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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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

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

v.

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

EMERGENCY PETITION UNDER NRAP 27(e)

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

ACTION IS NEEDED IMMEDIATELY BEFORE PETITIONER IS REQUIRED
TO DISCLOSE THE CONFIDENTIAL INFORMATION

ALTERNATIVE EMERGENCY MOTION TO STAY UNDER NRAP RULES 8
AND 27(e) IS BEING FILED CONCURRENTLY WITH THIS PETITION

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19-40385

Docket 79689 Document 2019-40111

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

VENETIAN CASINO RESORT, LLC, Nevada limited liability company licensed to do business in the State of Nevada, active since 1997, doing business as the Venetian Resort Hotel Casino.

LAS VEGAS SANDS, LLC, Nevada limited liability company licensed to do business in the State of Nevada since 2005.

VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC is represented in the District Court and in this Court by Michael A. Royal, Esq., and Gregory A. Miles, Esq., of the law firm of Royal & Miles LLP.

DATED this 26 day of September, 2019.

ROYAL & MILES LLP

By 

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1522 W. Warm Springs Rd.
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ROUTING STATEMENT

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

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

STATE OF NEVADA }
COUNTY OF CLARK } ss:

1. I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e).

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

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

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

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

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

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

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

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

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

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

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

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

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

11. I further certify that this brief complies with all Nevada Rules of Appellate Procedure, including the requirements of Rule 28(e) every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand I may be

subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

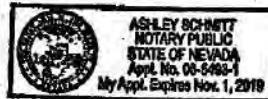
12. I have discussed the PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS with my Client, and have obtained authorization to file this Writ Petition.

Further affiant sayeth naught.



MICHAEL A. ROYAL, ESQ.

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




NOTARY PUBLIC in and for said
County and State

PETITION

COMES NOW, Petitioners, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC ("Petitioners"), by and through their counsel of record, ROYAL & MILES LLP, and hereby petition this Court for a Writ of Prohibition and/or Mandamus under NRAP 21(a) ordering the Eighth Judicial District Court to vacate the July 31, 2019 order compelling Petitioners to produce unredacted reports of other incidents occurring on the property of the Venetian Resort Hotel Casino ("Venetian"). Petitioners further request that this relief be granted on an emergency basis pursuant to NRAP 27(e) and NRAP 21(a)(6). This matter involves the compelled disclosure of non-litigants private personal information and if the emergency relief is not granted irreparable harm will result.

Alternatively, Petitioners are filing concurrently with this petition a motion for an emergency stay of the order pursuant to NRAP 8(a) and NRAP 27(e). This motion requests a stay of the July 31, 2019 order. If this Court grants that motion then this writ petition may be considered on a non-emergency basis.

Pursuant to NRAP Rule 17(b)(13) this writ petition challenges a discovery order and should presumptively be assigned to the Court of Appeals.

This Petition and Motion are based on the following Memorandum of Points and Authorities, the Appendix of record and such oral arguments as presented to this Honorable Court.

DATED this 26 day of September, 2019.

ROYAL & MILES LLP

By 

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Gregory A. Miles, Esq. (SBN 4336)

1522 W. Warm Springs Rd.

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Counsel for Petitioners

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

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

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

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

Discovery Commissioner's Report and Recommendation on April 4, 2019, which was heard by the Honorable Kathleen Delaney in Department XXV of the Eighth Judicial District Court on May 14, 2019. Judge Delaney, having been advised of the circumstances surrounding Sekera's sharing of information, nevertheless reversed the Discovery Commissioner and ordered Petitioners to produce prior incident reports in unredacted form without any restrictions related to dissemination of private guest information.

The order reversing the Discovery Commissioner's Report and Recommendation of April 4, 2019 was filed on July 31, 2019. Pursuant to the order, Sekera is to receive unredacted incident reports involving other Venetian guests, including those guests' names, addresses, telephone numbers, dates of birth, social security numbers, and driver's license/identification card numbers. Under the current order Sekera has no restrictions whatsoever on how the private information of Venetian guests will be used and shared. Petitioners filed a motion for reconsideration on an order shortening time with a request to stay the order allowing sufficient time to file a writ of mandamus and/or writ of prohibition with the Nevada Supreme Court, which was not heard until September 17, 2019. Judge Delaney denied Petitioners' motion for reconsideration and their request for a stay.

