructive notice of this
27 particular spill, and 29 videos from the previous 5 years of incidents anywhere on the property are not
28 relevant or admissible as to such notice—the reason Plaintiff states he wants the video. The purported

1 mode of operation approach was the reason identified in Plaintiff's motion to compel as *the* basis for
2 wanting the videos—to show notice. Defendant's Opposition detailed the history of the limited
3 application of the rule showing it did not apply here. Defendant also argued the prior video incidents
4 were not relevant to notice or other issues, were cumulative of other evidence, were prejudicial,
5 unduly burdensome, etc.

6 The Discovery Commissioner, however completely ignored the 'mode of operation' issue at
7 the hearing; it was never mentioned once. Instead, before argument even began, the Commissioner
8 stated the video should be produced. The Commissioner appeared predisposed to the *argument* that
9 marble floor is too slippery when wet regardless if there was a legal justification for the argument or
10 not. The ruling ordering production was thus error because the reason Plaintiff wants the videos for is
11 to show notice, but the videos are not relevant or admissible to that issue.

12 Ultimately, the Commissioner ruled that the *argument* was being made that marble floor, when
13 wet, is too slippery, and ordered the video produced as *discoverable* evidence on that basis. The
14 Commissioner did, at least, acknowledge, and order, that while she believes them to be discoverable,
15 it is ultimately up to the judge whether they are admissible during pretrial proceedings. The
16 Commissioner also ordered Rule 26(c) protective order limitations rendering the video confidential
17 and limiting their use until the district judge determines admissibility. Nevertheless, the production of
18 videos of more than 25 falls, over 5 years, from anywhere on the premises, was an erroneous ruling.

19 Defendant hereby objects to the Discovery Commissioner's Report and Recommendation
20 ordering production of the videos. The video is not produceable under the mode of operation
21 approach (which has no application to this case) or otherwise. The Commissioner's recommendations
22 for production are therefore erroneous and contrary to law.

23 II. STATEMENT OF FACTS

24 A. The Incident: Plaintiff Slips On Water, A Transient Foreign Substance, Spilled 25 By Another Guest When Dropping A Bottle 6 Minutes Before The Fall.

26 This matter involves allegations of personal injury resulting from a slip-and-fall accident
27 reported as having occurred on July 7, 2016. Plaintiff Carol Smith, a then 57-year-old registered
28

1 guest of the hotel, reported that she was on her way to the guest room elevators when she slipped and
2 fell on a large puddle of clear liquid. Security video footage of the incident was preserved.

3 The video shows approximately thirty minutes of activity prior to the subject incident. During
4 this time, heavy foot traffic is seen in the area of the incident, including several Venetian team
5 members who are seen walking through the area of the incident prior to the spill by a guest. The video
6 appears to show an unknown guest drop a bottle of water from her bag onto the floor at
7 approximately 12:08 p.m. The guest then picks up the water bottle, and exits the area with her family.

8 At approximately 12:12 p.m., 4 minutes after the guest was seen dropping a water bottle on
9 the floor, Plaintiff is seen walking through the lobby and into the adjacent gift shop. Plaintiff walked
10 over the area where she later fell without noticing anything on the floor or slipping. At 12:14 p.m., 6
11 minutes after the other guest dropped and spilled the water bottle, Plaintiff is seen exiting the gift
12 shop and slipping and falling. The video then shows Defendant's Public Area Department
13 responding to the scene and mopping the floor. Plaintiff was then transported from the area in a
14 wheelchair with the assistance of Security.

15 **B. Prior Discovery Concerning Other Slip and Falls Generally, The Other Incident**
16 **Reports With Pictures, And The Protective Order.**

17 Plaintiff initially requested for production all documents relating to complaints regarding slip
18 and falls for 5 years preceding the incident *anywhere* on the premises, and in *interrogatories* asked
19 for the identity of any patron or guest involved. Without conceding admissibility or relevance,
20 Defendant produced prior incident reports in the general vicinity referencing Lobby 1 where
21 Plaintiff's incident generally took place, redacting the identities of parties involved in slips and falls
22 (VEN371-499), in its Fifth Supplemental Disclosure. Defendant then filed a March 22, 2018 Motion
23 for Protective Order regarding Plaintiff's interrogatory seeking disclosure of personal identifying
24 information of guests and the corresponding redactions. Defendant argued the identity of individuals
25 in prior accidents is not relevant to an issue in the Plaintiff's claims, a temporary hazard case, among
26 other arguments. Def.'s Mot. For Prot. Order, 8:9-28.

27 Plaintiff filed a Motion to Compel further *interrogatory* responses seeking among other things
28 disclosure of the identities and contact information of the guests or patrons involved as "discoverable

1 witness information." See Pl.'s Mar. 28, 2018 Motion to Compel, 8:3-27. Plaintiff's Motion seeking
2 further interrogatory responses referred to Defendant's production arguing that "slips and falls
3 *anywhere* in the hotel are relevant to Defendant's notice that marble floors are dangerous," though
4 was focused on discovery of the *individuals* who had fallen as witnesses. *Id.* (emphasis added).

5 The Discovery Commissioner recommended Defendant's Motion for Protective Order be
6 granted, and the R&R states "re: transitory condition of the floor; counsel can have the number of
7 falls in the lobbies; ... if there is a specific fall event that happened in the general area of Plaintiff's
8 fall, have a 2.34 conference with Defense counsel and bring back to Commissioner's attention." See
9 D.C. R&R signed July 2, 2018, also attached as Exhibit 7 to plaintiff's Motion to Compel (emphasis
10 added).

11 The Discovery Commissioner granted Plaintiff's Motion to Compel further interrogatory
12 responses in part, to supplement Interrogatory No. 18 to "go back five years of fall history for the
13 lobby at issue [which was already produced]; go back three years before the incident for other lobbies
14 with the same marble floor due to liquid on the floor." *Id.* Defendant then served its Ninth
15 Supplemental Disclosure producing the incident reports as ordered by the court from 7/7/14-7/7/16,
16 the 3 year period for the other areas not involved or related to Plaintiff's incident (VEN1892-2251).

17 Defendant's disclosures of incident reports for 5 years in the same general area of Plaintiff's
18 incident, and 3 years in other areas, contain, where available, Venetian reports, witness reports,
19 security reports, medical releases, and color photographs of the scene of the fall, injuries, the
20 guests/patrons and their shoes.

21 **C. Defendant Demands 29 Videos of Other Slip And Falls (Some of Which Do Not**
22 **Exist as Stated in the Reports) That Concern Different Areas and Circumstances.**

23 Despite the incident reports and colored photographs, the Court granting the motion for
24 protective order to keep the identities of the guests/patrons from other incidents from disclosure, and
25 the Court's order regarding events that happened *in the general area of Plaintiff's fall*, Plaintiff then
26 served a fourth set of requests for production seeking production of numerous videos from other
27 incidents—almost entirely from areas other than where Plaintiff's incident took place—and whether
28 or not similar to the circumstances of Plaintiff's incident.

1 The vast majority of incidents took place at locations different than Plaintiff's incident and
2 under different circumstances. Notably, 26 of the 29 videos Plaintiff is requesting are from the
3 supplemental disclosure concerning areas other than where Plaintiff's incident took place, and a
4 review of all the reports and supporting documentation show there are very few *if any* that took place
5 at the spot of Plaintiff's incident.

6 **D. Briefing on Plaintiff's Motion to Compel.**

7 Plaintiff filed a Motion to Compel on September 26, 2018, attached to this Objection as
8 Exhibit "A." Plaintiff's Motion to Compel argues "Marble floors are known to be slippery when
9 wet and that marble surface is prone to cause slips and falls when there is a liquid substance on the
10 flooring." Pl.'s Sept. 26, 2018 Motion, 3:10-12. This of course could be said of any floor. Plaintiff
11 next states that "it is foreseeable that patrons will spill water." *Id.* at 3:13. Again, this is overly
12 simplistic.

13 Plaintiff uses this basic argument—people spill water, and marble floors are too slippery when
14 wet—to advocate for the application of the mode of operation approach, under which he seeks
15 production of the video from 5 years of incidents anywhere on the premises for the purpose to show
16 notice to Defendant that all marble floors—though building code complaint—are purportedly already
17 known to be unreasonably dangerous. *See id.* at 6:10-12; 7:2-3 ("The requests are certainly relevant
18 to the issue of notice of an unreasonably dangerous nature of marble floors ... Video which depict
19 previous slip and fall incidents provide direct evidence of the slippery nature of the marble floors.";
20 "The videos and prior incidents go to notice ..."). Plaintiff then argues the marble floor is a
21 "permanent condition." *Id.* at 6:28.

22 Plaintiff's Motion argues the purpose of discovery is to take out the elements of surprise and
23 gamesmanship to ensure parties can evaluate the case on the merits. *Id.* at 4:22-23. But there is no
24 surprise here; Plaintiff knows about the prior incidents, and has the reports and pictures. Plaintiff's
25 Motion concedes the incidents have already been identified. The only purpose of the videos would be
26 to use them to show a jury for improper purposes.

27 Defendant filed an Opposition on October 19, 2018, attached to this Objection as Exhibit
28 "B." Defendant's Opposition detailed the history, adoption, rationale, and narrow application of the

1 mode of operation approach, and how it cannot apply to the circumstances here, as also discussed
2 below in Section III(A). Defendant also opposed production on grounds of relevance, that the
3 discovery is not reasonably tailored to lead to the discovery of admissible evidence, that the evidence
4 is cumulative of the incident report and pictures, that the evidence is inadmissible, and would only
5 tend to confuse, mislead, or prejudice the jury, and because the requests are overbroad and unduly
6 burdensome.

7 Plaintiff filed a Reply on October 25, 2018, attached to this Objection as **Exhibit "C."**
8 Plaintiff's Reply first details Plaintiff's fall, and discusses how the video of that incident is relevant
9 and corroborates her story. Pl.'s Reply, 2:8. Plaintiff has this video already. Plaintiff's Reply argues
10 that the video of Plaintiff's incident "is significant evidence because it rebuts the Defendant's position
11 that they lacked notice." Pl.'s Reply, 2:14-15. However, videos of other incidents, which is what the
12 Motion sought to compel, will not corroborate Plaintiff's story or show notice to Defendant of the
13 spill at issue in this case.

14 Plaintiff's Reply again argues that the mode of operation approach applies, and details the
15 grocery store example in *Sprague* (grape falling on floor in produce section) that, once again, is
16 dissimilar to the circumstances here, in one last effort to argue the mode of operation approach
17 applies. Plaintiff's Reply also in part improperly raises new issues and evidence because she could
18 not show the mode of operation approach applied here; new issues and evidence cannot be raised in a
19 Reply, and thus this Court need not consider it. To the extent the Court does, Defendant will address
20 the new matters here.

21 Plaintiff's Reply now argued generally that whether a landowner exercised reasonable care
22 involves the totality of the circumstances which may include prior similar occurrences, yet she
23 inappropriately cites a case (i) that does not say that, and (ii) that actually concerns a totally different
24 situation—the court was adopting a new standard for the open and obvious danger doctrine, not
25 applicable here. Pl.'s Reply, 4:8-13, citing *Foster v. Costco Wholesale Corp.* 128 Nev. 773 (2012).

26 The open and obvious doctrine previously eliminated landowner liability to visitors from open
27 and obvious dangers, for example, like a giant hole or other obstruction on the premises. In *Foster*,
28 the court adopted an exception to the doctrine ruling a landowner may be held liable if it should

1 anticipate the harm despite the hazards' open and obvious nature, but failed to remedy the risk.
2 Plaintiff's Reply thus also tried to misapply this doctrine too that has no application to the
3 circumstances in efforts to get the video of other incidents anywhere on the property.

4 Plaintiff's Reply then states that Defendant chose to install marble floors, that the expert said
5 that "when dry and clean, the marble affords sufficient friction" but when wet, can cause a slip due to
6 loss of traction. Pl.'s Reply, 7:1-7, and Exhibit 10 to the Reply. This is the lone piece of evidence
7 Plaintiff has offered (improperly in his Reply), and it states the floor meets friction standards.

8 Plaintiff's Reply then describes and attaches a transcript of a prior discovery hearing in a
9 totally different case (again, improperly withholding evidence in his Motion, and trying to sandbag
10 Defendant in Reply). Plaintiff's Reply argues the Commissioner in that other case allowed
11 production of prior flooring incidents. Nevertheless, a review of the transcript from the different
12 lawsuit, the portion of which Plaintiff omitted when quoting the transcript in her Reply, states:

13 "DISCOVERY COMMISSIONER

14 Now, I typically don't require anything else except the incident
15 report itself or a printout that shows how many slips and falls occurred in
that particular area."

16 Exhibit C: Pl.'s Reply, at its exhibit 7, Transcript, 4:1-2. Here, Plaintiff already has the incident
17 reports, however. The Commissioner in that transcript also stated in that other case that "you'll have
18 to have an expert look at the flooring because, otherwise, if the flooring is proper, where it meets
19 friction, coefficient, whatever it is, then it's not really relevant." *Id.* at 9:17-19. Here, as Plaintiff
20 herself pointed out, the floor does meet the friction standards. Finally, the motion to compel in that
21 other case was actually denied. *Id.* at 9:20-22

22 Despite all of this, however, the videos were recommended to be produced in this case in the
23 Discovery Commissioner's Report and Recommendation, attached as **Exhibit "D"** to this Objection.
24 The Transcript of the hearing on Plaintiff's Motion to Compel held October 31, 2018 is attached as
25 **Exhibit "E"** to this Objection. Not one mention is made by the Commissioner of the mode of
26 operation approach or what legal standard applies to allow production of the *videos*. The
27 Commissioner recommended the videos be produced as discoverable evidence, recommended Rule
28 26(c) protections keeping them confidential and limiting their use, and recommended that it was

1 ultimately up to the district court judge, at the time of pretrial proceedings, whether or not the video
2 would be admissible.

3 The mode of operation approach does not apply here to relax the notice standard. The videos
4 are not relevant to show notice. The motion should have been denied.

5 **III. LEGAL ARGUMENT**

6 **A. Plaintiff's Motion Incorrectly Argues The 'Mode of Operation' Analysis Applies To**
7 **This Case To Obtain The Videos. When Caselaw Demonstrates It Does Not; The**
8 **Approach Is Only Applied, If At All, Very Narrowly In Circumstances Unlike Here.**

9 The notice requirement is relaxed under the mode of operation approach, but the rule's
10 application is specifically limited, by the Nevada Supreme Court, to where an "owner of a self-
11 service establishment has, as a cost-saving measure, chosen to have his customers perform tasks
12 that were traditionally performed by employees." *FGA, Inc. v. Giglio*, 128 Nev. 271, 281, 278
13 P.3d 490 (2012). The rule, however, is not applicable here for a slip in fall from a bottle of water
14 spilled in a lobby of a hotel.

15 In order to *avoid* her legal burden to prove Defendant's actual or constructive notice of an
16 alleged unreasonably dangerous condition—here, the water spilled on the floor for 6 minutes—
17 Plaintiff tries to convert this case into something it is not under the limited 'mode of operation'
18 approach. In so doing, Plaintiff seeks to improperly expand the "*narrowly*" applied 'mode of
19 operation' analysis into a new broad, vast realm, that would undermine negligence and premises
20 liability law as we know it and convert business owners into strict liability insurers. The law does not
21 allow for this, however. Plaintiff's attempt to use the doctrine to obtain video of incidents anywhere
22 on property to try and show notice is improper.

23 As demonstrated below, the Nevada Supreme Court has not recognized or expanded the
24 narrow approach to cover the circumstances at issue here, which is why Plaintiff's Motion did not
25 analyze the Nevada cases that address it, nor the underlying rationale Nevada relies upon in
26 acknowledging the doctrine's limited use. Instead, Plaintiff's Motion just *says* and assumes it
27 applies, with no showing or support under law, so that Plaintiff can attempt to avoid her notice
28 burden, and accordingly try to obtain and use a montage of approximately 30 irrelevant videos of

1 unrelated slip and falls, from different foreign substances, in different spots, to try and prejudice,
2 confuse and mislead the jury into imposing liability against Defendant *for the unrelated slip and fall*
3 *that is at issue here*. This is simply not appropriate or proper.

4 "The owner or occupant of property is not an insurer of the safety of a person on the premises,
5 and in the absence of negligence, no liability lies." *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250,
6 849 P.2d 320 (1993), citing *Gunlock v. New Frontier Hotel*, 78 Nev. 182, 185, 370 P.2d 682, 684
7 (1962). "An accident occurring on the premises does not of itself establish negligence." *Id.* "A
8 business does owe its patrons a duty to keep the premises in a reasonably safe condition for use." *Id.*,
9 citing *Asmussen v. New Golden Hotel Co.*, 80 Nev. 260, 262, 392 P.2d 49 (1964).

10 "Where a foreign substance on the floor causes a patron to slip and fall, and the business
11 owner or one of its agents caused the substance to be on the floor [unlike here], liability will lie, as a
12 foreign substance on the floor is usually not consistent with the standard of ordinary care." *Id.*, citing
13 *Asmussen*, 80 Nev. at 262; *see also Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 509, 377 P.2d 174, 175
14 (1962); *FGA, Inc. v. Giglio*, 128 Nev. 271, 280, 278 P.3d 490 (2012). "Where the foreign substance
15 is the result of the actions of persons other than the business or its employees [similar to here],
16 liability will lie only if the business had actual or constructive notice of the condition and failed to
17 remedy it." *Id.*, citing *Asmussen*, 80 Nev. at 262; *see also Eldorado Club*, 78 Nev. at 510; *FGA, Inc.*,
18 128 Nev. at 280.

19 Here, because it was not an employee that spilled the water, Plaintiff therefore has the burden
20 to show that Defendant had actual or constructive notice of the water in the lobby within 6 minutes
21 from it being spilled in order to hold Defendant liable under the law. *Sprague*, 109 Nev. at 250;
22 *Asmussen*, 80 Nev. at 262; *Eldorado Club*, 78 Nev. at 510; *FGA, Inc.*, 128 Nev. at 280. Plaintiff
23 seeks to make new law here by applying the mode of operation approach where it does not belong to
24 avoid her burden to show actual or constructive notice, and seeks the videos from Defendant under
25 that misapplied theory.

26 Plaintiff's Motion does not analyze the rationale, bases, or instances of where the mode of
27 operation rule has been applied or declined to have been applied; instead, her Motion merely states
28 that the *FGA, Inc. v. Giglio* case generally recognized the implicit adoption of the mode of operation

1 approach in *Sprague* under certain circumstances, but does not address under what specific
2 circumstances it does apply, which is telling. See Pl.'s Mot., 3:18-20. Plaintiff's Motion then
3 summarily jumps to the conclusion that the mode of operation approach applies here and that
4 therefore she is entitled to the videos of all prior slips and falls on marble regardless of the
5 circumstances. An analysis of the rationale, adoption, and bases for the mode of operation rule along
6 with Nevada's jurisprudence on the issue demonstrates why it does not apply to this case, and
7 consequently, why the videos should not have been ordered produced.

8 Under the mode of operation rule *when it applies*, "the plaintiff satisfies the notice
9 requirement if [s]he establishes that an injury was attributable to a reasonably foreseeable dangerous
10 condition on the owner's premises **that is related to the owner's self-service mode of operation.**"
11 *FGA, Inc.*, 128 Nev. at 281 (emphasis added). It is the latter phrase in bold that has significance here
12 requiring the circumstances to meet the self-service nature of a certain business whereby the business
13 has customers service themselves in the manner traditionally performed by its employees. *FGA, Inc.*,
14 128 Nev. at 281. The rationale is that the owners have created an increased risk of a potentially
15 hazardous condition "**by having their customers perform tasks that are traditionally carried out**
16 **by employees.**" *FGA, Inc.*, 128 Nev. at 282. The *FGA* court declined to apply the mode of operation
17 approach in that case, however, because it did not fit the circumstances.

18 The *FGA, Inc.* court analyzed the rationale for, and origins of, the mode of operation
19 approach. The Court acknowledged there was "a modern trend toward modifying th[e] traditional
20 approach to premises liability to accommodate newer merchandising techniques, such as the shift
21 that grocery stores have made from clerk-assisted to self-service operations." *FGA, Inc.*, 128
22 Nev. at 280 (emphasis added), citing *Sheehan v. Roche Bros. Supermarkets, Inc.*, 448 Mass. 780, 863
23 N.E.2d 1276, 1281-82 (2007) (customer slipped on grape at grocery store, similar to *Sprague*). "The
24 modification of the traditional premises liability approach is, in large part, **based on the change in**
25 **grocery stores from individualized clerk-assisted to self-service operations.**" *Roche Bros.*
26 *Supermarkets, Inc.*, 863 N.E.2d at 1281. "One such variation is the 'mode of operation' approach."
27 *FGA, Inc.*, 128 Nev. at 280. "This approach focuses on the nature of the business at issue." *Id.*

28

1 According to the Nevada Supreme Court, “[t]he rationale underlying the mode of operation
2 approach is that an owner of a *self-service establishment* has, as a cost-saving measure, chosen to
3 have his customers perform tasks that were traditionally performed by employees.” *FGA, Inc.*,
4 128 Nev. at 281 (emphasis added). “If a customer who is performing *such a task* negligently creates
5 a hazardous condition, the owner is ‘charged with the creation of this condition just as he would be
6 charged with the responsibility for negligent acts of his employees’ because it was the owner’s choice
7 of mode of operation that created the risk.” *Id.* (emphasis added). For example, at Wal-Mart, “[a]
8 self-service flower display creates a risk of minor drips and spills as flowers are removed from
9 containers of water by customers.” *Mills v. Wal-Mart Stores, Inc.*, 2017 WL 4038398 (D. Nev. Sept.
10 13, 2017).

11 While the *FGA* Court acknowledged the mode of operation approach was a trend applied in
12 certain limited circumstances, it also recognized that the “majority of jurisdictions adopting [the rule]
13 have applied it *narrowly*.” *FGA, Inc.*, 128 Nev. at 281 (emphasis added). Other Nevada courts have
14 similarly recognized its narrow application as well. *See, e.g., Espreccion v. Costco Wholesale Corp.*,
15 2016 WL 4926424, *3 (D. Nev. Sept. 14, 2016) (“The Nevada Supreme Court has limited *Sprague*,
16 however, noting that the ‘mode of operation’ approach to landowner liability adopted in that case had
17 been applied ‘narrowly’ in the other states that had adopted some version of it. Accordingly, **the**
18 ***FGA* Court rejected an expanded theory of liability under circumstances dissimilar to those in**
19 ***Sprague*.**”); *Mills v. Wal-Mart Stores, Inc.*, 2017 WL 4038398 (D. Nev. Sept. 13, 2017) (“The
20 Supreme Court of Nevada has recognized a modified theory of traditional premises liability, called
21 ‘mode of operations,’ in self-service retail establishments, such as grocery stores ... [s]pecifically,
22 when [] an owner allows customers to self-serve...”);

23 The Court in *FGA, Inc.*, after analyzing the mode of operation approach, its origins, and its
24 rationale, actually found “**no reason to extend mode of operation liability to such establishments**
25 **absent such a showing as their owners have not created the increased risk of a potentially**
26 **hazardous condition by having their customers perform tasks that are traditionally carried out**
27 **by employees.**” *FGA, Inc.*, 128 Nev. at 282. *Giglio* was arguing for application of the mode of
28

1 operation liability to extend beyond the self-service context just as Plaintiff does here, but the *FGA*
2 court specifically declined to do so.

3 There is no applicable 'self-service mode of operation' at play under the circumstances of this
4 case such as, for example, in the grocery store produce section where the approach emanated from.
5 There was no 'such self-service task' carried out by the guests here that was traditionally performed
6 by Defendant's employees, and therefore the mode of operation approach has no application here
7 despite Plaintiff's attempt to stretch the rule. Plaintiff's argument that marble is too slippery when
8 wet because others have fallen on foreign substances too does not implicate the mode of operation
9 approach; there was no self-service task here traditionally performed by Defendant's employees so
10 the rationale does not apply, and Plaintiff must prove actual or constructive notice under the normal
11 premises liability standard. Walking through a lobby on floors that are alleged to be too slippery
12 *when wet* does not implicate the mode of operation approach, but one can imagine the ramifications
13 to the Las Vegas hotel industry if it did. The rationale simply does not apply here.

14 Plaintiff seeks production of the video under the misnomer that the mode of operation
15 approach may apply to this case, which it does not. Plaintiff wants to forego her burden to show
16 actual or constructive notice and inflame the jury with an 'America's Funniest Home Videos' style
17 montage of 5 years of slip and falls from anywhere on the property. Most if not every hotel in town
18 has had their share of slips and falls in their lobbies; this in and of itself does not implicate the mode
19 of operation rule nor entitle plaintiffs to years of slip and fall videos anywhere on the premises.
20 Discovery is not without limits.

21 **B. Plaintiff's Motion to Compel Should be Denied Because the Requests are Unduly**
22 **Burdensome, Irrelevant, Cumulative, Not Likely to Lead to the Discovery of**
23 **Admissible Evidence, Prejudicial, and Misleading.**

24 Plaintiff still has her burden to show that Defendant had notice of the foreign substance at
25 issue in this case. The approximately 25-30 videos of other unrelated falls, with various substances,
26 occurring in various manners, in various locations, is irrelevant, inadmissible to show notice,
27 cumulative of the incident reports already produced (that contain pictures), prejudicial, confusing and
28 misleading to a jury, and not likely to lead to the discovery of admissible evidence.

1 The Court "shall" limit the "frequency or extent of use of discovery methods ... if it
2 determines that ... the discovery is unreasonably cumulative or duplicative, taking into account the
3 needs of the case, the amount in controversy, limitations on the parties' resources, and the importance
4 of the issues at stake in the litigation," or if "the discovery is unduly burdensome or expensive." Nev.
5 R. Civ. P. 26(b)(2).

6 The court may also limit discovery where it is irrelevant to the subject matter involved in the
7 pending action, or if the information sought is not reasonably calculated to lead to the discovery of
8 admissible evidence. Nev. R. Civ. P. 26(b)(1). Evidence is only relevant if it has "any tendency to
9 make the existence of any fact that is of consequence to the determination of the action more or less
10 probable than it would be without the evidence." *Garner v. State*, 116 Nev. 770, 780, 6 P.3d 1013,
11 1020 (2000), overruled on other grounds by *Sharma v. State*, 118 Nev. 6489, 56 P.3d 868
12 (2002)(quoting NRS 48.015).).

13 Alternatively, even if evidence is deemed relevant in some manner, it is still not admissible if
14 its probative value is substantially outweighed by (i) the danger of unfair prejudice, (ii) of confusion
15 of the issues, (iii) of misleading the jury, or outweighed by considerations of (iv) undue delay, (v)
16 waste of time, or (vi) the needless presentation of cumulative evidence. NRS 48.035(1),(2). Trial
17 courts generally have discretion in determining whether evidence is relevant and admissible. *Thomas*
18 *v. Hardwick*, 126 Nev. Adv. Op. 16, 231 P.3d 1111, 1117 (2010).

19 Here, Plaintiff's Complaint is based in negligence and she has the burden to prove Defendant
20 had actual or constructive notice of the water spill at issue in this action. *Sprague*, 109 Nev. at 250;
21 *Asmussen*, 80 Nev. at 262; *Eldorado Club*, 78 Nev. at 510; *FGA, Inc.*, 128 Nev. at 280. Prior slip
22 and falls under differing circumstances in different spots of the various lobbies, or by elevators, or the
23 parking garage, are not relevant to the slip and fall here nor admissible to show liability or notice
24 against Defendant for this slip and fall, and could only serve to inflame, confuse, and prejudice the
25 jury. Plaintiff is already in possession of the incident reports that also contain color pictures of the
26 events, which were redacted per court order to preserve the identity of the people involved.
27 Production of the videos is cumulative at best and also would disclose the identities that have been
28 redacted. There is no need for the videos other than for improper purposes.

1 The spilled water on the spot of the lobby floor where Plaintiff slipped was a temporary
2 condition, not a structural, permanent, or continuing defect. In *Eldorado*, the court held it was error
3 to admit prior accidents of slips and falls on a ramp to show notice of the condition even though the
4 prior slips were on the same instrumentality, a lettuce leaf. As in *Eldorado* where the instrumentality
5 causing the slip on the ramp was a lettuce leaf, a temporary situation not attributed to the ramp
6 without the leaf, the instrumentality causing the slip here was the spilled water in the lobby, not the
7 floor itself.

8 “The admissibility of evidence of prior accidents in this kind of a case, to show notice or
9 knowledge of the danger causing the accident, is generally confined to situations where there are
10 conditions of permanency.” *Eldorado*, 78 Nev. at 511. Plaintiff’s condition of permanency here is
11 the installation of marble floor that meets building codes. “Evidence of the type here in question is
12 usually excluded where it relates to a temporary condition which might or might not exist from one
13 day to the other,” like the spill at issue in this case. *Id.* “[W]here a slip and fall is caused by the
14 temporary presence of debris or foreign substance on a surface, which is not shown to be
15 continuing, it is error to receive ‘notice evidence’ of the type here involved for the purpose of
16 establishing the defendant’s duty.” *Id.* (emphasis added).

17 The videos Plaintiffs seek are not relevant or admissible and will not lead to the discovery of
18 admissible evidence. The evidence is cumulative of the incident reports already produced, and the
19 requests are unduly burdensome. The only purpose of the evidence would be to prejudice or mislead
20 a jury. The probative value of the videos does not outweigh any of these considerations.

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[illegible][illegible]

1 **PROOF OF SERVICE**
2 *LV-Smith v. Venetian Casino Resort, LLC*
3 Case No.: A-17-753362-C

4 The undersigned does hereby declare that I am over the age of eighteen (18) years and not a
5 party to the within entitled action. I am employed by Messner Reeves LLP, 8945 W. Russell Road,
6 Suite 300, Las Vegas, Nevada 89148. I am readily familiar with Messner Reeves LLP's practice for
7 collection and processing of documents for delivery by way of the service indicated below.

8 On December 7, 2018, I served the following document(s):

9 **DEFENDANT'S OBJECTION TO DISCOVERY COMMISSIONER'S**
10 **REPORT AND RECOMMENDATIONS**

11 on the interested party(ies) in this action as follows:

12 Peter Goldstein, Esq.
13 Nevada Bar No. 6992
14 PETER GOLDSTEIN LAW CORP.
15 10795 W. Twain Avenue, #110
16 Las Vegas, NV 89135
17 Telephone: (702) 474-6400
18 Facsimile: (888) 400-8799
19 *Attorneys for Plaintiff*

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

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

27 Executed on December 7, 2018, at Las Vegas, Nevada.

28 
An employee of Messner Reeves LLP

EXHIBIT 21



ORDER

Peter Goldstein, Esq. (SBN 6992)
PETER GOLDSTEIN LAW CORPORATION
10785 W Twain Ave, Ste. 230
Las Vegas, Nevada 89135
Email: peter@petergoldsteinlaw.com
Tel: 702.474.6400
Fax: 888.400.8799

Attorney for Plaintiff
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

ORDER

Defendant filed an objection to the Discovery Commissioner's Report and Recommendation. A hearing was held on January 22, 2019. Peter Goldstein appeared on behalf of the Plaintiff, and Ryan Loosvelt on behalf of the Defendant. The Court stated that the admissibility of the documents sought by Plaintiff, would be made at the time of trial, and affirmed the Discovery Commissioner's Report and Recommendation.

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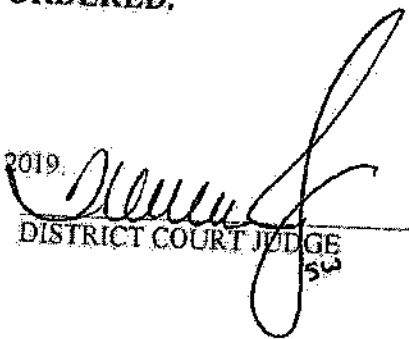
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1 IT IS HEREBY ORDERED that the Discovery Commissioner's Report and Recommendation is
2 AFFIRMED, and Plaintiff's Motion to Compel is Granted, Defendant must produce video for incident
3 reports on other marble floors on the property for which video evidence is maintained and supplement
4 Request for Production of Documents, set four and Defendant must produce all video tapes that pertain
5 to all the incident reports that were produced previously.
6

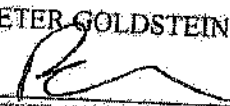
7 IT IS SO ORDERED.
8

9
10 DATED this 28 day of February, 2019.


DISTRICT COURT JUDGE
SW

11
12 Respectfully Submitted by:

13 PETER GOLDSTEIN LAW CORPORATION
14


15 PETER GOLDSTEIN, ESQ. [SBN 6992]
16 10785 W Twain Ave, Ste. 230
17 Las Vegas, Nevada 89135
18 Attorney for Plaintiff
19 CAROL SMITH

Date: 2.14.19

20 Approved as to form and content:

21 MESSNER REEVES

22 RYAN LOOSVELT, ESQ. [SBN 8550]
23 8945 W. Russell Road, Suite 300
24 Las Vegas, Nevada 89148
25 Attorneys for Defendant
26 VENETIAN CASINO RESORT, LLC
27
28

Date: _____

EXHIBIT 22

Steven D. Grierson

1 **ROPP**

Michael A. Royal, Esq.

2 Nevada Bar No. 4370

Gregory A. Miles, Esq.

3 Nevada Bar No. 4336

4 **ROYAL & MILES LLP**

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6 Fax: (702) 531-6777

Email: mroyal@royalmilesllp.com

7 Attorneys for Defendants

8 **VENETIAN CASINO RESORT, LLC and**

LAS VEGAS SANDS, LLC

9
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **JOYCE SEKERA, an Individual;**

13 Plaintiff,

14 v.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

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

22 Defendants.

23 **RESPONSE TO PLAINTIFF'S OBJECTION TO DISCOVERY COMMISSIONER'S**
24 **REPORT AND RECOMMENDATIONS DATED APRIL 2, 2019. COUNTERMOTION TO**
25 **STRIKE FACTS AND ARGUMENTS NOT BRIEFED BEFORE THE DISCOVERY**
26 **COMMISSIONER. . COUNTERMOTION FOR ORDER DIRECTING PLAINTIFF**
27 **TO COMPLY WITH PROTECTIVE ORDER BY RETRIEVING ALL INFORMATION**
28 **DISTRIBUTED TO PERSONS OUTSIDE THE LITIGATION, AND COUNTERMOTION**
FOR APPROPRIATE SANCTIONS UNDER NRCP 37(b)(2)

ROYAL & MILES LLP
1522 W Warm Springs Road
Henderson NV 89014
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1 1. **Guest Privacy Rights**

2 The Discovery Commissioner agreed that the people identified in the prior incident reports have
3 certain rights to privacy, that there is **protected HIPAA information** in the prior incident reports, and
4 that producing these reports in redacted form to protect the privacy of these individuals is appropriate.
5 (See Exhibit B.) The Health Insurance Portability and Accountability Act of 1996 (*HIPAA*) prohibits
6 unauthorized disclosure of certain protected health information. (See 42 USCS. § 1320d *et seq.*; 45
7 C.F.R. §§160-164.)

8
9 Providing Plaintiff with *carte blanche* personal information of all Venetian guests previously
10 involved in incidents sets up Defendants for a cause of action for invasion of privacy by these persons.
11 (See *e.g. Iorio v. Check City P'ship, LLC*, No. 64180, 2015 Nev. Unpub. LEXIS 658, 2015 WL
12 3489309, at *3 (Nev. May 29, 2015); *People for Ethical Treatment of Animals v. Bobby Berosini, Ltd.*,
13 111 Nev. 615, 895 P.2d 1269, 1279 (Nev. 1995) holding modified by *City of Las Vegas Downtown*
14 *Redevelopment Agency v. Hecht*, 113 Nev. 632, 940 P.2d 127 (Nev. 1997), holding modified by *City*
15 *of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 644, 940 P.2d 134 (Nev. 1997).)

16
17 2. **Guest Personal Information**

18 Defendants employ emergency medical technicians who respond to injury related matters on
19 Venetian property. Those EMTs routinely perform triage like exams and render first aid care, which
20 includes not only collecting information about present condition of a guest, but also information related
21 to past medical history, medications, etc. They also frequently provide information relayed by
22 responding paramedics, which information is intended to be relayed to hospital personnel. Statements
23 to responding EMTs and outside EMS personnel are often recorded in incident reports. By collecting
24 and reporting this information, Venetian contends that it is a provider within the umbrella of HIPAA
25 and, as such, cannot release information related to complaints of injury. Take Plaintiff's own incident,
26 for example. Plaintiff was examined by Joe Larson, EMT, who provided intricate details of his
27
28

1 Venetian's property; individuals who are not believed to have any personal knowledge or information
2 regarding any of the facts surrounding Plaintiff's alleged incident.

3 2. **Plaintiff is using information produce for improper purposes and cannot**
4 **articulate a reasonable need for guest contact information**

5 Disclosure of the guest information as it pertains to this litigation alone creates an issue for
6 Venetian, as it is potentially detrimental to its business interests to protect the confidential information
7 of its guests. Were Venetian to disclose this information without court ordered protection, subjecting
8 its customers to unrelenting contact by persons uninvolved with the litigation, it would likely diminish
9 the customer/client relationships which Venetian has extended extraordinary effort and resources
10 establishing. There is a recognized interest in protecting the disclosure of personal client information,
11 as unauthorized disclosure would likely be perceived negatively by customers and potential customers.
12 (See e.g., *Gonzales v. Google, Inc.*, 234 FRD 674, 684 (N.D.CA 2006) (disclosing client information
13 "may have an appreciable impact on the way which [the company] is perceived, and consequently the
14 frequency with which customers use [the company] ").)

15
16 Guests who stay at Venetian do so with an expectation that their personal information
17 (especially when it involves health issues) will not be disclosed or disseminated freely without their
18 consent. Accordingly, Venetian respectfully requests that the private identification information of its
19 guests involved in prior incidents be protected from disclosure by anyone not involved in this litigation
20 as legal counsel, an expert witness, or otherwise.

21
22 What has Plaintiff done to demonstrate her need for this information is so great that it
23 outweighs the privacy rights of Defendants' guests? She provides the following:

24
25 . . . Plaintiff needs the names and contact information on the incident reports
26 because they are potential witnesses. The identity of the individuals who fell at
27 Venetian and were injured on its marble floors as a result of impacting liquid are
28 important because they will enable Plaintiff's Counsel to locate these witnesses and
present them to counter Venetian's expected claims that Plaintiff was
comparatively negligent because she did not see the liquid substance on the floor
before she fell.

EXHIBIT 23

Steven D. Grierson

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18 Attorneys for Plaintiff

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DISTRICT COURT
CLARK COUNTY, NEVADA

19 JOYCE SEKERA, an Individual
20
21 Plaintiff,

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

22 v.

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

Defendants.

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

1 Here, similar to the plaintiff in *Benjamin*, Venetian does not "properly oppose" Plaintiff's
2 motion because Venetian does not address the issue of the 30(b)(6) deposition. (See generally
3 Defendant's Opp.) Plaintiff's motion emphasizes that she should be allowed to discuss the measures
4 Venetian took to locate and produce incident reports because (1) Venetian has shown time and time
5 again in 4 cases - *Sekera v. Venetian*, *Cohen v. Venetian*, *Smith v. Venetian* and *Boucher v. Venetian*
6 - that cannot be trusted to fully and fairly disclose incident reports and because (2) the rules
7 allowing discovery sanctions would be rendered meaningless if the parties were not permitted to
8 discover information related to violations to ensure compliance with the rules. Venetian's opposition
9 fails to even mention "30(b)(6)" let alone address these arguments. This failure is clearly not an
10 oversight, as Venetian references the body of Plaintiff's argument regarding Venetian's 30(b)(6)
11 witness and questions the "relevance" of Plaintiff's exhibit referenced in that same argument. (See
12 Defendant's Opp. At 13:22-23.) ("Exhibit 15 to Plaintiff's motion, identified as Plaintiff's Notice
13 a/Motion and Motion for Terminating Sanctions, et al filed by Peter Goldstein, Esq., on February 13,
14 2019 in the Smith matter, was denied by the District Court in a hearing held on May 7, 2019.
15 Therefore, the relevance of that motion referenced on page 17 of the motion to compel is unclear.")
16 Venetian's, like the plaintiff in *Benjamin*, therefore did not argue why the Plaintiff cannot question
17 on measures taken to locate and produce incident reports. Thus, this Court should rule the same as
18 the *Benjamin* Court and approve Plaintiff's 30(b)(6) parameters because Defendant's failure to
19 address the argument is an admission the motion is meritorious.

20 **II. LIMITED OPPOSITION / RESPONSE TO DEFENDANTS' MOTION TO COMPEL**
21 **DOCUMENTS PROVIDED TO TOM JENNINGS**

22 On July 22, 2019 Defendant served its 16th supplement to its list of witnesses and production
23 of documents for early case conference. (Defendant's 16th Supp., attached as Exhibit "2.") This
24 supplement contained the communication from Plaintiff's counsel to Plaintiff's expert Tom Jennings
25 ("Mr. Jennings") regarding the 196 incidents which occurred in the Venetian. The supplement also
26 contained a copy of the table summarizing the reports that Plaintiff provided to Mr. Jennings. These
27
28

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

III. OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER

A. Factual Background

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

REQUEST NO. 23:

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

REQUEST NO. 24:

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

REQUEST NO. 25:

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

REQUEST NO. 26:

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

REQUEST NO. 27:

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

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

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

REQUEST NO. 35:

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

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

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

26 //

27 //

EXHIBIT 24

Steven D. Grierson

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17 kgallagher@galliherlawfirm.com
18 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

14 JOYCE SEKERA, an Individual,
15 Plaintiff,

16 v.

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

25 Defendants.

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

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO QUASH
THE SUBPOENA TO DAVID ELLIOT,
P.E. AND FOR A PROTECTIVE
ORDER AND COUNTERMOTION TO
STRIKE MOTION FOR PROTECTIVE
ORDER AND FOR ATTORNEY'S FEES**

24 Plaintiff hereby submits her Opposition to Defendant's Motion to Quash the Subpoena to
25 David Elliot, P.E. and For a Protective Order and Countermotion to Strike Motion for Protective
26 Order and for Attorney's Fees.
27 //

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

2. Any reports, opinions or other documents generated by you, regarding the safety of the marble flooring utilized by The Venetian Las Vegas within its hotel and casino.

3. Any slip testing, reports or documents generated by you during the period of your consultancy with the Venetian Las Vegas regarding the safety of the marble flooring within its hotel and casino.

(Subpoena Duces Tecum to Elliott, attached as Exhibit "5.")

III. OPPOSITION TO DEFENDANT'S MOTION TO QUASH THE SUBPOENA TO DAVID ELLIOT, P.E. AND FOR A PROTECTIVE ORDER

A. The Information Plaintiff Seeks is Not Privileged and Not Attorney Work Product

Based on Elliott's deposition testimony in *Farina v. Desert Palace, Inc.* Plaintiff believed Venetian hired Elliott as a consultant between 2000 and 2009 to evaluate the safety of its marble floors. Thus, Plaintiff subpoenaed Elliott for a copy of this consulting contract and any reports, opinions, slip tests and other documents Elliott generated in relationship to this consultancy. To clarify, Plaintiff believes Venetian, *not Venetian's attorneys*, hired Elliott as a private consultant, *not an expert, outside of the course of litigation* to evaluate the safety of its marble floors. Plaintiff limited all of her requests for production to this consulting relationship.

Attorney-client privilege does not apply to these requests because Plaintiff requested Elliott's reports to Venetian, *not Elliott's reports to Venetian's attorneys*. See NRS 49.035, et. seq. As far as Plaintiff is concerned Venetian's attorneys' knowledge of the dangerous condition of the marble floors is irrelevant. Venetian's attorneys' are not managers and their conscious disregard of the dangerous condition is thus insufficient to hold Venetian liable for punitive damages. Plaintiff only seeks Elliott's reports, opinions, slip tests and other documents which he provided to Venetian's employees and management. Plaintiff is also not requesting documents that reflect an Mr. Royal's or any other lawyer's impressions, conclusions, opinions, or legal research or theories. Thus, work product does not apply.

The only documents Plaintiff seeks related to litigation are ones discoverable under the rules i.e. Elliott's reports in cases where Venetian disclosed him as a testifying expert. Plaintiff is not seeking non-testifying expert materials in violation of NRCPP 26(b)(4)(D). (Defendant's Mot. at

1 9:10-12.) Plaintiff is not seeking draft reports in violation NRCP 26(b)(4)(B). (Defendant's Mot. at
2 9:12-17.) Plaintiff is not seeking potentially privileged communications between Venetian's
3 attorneys and Elliott. (Defendant's Mot. at 9:17-21.) The undersigned is not in the habit of making
4 frivolous discovery requests as Venetian suggests. Of course, Venetian would know this if it
5 conducted the mandatory meet and confer under NRCP 26(c)(1) and EDCR 2.34(d).
6

7 **B. Elliott's Consulting Reports Are Discoverable as They Relate to Plaintiff's**
8 **Claim for Punitive Damages**

9 NRCP 26(b)(1) defines the scope of discovery as:

10 any nonprivileged matter that is relevant to **any party's claims or defenses** and
11 proportional to the needs of the case, considering the importance of the issues at
12 stake in the action, the amount in controversy, the parties' relative access to
13 relevant information, the parties' resources, **the importance of the discovery in**
14 **resolving the issues**, and whether the burden or expense of the proposed discovery
15 outweighs its likely benefit

16 NRCP 26(b)(1) (emphasis added). Plaintiff seeks a copy of Elliott's consulting contract with
17 Venetian and any reports, opinions, slip tests and other documents he generated as a result of this
18 contract to prove Venetian acted with conscious disregard when it refused to increase the slip
19 resistance of its marble floors.

20 In Nevada, a plaintiff may recover punitive damages when evidence demonstrates the
21 defendant acted with "malice, express or implied." *Wyeth v. Rowatt*, 126 Nev. Adv. Rep. 44, 244
22 P.3d 765, 783 (2010) *quoting* NRS 42.005(1). " 'Malice, express or implied,' means conduct which
23 is intended to injure a person or despicable conduct which is engaged in with a conscious disregard
24 of the rights or safety of others." *Id. quoting* NRS 42.001(3) (emphasis added). "A defendant has a
25 'conscious disregard' of a person's rights and safety when he or she knows of 'the probable harmful
26 consequence of a wrongful act and a willful and deliberate failure to act to avoid those
27 consequences.' " *Id. quoting* NRS 42.001(1). To succeed on her claim for punitive damages,
28 Plaintiff must show Venetian was aware its marble floors posed a hazard to guests, and deliberately
failed to take any steps to improve the condition of those floors. NRS 42.005(1) requires Plaintiff
prove her punitive damages claim by clear and convincing evidence. NRS 42.005(1).