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

date, time, place and circumstances, identifying Venetian employees involved, is already available to Sekera via the initial production. While Judge Delaney expressed some trepidation regarding the potential misuse of the subject private information, she did not provide any protection, concluding that she could not find a legal basis upon which to protect the private information at issue. Yet, when this issue was again before Judge Delaney on September 17, 2019, she expressed a belief that the unredacted incident reports were "for attorney eyes only." The District Judge was mistaken; yet, she still would not revisit the order and provide the requested protection. Petitioners assert that once this information is produced in unredacted form, it will be immediately shared with others outside the litigation and the harm will be irreparable. Accordingly, circumstances necessitate the filing of this writ in order to clarify important issues of law and right the injustice to Petitioners as well as any other property owners or innkeepers concerned with the protection of patron privacy.

II. **RELIEF SOUGHT**

Pursuant to Nev. Const. Art. 6, § 4, NRS § 34.320 or NRS § 34.160 and NRAP 21, Petitioners request that this Court issue a Writ of Mandamus and/or Writ of Prohibition instructing Respondent, the Eighth Judicial District Court of the State of Nevada and the Honorable Judge Delaney to:

1. Vacate the July 31, 2019 Order directing Petitioners to produce unredacted other incident reports to Sekera without any protections requested under NRCP 26(c); and

2. Provide clarification on the issue of privacy rights of guests and non-employees identified in other incident reports obtain and retained by Petitioners and other like property owners and innkeepers.

Petitioner is requesting this relief on an emergency basis as irreparable harm will be caused to individuals who are not involved in this litigation if there private personal information is released before this Court rules on this writ petition.

Concurrently with this writ petition Petitioner is filing an emergency motion to stay the July 31, 2019 Order. If this Court grants that motion, then this writ may be considered on a non-emergency basis.

III. ISSUES PRESENTED

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

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

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

IV. STANDARD OF REVIEW

A. Standards for Writ Review and Relief.

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

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

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

Petitioners contend that if they are forced to reveal private information of guests involved in other Venetian incidents without requested protections, "the assertedly [private and confidential] information would irretrievably lose its [private and confidential] quality and petitioners would have no effective remedy, even later by appeal." *Wardleigh v. Second Judicial Dist. Court*, 111 Nev. 345, 350, 891 P.2d 1180, 1183-84 (1995). Guests involved in other incidents, who are adversely impacted by the present district court order, are not parties to the district court proceedings, and are themselves are not aggrieved parties within the meaning of NRAP 3A(a) rendering this the only forum for which relief can be granted. *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 358 P.3d 228, 231 (Nev. 2015). In addition, the Supreme Court of Nevada is the proper forum to assess whether Petitioners are entitled to the relief being sought. Therefore, Petitioners

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

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

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

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

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

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

This case is set to commence trial on August 3, 2020. This Petition for Writ contains an important issue of law that will most certainly reoccur absent immediate direction from the Supreme Court. While Judge Delaney's rulings in this case are not controlling authority in other cases, it is common practice within the Eighth Judicial District Court for an attorney to attach rulings from other judges to motions as persuasive or suggestive of how a particular judge should handle a similar issue.

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

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

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

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

V. RELEVANT FACTS

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

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

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

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

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

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

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

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

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

VI. RELEVANT PROCEDURAL HISTORY

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

⁶ *Id.* at VEN 035, ln 4-7.

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

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

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

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

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

¹⁰ Appendix, Vol. 1, Tab 10, VEN 084-085, *Declaration of Peter Goldstein, Esq.* (date February 13, 2019) at VEN 084, ln 21-25, indicating that the subject prior incident reports were produced to Mr. Goldstein by Sekera counsel on February 7, 2019.

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

¹² Appendix, Vol. 1, Tab 12, VEN 140-85, *Sekera's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Sekera's Motion for Terminating Sanctions, in the matter of Smith v. Venetian, case no. A-17-753362-C* (filed March 12, 2019), at VEN 141, ln 15-26, VEN 147, ln 12-13, VEN 173.

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

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

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

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

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

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

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

* * *

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

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

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

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

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

¹⁹ *Id.* at VEN 269, ln 11-14.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁶ *Id.* at VEN 475, ln 4-9.

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

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

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

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

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

²⁹ *Id.* at 475, ln 18-23.

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

³¹ *Id.* at VEN 477, ln 15-20.