EXHIBIT 25

Steven D. Grierson

1 **OPPS**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

4 Gregory A. Miles, Esq.

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11 Email: mroyal@royalmilesllp.com

12 Attorneys for Defendants

13 VENETIAN CASINO RESORT, LLC and

14 LAS VEGAS SANDS, LLC

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

18 Plaintiff,

19 v.

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

27 Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

Before the Discovery Commissioner

Hearing Date: August 2, 2019

Hearing Time: 9:00 am

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

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

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

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

5 Defendants have properly requested that Plaintiff produce a copy of the entire file for any
6 experts retained in this matter. (See Exhibit P at 6, no. 18.) Defendants further requested that Mr.
7 Jennings produce a copy of his entire file at the July 2, 2019 deposition. (See Exhibit Q.) Mr. Jennings
8 confirmed in deposition that he received a copy of information from Plaintiff's counsel identifying the
9 196 prior incident reports set forth in his May 30, 2019 rebuttal. Mr. Jennings further stated that he
10 is no longer in possession of this information. Defendants have demanded that this be provided by
11 Plaintiff. It remains a contested issue. Therefore, Defendants hereby move this Honorable Court for
12 an order compelling Plaintiff to produce all information provided to Mr. Jennings to support his
13 conclusion that there were 196 prior incidents occurring in the Grand Lux rotunda area from January
14 1, 2012 to August, 5 2016.⁶

15
16 Defendants further move for an order to compelling Plaintiff to provide all information
17 supporting her claim that there were sixty-five (65) prior incident reports not previously disclosed by
18 Defendants as set forth in her correspondence of June 25, 2019, which would obviously be in addition
19 to the 196 prior incident reports occurring on ly in the Grand Lux area she provided exclusively to Mr.
20 Jennings as related in his May 30, 2019 report and July 2, 2019 deposition. If Plaintiff is indeed
21 already in possession of 260 other prior incident reports (a combined total of the 196 prior incident
22 reports and those identified in Plaintiff's June 25, 2019 correspondence), then Defendants should not
23 have to go through the expense and effort to produce them a second time.
24
25
26

27
28 ⁶Mr. 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.

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

7 **IV.**

8 **CONCLUSION**

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

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

17 DATED this 12 day of July, 2019.

18 **ROYAL & MILES LLP**

19
20 By 

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

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

23 1522 W. Warm Springs Rd.

24 Henderson, NV 89014

25 Attorney for Defendants

26 LAS VEGAS SANDS, LLC, and

27 VENETIAN CASINO RESORT, LLC
28



1 **ROPP**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

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12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

18 Plaintiff,

19 v.

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

27 Defendants.

Before the Discovery Commissioner

28 **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR A**
PROTECTIVE ORDER AND REPLY TO PLAINTIFF'S OPPOSITION
TO DEFENDANTS' MOTION TO COMPEL

29 COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS
30 SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL &
31 MILES LLP, and hereby submits the following Reply to Plaintiff's Opposition to Defendants' Motion
32 for a Protective Order and Reply to Plaintiff's Opposition to Defendants' Motion to Compel.

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

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

4 DATED this 10 day of September, 2019.

5 ROYAL & MILES LLP

6
7 By 

8 MICHAEL A. ROYAL, ESQ.

9 Nevada Bar No. 4370

10 1522 W. Warm Springs Rd.

11 Henderson, NV 89014

12 *Attorney for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DECLARATION OF MICHAEL A. ROYAL**

16 STATE OF NEVADA)
17) ss.
18 COUNTY OF CLARK)

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

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

23 2. This action arises out of an alleged incident involving a floor in a lobby area of the
24 Venetian property on November 4, 2016. Defendants dispute there was any foreign substance on the
25 floor causing Plaintiff to fall.

26 3. The parties have deposed eleven (11) of the persons identified in the surveillance
27 footage as having been present at the scene from its occurrence until Plaintiff left the property. Of
28 those eleven (11) witnesses, only Gary Shulman has testified that he saw water on the floor.

1 4. I affirmatively and unequivocally deny the continued unnecessary defamatory assertions
2 by Plaintiff's counsel filed in legal documents, such as on page two (2) of the Opposition, lines 18-22,
3 where counsel continues to disparage my professional and personal reputation by repeatedly declaring
4 that I had a meeting with Mr. Shulman in June 2018, a month prior to filing the Joint Case Conference
5 Report, and told him to lie about what he allegedly observed at the accident scene. Of note, if what
6 Mr. Shulman had to say about my conversation with him was remotely accurate - that there was a
7 foreign substance on the floor and he was pressured to testify otherwise - one would think that at least
8 one of the other ten (10) persons responding to the scene would have agreed with his observation that
9 there was something wet in the area causing Plaintiff's fall; however, none of them have done so.

11 5. Mr. Shulman is not the only former employee to testify in this case. In fact, depositions
12 have been taken of former security officer Joseph Larson, EMT, who responded to the incident and
13 prepared the written report. Mr. Larson confirmed he did not see any substance on the floor. As
14 previously related to the Court, former employees of Venetian's Public Area Department Maria Cruz
15 and David Martinez who cleaned the area around the Plaintiff both testified that there was nothing on
16 the floor in the area where Plaintiff slipped and fell.

18 6. Defendants have always objected to providing Plaintiff with post-incident security
19 reports or related documents. In its Responses to Plaintiff's Requests for Production of Documents
20 and Materials to Defendant, served October 9, 2018, Defendants objected to Plaintiff's Production
21 Request No. 7, which reads as follows:
22

23 *True and correct copies of any and all claim forms, legal actions, civil complaints,*
24 *statements, security reports, computer generated lists, investigative documents or*
25 *other memoranda which have, as its subject matter, slip and fall cases occurring on*
26 *marble floors within the subject VENETIAN CASINO RESORT within three years prior*
27 *to the incident described in Plaintiffs Complaint, to the present.*

28 (See Exhibit I, attached hereto, at 4.) Defendants responded as follows:

1 *Defendants object to the extent this request lacks foundation, assumes facts not in*
2 *evidence, is overly broad, vague and ambiguous, unduly burdensome and*
3 *presupposes there was a foreign substance on the floor causing Plaintiffs fall, which*
4 *Defendants deny. It also incorrectly identifies the subject premises as VENETIAN*
5 *CASINO RESORT. This request further seeks access to information which is equally*
6 *available to Plaintiff via public records, and otherwise seeks information that is not*
7 *reasonably calculated to lead to the discovery of admissible evidence. Defendant*
8 *objects as the request as over broad and not properly tailored to the issues in this case.*
9 *Without waiving said objection, Defendant responds as follows: Defendant is in the*
10 *process of making a good faith effort to identify information responsive to this*
11 *request and will respond as soon as the information is collected. Discovery is*
12 *continuing.*

13 (See *id.* at 4-5.)

14 7. Defendants provided a supplemental report related to this request on January 4, 2019,
15 with sixty-four (64) prior incident reports. (See Exhibit J, attached hereto, at 4-5.) This referenced the
16 documents produced by Defendants as VEN 269-928. Defendants have continued to object to the
17 production of any post-incident security reports throughout this litigation.

18 8. A true and correct copy of Defendants' Responses to Plaintiff's Second Requests for
19 Production of Documents and Materials to Defendants, served December 7, 2019, is attached hereto
20 as Exhibit K.

21 9. A true and correct copy of Defendants' Responses to Plaintiff's Third Requests for
22 Production of Documents and Materials to Defendants, served April 15, 2019, is attached hereto as
23 Exhibit L.

24 10. A true and correct copy of Defendants' Responses to Plaintiff's Sixth Requests for
25 Production of Documents and Materials to Defendants, served June 24, 2019, is attached hereto as
26 Exhibit M.

27 11. A true and correct copy of Defendants' Answers to Plaintiff's First Set of
28 Interrogatories, served July 22, 2019, is attached hereto as Exhibit N.

12. A true and correct copy of Responses to Plaintiff's Ninth Request for Production of
Documents and Materials to Defendant, served August 16, 2019, is attached hereto as Exhibit O.

1 13. A true and correct copy of Responses to Plaintiff's Tenth Request for Production of
2 Documents and Materials to Defendant, served August 16, 2019, is attached hereto as Exhibit P.

3 14. A true and correct copy of Defendants' Answers to Plaintiff's Second Set of
4 Interrogatories, served August 21, 2019, is attached hereto as Exhibit Q.

5 15. A true and correct copy of Responses to Plaintiff's Eleventh Request for Production of
6 Documents and Materials to Defendant, served August 28, 2019, is attached hereto as Exhibit R.

7 16. I am not counsel of record in the matters of *Smith v. Venetian*, *Boucher v. Venetian* or
8 *Cohen v. Venetian*, which Plaintiff's counsel frequently references in his filings with the Court.
9 Plaintiff's reference to these cases and what was reportedly "*left out*" by Venetian, referenced on page
10 10 of the Opposition, is entirely without context or supporting documents and has nothing to do with
11 the present litigation. The only thing remotely relevant about these other matters repeatedly referenced
12 by Plaintiff is that Plaintiff's counsel, Keith Galliher, Esq., shared prior incident reports with attorneys
13 in these matters after I filed a motion for protective order on February 1, 2019, which led to the
14 attorneys in these other cases using the documents (which were deemed privileged by the Discovery
15 Commissioner in the DCRR of April 4, 2019) in their respective matters, including filing all such
16 information with the court.
17

18 17. The area where Plaintiff slipped as depicted on the surveillance footage is identified at
19
20 **12:36:50.** (See Exhibit S, *Surveillance Footage*, VEN 019.)

21 18. Surveillance footage of the subject incident attached hereto reveals the following:

- 22 a. **12:06:49.** Coverage begins with no spill in the subject area.
23
24 b. **12:14:25.** An African-American female Venetian Public Area Department
25 (*PAD*) employee (wearing a black uniform with red collar, red on the shoulders, and gold name tag on
26 the front upper left lapel area) walks through area with a garbage bin. By this point, nearly 100 people
27
28

1 have walked through the subject area since the footage began at 12:06:49, without the slightest
2 indication of a foreign substance on the floor.

3 c. 12:18:50. A female employee holding a white rag walks right through the
4 subject area without incident. By this point, approximately 150 people have walked through the area
5 since the footage began, without any evidence of a spill or spill related incident.

6 d. 12:20:25. A female Venetian PAD employee (dressed in black/red uniform
7 described in Paragraph 6.b above) with sweeper walks about 20 feet from the area towards bathrooms
8 located just out of view to the left. By this point, approximately 180 people have walked through the
9 area since the footage began, without the slightest hint of a spill or spill related incident.

10 e. 12:25:09. An African-American male Venetian PAD employee (dressed in
11 black/red uniform described in Paragraph 6.b above) holding a broom/dust pan walks about 10 feet
12 from the area towards bathrooms located just out of view to the left. By this point, approximately 250
13 people have walked through the area since the footage began, without any evidence of a spill or spill
14 related incident.

15 f. 12:26:42. A male Venetian security employee (officer) wearing a blue uniform
16 walks past the subject area (from right to left in the footage). By this point, approximately 270 people
17 have walked through the area since the footage began, without the slightest evidence of a spill or spill
18 related incident.

19 g. 12:33:38. An African-American female wearing a blue apron believed to be
20 a Venetian tenant employee stops in the slip area to speak with a male briefly, both who whom are
21 depicted standing directly in the subject area where Plaintiff claims there was a foreign substance.
22 Here, once again, there is no evidence of a spill or spill related incident.

23 h. 12:33:53. Venetian PAD employee **Maria Cruz** (wearing the uniform
24 described in Paragraph 6.b above) walks through the subject slip area with a dust pan and broom. Ms.
25

1 Cruz identified herself from this footage during her April 17, 2019 deposition and testified that this
2 depicts her patrolling the area, walking right through the alleged spill area without identifying anything
3 on the floor. By this time, less than three minutes before the subject incident occurred, there had been
4 approximately 330 people walk through the subject area, without the slightest hint of a spill or spill
5 related incident.

6
7 i. 12:33:58. A woman walks right through the subject slip area within five (5)
8 seconds of Ms. Cruz, without the slightest hint of a spill or spill related incident.

9 j. 12:34:01. Two female Venetian PAD employees (dressed as described in
10 Paragraph 6.b above) are seen walking about twenty-five (25) from the subject area as a male looking
11 at his cell phone walks through the subject area, without the slightest hint of a spill or spill related
12 incident.

13 k. 12:34:20. A group of eight (8) people walk through the subject area without
14 incident. By this time, there remains no evidence of a spill or spill related incident in the preceding
15 nearly twenty-eight (28) minutes, while Venetian has continued to patrol this high traffic area.

16 l. 12:35:47. A woman walks directly over the slip area, followed by four (4) other
17 people, with no evidence of a spill or spill related incident.

18 m. 12:36:07. A minor boy and two adults walk right through the slip and alleged
19 spill area, without the slightest hint of a foreign substance on the floor. They are followed by a woman
20 walking in the same direction, then by a male and female walking through the same area in the opposite
21 direction, also without any hint of a spill or spill related incident.

22 n. 12:36:36. The slip area depicted is completely dry. To this point, there has been
23 no evidence of a spill or spill related incident since 12:06:49, as Venetian employees have continued
24 to patrol the area.

1 o. **12:36:50.** Plaintiff slips and falls while carrying a beverage with a lid in her left
2 hand. By the time this incident occurs, approximately 390 people walked through the subject area
3 without the slightest hint of a spill or spill related incident since 12:06:49.

4 p. **12:37:00.** Venetian Table Games Supervisor, Gary Shulman (bald male in dark
5 suit, white shirt and tie) arrives at the scene with coworker Venetian Front Desk Clerk, Louie Calleros
6 (large Hispanic male with dark hair and mustache wearing dark suit, white shirt and tie). Mr.
7 Schulman speaks with Plaintiff as she is seated on the floor, as one woman holds Plaintiff's beverage,
8 while Mr. Calleros then stands behind the area where Plaintiff fell and uses his phone.

10 q. **12:38:46.** The camera zooms into the subject area as Mr. Shulman walks
11 directly through the Plaintiff's slip area while speaking with Mr. Calleros. Mr. Shulman is then seen
12 departing the area without any evidence of any liquid substance being in the area where he had been
13 standing between Mr. Calleros and Plaintiff or evidence of a foreign substance being tracked across
14 the floor from the bottom of his shoes.

16 r. **12:39:45.** Three Venetian PAD employees (all wearing uniforms as described
17 in Paragraph 6.b above) respond to the scene: Maria Cruz (who arrives holding a broom/dustpan in her
18 left hand, green rag in her left hand, and wearing glasses), David Martinez (who arrives with a mop
19 and bucket) and Milan Graovac (depicted arriving without any cleaning tools, standing next to the
20 column in front of Plaintiff, top left area of footage). All have since testified that they did not observe
21 any foreign substance on the floor in the area where Plaintiff slipped.

23 s. **12:39:55.** Venetian PAD employee Martinez arrives at the slip area with a mop
24 and bucket, stepping directly into the slip area with his right foot, and begins mopping an area two to
25 three feet away, towards the column, while continuing to stand in the slip area. Mr. Martinez does not
26 actually drag the mop across the slip area where he originally stood until **12:41:12.** Mr. Martinez
27
28

1 testified on July 26, 2019 that there was nothing on the floor upon his arrival with the mop and bucket,
2 but that he mopped the area as a precaution.

3 19. Venetian PAD employee Maria Cruz testified on April 17, 2019 that she did not see any
4 evidence of a foreign substance on the floor in the subject area before when she walked through at
5 12:33:53 or upon her return at 12:39:45, prior to Mr. Martinez standing in the slip area and running
6 his mop through a different area. There is no dispute that Ms. Cruz walked through the subject area
7 as part of her assigned duties to patrol to identify potential hazards within three (3) minutes of the
8 subject incident.
9

10 20. Venetian PAD employee Milan Graovac testified on April 22, 2019 that he did not see
11 anything on the floor around where Plaintiff is depicted at 12:39:33 - 12:40:03.
12

13 21. Venetian Front Desk Clerk Louie Calleros testified on April 22, 2019 that he did not
14 identify a foreign substance on the floor from the time of his arrival at 12:37:00 until leaving the
15 subject area at approximately 12:44:50.

16 22. Plaintiff has previously testified that while working daily on Defendants' property from
17 December 28, 2015 to November 4, 2016, she had walked the fall area hundreds of times prior to
18 November 4, 2016 without any safety concerns or issues with the subject flooring. (See Exhibit H at
19 78-79; see also *id.* at 86, ln 13-25; 87, ln 1-5; 88, ln 7-14.) She denied even hearing of such an
20 occurrence during that eleven (11) month period of time. (See *id.*)
21

22 23. Plaintiff has always asserted that she slipped due to a foreign substance in this matter.

23 24. Plaintiff's experts have both opined that the subject fall occurred because there was a
24 foreign substance on the floor.

25 25. Plaintiff's expert Tom Jennings has opined that the subject floor is safe when dry. (See
26 Exhibit T, *Transcript of Tom Jennings Deposition* at 20, ln 16-21; 80, ln 8-22.)
27
28

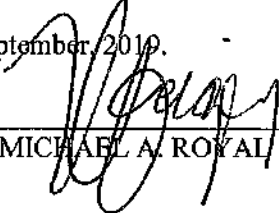
26. Plaintiff has offered absolutely no evidence to suggest that Defendants' use of marble flooring was not reviewed, approved, permitted, inspected and certified by the Clark County Building Department.

27. 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
I	Responses to Plaintiff's Request for Production of Documents and Materials to Defendant (served October 9, 2018)
J	Supplemental Responses to Plaintiff's Request for Production of Documents and Materials to Defendant (served January 4, 2019)
K	Defendants' Responses to Plaintiff's Second Requests for Production of Documents and Materials to Defendant (served December 7, 2018)
L	Defendants' Responses to Plaintiff's Third Requests for Production of Documents and Materials to Defendants, served April 15, 2019
M	Defendants' Responses to Plaintiff's Sixth Requests for Production of Documents and Materials to Defendants, served June 24, 2019
N	Defendants' Answers to Plaintiff's First Set of Interrogatories, served July 22, 2019
O	Responses to Plaintiff's Ninth Request for Production of Documents and Materials to Defendant, served August 16, 2019
P	Responses to Plaintiff's Tenth Request for Production of Documents and Materials to Defendant, served August 16, 2019
Q	Defendants' Answers to Plaintiff's Second Set of Interrogatories, served August 21, 2019
R	Responses to Plaintiff's Eleventh Request for Production of Documents and Materials to Defendant, served August 28, 2019
S	Surveillance Footage of Incident (VEN 019)
T	Transcript of Tom Jennings Deposition (July 2, 2019), selected pages
U	Transcript of Hearing (May 14, 2019), selected pages
V	Declaration of Peter Goldstein (dated February 13, 2019)
W	Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's Motion for Terminating Sanctions (dated March 12, 2019)

T	B I HXE	TITLE
X		Plaintiff's Reply in Support of Her Motion to Compel Testimony and Documents (filed July 25, 2019) (without exhibits)
Y		Discovery Commissioner's Report and Recommendation (filed July 9, 2019), <i>Boucher v. Venetian Casino Resort, LLC, et al</i> , Case No. A-18-773651-C

DATED this 10 day of September, 2019.


MICHAEL A. ROYAL

SUBSCRIBED and SWORN to
Before me this 10 day of September, 2019,


NOTARY PUBLIC



MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF PERTINENT FACTS

This litigation arises from a November 4, 2016 incident occurring when Plaintiff slipped and fell in an area known as the Grand Lux rotunda, where she had safely walked hundreds of times in the preceding year as a kiosk employee within the Grand Canal Shops. (See Exhibit H.) 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 position is clearly verified with video evidence submitted to the Court. (See Exhibit S.) There is no credible objective evidence of a foreign substance on the floor causing Plaintiff's fall.

II.

NATURE OF REPLY

Defendants have objected to all of Plaintiff's requests in the course of discovery for information dating back to May 1999 to the present. This motion for protective order was filed once Plaintiff

1 noticed an NRCP 30(b)(6) deposition demanding a *carte blanche* production of information sought
2 by Plaintiff is well beyond anything remotely reasonable under NRCP 26(b)(1).

3 Plaintiff has plead her cause of action as a slip and fall occurring on a wet floor. That, by
4 definition, is a temporary transitory condition. Defendants are not "confused" about the facts here,
5 as Plaintiff suggests in the Opposition. (See Opposition at 3, ln 13-15.) Plaintiff herself acknowledged
6 that the subject floor was safe during her hundreds of prior uses on Defendants' property. Plaintiff's
7 experts have also contended that she fell due to the existence of a foreign substance on the floor.
8 Plaintiff expert Tom Jennings has acknowledge the floor is safe when dry. Only one person responding
9 to the scene claims it was not dry based on his observation - Mr. Shulman, who Plaintiff now embraces
10 as her star witness.
11

The bottom line is that Plaintiff is seeking to bury Defendants in discovery in a very common slip and fall case. Plaintiff's counsel, by his own admission, is "*mining*" for evidence he can use not only for this case, but for those cases on page 10 of the Opposition, among no doubt many others. Plaintiff is abusing the discovery process at great cost to Defendants, who have moved the Court for an order protecting them from this continued onslaught of discovery requests. Plaintiff's discovery requests are overly broad and unduly burdensome. They must be examined pursuant to the new relevant/proportional requirement of NRCP 26(b)(1). Defendants therefore have moved this Honorable Court for relief, direction and protection.

III.

DISCUSSION

24 **A. Plaintiff Must Demonstrate Both Relevance and Proportionality**

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

1 *Unless otherwise limited by court order, the scope of discovery is as follows: Parties*
2 *may obtain discovery regarding any nonprivileged matter that is relevant to any party's*
3 *claim or defense and proportional to the needs of the case, considering the*
4 *importance of the issues at stake in the action, the amount in controversy, the*
5 *parties' relative access to relevant information, the parties' resources, the importance*
6 *of the discovery in resolving the issues, and whether the burden or expense of the*
7 *proposed discovery outweighs its likely benefit.* (Emphasis added.)

8 Contrary to Plaintiff's assertion, this is a simple slip and fall case. The problem for Plaintiff
9 is that she cannot win by focusing on the merits of her actual case; therefore, Plaintiff has engaged in
10 an abusive tactic of both demonizing Defendants and burying them in discovery. The Court has
11 already ruled that the *Mode of Operation* theory of liability does not apply here. So, Plaintiff is
12 required to show actual or constructive notice. There is no evidence of actual notice. Therefore,
13 Plaintiff must show constructive notice.

14 Defendants have an entire department dedicated to keeping the subject floors clean and safe
15 for guests - the Public Area Department. An employee of this department, Maria Cruz, was
16 responsible for patrolling the area where this incident occurred and is depicted walking through it
17 within less than three minutes prior to the subject incident. (See Exhibit S at 12:33:53.) Ten (10) of
18 the eleven (11) persons identified at the scene have been deposed and only one (1) of them testified
19 that he identified a substance on the floor - Gary Shulman; yet, Mr. Shulman is actually depicted
20 standing in the very area he claims there to have been standing water within minutes following the
21 incident - prior to the arrival of anyone to clean the area. (See *id.* at 12:38:46.)