³² See Appendix, Vol. 3, Tab 21, VEN 484-85, *Court Minutes, Discovery Commissioner* (September 18, 2019) (indicating production of unredacted incident reports for the five years preceding and the three years after the subject incident)

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

VII. LEGAL ARGUMENT

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

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

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

In *Eldorado Club, Inc., supra*, 78 Nev. at 511, 377 P.2d at 176, the Nevada Supreme Court held that evidence of prior incident reports in cases involving the temporary presence of debris or foreign substances on a walking surface is not

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

³⁴ See Appendix, Vol. 1, Tab 5, at VEN 021-025. See also Appendix, Vol. 1, Tabs 1-4, VEN 001-014, Tab 6, VEN 033-037, *generally*.

admissible for the purpose of establishing notice. Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is **relevant** to any party's claims or defenses and **proportional** to the needs of the case, **considering the importance of the issues at stake** in the action, the **amount in controversy**, the **parties' relative access to relevant information**, the **parties' resources**, the **importance of the discovery** in resolving the issues, and whether **the burden or expense of the proposed discovery outweighs its likely benefit**. Information within this scope of discovery need not be admissible in evidence to be discoverable. (Emphasis added.)

Accordingly, Sekera has the burden of establishing that the production of unredacted prior incident reports is both **relevant** to issues surrounding the November 4, 2016 incident and that the production of this discovery is **proportional** to the needs of the case in light of five factors: 1) importance of issues at stake; 2) amount in controversy; 3) parties' relative access to relevant information; 4) parties' resources; the importance of the discovery in resolving contested issues; and 5) the burden of proposed discovery vs. the likely benefit.

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

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

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

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

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

³⁵ See Appendix, Vol. 2, Tab 15, at VEN 214, ln 12-25; VEN 215, ln 1-14; VEN 222, ln 14-25; VEN 223, ln 1-11; VEN 234, ln 3-25; VEN 235, ln 1-18; Appendix, Vol. 3, Tab 20, at VEN 469, ln 16-25; VEN 470, ln 1-12.

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

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

In *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694, the plaintiff, who slipped and fell on a clear liquid within a Las Vegas Wal Mart store on May 18, 2013, filed a motion to compel the defendant to produce evidence of prior claims and incidents for the three (3) years preceding the subject incident. The court evaluated the claim under the federal equivalent of NRCP 26(b)(1) and Nevada law as set forth in *Eldorado Club, Inc., supra* at 511, 377 P.2d at 176. In *Izzo*, the defense had previously produced a list of prior reported slip and falls. The plaintiff sought the incident reports including personal information of the other Wal Mart customers. The federal district court found that

the burden on defendant and the privacy interests of the non litigants outweighed the tangential relevance of the information to the issues in the lawsuit. (*Id.* at 4, 2016 U.S. Dist LEXIS at *11.) Similarly, in the instant matter, Sekera has shown no compelling reason under NRCP 26(b)(1) for the production of non litigant individual's private information. Accordingly, the District Court should have granted Petitioner's motion for a protective order.

In *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502, the federal district court applying the federal equivalent of NRCP 26(b)(1) found that third parties have a protected privacy interest in their identities, phone numbers and addresses. In *Rowland*, Plaintiff sued the defendant for injuries after slipping and falling on a recently polished tile floor. The plaintiff sought to compel the defendant to identify by name (with phone numbers and addresses) any person who had previously complained about the subject flooring. The court not only found the request to be overly broad, but also determined that it violated the privacy rights of the persons involved. It explained as follows:

Further, the Court finds that requiring disclosure of the addresses and telephone numbers of prior hotel guests would violate the privacy rights of third parties. "Federal courts ordinarily recognize a constitutionally-based right of privacy that can be raised in response to discovery requests." *Zuniga v. Western Apartments*, 2014 U.S. Dist. LEXIS 83135, at *8 (C.D. Cal. Mar. 25, 2014) (citing *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 191 (C.D. Cal. 2006)). However, this right is not absolute; rather, it is subject to a balancing test.