22 The fact that the District Court has allowed Plaintiff to include a claim for punitive damages
23 does not open the floodgates of discovery here, nor does it change the fact that this is a simple
24 negligence case, with Plaintiff claiming to have fallen due to a temporary transitory condition. In the
25 lengthy thirty-three (33) page Opposition that Plaintiff filed without seeking leave of court as required
26 by EDCR 2.20(a), Plaintiff failed to present a case addressing the relevance and proportionality
27 requirements of NRCP 26(b)(1).
28

1 B. Plaintiff's "Mining" of Information is Systematic

2 Plaintiff takes issue with Defendants' assertion that her counsel is "mining information" here
3 to use beyond this litigation. In fact, counsel writes in the Opposition: "*The undersigned **NEVER***
4 *made such a statement or otherwise implied, eluded to or suggested he was engaged in such conduct.*"
5 (See Opposition at 14, ln 18-23, original emphasis.) However, Plaintiff's counsel has already done just
6 that and, in fact, argued before the District Court that he has every right to share anything and
7 everything obtained in this litigation. Consider what counsel argued on May 14, 2019:

9 *THE COURT: Just to be clear, it wasn't Attorney's Eyes Only. It was okay to be seen*
10 *by experts and --*

11 *MR. GALLIHER: Experts and --*

12 *THE COURT: -- and the client.*

13 *MR. GALLIHER: -- **and shared with other attorneys who have lawsuits against Venetian.***

14 (See Exhibit U, Transcript of Hearing (May 14, 2019) at 10, ln 3-8, emphasis added.) Mr. Galliher
15 continued:

16 *For example, in this case, I received 64 prior fall reports redacted. Attorney Goldstein*
17 *had another case against the Venetian. He received 32. Same time frames. What*
18 *happened when I got my redacted reports, I exchanged them with him. He sent them*
19 *to me -- and by the way, there was no Protective Order in place. **There was no motion***
20 ***practice in place, despite what's being represented.***

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

22 *MR. GALLIHER: Yeah, I know.*

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

24 *MR. GALLIHER: This was done right upfront. The minute I got the information, I --*
25 *I exchanged it with counsel. George Bochanis also got a set. He exchanged a set. **So***
26 ***what we did is we got a set and compared notes.** And lo and behold, what we find is*
27 *I don't have four of the reports that Mr. Goldstein has. He doesn't have 35 of the*
28 *reports that I have. And Mr. Bochanis has about 11 that I don't have.*

(See *id.* at 11, ln 24-25; 12, ln 1-18, emphasis added.)

Of note, Mr. Galliher represented to the District Court on May 14, 2019 that he exchanged
information with other counsel when "*There was no motion practice in place*"; yet, that was clearly
untrue. To the contrary, Defendants filed a motion for protective order related to the redacted prior
incident reports on February 1, 2019, and while that motion was pending, Plaintiff's counsel shared

1 them with Peter Goldstein, Esq., on February 7, 2019. (See Exhibit V, *Declaration of Peter Goldstein*
2 at 10, ln 21-23.) Mr. Goldstein filed a copy of each prior incident report provided by Mr. Galliher
3 after Defendants filed their previous motion for protective order on March 12, 2019 - one day prior
4 to the March 13, 2019 hearing. (See Exhibit W, *Plaintiff's Reply to Defendant Venetian Casino*
5 *Resort, LLC's Opposition to Plaintiff's Motion for Terminating Sanctions*, dated March 12, 2019,
6 Exhibit 10.)

7
8 It is incredible that Plaintiff's counsel, who was transparent about his right to share any and all
9 information with other counsel obtained in this litigation however he desires now takes the position
10 in Opposition that he has never taken that position and has no intention to do the same with whatever
11 he is able to obtain on his "mining" expedition here. Plaintiff's counsel was not transparent about
12 having provided the prior incident reports at issue in the February 1, 2019 motion for protective order
13 with the Discovery Commissioner, nor did he advise the Court at the March 13, 2019 hearing that the
14 very documents the Discovery Commissioner ruled to be protected pursuant to NRCP 26(c) had been
15 filed in open court on the previous day by Mr. Goldstein.
16

17 Plaintiff's counsel has a pattern of sharing openly whatever he obtains in this case. He has
18 argued for his right to do so. Now, however, Plaintiff's counsel is arguing that he would never follow
19 such a course here? It is, frankly, absurd.
20

21 **C. Production of Prior Incident Reports Should Be Limited**

22 Defendants have provided Plaintiff with the three (3) years of prior incident reports she initially
23 requested. Now, however, Plaintiff is demanding twenty (20) years of prior incident reports. These
24 requests are not limited to the same area, factually similar circumstances, the same floor, common
25 areas, etc. They are all inclusive, broad and are not limited to time. That kind of a request falls
26 squarely within the definition of "mining".
27
28

1 Contrary to what Plaintiff claims in the Opposition, the Court has not yet considered or ruled
2 upon Defendants' request for a protective order under NRCP 26(c) as it relates to the scope of prior
3 incident reports. Defendants have presented its concerns with the Court and is seeking protection. It
4 is not attempting to "*relitigate*" the issue. However, if the Court is inclined to provide Plaintiff with
5 the kind of discovery being sought, Defendants renew their request for NRCP 26(c) protection
6 preventing Plaintiff's counsel from both "*mining*" information and sharing it at will.

8 Plaintiff's claim that *Eldorado Club, Inc. v. Graff*, 377 P.2d 174 (Nev. 1962), does not apply
9 because her issue is with the permanency of the marble flooring as a hazard itself goes against the grain
10 of the allegations in her Complaint, which are based on a foreign substance. Plaintiff has not offered
11 any credible evidence whatsoever to suggest that having marble flooring is *per se* negligent. There is
12 no evidence of a code violation or that Defendants have done anything but comply with the
13 requirements set forth by the Clark County Building Department.

15 Keep in mind that Plaintiff is no ordinary guest. She was a pseudo employee, parking with
16 Venetian employees, wearing ID issued by Venetian to come upon its premises daily, and used
17 Venetian facilities many times daily in the course of her employment from December 28, 2015 to
18 November 4, 2016. Plaintiff walked the subject flooring with ease and safety on hundreds of occasions
19 prior to the subject incident. (See Exhibit H.) Plaintiff not even heard of a slip and fall occurring on
20 the premises during the eleven (11) months of her past employment. (See *id.*) Yet, Plaintiff would
21 have the Court believe that the subject marble flooring is dangerous to anyone and everyone once a
22 drop of liquid is introduced to the surface.

24 If the Court considers that there was water on the floor causing Plaintiff's fall, as she claims,
25 Defendants invite the Court to carefully watch the surveillance footage for the thirty (30) minutes prior
26 to Plaintiff's fall and identify the number of people who walk through the area without the slightest
27

1 hind of a slip. (See Exhibit S.) There are none. That being the case, how on earth is the subject
2 flooring a permanent dangerous condition?

3 Once again, Plaintiff has not addressed the relevancy/proportionality requirements of NRCP
4 26(b)(1) in her response to Defendants' motion for protection as to her desire for more than seventeen
5 (17) years of prior incident reports. Defendants have produced reports it located on the casino level
6 of the property involving the common area marble flooring from November 4, 2013 to November 4,
7 2016. Plaintiff has sixty-six (66) prior incident reports and, according to expert Tom Jennings,
8 Plaintiff has independently obtained evidence of 196 prior incident reports in the Grand Lux rotunda
9 alone.¹ That being the case, Plaintiff has plenty of evidence to make her case for constructive notice
10 and punitive damages.
11

12 **D. Plaintiff's Demand for Computer Generated Information Should Be Denied or Limited**

13
14 Defendants have moved for protection under NRCP 26(c) regarding Plaintiff's demand for
15 information from Defendants' computer data system. In the Opposition, Plaintiff again confuses the
16 issues by referencing to other matters litigated against Venetian by attorneys with whom Plaintiff's
17 counsel admits to freely sharing information. (See Opposition at 18, ln 11-20.) This is another *carte*
18 *blanche* request by Plaintiff. Without question, there is nothing Plaintiff sees or obtains that will not
19 be shared outside this litigation absent a protective order (even then, as we have seen, that does not
20 guarantee anything here). Defendants have moved for reasonable limitations on the information to
21 which Plaintiff is entitled to prove up her case regarding constructive notice.
22

23 Defendants again refer the Court to the surveillance footage and to the fact that Mr. Shulman
24 is the one and only person to testify that he identified a foreign substance on the floor. Plaintiff is
25

26
27 ¹Recall that Plaintiff previously accused Defendants of failing to produce from forty-six (46)
28 to sixty-five (65) prior incident reports, which Plaintiff conceded in a filing with the Court on July 25,
2019 to be completely false. (See Exhibit X, *Plaintiff's Reply in Support of Her Motion to Compel*
Testimony and Documents, filed July 25, 2019, at 4, ln 5-10.)

1 using the discovery process not only to “mine” and fish, but to vex, harass and annoy. Then, if
2 Plaintiff does obtain information, it will be circulated to the world.

3 There is no evidence that Defendants have been hiding information as Plaintiff claims. Even
4 Plaintiff had to acknowledge in her filing with the Discovery Commissioner on July 25, 2019 that this
5 allegation is without any basis. In fact, on page four (4) of Plaintiff’s Reply in Support of Her Motion
6 to Compel Testimony and Documents, filed July 25, 2019, Plaintiff writes:

7
8 After a careful review of the previously disclosed table, the undersigned owes Venetian
9 an this Honorable Court an apology. The undersigned misinterpreted the notations of
10 staff on the comparison table they put together and in hindsight should have spent more
11 time studying the table and/or clarified the table summaries with staff before filing this
12 motion. **Since the filing of this motion Venetian has produced all additional
13 responsive reports.** Plaintiff therefore withdraws this portion of her motion.

14 (*See Exhibit X, Plaintiff’s Reply in Support of Her Motion to Compel Testimony and Documents*, filed
15 July 25, 2019, at 4, ln 5-10, emphasis added.) Even while acknowledging error, Plaintiff still had to
16 mislead the Court by suggesting that Defendants had taken some kind of remedial action since
17 Plaintiff’s earlier motion to compel. That did not occur. In truth, Plaintiff simply misled the Court.
18 That is an ongoing theme in this litigation, as Plaintiff is desperately try to vilify Defendants in filings
19 in order to persuade the Court to act in her favor.

20 This is an untenable situation. Regardless of how Plaintiff seeks to portray it, this is a very
21 simple negligence action based on a temporary transitory condition - nothing more. And, even that is
22 factually disputed by the evidence.

23 **E. Plaintiff is Not Entitled to Subsequent Incident Reports**

24 Defendants have taken the position, consistent with this Court’s prior rulings, that Plaintiff is
25 not entitled to subsequent incident reports in circumstances where Plaintiff claims to have slipped and
26 fallen due to a temporary transitory condition. Again, Plaintiff walked the same area hundreds of times
27 prior to her fall. The only thing that allegedly changed on November 4, 2016 was the existence of
28 some unidentified clear substance that none of the eleven (11) people responding to the scene identified

1 except for Mr. Shulman. While Plaintiff has quoted Mr. Shulman in deposition in the Opposition, she
2 failed to note for the Court that in his seventeen (17) years of work at the Venetian on the casino floor,
3 this was the first time he had become personally aware of a slip and fall. (See Opposition, Exhibit 1,
4 at 67, ln 1-15.)

5 Plaintiff has morphed her factual allegations from a temporary transitory condition to a
6 permanent, defective, dangerous condition for at least one primary reason - to get unredacted
7 subsequent incident reports to both "mine" and share in her counsel's repository. In fact, if everything
8 worked out just right, Plaintiff's counsel might even find cases where the two (2) year statute of
9 limitations has not yet lapsed and contact them as a "witness" here.

10 What exactly is the defective, permanent condition here? Marble/stone flooring that has been
11 reviewed, approved and certified by the Clark County Building Department? Plaintiff is not talking
12 about a permanent crack in the floor here. The floor is perfectly fine when dry and, like many other
13 surfaces, can become slippery when wet. That is why Defendants have employees dedicated to
14 cleaning and maintaining the flooring throughout its property. That is why Defendants had employee
15 Maria Cruz patrolling the subject area within three (3) minutes of Plaintiff's fall. (See Exhibit S at
16 12:33:53.)

17 In the Opposition, Plaintiff refers to cases involving permanent conditions like doors (*i.e.*
18 *Ginnis v. Mapes Hotel Corp.*, 470 P.2d 135 (Nev. 1970)). There is no permanent condition here. The
19 floor was safe by Plaintiff's own experience and admission. She had a slip/fall on November 4, 2016,
20 the cause of which is contested. However, assuming for the sake of argument that Plaintiff slipped due
21 to a foreign substance, that is a temporary transitory condition. Plaintiff continues to twist and mold
22 the facts to transform this into a products case or one involving some permanent issue with the flooring
23 itself. That is not what is alleged in the Complaint nor is it a fact supported by the evidence.
24
25
26
27
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1 Plaintiff has not presented any cases from Nevada supporting her claim that simply by alleging
2 punitive damages in a Complaint she is entitled to evidence of subsequent incidents. That is not the
3 law, nor is it the rule followed in prior similar cases by the Discovery Commissioner. (See Exhibit Y,
4 *Discovery Commissioner's Report and Recommendation* (filed July 9, 2019), *Boucher v. Venetian*
5 *Casino Resort, LLC, et al*, Case No. A-18-773651-C.)

6
7 Defendants therefore respectfully submit they have good basis to seek a protective order under
8 NRCP 26(c) as to any demand for subsequent incidents in this litigation.

9 F. **Evidence of 2008 Remodel is Not Relevant Here**

10 This, once again, is a simple negligence case based on a temporary transitory condition.
11 Plaintiff's requests for information about installation of the subject flooring is just more *fishing* and
12 *mining* expedition which is simply not relevant or proportional under NRCP 26(b)(1), nor is it
13 appropriate under *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189 (1977).
14

15 Plaintiff presently claims to have a total of 196 prior incidents in the area of the Grand Lux
16 rotunda in the five (5) years preceding the subject incident. That is plenty of data for Plaintiff to make
17 her case for both constructive notice and punitive damages. What happened in 2008 - other than the
18 Clark County Building Department reviewing, permitting and certifying the flooring as code compliant
19 - is irrelevant.
20

21 G. **Defendants Seek Reasonable Limitations on the Ever Increasing Scope of Discovery**

22 Defendants are being pummeled with discovery requests that have little to no bearing on the
23 subject incident, as Plaintiff is trying to reposition her claim from a slip/fall due to a temporary
24 transitory condition to a fall due to a permanent defective floor.

25 Plaintiff is seeking incident reports for more than (20) years and is further seeking information
26 that is clearly not discoverable (*i.e.* testing of the subject flooring by consulting experts). There is no
27
28

1 end to Plaintiff's insatiable appetite for *mining information*. Defendants hereby move the Court for
2 limitations as outlined in their moving papers.

3 Defendants have further outlined additional information for the Court to consider regarding
4 their desire to have any further disclosures to be protected pursuant to NRCP 26(c) in the motion,
5 which was not addressed by Plaintiff specifically in the Opposition.
6

7 **REPLY TO OPPOSITION TO MOTION TO COMPEL TOM JENNINGS INFORMATION**

8 In his July 2, 2019 deposition, Tom Jennings testified that he received information confirming
9 196 prior incident reports occurring in the Grand Lux rotunda. (See Exhibit T at 84, ln 7-25; 85-87,
10 88, ln 1-3.) Consider the following from Mr. Jennings' deposition:

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

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

15 (See *id.* at 87, ln 24-25; 88, ln 1-3; see also *id.* at 86, ln 15-19 (again affirming that all incidents
16 occurred within the Grand Lux rotunda area).) To be clear, the documents later produced by Plaintiff's
17 counsel do not identify 196 incidents in the Grand Lux rotunda. The documents produced by Plaintiff
18 are not as described by Mr. Jennings in deposition.

19 Since Plaintiff produced Defendants with something not consistent with Mr. Jennings'
20 description, and Mr. Jennings failed to produce the requested document, Defendants move for an order
21 directing Plaintiff to produce all such documents she has in her possession not previously produced
22 to her by Defendants pursuant to NRCP 16.1. Also, again, if Plaintiff has such information already
23 in her possession, it begs the question of why she needs such massive discovery to make a notice
24 argument - even one for punitive damages. Defendants are not playing "*hide the ball*" - Plaintiff is
25 doing that well enough here. Defendants believe that Plaintiff has access to even more unredacted
26 prior incident reports which have not been disclosed. Certainly, if that is the case, it suggests that
27 Plaintiff's need for discovery to prove up notice and punitive damages is very limited.
28

1 As for retaking Mr. Jennings' deposition, what Plaintiff did to require it is failing to produce
2 the information Plaintiff produced to Mr. Jennings to support the claim in his May 30, 2019 report that
3 there were 196 prior incidents in the Grand Lux rotunda area for a near five (5) year period prior to the
4 subject incident. Therefore, Defendants did not have the opportunity to review the alleged prior
5 incident information with Mr. Jennings. That is the basis for Defendants' request for an order granting
6 the retaking of Mr. Jennings' deposition limited in scope as it pertains to the alleged 196 prior incident
7 reports occurring in the Grand Lux rotunda area.
8

9 **IV.**

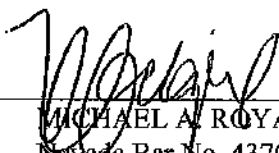
10 **CONCLUSION**

11 Based on the foregoing, Venetian respectfully submits that it has presented good cause to this
12 Honorable Court to issue an order protecting Defendants under NRCP 26(c), providing sufficient limits
13 on the massive discovery sought by Plaintiff in this matter. Defendants further submit that their
14 request for an order compelling Plaintiff to disclose all prior incident reports or information related to
15 prior incident reports occurring at the Venetian property in her possession pursuant to NRCP 16.1
16 should be granted.
17

18 DATED this 10 day of September, 2019.

19 ROYAL & MILES LLP

20
21 By



22 MICHAEL A. ROYAL, ESQ.

23 Nevada Bar No. 4370

24 1522 W. Warm Springs Rd.

25 Henderson, NV 89014

26 *Attorney for Defendants*

27 *VENETIAN CASINO RESORT, LLC and*
28 *LAS VEGAS SANDS, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10 day of September, 2019, and pursuant to NRCP 5(b),

I caused a true and correct copy of the foregoing **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER AND REPLY TO PLAINTIFF'S OPPOSITION** to be served as follows:

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

_____ to be served via facsimile; and/or

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

_____ to be hand delivered;

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

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014

Attorneys for Plaintiff

Facsimile: 702-735-0204

E-Service: kgalliher@galliherlawfirm.com
dmooney@galliherlawfirm.com
gramos@galliherlawfirm.com
rray@galliherlawfirm.com


An employee of ROYAL & MILES LLP

EXHIBIT “I”

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

RFP

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@royalmilesllp.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

**RESPONSES TO PLAINTIFF'S REQUESTS 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 36 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:

R:\Master Case Folder\383718\Discovery\3Produce (Plaintiff) 1st.wpd

1 **REQUEST NO. 1:**

2 All written, oral, or recorded statements made by any party, witness, or any other person or
3 persons with knowledge of the incident described in Plaintiffs Complaint.

4 **RESPONSE NO. 1:**

5 Defendants object to the extent this request seeks information protected by attorney/client
6 privilege and/or attorney work product privilege. Without waiving said objection, Defendants refer
7 to their disclosures pursuant to NRCP 16.1, documents 2-9, and all supplements thereto. Discovery
8 is continuing.

10 **REQUEST NO. 2:**

11 Any and all accident and investigative reports, films, video tapes, charts, plats, drawings, maps
12 or pictures and/or photographs of any kind which has, as its subject matter, the incident described in
13 Plaintiffs Complaint.

15 **RESPONSE NO. 2:**

16 See Response No. 1.

17 **REQUEST NO. 3:**

18 A complete copy of the Defendant's insurance carriers and/or risk management pre-litigation
19 claim file.

21 **RESPONSE NO. 3:**

22 Objection. This request lacks foundation, assumes facts not in evidence, seeks information that
23 is protected from disclosure by the attorney/client and/or attorney work product doctrine. Without
24 waiving said objection all known discoverable documents regarding the investigation of the loss have
25 been produced. See Defendants' NRCP 16.1 early case conference disclosures, documents 2-9, and
26 all supplements thereto. Discovery is continuing.

27

28

1 **REQUEST NO. 4:**

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

4 **RESPONSE NO. 4:**

5 Objection. This request is premature. Defendants' expert disclosures containing the requested
6 information will take place as set forth in the court's scheduling order. It is also an improper request
7 for production of documents.
8

9 **REQUEST NO. 5:**

10 Any and all sweep sheets, sweep logs, or other similar documentation which reflects the
11 maintenance and/or cleaning of the flooring located within the VENETIAN CASINO RESORT
12 described in Plaintiffs Complaint for the day before, day of, and day after the incident described
13 therein.
14

15 **RESPONSE NO. 5:**

16 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
17 is overly broad, vague and ambiguous. This request also presupposes that there was a foreign
18 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
19 subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
20 reasonably calculated to lead to the discovery of admissible evidence (*i.e.* documents related to
21 November 5, 2016). Without waiving said objection, Defendants respond as follows: *See* documents
22 identified pursuant to NRCP 16.1, bates numbers VEN 044-106. Discovery is continuing.
23

24 **REQUEST NO. 6:**

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

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

3 **RESPONSE NO. 6:**

4 Defendant objects to the extent this request lacks foundation, assumes facts not in evidence,
5 and is further overly broad, vague and ambiguous. This request also presupposes that there was a
6 foreign substance on the floor causing Plaintiff's fall, which Defendants deny. also incorrectly identifies
7 the subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
8 reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection,
9 Defendant responds as follows: See Response No. 5.

11 **REQUEST NO. 7:**

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

18 **RESPONSE NO. 7:**

19 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
20 is overly broad, vague and ambiguous, unduly burdensome and presupposes there was a foreign
21 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
22 subject premises as *VENETIAN CASINO RESORT*. This request further seeks access to information
23 which is equally available to Plaintiff via public records, and otherwise seeks information that is not
24 reasonably calculated to lead to the discovery of admissible evidence. Defendant objects as the request
25 as over broad and not properly tailored to the issues in this case. Without waiving said objection,
26
27
28

1 Defendant responds as follows: Defendant is in the process of making a good faith effort to identify
2 information responsive to this request and will respond as soon as the information is collected.
3 Discovery is continuing.

4 **REQUEST NO. 8:**

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

7 **RESPONSE NO. 8:**

8 See Response No. 1.

9 **REQUEST NO. 9:**

10 Any surveillance video showing the Plaintiffs fall at the VENETIAN CASINO RESORT
11 from any other angle, other than the one shown in the video surveillance produced by the
12 Defendants thus far.

13 **RESPONSE NO. 9:**

14 Defendants object to the extent this request incorrectly identifies the subject premises as
15 *VENETIAN CASINO RESORT*, and further that the term "*surveillance video*" is itself overly broad
16 and seeks information outside Defendants' knowledge, custody and control (*i.e.* videos taken by other
17 persons on the subject premises at the time). Without waiving said objection, Defendants respond as
18 follows: All known surveillance related to this matter was produced as Document No. 9 in Defendants'
19 NRCP 16.1 disclosure. Discovery is continuing.

20 **REQUEST NO. 10:**

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

22 ///

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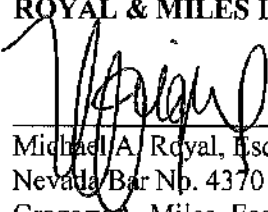
RESPONSE NO. 10:

See Response No. 1.

DATED this 9 day of October, 2018.

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 9 day of October, 2018, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S REQUESTS 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.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Plaintiff
Facsimile: 702-735-0204
Email: kgalliher@galliherlawfirm.com


An employee of ROYAL & MILES LLP

EXHIBIT “J”

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

RFP

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

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Email: mroyal@royalmilesllp.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 1
through X, inclusive,

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**SUPPLEMENTAL RESPONSES TO PLAINTIFF'S REQUESTS 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 36 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:

1 **REQUEST NO. 1:**

2 All written, oral, or recorded statements made by any party, witness, or any other person or
3 persons with knowledge of the incident described in Plaintiffs Complaint.

4 **RESPONSE NO. 1:**

5 Defendants object to the extent this request seeks information protected by attorney/client
6 privilege and/or attorney work product privilege. Without waiving said objection, Defendants refer
7 to their disclosures pursuant to NRCP 16.1, documents 2-9, and all supplements thereto. Discovery
8 is continuing.

10 **REQUEST NO. 2:**

11 Any and all accident and investigative reports, films, video tapes, charts, plats, drawings, maps
12 or pictures and/or photographs of any kind which has, as its subject matter, the incident described in
13 Plaintiffs Complaint.

15 **RESPONSE NO. 2:**

16 See Response No. 1.

17 **REQUEST NO. 3:**

18 A complete copy of the Defendant's insurance carriers and/or risk management pre-litigation
19 claim file.

21 **RESPONSE NO. 3:**

22 Objection. This request lacks foundation, assumes facts not in evidence, seeks information that
23 is protected from disclosure by the attorney/client and/or attorney work product doctrine. Without
24 waiving said objection all known discoverable documents regarding the investigation of the loss have
25 been produced. See Defendants' NRCP 16.1 early case conference disclosures, documents 2-9, and
26 all supplements thereto. Discovery is continuing.

27

28

1 **REQUEST NO. 4:**

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

4 **RESPONSE NO. 4:**

5 Objection. This request is premature. Defendants' expert disclosures containing the requested
6 information will take place as set forth in the court's scheduling order. It is also an improper request
7 for production of documents.
8

9 **REQUEST NO. 5:**

10 Any and all sweep sheets, sweep logs, or other similar documentation which reflects the
11 maintenance and/or cleaning of the flooring located within the VENETIAN CASINO RESORT
12 described in Plaintiffs Complaint for the day before, day of, and day after the incident described
13 therein.
14

15 **RESPONSE NO. 5:**

16 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
17 is overly broad, vague and ambiguous. This request also presupposes that there was a foreign
18 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
19 subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
20 reasonably calculated to lead to the discovery of admissible evidence (*i.e.* documents related to
21 November 5, 2016). Without waiving said objection, Defendants respond as follows: *See* documents
22 identified pursuant to NRCp 16.1, bates numbers VEN 044-106. Discovery is continuing.
23

24 **REQUEST NO. 6:**

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

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

3 **RESPONSE NO. 6:**

4 Defendant objects to the extent this request lacks foundation, assumes facts not in evidence,
5 and is further overly broad, vague and ambiguous. This request also presupposes that there was a
6 foreign substance on the floor causing Plaintiff's fall, which Defendants deny. also incorrectly identifies
7 the subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
8 reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection,
9 Defendant responds as follows: *See Response No. 5.*

11 **REQUEST NO. 7:**

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

18 **RESPONSE NO. 7:**

19 Defendants object to the extent this request lacks foundation, assumes facts not in
20 evidence, is overly broad, vague and ambiguous, unduly burdensome and presupposes there was
21 a foreign substance on the floor causing Plaintiff's fall, which Defendants deny. It also
22 incorrectly identifies the subject premises as *VENETIAN CASINO RESORT*. This request
23 further seeks access to information which is equally available to Plaintiff via public records, and
24 otherwise seeks information that is not reasonably calculated to lead to the discovery of
25 admissible evidence. Defendant objects as the request as over broad and not properly tailored
26 to the issues in this case. Without waiving said objection, Defendants respond as follows: Please
27
28

1 see Defendants' 5th Supplement to NRCP 16.1 Disclosure and all supplements thereto.

2 Discovery is continuing.

3 **REQUEST NO. 8:**

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

6 **RESPONSE NO. 8:**

7 See Response No. 1.

8 **REQUEST NO. 9:**

9 Any surveillance video showing the Plaintiffs fall at the VENETIAN CASINO RESORT
10 from any other angle, other than the one shown in the video surveillance produced by the
11 Defendants thus far.

12 **RESPONSE NO. 9:**

13 Defendants object to the extent this request incorrectly identifies the subject premises as
14 VENETIAN CASINO RESORT, and further that the term "surveillance video" is itself overly broad
15 and seeks information outside Defendants' knowledge, custody and control (*i.e.* videos taken by other
16 persons on the subject premises at the time). Without waiving said objection, Defendants respond as
17 follows: All known surveillance related to this matter was produced as Document No. 9 in Defendants'
18 NRCP 16.1 disclosure. Discovery is continuing.

19 **REQUEST NO. 10:**

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

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RESPONSE NO. 10:

See Response No. 1.

DATED this 3 day of January, 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 4 day of January, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **SUPPLEMENTAL RESPONSES TO PLAINTIFF'S REQUESTS 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.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014

Attorneys for Plaintiff

Facsimile: 702-735-0204

E-Service: kgalliher@galliherlawfirm.com
dmooney@galliherlawfirm.com
gramos@galliherlawfirm.com
sray@galliherlawfirm.com

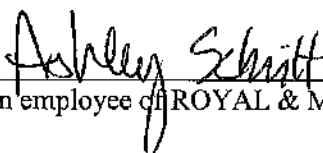

An employee of ROYAL & MILES LLP

EXHIBIT “K”

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

RFP

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

ROYAL & MILES LLP

1522 West Warm Springs Road

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Email: mroyal@royalmilesllp.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

**RESPONSES TO PLAINTIFF'S SECOND REQUESTS 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 36 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 second requests for production of documents and materials as follows:

1 **REQUEST NO. 11:**

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

5 **RESPONSE NO. 11:**

6 Defendant objects to this request to the extent it seeks information protected by attorney/client
7 privilege, attorney work product privilege or otherwise prematurely seeks information related to
8 experts in this matter pursuant to NRCP 16.1, as per the present Joint Case Conference Report
9 schedule. Defendant further objects to this request in that it is vague, ambiguous, overly broad in
10 scope, and seeks information not reasonably calculated to lead to the discovery of admissible evidence.
11 Without waiving said objection, Defendant responds as follows: See Defendants' NRCP 16.1
12 Supplement, identified as VEN 107-134.
13
14

15 DATED this 6 day of December, 2018.

16 **ROYAL & MILES LLP**

17
18 By: 

19 Michael A. Royal, Esq.
20 Nevada Bar No. 4370
21 Gregory A. Miles, Esq.
22 Nevada Bar No. 4336
23 1522 W. Warm Springs Road
24 Henderson, NV 89014
25 *Attorneys for Defendants*
26 *VENETIAN CASINO RESORT, LLC and*
27 *LAS VEGAS SANDS, LLC*
28

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 7th day of December, 2018, and pursuant to NRCP 5(b),

3 I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S SECOND**
4 **REQUESTS FOR PRODUCTION OF DOCUMENTS AND MATERIALS TO DEFENDANT**

5 to be served as follows:

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

8 _____ to be served via facsimile; and/or

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

12 _____ to be hand delivered;

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

14 Keith E. Galliher, Jr., Esq.
15 THE GALLIHER LAW FIRM
16 1850 E. Sahara Avenue, Suite 107
17 Las Vegas, NV 89014
18 *Attorneys for Plaintiff*
19 Facsimile: 702-735-0204
20 Email: kgalliher@galliherlawfirm.com

21 
22 An employee of ROYAL & MILES LLP
23
24
25
26
27
28

EXHIBIT “L”

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

RFP

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

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ROYAL & MILES LLP

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Tel: 702-471-6777

Fax: 702-531-6777

Email: mroyal@royalmilesllp.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

**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:

1 **REQUEST NO. 12:**

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

8 **RESPONSE NO. 12:**

9 Defendants object to the extent this request lacks foundation and assumes facts not in evidence,
10 is overly broad, vague and ambiguous (*i.e.* "ground floor" would refer to the basement which has a
11 different floor surface, and "Bouchon restaurant floor" as Defendants did not own, manage, maintain
12 or control the premises of the Bouchon restaurant nor is there any evidence that Plaintiff ever in the
13 Bouchon restaurant at any time), is unduly burdensome and presupposes Defendants are in possession
14 of all information requested, further to the extent that it seeks information protected by attorney/client
15 privilege and/or attorney work product privilege, further to the extent it seeks information surrounding
16 expert consultants or seeks information related to the disclosure of experts prior to the time set forth
17 in the Joint Case Conference Report, and also to the extent it seeks information not reasonably
18 calculated to lead to the discovery of admissible evidence. Without waiving and subject to said
19 objection, Defendants respond as follows: As to any such reports obtained from November 3, 2013 to
20 November 4, 2016 on the main casino floor level where the subject incident occurred, Defendant has
21 no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1
22 and all supplements thereto. Discovery is continuing.
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25 **REQUEST NO. 13:**

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

3 **RESPONSE NO. 13:**

4 Defendants object to this request as vague, ambiguous and overly broad as to "*any coating*
5 *placed on the marble floor*" (*i.e.* this conceivably would include water used to clean), "*ground floor*"
6 (as this refers to the basement area, which has an entirely different floor surface), and "*Bouchon*
7 *restaurant floor*" (Defendants did not own, manage, maintain or control the premises of the Bouchon
8 restaurant nor is there any evidence that Plaintiff ever in the Bouchon restaurant at any time), lacks
9 foundation and assumes facts not in evidence (*i.e.* that Plaintiff was ever in and around the Bouchon
10 restaurant at any time prior to the subject incident or that there was a foreign substance on the floor at
11 the time of Plaintiff's fall, which Defendants deny), to the extent it seeks information not reasonably
12 calculated to lead to the discovery of admissible evidence. Without waiving and subject to said
13 objection, Defendants respond as follows: As to the area where Plaintiff fell, from the time period of
14 November 4, 2013 to November 4, 2016 on the main casino floor level where the subject incident
15 occurred, please see Defendants' disclosures pursuant to NRCP 16.1, including but not limited to VEN
16 1078-VEN 1097. Discovery is continuing.

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19 **REQUEST NO. 14:**

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

23 **RESPONSE NO. 14:**

24 Defendants object to the extent this request lacks foundation and assumes facts not in evidence
25 (*i.e.* that there was a foreign substance on the floor at the time of Plaintiff's fall, which Defendants
26 deny), is overly broad, vague and ambiguous, unduly burdensome and presupposes Defendants are in
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1 possession of all information requested, to the extent that it seeks information protected by
2 attorney/client privilege and/or attorney work product privilege, to the extent it seeks information
3 surrounding expert consultants or seeks information related to the disclosure of experts prior to the
4 time set forth in the Joint Case Conference Report, and to the extent it seeks information not
5 reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject
6 to said objection, Defendants respond as follows: See documents previously identified by Defendants
7 as VEN 269 - 928, and all supplements thereto, which relate to the common areas of flooring on the
8 casino floor area where the subject incident occurred. Discovery is continuing.
9

10 DATED this 15 day of April, 2019.

11 **ROYAL & MILES LLP**

12
13 By: 

14 Michael A. Royal, Esq.

15 Nevada Bar No. 4370

16 Gregory A. Miles, Esq.

17 Nevada Bar No. 4336

18 1522 W. Warm Springs Road

19 Henderson, NV 89014

20 Attorneys for Defendants

21 VENETIAN CASINO RESORT, LLC and

22 LAS VEGAS SANDS, LLC
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

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

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

8 _____ to be served via facsimile; and/or

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

12 _____ to be hand delivered;

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

14 Keith E. Galliher, Jr., Esq.
15 THE GALLIHER LAW FIRM
16 1850 E. Sahara Avenue, Suite 107
17 Las Vegas, NV 89014

Attorneys for Plaintiff

Facsimile: 702-735-0204

18 E-Service: kgalliher@galliherlawfirm.com
dmooney@galliherlawfirm.com
19 gramos@galliherlawfirm.com
20 sray@galliherlawfirm.com

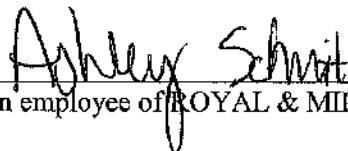
21
22 
23 An employee of ROYAL & MILES LLP
24
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EXHIBIT “M”

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

RFP

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

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ROYAL & MILES LLP

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Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**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:

1 **REQUEST NO. 23:**

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

5 **RESPONSE NO. 23:**

6
7 Defendants object to the extent this request lacks foundation and assumes facts not in evidence,
8 is overly broad, vague and ambiguous, is unduly burdensome and presupposes Defendants are in
9 possession of all information requested. Defendants further object to the extent that this request seeks
10 information equally accessible by Plaintiff and in the possession of her counsel (*i.e.* testing by experts
11 exchanged in the present litigation in accordance with NRCP 16.1), or that it is protected by
12 attorney/client privilege and/or attorney work product privilege (*i.e.* use of expert consultants as
13 contemplated by NRCP 26(b)(4)), further to the extent it seeks information surrounding expert
14 consultants or seeks information related to the disclosure of experts used in a consulting capacity
15 protected by NRCP 16.1(b), and further to the extent it seeks information not reasonably calculated
16 to lead to the discovery of admissible evidence, such as any testing performed following the subject
17 incident beyond what has been exchanged pursuant to NRCP 16.1. (Defendants contend that the
18 subject incident occurred on a dry marble floor, which is clearly established from surveillance footage
19 identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the kind of "*fishing expedition*"
20 contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189,
21 192 (1977), which it determined to be without reasonable justification. Without waiving and subject
22 to the above stated objection, Defendants respond as follows: *See* Defendants' Responses to Plaintiff's
23 Second Requests for Production of Documents and Materials to Defendant (12.07.18); *see also*
24 Defendants' NRCP 16.1 disclosure and all supplements thereto, including but not limited to documents
25 identified as follows: Tom Jennings April 23, 2018 Report (VEN 107 - 119); Joseph Cohen, Ph.D,
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1 August 8, 2018 (VEN 120 - 132); Tom Jennings October 23, 2018 Report (VEN 133 - 134); Tom
2 Jennings December 28, 2018 report (produced by Plaintiff pursuant to NRCP 16.1); Toby Hayes, Ph.D.
3 May 17, 2019 report (produced by Defendants pursuant to NRCP 16.1). Defendants reserve the right
4 to supplement this response if additional information becomes available. Discovery is continuing.

5 **REQUEST NO. 24:**
6

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

10 **RESPONSE NO. 24:**
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12 Defendants object to this request as vague and ambiguous (*i.e. "safety of the marble floors"*),
13 is overly broad in scope and time, is unduly burdensome, seeks information protected by
14 attorney/client privilege and/or attorney work product privilege (*i.e. disclosure of information protected*
15 *by NRCP 26(b)(4)*), lacks foundation, and seeks information which is not reasonably calculated to lead
16 to the discovery of admissible evidence, but is intended to vex, harass and annoy. (Defendants contend
17 that the subject incident occurred on a dry marble floor, which is clearly established from surveillance
18 footage identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the very kind of "*fishing*
19 *expedition*" contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court,
20 93 Nev. 189, 192 (1977), which it determined to be without reasonable justification. Without waiving
21 and subject to the above stated objection, Defendants respond as follows: Defendants have no
22 documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1,
23 NRCP 34, and all supplements thereto. *See also* Response to Request No. 23. Discovery is
24 continuing.
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1 **REQUEST NO. 25:**

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

6
7 **RESPONSE NO. 25:**

8 Defendants object to this request as vague and ambiguous (*i.e. "safety of the marble floors"*),
9 is overly broad in scope and time, unduly burdensome, seeks information protected by attorney/client
10 privilege and/or attorney work product privilege (*i.e* information protected by NRCP 26(b)(4)), lacks
11 foundation, and seeks information which is not reasonably calculated to lead to the discovery of
12 admissible evidence, but is intended to vex, harass and annoy. (Defendants contend that the subject
13 incident occurred on a dry marble floor, which is clearly established from surveillance footage
14 identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the very kind of "*fishing expedition*"
15 contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189,
16 192 (1977), which it determined to be without reasonable justification. Without waiving and subject
17 to the above stated objection, Defendants respond as follows: Defendants have no documents
18 responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1, NRCP 34, and
19 all supplements thereto. *See also* Response to Request No. 23. Discovery is continuing.

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22 **REQUEST NO. 26:**

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

1 **RESPONSE NO. 26:**

2 Defendants object to this request as vague and ambiguous (*i.e. "safety of the marble floors"*),
3 is overly broad in scope and time, unduly burdensome, seeks information protected by attorney/client
4 privilege and/or attorney work product privilege (*i.e. information protected by NRCP 26(b)(4)*), lacks
5 foundation, and seeks information which is not reasonably calculated to lead to the discovery of
6 admissible evidence, but is intended to vex, harass and annoy. (Defendants contend that the subject
7 incident occurred on a dry marble floor, which is clearly established from surveillance footage
8 identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the very kind of "*fishing expedition*"
9 contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189,
10 192 (1977), which it determined to be without reasonable justification. Without waiving and subject
11 to the above stated objection, Defendants respond as follows: Defendants have no documents
12 responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1, NRCP 34, and
13 all supplements thereto. *See also* Response to Request No. 23. Discovery is continuing.

14 **REQUEST NO. 27:**

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

16 **RESPONSE NO 27:**

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

19 **REQUEST NO. 28**

20 Any and all current and dated policies, procedures and training manuals and amendments
21 referencing standards for flooring and procedures for slip and falls including, but not limited to a copy
22 of "Preventing Slips, Trips and Falls."
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1 **RESPONSE NO. 28:**

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

8 **REQUEST NO. 29:**

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

12 **RESPONSE NO. 29:**

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

22 **REQUEST NO. 30:**

23 Any and all quotes and estimates and correspondence regarding quotes and estimates relating
24 to the modification of the marble floors to increase their slip resistance.
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1 **RESPONSE NO. 30:**

2 Defendants object to this request as vague, ambiguous and overly broad as to "*the marble*
3 *floors*" and "*modification*" and further as to scope in location and time, lacks foundation, assumes
4 facts not in evidence, seeks information protected by attorney/client privilege and/or attorney work
5 product privilege, further seeks information regarding protected communications pursuant to NRCP
6 26(b)(4), and generally seeks information not reasonably calculated to lead to the discovery of
7 admissible evidence. Without waiving said objection, Defendants respond as follows: Defendants
8 cannot respond to this request as phrased. Discovery is continuing.

9
10 DATED this 24 day of June, 2019.

11 **ROYAL & MILES LLP**

12
13 By: _____

14 Michael A. Royal, Esq.
15 Nevada Bar No. 4370
16 Gregory A. Miles, Esq.
17 Nevada Bar No. 4336
18 1522 W. Warm Springs Road
19 Henderson, NV 89014
20 *Attorneys for Defendants*
21 *VENETIAN CASINO RESORT, LLC and*
22 *LAS VEGAS SANDS, LLC*
23
24
25
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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.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Plaintiff
Facsimile: 702-735-0204

E-Service: kgalliher@galliherlawfirm.com
dmooney@galliherlawfirm.com
gramos@galliherlawfirm.com
sray@galliherlawfirm.com


An employee of ROYAL & MILES LLP

EXHIBIT “N”

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

ROGS

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@royalmilesllp.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

DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: Plaintiff JOYCE SEKERA; and

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

Pursuant to Rules 26 and 33 of the Nevada Rules of Civil Procedure, Defendants, VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS and LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, by and through their counsel, ROYAL & MILES LLP, and answers Plaintiff's Interrogatories as follows:

1 **ANSWER NO. 1:**

2 Defendants object to the extent that this request lacks foundation, assumes facts not in evidence
3 (presupposing there was a foreign substance on the floor causing Plaintiff's fall, which Defendants
4 deny), is vague and ambiguous as to "complaints", is overly broad and not tailored to issues in the
5 present case (i.e. it is not limited to the area where the subject incident occurred, extends to non-
6 common areas, includes "trip" and falls, and seeks information related to post incident matters which
7 are not relevant to issues related to an alleged transient condition on the floor), is unduly burdensome
8 and seeks information which is equally available to Plaintiff via public records. This interrogatory
9 further seeks information which is not reasonably calculated to lead to the discovery of admissible
10 evidence. Without waiving and subject to said objection, Defendants respond as follows: See
11 Defendants' NRCP 16.1 Disclosures and all supplements thereto, including but not limited to the
12 following: VEN 269 - 928, VEN 1104 - 1122, VEN 1417 - 1437. See also Supplemental Responses
13 to Plaintiff's Requests for Production of Documents and Materials to Defendant (served 01.04.19),
14 Response No. 7. Discovery is continuing.

15
16 DATED this 12 day of July, 2019.

17
18 **ROYAL & MILES LLP**

19
20 By: 

21 Michael A. Royal, Esq.
22 Nevada Bar No. 4370
23 Gregory A. Miles, Esq.
24 Nevada Bar No. 4336
25 1522 W. Warm Springs Road
26 Henderson, NV 89014
27 Attorneys for Defendants
28 VENETIAN CASINO RESORT, LLC and
LAS VEGAS SANDS, LLC

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JULIE ADDISON, hereby swears under penalty of perjury, deposes and says:

That I am the Person Most Knowledgeable for Defendants, VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS and LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, in the above-entitled action; that I have read the foregoing DEFENDANTS' ANSWERS TO PLAINTIFF'S INTERROGATORIES and knows the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe them to be true.

SUBSCRIBED AND SWORN to before me
this 18 day of July, 2019.

NOTARY PUBLIC in and for said
County and State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of July, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** to be served as follows:

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

_____ to be served via facsimile; and/or

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

_____ to be hand delivered;

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

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

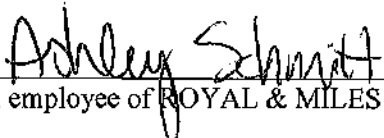

An employee of ROYAL & MILES LLP

EXHIBIT “O”

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

RFP

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@royalmilesllp.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

**RESPONSES TO PLAINTIFF'S NINTH 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 seventh requests for production of documents and materials as follows:

1 **REQUEST NO. 35:**

2 True and correct copies of any and all claim forms, legal actions, civil complaints, statements,
3 security reports, computer generated lists, investigative documents or other memoranda which have,
4 as its subject matter, slip and fall cases occurring on marble floors within the subject VENETIAN
5 CASINO RESORT from the May 3, 1999 to the present.
6

7 **RESPONSE NO. 32:**

8 Defendants object to the extent this request lacks foundation and assumes facts not in evidence,
9 is overly broad, vague and ambiguous, is unduly burdensome and presupposes Defendants are in
10 possession of all information requested. Defendants further object to the extent that this request seeks
11 information equally accessible by Plaintiff and in the possession of her counsel (*i.e.* civil complaints
12 are matters of public record; further, Plaintiff allegedly is in possession of at least 196 prior incident
13 reports in the Grand Lux rotunda area according to the deposition testimony of Thomas Jennings (dated
14 July 2, 20-19) and as also noted in his May 30, 2019 rebuttal report), lacks foundation, seeks
15 information protected by attorney/client privilege and/or attorney work product privilege (*i.e.*
16 "*statements . . . computer generated lists, investigative documents or other memoranda*"), does not
17 meet the *relevant* and *proportional* requirements of NRCP 26(b)(1), and otherwise seeks information
18 not reasonably calculated to lead to the discover of admissible evidence, but is instead intended to vex,
19 harass and annoy. This is the kind of "*fishing expedition*" contemplated by the Nevada Supreme Court
20 in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189, 192 (1977), which it determined to be without
21 reasonable justification. Without waiving and subject to the above stated objection, Defendants
22 respond as follows: *See* documents previously produced by Defendants pursuant to NRCP 16.1,
23 including but not limited to those identified as VEN 269 - 928; VEN 1104 - 1122, and all supplements
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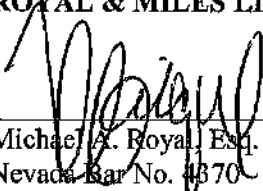
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thereto. Discovery is continuing.