Stallworth v. Brollini, 288 F.R.D. 439, 444 (N.D. Cal. 2012). "When the constitutional right of privacy is involved, 'the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced.'" *Artis v. Deere & Co.*, 276 F.R.D. 348, 352 (N.D. Cal. 2011) (quoting *Wiegele v. Fedex Ground Package Sys.*, 2007 U.S. Dist. LEXIS 9444, at *2 (S.D. Cal. Feb. 8, 2007)). "Compelled discovery within the realm of the right of privacy 'cannot be justified solely on the ground that it may lead to relevant information.'" *Id.* Here, Plaintiff has not addressed these privacy concerns, much less demonstrated that her need for the information outweighs the third party privacy interests. Therefore, the Court will not require Defendant to produce addresses or telephone numbers in response to Interrogatory No. 5.

(*Id.* at *7. Emphasis added.)

Based upon the foregoing it is clear that the non litigant individuals have a protected privacy interest and Sekera has done nothing to demonstrate a "compelling need" to violate that protected interest. Given the Nevada Supreme Court's finding that prior incident information is irrelevant to establish notice in the facts at issue here before the Court (*i.e. Eldorado Club, Inc., supra*), Plaintiff necessarily cannot demonstrate a need outweighing the third party guests' privacy interest. Accordingly, the District Court's July 31, 2019 order denying Petitioner's request for a protective order is clearly in error. (*See also, Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620-21, 2007 U.S. Dist. LEXIS 80017 at *16-17 ("the rights of third parties can be adequately protected by permitting defendant to redact the guest's complaints and staff incident reports to protect the guest's name and

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

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

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

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

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

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

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

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

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

Petitioners have a published policy to protect the privacy of their guests. The **Venetian's Data Privacy Policy** ("Privacy Policy") states in relevant part, as follows:

This is the Data Privacy Policy ("Privacy Policy") of Venetian Casino Resort, LLC and its parent, affiliate and subsidiary entities (collectively, the "Company") located in the United States. ... This Privacy Policy applies to activities the Company engages in on its websites **and activities that are offline or unrelated to our websites**, as applicable. We are providing this notice to explain our information practices and the choices you can make about the way your information is collected and used.

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

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

This Privacy Policy applies to all personal data in any format or medium, relating to all guests, prospective guests, patrons,

employees, suppliers and others who do business with the Company.³⁷

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

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

Venetian's Privacy Policy includes offering Venetian's guests an opportunity to choose what personal information, if any, they wish to share and/or with whom Venetian may share information. Venetian provides guests with the ability to control what information Venetian maintains and to whom it is disseminated. For example, Venetian's Privacy Policy provides the following:

³⁷ Appendix, Vol. 3, Tab 22, VEN 486-95, *Privacy Policy, The Venetian Resort Las Vegas* (July 7, 2019), <https://www.venetian.com/policy.html> at VEN 486-87 (emphasis added).

³⁸ *Id.* at VEN 488.

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

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

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

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

³⁹ *Id.* at VEN 492.

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

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

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

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

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

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

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

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

VIII. CONCLUSION

This petition seeks relief from this Court surrounding an important issue of law; *to wit*: whether property owners and innkeepers can be compelled to produce the private information of individuals who are not involved in a slip and fall tort lawsuit when the party seeking this confidential information has failed to make the showing required by NRCP 26(b)(1). This matter requires resolution on an emergency basis because once the confidential information is provided to plaintiff's attorney it will be freely distributed with impunity to third parties that are not involved in the instant litigation. This will effectively result in the Court sanctioning a widespread violation of individual's confidential information. If the requested relief is not granted on an emergency basis, or alternatively a stay ordered, then innocent third parties will have their privacy rights irreparably damaged. Petitioners herein respectfully move for the following:

1. That this Court issue an **immediate order vacating the District Court's July 31, 2019 order** directing Venetian to provide Sekera with unredacted

⁴⁴ See Appendix, Vol. 3, VEN 484-85.

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

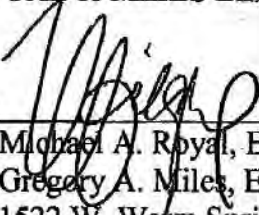
2. That this Court clarify the subject issue of law regarding the protection of private information produced in the course of discovery pursuant to NRCP 26(b)(1) and issue an order directing the District Court to protect the private information of guests contained in the incident reports at issue.

In the interests of judicial economy and the administration of justice, reversal is required in order to avoid severe prejudice to Petitioner, innocent individuals, and any future defendants in similar cases as this.

DATED this 26 day of September, 2019.