DATED this 16 day of August, 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 16 day of August 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S NINTH 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.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014

Attorneys for Plaintiff

Facsimile: 702-735-0204

E-Service: kgalliher@galliherlawfirm.com
dmooney@galliherlawfirm.com
gramos@galliherlawfirm.com
sray@galliherlawfirm.com

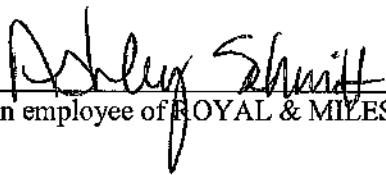

An employee of ROYAL & MILES LLP

EXHIBIT “P”

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

RFP

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@royalmilesllp.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

**RESPONSES TO PLAINTIFF'S TENTH 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 tenth requests for production of documents and materials as follows:

1 **REQUEST NO. 36:**

2 True and correct copies of any and all entries and information contained in the Venetian's
3 Alliance System regarding injury falls on marble flooring within the Venetian Las Vegas from January
4 1, 2000 to present.

5 **RESPONSE NO. 36:**

6 Defendants object to the extent this request lacks foundation and assumes facts not in evidence
7 (*i.e.* that Venetian has an *Alliance System* or that it has an obligation to maintain such records dating
8 back to 2000), is overly broad in scope (*i.e.* not limited to area of the subject incident or even to simply
9 slip/falls or factually similar circumstances, also seeks information far beyond any reasonable time
10 period is also far beyond anything remotely reasonable), is vague and ambiguous (*i.e. injury falls*), is
11 unduly burdensome and presupposes Defendants are in possession of all information requested.
12 Defendants further object to the extent that this request seeks information equally accessible by
13 Plaintiff and in the possession of her counsel (*i.e.* Plaintiff allegedly is in possession of at least 196
14 prior incident reports in the Grand Lux rotunda area provided to expert Thomas Jennings as noted in
15 his May 30, 2019 rebuttal report), seeks information protected by attorney/client privilege and/or
16 attorney work product privilege (*i.e. "all entries and information . . . "*), does not meet the dual
17 requirements of NRCP 26(b)(1) of *relevant* and *proportional*, and seeks information not reasonably
18 calculated to lead to the discover of admissible evidence, but is instead intended to vex, harass and
19 annoy. This is the kind of "*fishing expedition*" contemplated by the Nevada Supreme Court in
20 Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189, 192 (1977), which it determined to be without
21 reasonable justification. Without waiving and subject to the above stated objection, Defendants
22 respond as follows: *See* documents previously produced by Defendants pursuant to NRCP 16.1,
23 including but not limited to those identified as VEN 269 - 928; VEN 1104 - 1122, and all supplements
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1 thereto. Discovery is continuing.

2 DATED this 16 day of August, 2019.

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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 16 day of August 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S TENTH 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.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014

Attorneys for Plaintiff

Facsimile: 702-735-0204

E-Service: kgalliher@galliherlawfirm.com
dmooney@galliherlawfirm.com
gramos@galliherlawfirm.com
sray@galliherlawfirm.com


An employee of ROYAL & MILES LLP

EXHIBIT “Q”

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

ROGS

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@royalmilesllp.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

DEFENDANTS' ANSWERS TO PLAINTIFF'S SECOND SET OF INTERROGATORIES

TO: Plaintiff JOYCE SEKERA; and

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

Pursuant to Rules 26 and 33 of the Nevada Rules of Civil Procedure, Defendants, VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS and LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, by and through their counsel, ROYAL & MILES LLP, and answers Plaintiff's Interrogatories as follows:

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1 reasonable time period is also far beyond anything remotely reasonable), is vague and ambiguous (*i.e.*
2 "*accident checks*"), is unduly burdensome and presupposes Defendants are in possession of all
3 information requested. Defendants further object to the extent that this request seeks information
4 equally accessible by Plaintiff and in the possession of her counsel (*i.e.* Plaintiff allegedly is in
5 possession of at least 196 prior incident reports in the Grand Lux rotunda area provided to expert
6 Thomas Jennings as noted in his May 30, 2019 rebuttal report), seeks information protected by
7 attorney/client privilege and/or attorney work product privilege (*i.e.* "*any and all individuals*
8 *designated . . .*"), and seeks information not reasonably calculated to lead to the discover of
9 admissible evidence, but is instead intended to vex, harass and annoy. This is the kind of "*fishing*
10 *expedition*" contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court,
11 93 Nev. 189, 192 (1977), which it determined to be without reasonable justification. Finally, this
12 request was served on July 22, 2019 and the Discovery Cutoff per court order is August 15, 2019.
13 Therefore, pursuant to NRCP 34, Plaintiff has not provided Defendants with sufficient time to respond.
14 Without waiving and subject to the above stated objection, Defendants respond as follows: See
15 documents previously produced by Defendants pursuant to NRCP 16.1, including but not limited to
16 those identified as VEN 269 - 928; VEN 1104 - 1122, VEN 1417 - 1437, and all supplements thereto.
17
18
19 Discovery is continuing.

20 DATED this 19 day of August, 2019.

21
22
23 By:

ROYAL & MILES LLP

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

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JULIE ADDISON, hereby swears under penalty of perjury, deposes and says:

That I am the Person Most Knowledgeable for Defendants, VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS and LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, in the above-entitled action; that I have read the foregoing DEFENDANTS' ANSWERS TO PLAINTIFF'S SECOND SET OF INTERROGATORIES and knows the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe them to be true.

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

NOTARY PUBLIC in and for said
County and State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of August, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **DEFENDANTS' ANSWERS TO PLAINTIFF'S SECOND SET OF INTERROGATORIES** to be served as follows:

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

_____ to be served via facsimile; and/or

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

_____ to be hand delivered;

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

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

E-Service: kgalliher@galliherlawfirm.com
dmooney@galliherlawfirm.com
gramos@galliherlawfirm.com
sray@galliherlawfirm.com

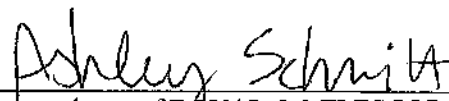

An employee of ROYAL & MILES LLP

EXHIBIT “R”

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

RFP

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@royalmilesllp.com

Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

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.

**RESPONSES TO PLAINTIFF'S ELEVENTH 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 seventh requests for production of documents and materials as
follows:

1 **REQUEST NO. 36:**

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

7 **RESPONSE NO. 37:**

8 Objection. This request is vague, ambiguous, overly broad and seeks information that is not
9 reasonably calculated to lead to the discovery of admissible evidence, nor does it meet the
10 proportionality requirement of NRCP 26(a). (Plaintiff's incident of November 4, 2016 did not occur
11 in the casino area where Ms. Tonemah was referring in deposition, but in the Grand Lux rotunda area,
12 which has never been carpeted.) This request is a "fishing expedition" which has nothing to do with
13 the subject incident, but is part of Plaintiff's *carte blanche* demand for records, documents and
14 information in violation of *Schlatter v. Eighth Judicial District Court*, 561 P.2d 1342 (1977).
15

16 DATED this 27 day of August, 2019.

17 **ROYAL & MILES LLP**

18
19 By: _____

20 Michael A. Royal, Esq.

21 Nevada Bar No. 4370

22 Gregory A. Miles, Esq.

23 Nevada Bar No. 4336

24 1522 W. Warm Springs Road

25 Henderson, NV 89014

26 Attorneys for Defendants

27 VENETIAN CASINO RESORT, LLC and

28 LAS VEGAS SANDS, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28 day of August 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S ELEVENTH 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.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Plaintiff

Facsimile: 702-735-0204

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An employee of ROYAL & MILES LLP

SURVEILLANCE VIDEO



EXHIBIT "S"

EXHIBIT “T”

Deposition of:

Thomas A. Jennings

Case:

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

Date:

07/02/2019



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1 Q. And I understand that.

2 In this particular case, you had done a site
3 inspection and you'd received documents like you have in
4 this case.

5 A. Okay.

6 Q. And you reviewed the area at least enough to
7 prepare this affidavit.

8 You agree?

9 A. I do.

10 Q. Okay. Then paragraph 4 says, "Based on my
11 review to date, however, I can state with a reasonable
12 degree of probability that the walking surface at issue
13 is safe for ambulation when dry."

14 Do you see that?

15 A. I do.

16 Q. And that's your testimony, at least in -- and
17 we'll get to your report. But your testimony, as I
18 understand it, is that the marble floor, whether it's
19 exterior or interior, is safe when dry, the marble floor
20 at the Venetian; correct?

21 A. That's been my experience, yes.

22 Q. All right. Okay. You also stated here in the
23 same paragraph, "I can further state that the area,
24 although controlled by the Venetian, can be accessed
25 from various points in areas over which the Venetian

1 falls more so than other kind of footwear?

2 A. They can.

3 Q. So it's not always your opinion that footwear
4 is not a primary causal factor?

5 A. I think we discussed that earlier. It could be
6 a contributing factor, but I don't believe that was the
7 case in this situation.

8 Q. Okay. If a jury were to determine that the
9 area where the plaintiff slipped and fell was dry, your
10 opinion would be that -- would be what?

11 A. That the floor was slip resistant.

12 MR. KUNZ: Objection. Speculation.

13 Go ahead.

14 THE WITNESS: If it was dry, that the floor was
15 slip resistant as tested.

16 BY MR. ROYAL:

17 Q. And that the floor did not cause the
18 plaintiff's fall?

19 MR. KUNZ: Same objection.

20 BY MR. ROYAL:

21 Q. Would that be your opinion?

22 A. I think that would be reasonable, yes, sir.

23 Q. All right. I think you -- on page 2 of your
24 rebuttal report, you dismiss the Burnfield and Power
25 study just because it happened in a laboratory, it was

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

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

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

10 A. Yes, sir.

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

17 Did I read that correctly?

18 A. You did.

19 Q. What information are you drawing from?

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

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

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

4 Q. Did you bring that with you today?

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

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

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

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

13 A. Yes.

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

16 A. Yes.

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

18 A. Yes.

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

22 A. Correct. That is true.

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

25 A. Yes, sir.

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

3 A. Correct.

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

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

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

9 A. Okay.

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

11 A. Sure.

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

14 A. Yes, sir.

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

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

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

22 Tell me what the spreadsheet looks like.

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

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

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

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

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

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

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

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

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

17 A. Yes, sir.

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

22 A. Yes, sir.

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

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

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

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

6 A. To the property, yes, sir.

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

9 A. Yes, sir.

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

13 A. There is, sir.

14 Q. Right?

15 A. Yep.

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

19 Would that be right?

20 A. I believe that's accurate.

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

24 A. I believe --

25 Q. -- number?

EXHIBIT “U”

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DISTRICT COURT
CLARK COUNTY, NEVADA

Joyce Sekera,)	
)	
Plaintiff,)	
)	Case No. A-18-773761
vs.)	Dept. No. XXV
)	
Venetian Casino Resort, LLC,)	
)	
Defendant.)	

Before the Honorable KATHLEEN E. DELANEY
Tuesday, May 14, 2019, 9:00 A.M.
Reporter's Transcript of Proceedings
OBJECTION TO DISCOVERY COMMISSIONER'S REPORT

APPEARANCES:

For the Plaintiff:	KEITH E. GALLIHER, JR., ESQ. KATHLEEN GALLAGHER, ESQ. Attorneys at Law
For the Defendant:	MICHAEL A. ROYAL, ESQ. Attorney at Law

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

1 information that should be readily available to anyone who sues
2 the Venetian.

3 THE COURT: Just to be clear, it wasn't
4 Attorney's Eyes Only. It was okay to be seen by experts and --

5 MR. GALLIHER: Experts and --

6 THE COURT: -- and the client.

7 MR. GALLIHER: -- and shared with other
8 attorneys who have lawsuits against Venetian.

9 THE COURT: Yeah. But, no, I'm not talking
10 about your position.

11 I was talking about -- because when you said
12 that it was -- the Protective Order was you and no one else, I
13 just wanted to clarify that it was for litigation purposes in
14 this litigation.

15 MR. GALLIHER: Yes.

16 THE COURT: So it would have been inclusive of
17 experts in this litigation and staff of the counsel in this
18 litigation.

19 It was just not to be shared outside of anybody
20 necessary for this litigation, because there are -- there's a
21 difference between an Attorney's Eyes Only request and a
22 request where the client and the expert can see it.

23 MR. GALLIHER: Understood. No, this is not an
24 attorney's only request.

25 This was you can use it in litigation but you

1 can't use it outside the litigation. You can't give it to
2 anybody else who's involved in litigation against the Venetian.
3 You have to keep it in this litigation.

4 And my response was: I can't agree to that
5 because I do not think that a Protective Order is proper in
6 this case given the nature of what we're asking for, injury
7 incident reports.

8 There are a number of pending lawsuits against
9 the Venetian as a result of these floors and people slipping on
10 these floors.

11 And, I mean, the Court should be aware that as
12 members of the Nevada Justice Association, we all share
13 information concerning our cases. We share briefing, we share
14 experts and we share discovery that, in fact, we collected in
15 our case.

16 And as the Court would note from the objection
17 that we filed, and by the way, giving credit where credit is
18 due, Kathleen wrote the objection. She researched it and wrote
19 it. And I thought she did an excellent job.

20 The bottom line is that the cases in this
21 country are uniform, that a Protective Order is not proper in a
22 situation like this because what it does is it increases
23 discovery costs.

24 For example, in this case, I received 64 prior
25 fall reports redacted. Attorney Goldstein had another case

1 against the Venetian. He received 32. Same time frames.

2 What happened when I got my redacted reports, I
3 exchanged them with him. He sent them to me -- and by the way,
4 there was no Protective Order in place. There was no motion
5 practice in place, despite what's being represented.

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

8 MR. GALLIHER: Yeah. I know.

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

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

14 So what we did is we got a set and compared
15 notes. And lo and behold, what we find is I don't have four of
16 the reports that Mr. Goldstein has. He doesn't have 35 of the
17 reports that I have. And Mr. Bochanis has about 11 that I
18 don't have.

19 So what we're finding is this -- and the
20 interesting thing about this is that the Venetian, when they
21 defend these cases, they always retain different defense firms.
22 So they don't retain the same firm to represent them in
23 defending these cases.

24 Now, why do I think that's the case?

25 Well, gee, if you have an ethical defense lawyer

EXHIBIT “V”

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.

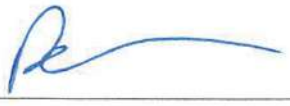
6. I can provide PDF copies of all incident reports disclosed in the Smith v. Venetian and Sekera v. Venetian cases, if required by the Court.

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.

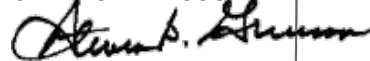
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2 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and
3 correct.

4
5 Dated February 13, 2019 at Las Vegas, Nevada.

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8 Signed:  _____

9 Peter Goldstein, Declarant
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EXHIBIT “W”



1 **ROPP**

2 Peter Goldstein, Esq. (SBN 6992)

3 **PETER GOLDSTEIN LAW CORPORATION**

4 10785 W Twain Ave, Ste. 230

5 Las Vegas, Nevada 89135

6 Email: peter@petergoldsteinlaw.com

7 Tel: 702.474.6400

8 Fax: 888.400.8799

9 Attorney for Plaintiff

10 **CAROL SMITH**

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 **CAROL SMITH, an individual,**

14 **Plaintiff,**

15 **vs.**

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

18 **Defendants.**

Case No.: A-17-753362-C

Dept. No.: X

Discovery Commissioner

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

Date of Hearing: March 20, 2019

Time of Hearing: 9:00 a.m.

19 Plaintiff, CAROL SMITH, by and through her attorney of record, PETER GOLDSTEIN, ESQ.,
20 hereby submit Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's
21 Motion for Termination Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant to
22 NRCP Rule 37.

23 Dated: 3.12.19

PETER GOLDSTEIN LAW CORPORATION

BY: 

PETER GOLDSTEIN, ESQ.

Attorney for Plaintiff

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

3 Defendant argues that the discovery issues involving *Sekera v Venetian*, Case No. A-18-772761-
4 C and *Smith v Venetian* are not identical, but “rather are different”. The discovery requests and
5 responses involve prior falls on marble floors in lobbies of the Venetian Hotel and Casino primarily for
6 2014 to 2016. In request number 7, *Sekera* requested slip and fall incident reports on marble floors in the
7 Venetian Hotel and Casino for three years prior to the date of the *Sekera* incident (November 4, 2016).
8 Venetian provided 64 prior reports and 660 pages of documents in its Responses and Supplemental
9 Responses to Request for Production of Documents No. 7, see Exhibits 7 and 8. It is undisputed that 25
10 reports were produced in Smith for falls reports from 2014 to 2016, no reports were produced for the
11 two year period of time 2011 to 2013 for falls in Lobby One, see Exhibit 9, Defendant’s Ninth
12 Supplemental Disclosure.
13

14 Plaintiff will bring 660 bate stamped pages of documents produced by Defendant Venetian in
15 *Sekera v. Venetian*, to the hearing as they are responsive to the previous fall incident requests and
16 responses in Smith and directly relate to notice and knowledge of prior falls on wet marble floors (Ex.
17 10 not attached) but Plaintiff also attaches another spreadsheet of the incident reports, Exhibit 11,
18 showing the *Sekera* falls in black and the *Smith* falls in red. The *Sekura* reports were produced in
19 response to a request for prior falls on marble floors for a three-year period before November 14, 2016
20 and 56 involved falling on wet floors. Defendant’s argument that the cases differ in facts, circumstances,
21 allegations, discovery, orders, is more than misleading, it is flat out false. Of the 60 plus incident reports
22 disclosed in the 660 pages of documents, only four do not specifically state that Venetian patrons
23 slipped on a liquid on a marble floor. Of those four, two do not specify the reason for the fall and two
24 state that the individual tripped over their feet. Though, in those two reports, it is noted that the floor was
25 recently cleaned, so a wet floor cannot be ruled out. For example, an incident report, not disclosed in this
26
27
28

1 case, dated 11/24/2013 the author of the narrative states "impossible to see because of the shiny floor
2 until the liquid was encountered".

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

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

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

25 Defendant's motive for not producing the reports and to minimize the number of prior reports is
26 so they can argue that the prior occurrences are less than actually exists so that the prior reports would
27
28

1 not be admissible at trial. This would be consistent with their failure to meet and confer regarding a
2 stipulation on the admissibility of the prior reports even though the Discovery Commissioner required
3 them to do so.

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

15
16 Defendant argues that the main line of questioning of Plaintiff's expert was the number of
17 incidents and gratuitously inserted an argument without any evidentiary support that the marble floors
18 were built within building codes which have been approved. This is unsupported hyperbole and lacks
19 evidentiary support.

20
21 Defendant then confuses and conflates the mode of operation theory of liability with the fact that
22 the marble floors are inherently dangerous when wet and are a serious slip hazard. It wasn't until 2012
23 when we heard the term in Nevada, the mode of operations, a legal variation to the traditional approach
24 to premises liability. Customarily, a business will only be held liable for a dangerous condition on its
25 floor (e.g., foreign substance) caused by someone other than an employee when the business had actual
26 or constructive notice of the condition and failed to remedy or warn of it. *See Sprague v. Lucky Store,*
27
28

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

9
10 Plaintiff's Motion did not misrepresent the fact that Defendant failed to produce video footage in
11 violation of the Court Order. Defendant never responded to the proposed Order contained in the email
12 which Plaintiff's counsel submitted to defense counsel. Regardless, that Order has been signed by the
13 Court, and attached as Exhibit 10.
14

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

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

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

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

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

23
24 The United States Supreme Court stated that:


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

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

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

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10 DATED: 3.12.19

LAW OFFICES OF PETER GOLDSTEIN

11 BY: 
12 PETER GOLDSTEIN, ESQ.
13 Attorney for Plaintiff
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1
2 **CERTIFICATE OF SERVICE**
3

4 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure and [N.E.F.R. 9(b)] I certify that
5 I am an employee of Peter Goldstein Law Corporation and that on March 12, 2019, I served a true
6 and correct copy of the foregoing document entitled **PLAINTIFF'S REPLY TO DEFENDANT**
7 **VENETIAN CASINO RESORT, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR**
8 **TERMINATING SANCTIONS, MONETARY SANCTIONS FOR WILLFUL SUPPRESSION**
9 **OF EVIDENCE PURSUANT TO NRCP RULE 27.** upon all parties listed below, via the following
10 means:
11

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

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

26 3/12/19
27 Date

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

EXHIBIT 7

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

RFP

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@royalmilesllp.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 1
through X, inclusive,

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**RESPONSES TO PLAINTIFF'S REQUESTS 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 36 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:

1 **REQUEST NO. 1:**

2 All written, oral, or recorded statements made by any party, witness, or any other person or
3 persons with knowledge of the incident described in Plaintiffs Complaint.

4 **RESPONSE NO. 1:**

5 Defendants object to the extent this request seeks information protected by attorney/client
6 privilege and/or attorney work product privilege. Without waiving said objection, Defendants refer
7 to their disclosures pursuant to NRCP 16.1, documents 2-9, and all supplements thereto. Discovery
8 is continuing.

10 **REQUEST NO. 2:**

11 Any and all accident and investigative reports, films, video tapes, charts, plats, drawings, maps
12 or pictures and/or photographs of any kind which has, as its subject matter, the incident described in
13 Plaintiffs Complaint.

14 **RESPONSE NO. 2:**

15 See Response No. 1.

17 **REQUEST NO. 3:**

18 A complete copy of the Defendant's insurance carriers and/or risk management pre-litigation
19 claim file.

20 **RESPONSE NO. 3:**

21 Objection. This request lacks foundation, assumes facts not in evidence, seeks information that
22 is protected from disclosure by the attorney/client and/or attorney work product doctrine. Without
23 waiving said objection all known discoverable documents regarding the investigation of the loss have
24 been produced. See Defendants' NRCP 16.1 early case conference disclosures, documents 2-9, and
25 all supplements thereto. Discovery is continuing.

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1 **REQUEST NO. 4:**

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

4 **RESPONSE NO. 4:**

5 Objection. This request is premature. Defendants' expert disclosures containing the requested
6 information will take place as set forth in the court's scheduling order. It is also an improper request
7 for production of documents.
8

9 **REQUEST NO. 5:**

10 Any and all sweep sheets, sweep logs, or other similar documentation which reflects the
11 maintenance and/or cleaning of the flooring located within the VENETIAN CASINO RESORT
12 described in Plaintiffs Complaint for the day before, day of, and day after the incident described
13 therein.
14

15 **RESPONSE NO. 5:**

16 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
17 is overly broad, vague and ambiguous. This request also presupposes that there was a foreign
18 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
19 subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
20 reasonably calculated to lead to the discovery of admissible evidence (*i.e.* documents related to
21 November 5, 2016). Without waiving said objection, Defendants respond as follows: *See* documents
22 identified pursuant to NRCP 16.1, bates numbers VEN 044-106. Discovery is continuing.
23

24 **REQUEST NO. 6:**

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

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

3 **RESPONSE NO. 6:**

4 Defendant objects to the extent this request lacks foundation, assumes facts not in evidence,
5 and is further overly broad, vague and ambiguous. This request also presupposes that there was a
6 foreign substance on the floor causing Plaintiff's fall, which Defendants deny. also incorrectly identifies
7 the subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
8 reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection,
9 Defendant responds as follows: See Response No. 5.

11 **REQUEST NO. 7:**

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

18 **RESPONSE NO. 7:**

19 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
20 is overly broad, vague and ambiguous, unduly burdensome and presupposes there was a foreign
21 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
22 subject premises as *VENETIAN CASINO RESORT*. This request further seeks access to information
23 which is equally available to Plaintiff via public records, and otherwise seeks information that is not
24 reasonably calculated to lead to the discovery of admissible evidence. Defendant objects as the request
25 as over broad and not properly tailored to the issues in this case. Without waiving said objection,
26
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1 Defendant responds as follows: Defendant is in the process of making a good faith effort to identify
2 information responsive to this request and will respond as soon as the information is collected.

3 Discovery is continuing.

4 **REQUEST NO. 8:**

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

7 **RESPONSE NO. 8:**

8 See Response No. 1.

9 **REQUEST NO. 9:**

10 Any surveillance video showing the Plaintiffs fall at the VENETIAN CASINO RESORT
11 from any other angle, other than the one shown in the video surveillance produced by the
12 Defendants thus far.

13 **RESPONSE NO. 9:**

14 Defendants object to the extent this request incorrectly identifies the subject premises as
15 *VENETIAN CASINO RESORT*, and further that the term "*surveillance video*" is itself overly broad
16 and seeks information outside Defendants' knowledge, custody and control (*i.e.* videos taken by other
17 persons on the subject premises at the time). Without waiving said objection, Defendants respond as
18 follows: All known surveillance related to this matter was produced as Document No. 9 in Defendants'
19 NRCP 16.1 disclosure. Discovery is continuing.

20 **REQUEST NO. 10:**

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

22 ///

23 ///

24 ///

1 **RESPONSE NO. 10:**

2 See Response No. 1.

3 DATED this 9 day of October, 2018.

4 **ROYAL & MILES LLP**

6 By: 

7 Michael A. Royal, Esq.

8 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 9 day of October, 2018, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S REQUESTS 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.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Plaintiff
Facsimile: 702-735-0204
Email: kgalliher@galliherlawfirm.com

Ashley Schiff
An employee of ROYAL & MILES LLP

EXHIBIT 8

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

RFP

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@royalmilesllp.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 1
through X, inclusive,

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**SUPPLEMENTAL RESPONSES TO PLAINTIFF'S REQUESTS 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 36 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:

1 **REQUEST NO. 1:**

2 All written, oral, or recorded statements made by any party, witness, or any other person or
3 persons with knowledge of the incident described in Plaintiffs Complaint.

4 **RESPONSE NO. 1:**

5 Defendants object to the extent this request seeks information protected by attorney/client
6 privilege and/or attorney work product privilege. Without waiving said objection, Defendants refer
7 to their disclosures pursuant to NRCP 16.1, documents 2-9, and all supplements thereto. Discovery
8 is continuing.

9
10 **REQUEST NO. 2:**

11 Any and all accident and investigative reports, films, video tapes, charts, plats, drawings, maps
12 or pictures and/or photographs of any kind which has, as its subject matter, the incident described in
13 Plaintiffs Complaint.

14
15 **RESPONSE NO. 2:**

16 See Response No. 1.

17 **REQUEST NO. 3:**

18 A complete copy of the Defendant's insurance carriers and/or risk management pre-litigation
19 claim file.

20 **RESPONSE NO. 3:**

21 Objection. This request lacks foundation, assumes facts not in evidence, seeks information that
22 is protected from disclosure by the attorney/client and/or attorney work product doctrine. Without
23 waiving said objection all known discoverable documents regarding the investigation of the loss have
24 been produced. See Defendants' NRCP 16.1 early case conference disclosures, documents 2-9, and
25 all supplements thereto. Discovery is continuing.
26
27
28

1 **REQUEST NO. 4:**

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

4 **RESPONSE NO. 4:**

5 Objection. This request is premature. Defendants' expert disclosures containing the requested
6 information will take place as set forth in the court's scheduling order. It is also an improper request
7 for production of documents.
8

9 **REQUEST NO. 5:**

10 Any and all sweep sheets, sweep logs, or other similar documentation which reflects the
11 maintenance and/or cleaning of the flooring located within the VENETIAN CASINO RESORT
12 described in Plaintiffs Complaint for the day before, day of, and day after the incident described
13 therein.
14

15 **RESPONSE NO. 5:**

16 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
17 is overly broad, vague and ambiguous. This request also presupposes that there was a foreign
18 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
19 subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
20 reasonably calculated to lead to the discovery of admissible evidence (*i.e.* documents related to
21 November 5, 2016). Without waiving said objection, Defendants respond as follows: *See* documents
22 identified pursuant to NRCP 16.1, bates numbers VEN 044-106. Discovery is continuing.
23

24 **REQUEST NO. 6:**

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

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

3 **RESPONSE NO. 6:**

4 Defendant objects to the extent this request lacks foundation, assumes facts not in evidence,
5 and is further overly broad, vague and ambiguous. This request also presupposes that there was a
6 foreign substance on the floor causing Plaintiff's fall, which Defendants deny, also incorrectly identifies
7 the subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
8 reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection,
9 Defendant responds as follows: *See Response No. 5.*

11 **REQUEST NO. 7:**

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

18 **RESPONSE NO. 7:**

19 Defendants object to the extent this request lacks foundation, assumes facts not in
20 evidence, is overly broad, vague and ambiguous, unduly burdensome and presupposes there was
21 a foreign substance on the floor causing Plaintiff's fall, which Defendants deny. It also
22 incorrectly identifies the subject premises as *VENETIAN CASINO RESORT*. This request
23 further seeks access to information which is equally available to Plaintiff via public records, and
24 otherwise seeks information that is not reasonably calculated to lead to the discovery of
25 admissible evidence. Defendant objects as the request as over broad and not properly tailored
26 to the issues in this case. Without waiving said objection, Defendants respond as follows: Please
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1 | see Defendants' 5th Supplement to NRCP 16.1 Disclosure and all supplements thereto.

2 | Discovery is continuing.

3 | **REQUEST NO. 8:**

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

6 | **RESPONSE NO. 8:**

7 | See Response No. 1.

8 | **REQUEST NO. 9:**

9 | Any surveillance video showing the Plaintiffs fall at the VENETIAN CASINO RESORT
10 | from any other angle, other than the one shown in the video surveillance produced by the
11 | Defendants thus far.

12 | **RESPONSE NO. 9:**

13 | Defendants object to the extent this request incorrectly identifies the subject premises as
14 | *VENETIAN CASINO RESORT*, and further that the term "*surveillance video*" is itself overly broad
15 | and seeks information outside Defendants' knowledge, custody and control (*i.e.* videos taken by other
16 | persons on the subject premises at the time). Without waiving said objection, Defendants respond as
17 | follows: All known surveillance related to this matter was produced as Document No. 9 in Defendants'
18 | NRCP 16.1 disclosure. Discovery is continuing.

19 | **REQUEST NO. 10:**

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

21 | ///

22 | ///

23 | ///

24 |

25 |

1 **RESPONSE NO. 10:**

2 See Response No. 1.

3 DATED this 3 day of January, 2019.

4 **ROYAL & MILES LLP**

6 By: _____

7 Michael A. Royal, Esq.

8 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 4 day of January, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **SUPPLEMENTAL RESPONSES TO PLAINTIFF'S REQUESTS 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 scaled envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

_____ to be served via facsimile; and/or

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

_____ to be hand delivered;

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

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014

Attorneys for Plaintiff

Facsimile: 702-735-0204

E-Service: kgalliher@galliherlawfirm.com
dmooney@galliherlawfirm.com
gramos@galliherlawfirm.com
sray@galliherlawfirm.com

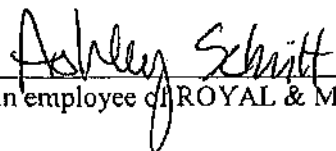

An employee of ROYAL & MILES LLP

EXHIBIT 9

1 **ECCD**
MARK B. SCHELLERUP
2 Nevada Bar No. 7170
ANDREW R. GUZIK
3 Nevada Bar No. 12758
MESSNER REEVES LLP
4 8945 W. Russell Road, Suite 300
Las Vegas, Nevada 89148
5 Telephone: (702) 363-5100
Facsimile: (702) 363-5101
6 Email: mschellerup@messner.com
Email: aguzik@messner.com
7 Attorneys for Venetian Casino Resort, LLC

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

11 CAROL SMITH, an individual,
12 Plaintiff,

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

13 vs.

14 VENETIAN CASINO RESORT, LLC; and
15 DOES 1 through 50, inclusive,
16 Defendant(s).

**DEFENDANT'S NINTH
SUPPLEMENTAL EARLY CASE
CONFERENCE STATEMENT LIST OF
WITNESSES, EXHIBITS AND
PRODUCTION OF DOCUMENTS**

17
18 Defendant VENETIAN CASINO RESORT, LLC, by and through its attorneys of record,
19 Messner Reeves, LLP, hereby serves their Ninth Supplemental Early Case Conference Statement
20 List of Witnesses, Exhibits and Production of Documents with respect to the above captioned action.
21 New items in **[BOLD]**

22 **WITNESSES**

23 1. Security Officer, Patrick Overfield, Security Department of Venetian, c/o Messner
24 Reeves LLP, 8945 W. Russell Rd., Suite 300, Las Vegas, Nevada 89148. Expected to testify
25 regarding the facts and circumstances surrounding the subject incident, any investigation regarding
26 the subject incident, any interaction with the Plaintiff or witnesses, the Incident Report.

27 2. Rafael Chavez, Facilities Department of Palazzo, c/o Messner Reeves LLP, 8945 W.
28 Russell Rd., Suite 300, Las Vegas, Nevada 89148. Expected to testify regarding the facts and

1 circumstances surrounding the subject incident, the inspection conducted after the alleged incident,
2 the Accident Scene Check report which he authored, any interaction with the Plaintiff or any
3 witnesses.

4 3. Security Officer, Michael Chreene, Security Department of Venetian, c/o Messner
5 Reeves LLP, 8945 W. Russell Rd., Suite 300, Las Vegas, Nevada 89148. Expected to testify
6 regarding the facts and circumstances surrounding the subject incident, any investigation regarding
7 the subject incident, any interaction with the Plaintiff or witnesses, the Incident Report.

8 4. Person Most Knowledgeable, PAD Department of Venetian, c/o Messner Reeves
9 LLP, 8945 W. Russell Road, Suite 300, Las Vegas, Nevada 89148. Expected to testify regarding
10 the policies and procedures regarding floor maintenance in the area where this incident occurred.

11 5. Person Most Knowledgeable, Security Department of Venetian, c/o Messner Reeves
12 LLP, 8945 W. Russell Road, Suite 300, Las Vegas, Nevada 89148. Expected to testify regarding
13 the facts and circumstances surrounding the subject incident.

14 6. Carol Smith, Plaintiff, c/o PETER GOLDSTEIN LAW CORP, 10795 W. Twain,
15 #110, Las Vegas, NV 89135. Ms. Smith is the named Plaintiff in this matter and is expected to
16 testify regarding her interaction with security personnel, her visit to the Venetian, any conversations
17 she may have had with anyone relating to the subject incident, her medical treatment and medical
18 history and any other facts and circumstances surrounding the subject incident.

19 7. Plaintiff's medical providers.

20 8. Any witnesses identified by any party to this action.

21 9. Any necessary rebuttal witnesses.

22 Defendant hereby reserves the right to amend and/or supplement its Early Case Conference
23 Statement List of Witnesses, Exhibits and Production of Documents as it uncovers additional
24 information through discovery of this matter and it reserves the right to object to Plaintiff's
25 witnesses.

26 **EXHIBITS/DOCUMENTS**

27 A. Plaintiff's First Amended Complaint [Bates No. VEN001-VEN005]

28

- 1 B. Medical records produced with letter from Peter Goldstein dated 10/25/16 (letter
2 included) [Bates No. VEN006-VEN0027]
- 3 C. Venetian Incident Report w/ color photographs [Bates No. VEN028-VEN037]
- 4 D. Copy of Voluntary Statement authored by Carol Smith [Bates No. VEN038]
- 5 E. Copy of Accident Scene Check [Bates No. VEN039]
- 6 F. Copy of Letter of Representation from Peter Goldstein dated 7/19/16 [Bates No.
7 VEN040]
- 8 G. Copy of letter from Venetian to Peter Goldstein dated 8/2/16 [Bates No. VEN041]
- 9 H. Copy of letter from Venetian to Peter Goldstein dated 4/17/17 [Bates No. VEN042]
- 10 I. Copy of surveillance video [Bates No. VEN043]
- 11 J. Copy of records from Irvine Unified School District [Bates No VEN044-VEN132]
- 12 K. Copy of records from State of the Art Physical Therapy [Bates No. VEN133-
13 VEN223]
- 14 L. Copy of records from Orthopedic Surgery Center of Orange County [Bates No.
15 VEN224-VEN303]
- 16 M. Copy of records from State of the Art Physical Therapy [Bates No. VEN304-
17 VEN370]
- 18 N. Copy of Incident Reports of slip and falls for two FIVE (5) years prior to this
19 alleged incident, in the area where Plaintiff's incident occurred (with all personal information
20 redacted) [Bates No. VEN371-VEN499]
- 21 O. Copy of Preventing Slip, Trips & Falls [Bates No. VEN500-VEN510]
- 22 P. Copy of floor cleaner product documents [Bates No. VEN511-VEN522]
- 23 P. Copy of Public Area's Department Work Slips for two-years prior to incident
24 [Bates No. VEN523-VEN1750]
- 25 Q. Copy of Preventing Slips, Trips and Falls Lesson Plan [Bates No. VEN1751-
26 VEN1753]
- 27 R. Copy of Lobby 2 Day Shift Specialist Workslip [Bates No. VEN1754]
- 28 ///

1 S. Copy of Day Shift Schedule for 7/7/2016 [Bates No. VEN1755]
2 T. Copy of Slip & Fall Training Video [Bates No. VEN1756]
3 U. Copy of medical records from Newport Orthopedic Institute [Bates No. VEN1757-
4 VEN1891]

5 V. Copy of similar incident reports 7/7/14-7/7/16 with personal information
6 redacted [Bates No. VEN1892-VEN2251]

7 Defendant hereby reserves the right to amend and/or supplement its Early Case Conference
8 Statement List of Witnesses, Exhibits and Production of Documents as it uncovers additional
9 information through discovery of this matter and it reserves the right to object to Plaintiff's exhibits
10 and documents.

11 DATED this 8th day of June, 2018

12 MESSNER REEVES, LLP

13
14 By 

15 MARK B. SCHELLERUP
16 Nevada Bar No. 7170
17 ANDREW R. GUZIK
18 Nevada Bar No. 12758
19 8945 W. Russell Road, Suite 300
20 Las Vegas, NV 89148
21 Telephone: (702) 363-5100
22 Facsimile: (702) 363-5101
23 Attorneys for Venetian Casino Resort, LLC
24
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26
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28

PROOF OF SERVICE
LV-Smith v. Venetian Casino Resort, LLC
Case No.: A-17-753362-C

The undersigned does hereby declare that I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by Messner Reeves LLP, 8945 W. Russell Road, Suite 300, Las Vegas, Nevada 89148. I am readily familiar with Messner Reeves LLP's practice for collection and processing of documents for delivery by way of the service indicated below.

On June 11, 2018, I served the following document(s):

**DEFENDANT'S NINTH SUPPLEMENTAL EARLY CASE CONFERENCE STATEMENT
LIST OF WITNESSES, EXHIBITS AND PRODUCTION
OF DOCUMENTS**

on the interested party(ies) in this action as follows:

Peter Goldstein
Nevada Bar No. 6992
PETER GOLDSTEIN LAW CORP
10795 W. Twain Avenue, #110
Las Vegas, NV 89135
Telephone: (702) 474-6400
Facsimile: (888) 400-8799
Attorneys for Plaintiff

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

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

Executed on June 11, 2018, at Las Vegas, Nevada.


An employee of MESSNER REEVES LLP

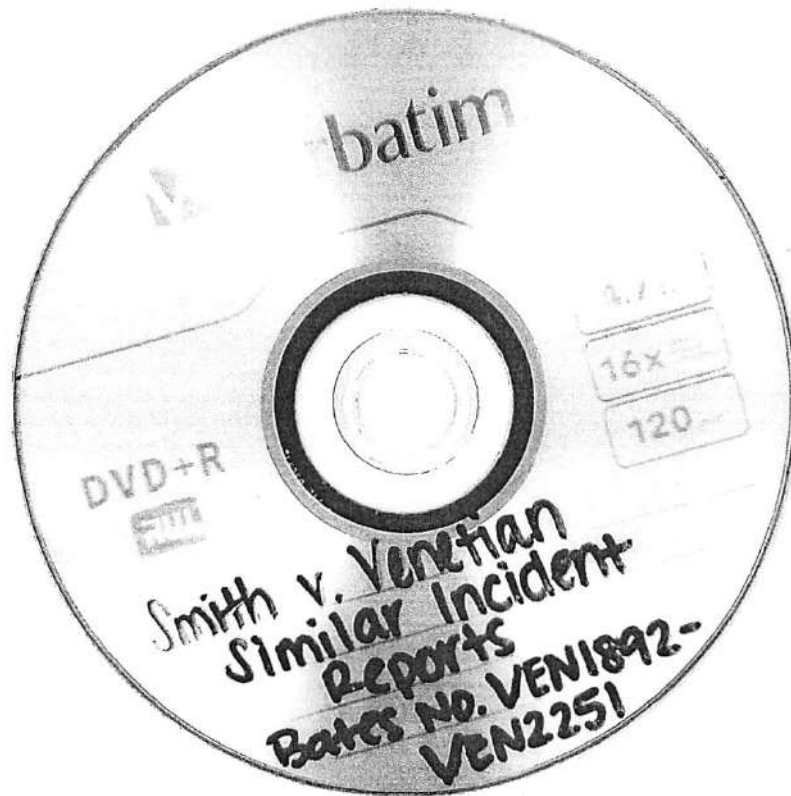


EXHIBIT 10

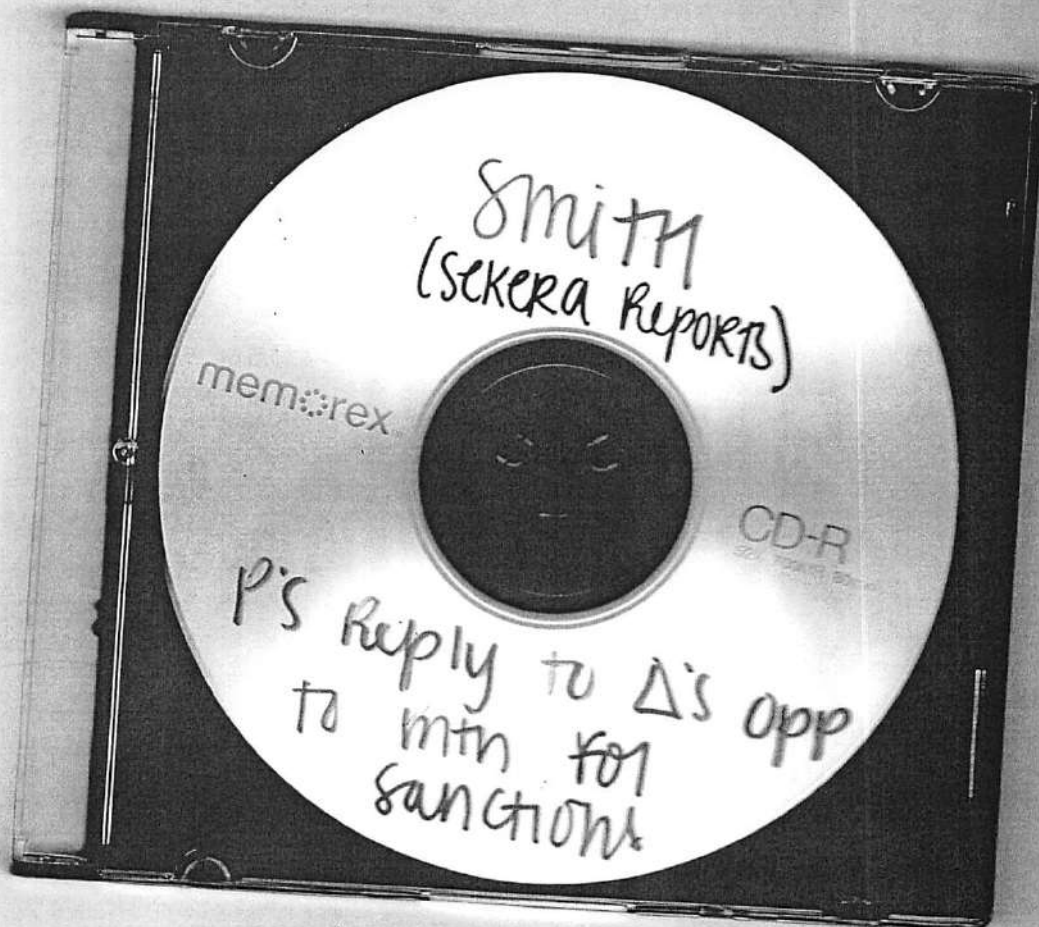


EXHIBIT 11

SEKERA FALLS

Sekera v. Venetian reports are in black
Smith v. Venetian reports are in red

DATE	TIME	REPORT	LOCATION	COMMENTS	SECURITY
11-24-13	5:27 a.m.	1311V-5502	Grand Luxe Café	Slip and fall	Mary Ros Eve Gizelbach Ryan Meyer J. Lopez report writer
11-24-13	1:54 p.m.	1311V-5588	Grand Hall	Slipped in apple cider given out by elves who are employees	Devon O'Brien manager Christopher Mosier asst. security manager G. Rescigno report writer David Magnism
1-26-14	12:28 a.m.	1401V-5339	Lobby 1	Water on marble	Conie Klaver Joe Barrett facilities senior watch L. Sivrals report writer Joe Barrett
5-2-14	4:42 p.m.	1405V-0423	Grand Hall LV	Water on marble	Manny Arguello R. Marquez report writer David Boyko
5-3-14	3:36 p.m.	1405V-0687	Grand Hall	Wet marble	Thomas Harris security officer Gary Rescigno security EMT T. McFate report writer Derek Santillan facilities
5-3-14	4:47 p.m.	1405V-0704	Lobby 1	Water on marble	Christopher Daniels Derek Santillan
5-24-14	9:49 p.m.	1405V-5900	Lobby 1	Wet marble	Karen Sidhoo front desk manager Tim Alvonells security shift manager T. Morgan report writer Sean Pemberton
6-28-14	2:10 p.m.	1406V-66937	Grand Luxe Café	Wet marble	Connic Kulver Nicholas Coronado Andres Florentino J. Lopez report writer John Burnett security officer
7-5-14	6:05 p.m.	1407V-1121	Lobby 1	Liquid stated he had fallen yesterday see report	Brittany Peck front desk manager Sean Pemberton engineer

				1407V-0807 (missing this report)	L. Sivras report writer
7-10-14	1:25 PM	1407V-2272	Grand Luxe	Water on floor	J. Larson report writer T. Mofate EMT/SO Merrick Anderson Facilities Eng.
7-10-14	12:30 a.m.	1407V-2142	Grand Hall	Drink on floor Prior to victim slipping group of unknown males with "yard" like drink spilled on floor	Sang Han front desk manager E. Gitzelback report writer
7-13-14	8:02	1407V-3057	Lobby 1	Liquid	Jacob Johnson Asst. Sec. Mngr. Brittany Peck Front desk mngr. Taylor McFate, EMT S.O. G. Rescigno Report writer
7-13-14	8:02 a.m.	1407V-3057	Lobby 1	liquid marble	Jacob Johnson asst. security manager Brittany Peck front desk manager Tyler McFate EMT security G. Rescigno report writer
7-18-14	7:14 p.m.	1407V-4386	Venetian front desk	Fall happened at 6:00 p.m. victim stated there was a guy there said his buddy dropped his bottle of alcohol and left it there	Tim Avonellos security shift manager Conie Kluver front desk manager kT. Morgan report writer
7-25-14	5:31 p.m.	1407V-6125	Lobby 1	Wet marble	Amy McCaslin front desk manager Kyle Donaldson Asst. security manager T. Morgan report writer
7-25-14	7:59	1407V-6151	Grand Hall	Liquid Victim Luz Gammio (unredacted)	Allen Backman facilities L. Sivrais report writer
7-29-14	2:47 p.m.	1407V-7161	Lobby 1	Liquid	Thomas Labert Front Desk Mngr. Christopher Moiser Asst. Sec Mngr. Sean Pemberton Eng. G. Rescigno Report writer Chris Malcom S.O.
7-29-14	2:47 p.m.	1407V-7161	Lobby 1	Liquid	Thomas Lambert front desk manager Christopher Mosier asst. security manager Sean Pemberton engineer

				G. Rescigno Chris Malcom security officer	
7-30-14	9:55 a.m.	1407V-7375	Lobby 1	Water fluid was spilled by unknown male at 9:48	Mary Rosk front desk manager Joseph Florio security officer Joseph Larson EMT security officer T. McFate report writer Abimael Suarez internal maintenance PAD
8-4-14	4:31 a.m.	1408V-0843	Lobby 1	Tripped over own feet	Mary Ros front desk manager John Ballesteros facilities team member E. Gizelbach report writer
8-5-14	5:08 a.m.	1408V-1088	Lobby 1	Tripped over own feet Marc Fesel engineer no defects but a wet floor	Mary Ros front desk manager Garry Lee security officer E. Gizelbach report writer
8-28-14	10:30 p.m.	1408V-7104	Venetian Tower	Fall reported next morning. Fall occurred near bathroom by Grand Luxe Water	Mary Ros, Front Desk Monte McAnulty Facilities J. Larson, Report Writer 1/7/15
8-28-14	10:30 p.m.	1408V-7104	11 Venetian Tower 121	Fall reported next morning. Fall occurred near bathrooms by Grand Luxe Water	Mary Ros front desk manager Monte McAnulty facilities J. Larson report writer
8-31-14	2:43 p.m.	1408V-7791	Lobby 1	large water spill	Jacob Johnson Asst. Sec. Mgr. Archie Balon, S.O. G. Rescigno, report writer Derek Santillan, Facilities
8-31-14	2:43 p.m.	1408V-7791	Lobby 1	Large water spill	Jacob Johnson asst. security manager Archie Balon security officer G. Rescigno report writer Derek Santillon facilities
9-13-14	3:17 p.m.	1409V2807	Grand Hall	Slipped due to water or drink spill that another guest caused. Tyler Corbely had notified security earlier about his stand by due to this fluid spill	Jacob Johnson asst. security manager Tyler Corbely field training officer G. Rescigno report writer

9-15-14	5:29 a.m.	1409V-3261	Lobby 1	3 piles of feces slip and fall	Nicholas Coronado Mary Ros Hinkle Z. Hakim report writer Rosa Estela facilities
9-30-14	1:30	1409V-6750	Grand Hall	Slip and fall on marble. "I slipped on something spilled on marble" pictures of liquid looks like milk	George Valley security manager Jonathan Derleth front desk manager John Wells security officer Z. Hakim report writer James Guernick security officer
10-11-14	2:08 a.m.	1410V-2293	Lobby 1	Tripped over feet	Nachely frond desk manager Zachary Hakim EMT security E. Gizelbach report writer Rudy Conception facilities engineer
12-23-14	5:24 p.m.	1412V-4685	Lobby 1	Liquid Ashay Shah minor (not redacted) Jignesh Shah father	Sang Han hotel manager Tim Avonellos security shift manager L. Sivrais report writer Derek Sentilian facilities
1-17-15	11:49 p.m.	1501V-3857	Venetian Front Office	Liquid	Nicolas Coronado, asst. mgr. Jonathan Deruth, Front desk mgr. Jose Lopez, EMT Sec. Z. Hakim Report Writer Theodore Reash, Facilities
1-17-15	11:49 p.m.	1501V-3857	Venetian front office	Liquid	Nicholas Coronado asst. manager Jonathan Deruth front desk manager Jose Lopez EMT security Z. Hakim report writer Theodore Eash facilities
1-31-15	2:53 p.m.	1501V-6887	Lobby 1	Water "there appeared to be water all over immediate area"	Tim Alvonellos security shift manager Thomas Lambert front desk manager L. Dozier report writer
2-9-15	1:37 p.m.	1502V-1803	Lobby1	Liquid	Eric Wennerberg security officer Rudy Conception senor watch Eve Gizelbach report writer
2-9-15	1:37 a.m.	1502V-1803	Lobby 1	Liquid	Eric Wennerberg, S.O. Rady Conception. Seior Watch E. Gizelbach Report writer

2-20-15	1:28 p.m.	1502V-4322	Lobby 1	Liquid. Slipped on spilled beverage	Jacob Johnson Asst. Sec. Mngr. Brittany Peck, Front Desk L. Dozier. Report writer
2-20-15	1:28 p.m.	1502V-4322	Lobby 1	Liquid. Slipped on spilled beverage	Jacob Johnson asst. security manager Brittany Peck front desk manager L. Dozier report writer
3-8-15	8:45 a.m.	1503V-1561	Grand Hall	Slip. "I observed a wet sticky spot on marble floor"	Melissa Perry front desk manager Bryan Greenfield facilities E. Grizelbach report writer
3-23-15	3:18 a.m.	1503V-5040	Lobby 1	Slip. "appeared to have red sauce or grease on marble" previous injury under report #1503V-5119 (we don't have report) stated she had been injured earlier that morning at 3:00 a.m. when she slipped and fell in pasta sauce	Nathan Beyers front desk manager Garry Lee security officer E. Grizelbach report writer James Stoyer facilities engineer
4-24-15	3:25p.m..	1504V-5396	Grand Hall	Slip. Broken bottle of alcohol	Sang Han front desk manager Melissa Perry front desk manager Lynn Sivrais EMT Security G. Rescigno report writer Rodolfo Storino
4-24-15	3:25 p.m.	1504V-5396	Grand Hall	Broken Bottle of Alcohol	Sang Han, Front Desk Mngr. Melissa Perry Front Desk Mngr. Lynn Sivrais, EMT S.O. V-5319G. Rescigno Report writer Rodolfo Stoiono
5-3-15	1:08 p.m.	1505V-0844	Grand Hall	Slip. "small puddles of what appeared to be a clear liquid"	Jacob Johnson asst. security manager Tyler Corbaley field training officer G. Rescigno report writer
5-22-15	4:43 p.m.	1505V-5319	Lobby 1	Water on floor	Thomas Lambert Front Desk Tony Bersano Asst. Sec. Mngr. Crystal Clanton S.O. J. Lopez Report writer Jeffrey Dunihoo, S.O.
5-22-15	4:43 a.m.	1505V-5319	Lobby 1	Water on floor	Thomas Lamber front desk manager

					Tony Bersano asst. security manager Crystal Clanton security officer J. Lopez report writer Jeffrey Dumlao security officer
5-29-15	7:36 a.m.	1505V-7253	Lobby 1	Slip	Christopher Moiler asst. security manager Francesca Comeli front desk manager G. Rescigno report writer Steve Hansen facilities
5-30-15	4:35 p.m.	1505V-7506	Lobby 1	Slip Water	Tony Bersano, Asst. Sec. Mngr. Thomas Lambert, Front Desk Mngr. Michael Perez, S.O. D. Davila Report writer Heather Kaufmann, S.O. Zachary Hakim, EMT S.O.
5-30-15	4:35	1505V-7506	Lobby 1	Slip water	Anthony Bersano asst. security manager Thomas Lambert front desk manager Zachary Hakim security officer EMT Michael Perez security officer Heather Kaufmann security officer S. Davila report writer John Ballesteros facilities
6-12-15	12:51 p.m.	1506V-7480	Lobby 1	Liquid	Antonio Lopez David Magnuson A. Lopez report writer
6-12-15	5:51 p.m.	1506V-2824	Lobby 1	Wet floor. "so much foot traffic I asked two males to stand by spill" "The spill was small comprised of droplets of what seemed to be water stretching about a foot and a half in a straight line on the tile"	Antonio Lopez security officer David Magnuson A. Lopez report writer
6-30-15	11:38 a.m.	1506V-7480	Lobby 1	Slip and fall "small pool of clear liquid on marble flooring nearby"	Mary Ros front desk manager Gary Rescigno Security/EMT John Wells Security Officer j. Larson Report writer

6-30-15	11:58 a.m.	1506V-7480	Lobby 1	Slip and fall. "small pool of clear liquid on marble flooring nearby"	Mary Ros front desk manager Gary Rescigno security EMT John Wells security officer J. Larson report writer Bryan Greenfield facilities
7-5-15	12:40 p.m.	1507V-1236	6 Venezia Tower 417 Lobby 4	Slip and fall on water	Jacob Johnson Asst. Security Manager K Ecnammeste facilities G. Rescigno Report writer
7-5-15	12:40 p.m.	1507V-1236	6 Venezia Tower 417 Lobby 4	Slip and fall on water	Jacob Johnson asst. security manager Keenam Meste facilities G. Rescigno report writer
7-19-15	8:18 a.m.	1507V-5121	19 Venetian Tower 129 Lobby 1	Liquid	Melissa Perry Front desk manager Jacob Johnson Asst. Security manager L. Dozier report writer Jeffrey Dunihoo security officer Richard Heleman
7-19-15	1:47 a.m.	1507V-5024	Grand Hall	Slip and fall	Nicholas Coronado asst. manager S Tevan security L. Lopez report writer Brian Corpas security officer
7-19-15	8:18 a.m.	1507V-5121	Venetian Tower 129	Slip and fall. Liquid on floor at approximately 7:05	Jacob Johnson asst. security manager L. Dozier report writer Jeffrey Dunnilhoo security officer Richard Heleman Melissa Perry
7-20-15	5:36 a.m.	1507V-5392	Main entrance	Slip and fall. Sofia Lovgren victim (unredacted) Swedish passport	Julianne Edward front desk manager Nicholas Coronado asst. manager James Stoyer facilities J. Burnett report writer Eric Wenneberg security officer
8-2-15	10:48 a.m.	1508V-0357	Lobby 1	Slip and fall. Puddle of water on floor	Conie Klayer M. Criddle report writer
8-8-15	1:30 p.m.	1508V-1866	Grand Hall	Slip and fall	Jacob Johnson asst. security manager Jonathan Derleth front desk manager L. Dozier report writer Glen Helman facilities
8-8-15	2:00 p.m.	1508V-1869	Lobby 1	Slip and fall.	Jacob Johnson Asst. Security Manager

				Upon contacting surveillance I was advised an unknown guest had dropped a bucket	Brittany Peck Front desk manager Allan Hill security officer G. Rescigno report writer
8-8-15	2:00 p.m.	1508V-1869	Lobby 1	Slip and fall. Upon contacting surveillance I was advised an unknown guest had dropped a bucket	Jacob Johnson asst. security manager Brittany Peck front desk manager Allan Hill security officer G. Rescigno report writer
8-14-15	1:40 a.m.	1508V2554	17 Palazzo Tower 141	Slip and fall on water Susan hammonds (unredacted)	Michael Perez security officer Eddie Hoang security manager Mathan Byers facilities Marc Fesel facilities
8-29-15	11:34 a.m.	1508V-7246	Lobby 1	Slip and fall clear liquid. "significant pool of water"	Tim Alvonellos Security shift manager Thomas Lambert front desk manager D. Cabada report writer Marc Fesel facilities Joseph De Jesus security/EMT
8-29-15	11:34 p.m.	1508V-7246	Lobby 1	Slip and fall clear liquid. "significant pool of water"	Tim Alvonellos security shift manager Thomas Lambert front desk manager D. Cabada report writer Marc Fesel facilities Joseph De Jesus security officer EMT
9-6-15	6:39 p.m.	1509V-1497	Lobby 1	Slip and fall wet floor. Spilled drink on floor	Tim Alvonellos security shift manager Nachely Martinez front desk manager J. De Jesus report writer Catherine Carlson security officer
9-6-15	6:39 p.m.	1509V-1497	Lobby 1	Slip and fall wet floor. Spilled drink on floor	Tim Alvonellos security shift manager Nachely Martinez front desk manager Joseph De Jesus report writer Catherine Carlson security officer Derek Sanitilian facilities
9-13-15	11:26 p.m.	1509V-3312	Grand Hall	Slip and fall red liquid	Matthew Kaufman security manager Thomas Lambert front desk manager D. Cabada report writer Jose Lopez security officer Peter Guagiardo facilities
12-27-15	3:32 p.m.	1512V-5875	Lobby 1	Slip and fall clear liquid	Thomas Lambert front desk manager

				Tim Alvonellos security shift manager D. Cabada report writer Shane Navara facilities
2-20-16	2:56 p.m.	1602V-4290	1 Guest services podium	Liquid fall occurred earlier in day at 11:45 – 12:05 “very wet floor” Jacob Johnson asst. Security manager Devon O’Brien G. Rescigno report writer
2-20-16	2:56 p.m.	1602V-4290	Guest service podium	Jacob Johnson asst. Security manager Devon O’Brien G. Rescigno report writer
3-6-16	1:59 p.m.	1603V-1233	Lobby 1	Liquid Jacob Johnson Asst. security manager Kyle Kirchmeyer VIP Services D. Winn report writer Rafael Chavez facilities
3-6-16	1:59 p.m.	1603V-1233	Lobby 1	Liquid Jacob Johnson security manager Kyle Kirchmeyer VIP services D. Winn report writer Raphael Chavez facilities
3-18-16	2:57 p.m.	1603V-3584	5 th floor of the garage elevator lobby	Cup of coffee spilled on floor. Fall occurred earlier in the day 11:45 – 12:00 Seljika Bucalo security officer David Boko facilities D. Wi report writer Devin O’Brien front desk manager Jacob Johnson security manager
3-25-16	1:14 p.m.	1603V-5018	Lobby 1	Slip and fall. Puddle of clear liquid Sharry Kim front desk supervisor Rafael Chavez facilities J. Larson report writer
3-25-16	1:14	1603V-5018	Lobby 1	Slip and fall. Puddle of clear liquid Sharry Kim front desk supervisor Rafael Chavez facilities J. Larson report writer
4-9-16	7:34 p.m.	1604V-1926	Lobby 1	Male walker between wet floor signs Matthew Kaufman security manager C. Reanos report writer
4-9-16	2:44 p.m.	1604V-1850	Grand Hall	Slip and fall. Puddle of water Archie Balon security officer Jacob Johnson security manger D. Winn report writer Raphael Chavez facilities
4-9-16	7:34 p.m.	1604V-1926	Lobby	Slip and fall. Walked between wet floor signs Matthew Kaufman security manager C. Reanos report writer
4-10-16	1:51 p.m.	1604V-2136	Grand Hall	Slip and fall Nicole Floyd George Valley security manger

				Jason Palm guest (unredacted)	D. Winn report writer Shane Navara Facilities Sharry Kim front desk manager
4-12-16	3:40 p.m.	1604V-2459	Control 1	Slip and fall. Occurred on 4/10/16 SO "Felix" was attempting to stop foot traffic when he slipped and fell	Matthew Kaufman asst. manager Albert Liu D. Cabda report writer
4-12-16	3:40 p.m.	1604V-2459	1 control	Slip and fall. Occurred on 4/10/16 SO "Felix" was attempting to stop foot traffic when he slipped and fell	Matthew Kaufman asst. manager Albert Liu D. Cabada report writer Felix Escobar security officer
5-5-16	9:12 p.m.	1605V-0952	Lobby 1	Slip and fall. Picture of red solo cup and liquid on floor	Tim Alvonellos security shift manager Royce Phung front desk manager J. Buscemi report writer James Johnson security officer
5-5-16	9:12 p.m.	1605V-0952	Lobby 1	Slip and fall. Picture of red solo cup and liquid on floor	Tim Alvonellos security shift manager Royce Phung front desk manager J. Buscemi report writer James Johnson security officer Shane Navara facilities
5-12-16	12:56 a.m.	1605V-5069	Lobby 1	Liquid	Amy McCaslin front desk manager Nicolas Coronado security manager John Ballesteros facilities J. Dietrich report writer Joseph Barr-Wilson
5-25-16	12:56 a.m.	1605V-5069	Lobby 1	Slip and fall earlier in day approx. 6:49	Ay McCaslin front desk manager Nicholas Coronado security manager John Ballesteros facilities J. Dietrich report writer Eve Gizelbach EMT security officer Joseph Barr-Wilson security officer
7-7-16	12:15 p.m.	1607V-1506	Lobby 1	Slip and fall. Large wet area	Jacob Johnson security manager Michael Chrene security officer R. Overfield report writer Raphel Chavez facilities

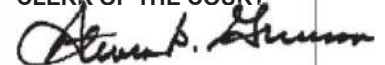
7-15-16	11:25 p.m.	1607V-3405	Lobby 1	Slip and fall. Ice cream on floor	Tim Alvonellos security shift manager Jonathan Derfeth front desk manager J. De Jesus report writer David Cabada EMT security officer Loren Harper security officer Rosa Estela facilities
8-5-16	11:07	1608V-0995	Casino	Slip and fall. Wet spill extended entire length of pit 9 guest walked into wet area and slipped and fell	Anthony Bersano assl. security manager Nathan Beyers front desk manager D. Cabada report writer Joseph De Jesus EMT security officer Dale Keezer field training officer Amber Platt security officer Laterrious Robinson field training officer Eddie Hinton facilities
8-5-16	5:04 p.m.	1608V-0947	Lobby 1	Slip and fall. Large pool of water	Tim Alvonellos security shift manager Monique Heng front desk manager J. De Jesus report writer Justin Vasquez security officer David Cabada EMT security officer Shane Naema facilities

EXHIBIT “X”

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CLERK OF THE COURT



DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

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

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,

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

Defendants.

//

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

This reply and 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 25th day of July, 2019

THE GALLIHER LAW FIRM



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MEMORANDUM AND POINTS OF AUTHORITIES

I. REPLY IN SUPPORT OF MOTION TO COMPEL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁵ 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. Farnier Bocken Co.*, 2003 S.D. 80, ¶ 48, 667 N.W.2d 651, 666 (in determining “degree of reprehensibility,” one consideration is whether “the conduct involved repeated actions or was an isolated incident”); *Boshears v. Saint-Gobain Calmar, Inc.*, 272 S.W.3d 215, 226 (Mo. Ct. App. 2008) (“actions subsequent to those for which damages are sought may be relevant and ‘admissible under an issue of exemplary damages if so connected with the particular acts as tending to show the defendant’s disposition, intention, or motive in the commission of the particular acts for which damages are claimed”); *Bergeson v. Dilworth* 959 F.2d 245 (10th Cir. 1992) (“subsequent conduct is admissible on the issue of punitive damages when it is probative of the defendant’s state of mind at the time of the event giving rise to liability”); *Smith v. Ingersoll-Rand Co.*, 214 F.3d 1235, 1249 (10th Cir. 2000); *GM Corp. v. Mosely*, 213 Ga. App. 875, 877 (Ga. Ct. App. 1994) (in a product defect case evidence of other incidents involving a product are admissible and relevant to prove notice of a defect and punitive damages); *Wolfe v. McNeil-PPC Inc.*, 773 F.Supp.2d 561, 575-576 (E.D.Pa. 2011) (post incident concealment of information from the FDA relevant to the question of defendant’s state of mind relative to the imposition of punitive damages); *Coale v. Dow Chem. Co.*, 701 P.2d 885, 890 (Colo.App. 1985) (evidence of post-injury conduct is admissible to show the defendant acted wantonly in connection with a claim of punitive damages); *Palmer v. A.H. Robins Co.*, 684 P.2d 187, 204 (Colo. 1984) (observing that post-injury conduct is relevant for purposes of determining punitive damages); *Hoppe v. G.D. Searle & Co.*, 779 F.Supp. 1413, 1424--1425 (S.D.N.Y. 1991) (admitting evidence of post-injury conduct because it was relevant to pre-injury evidence supporting an award of punitive damages); *Hill v. USA Truck, Inc.*, No. 8:06-CV-1010-GRA, 2007 WL 1574545, at *15 (D.S.C. May 30, 2007); *Hallman v. Cushman*, 196 S.C. 402, 13 S.E.2d 498, 501 (1941); *Eaves v. Penn.*, 587 F.2d 453, 464 (10th Cir.1978) (evidence of defendant’s subsequent conduct admissible under Rule 404(b))

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

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

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

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

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

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

1 Here, similar to the plaintiff in *Benjamin*, Venetian does not “properly oppose” Plaintiff’s
2 motion because Venetian does not address the issue of the 30(b)(6) deposition. (*See generally*,
3 Defendant’s Opp.) Plaintiff’s motion emphasizes that she should be allowed to discuss the measures
4 Venetian took to locate and produce incident reports because (1) Venetian has shown time and time
5 again in 4 cases – *Sekera v. Venetian*, *Cohen v. Venetian*, *Smith v. Venetian* and *Boucher v. Venetian*
6 – that cannot be trusted to fully and fairly disclose incident reports, and because (2) the rules
7 allowing discovery sanctions would be rendered meaningless if the parties were not permitted to
8 discover information related to violations to ensure compliance with the rules. Venetian’s opposition
9 fails to even mention “30(b)(6)” let alone address these arguments. This failure is clearly not an
10 oversight, as Venetian references the body of Plaintiff’s argument regarding Venetian’s 30(b)(6)
11 witness and questions the “relevance” of Plaintiff’s exhibit referenced in that same argument. (*See*
12 Defendant’s Opp. At 13:22-23.) (“Exhibit 15 to Plaintiff’s motion, identified as Plaintiff’s Notice
13 a/Motion and Motion for Terminating Sanctions, et al filed by Peter Goldstein, Esq., on February 13,
14 2019 in the Smith matter, was denied by the District Court in a hearing held on May 7, 2019.
15 Therefore, the relevance of that motion referenced on page 17 of the motion to compel is unclear.”)
16 Venetian’s, like the plaintiff in *Benjamin*, therefore did not argue why the Plaintiff cannot question
17 on measures taken to locate and produce incident reports. Thus, this Court should rule the same as
18 the *Benjamin* Court and approve Plaintiff’s 30(b)(6) parameters because Defendant’s failure to
19 address the argument is an admission the motion is meritorious.

20 **II. LIMITED OPPOSITION / RESPONSE TO DEFENDANTS’ MOTION TO COMPEL**
21 **DOCUMENTS PROVIDED TO TOM JENNINGS’**

22 On July 22, 2019 Defendant served its 16th supplement to its list of witnesses and production
23 of documents for early case conference. (Defendant’s 16th Supp., attached as Exhibit “2.”) This
24 supplement contained the communication from Plaintiff’s counsel to Plaintiff’s expert Tom Jennings
25 (“Mr. Jennings”) regarding the 196 incidents which occurred in the Venetian. The supplement also
26 contained a copy of the table summarizing the reports that Plaintiff provided to Mr. Jennings. These
27
28

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

III. OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER

A. Factual Background

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

REQUEST NO. 23:

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

REQUEST NO. 24:

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

REQUEST NO. 25:

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

REQUEST NO. 26:

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

REQUEST NO. 27:

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

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

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

REQUEST NO. 35:

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

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

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

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

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

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

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

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

NRCP 26(c).

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