ROYAL & MILES LLP

By


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CERTIFICATE OF COMPLIANCE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

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

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

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

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

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

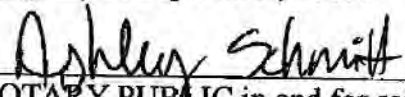
[X] Proportionately spaced, has a typeface of 14 points or more, and contains 7,403 words in compliance with NRAP 32(a)(1)(A)(ii) (having a word count of less than 14,000 words).

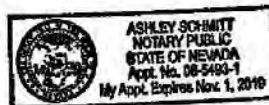
4. Finally, I hereby certify that I have read this Writ, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),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

Further affiant sayeth naught.


MICHAEL A. ROYAL, ESQ.

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


NOTARY PUBLIC in and for said
County and State



CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 26 day of September, 2019, I served true and correct copy of the foregoing PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e), by delivering the same via U.S. Mail addressed to the following:

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

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


An employee of Royal & Miles LLP

Docket Number - 79689-COA



Document Year - 2019



Document Number - 40392



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79689-WA

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SEP 27 2019

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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

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

v.

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

EMERGENCY MOTION UNDER NRAP 27(e)

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

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

Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
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19-40392

Docket 79689 Document 2019-40190

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

STATE OF NEVADA }
COUNTY OF CLARK } ss:

1. I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e).

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

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

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

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

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

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

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

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

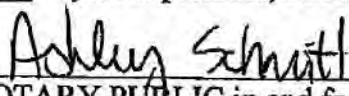
7. I certify that I have read this motion and, to the best of my knowledge, information and belief, this motion complies with the form requirements of Rule 21(d) and is not frivolous or interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost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

8. I further certify that this brief complies with all Nevada Rules of Appellate Procedure, including the requirements of Rule 28(e) every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Further affiant sayeth naught.


MICHAEL A. ROYAL, ESQ.

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


NOTARY PUBLIC in and for said
County and State

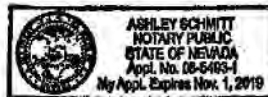


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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT AS TO RELIEF SOUGHT IN DISTRICT COURT

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

Petitioners moved for a stay of execution in district court, which was denied. Due to the exigent circumstances, and the potential violation of privacy rights for hundreds of individuals wholly unconnected to the subject litigation, this Emergency Motion is being filed with this Court. It has been brought in good faith. In addition, Petitioners have no other available avenue for relief. This is a matter of great importance to Petitioners not only as to this litigation, but as to all future litigation, as there are presently no restrictions placed on Sekera regarding what she is allowed to do with the personal information of guests ordered produced. Accordingly, once Petitioners comply with the order, there is no reasonable means of repairing the damage.

II. BASIS FOR RELIEF

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

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

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

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

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

III. STATEMENT OF FACTS

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

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

Following a hearing on March 13, 2019, the Discovery Commissioner issued a Report and Recommendation granting Petitioners' motion for protective order. (See Appendix, Vol. 1, Tab 14, VEN 201-06, *Discovery Commissioner's Report and Recommendation* (filed April 4, 2019).) Sekera filed an objection to the Discovery Commissioner's Report and Recommendation on April 4, 2019, which was heard by the Honorable Kathleen Delaney in Department XXV of the Eighth Judicial District Court on May 14, 2019. Judge Delaney reversed the Discovery Commissioner and ordered Petitioners to produce prior incident reports in unredacted form without any restrictions related to dissemination of private guest

information. (See Appendix, Vol. 2, Tab 15, VEN 207-66, *Transcript of Hearing on Objection to Discovery Commissioner's Report* (May 14, 2019); Appendix, Vol. 2, Tab 16, VEN 267-70, *Order* (filed July 31, 2019).)

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

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

IV. **LEGAL ARGUMENT**

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

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

In *Eldorado Club, Inc.*, *supra*, 78 Nev. at 511, 377 P.2d at 176, the Nevada Supreme Court held that evidence of prior incident reports in cases involving the temporary presence of debris or foreign substances on a walking surface is not admissible for the purpose of establishing notice. Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:

... Parties may obtain discovery regarding any nonprivileged matter that is **relevant** to any party's claims or defenses and **proportional** to the needs of the case, **considering the importance of the issues at stake** in the action, **the amount in controversy**, **the parties' relative access to relevant information**, **the parties' resources**, the

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

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

importance of the discovery in resolving the issues, and whether the **burden or expense of the proposed discovery outweighs its likely benefit. . . .** (Emphasis added.)

Accordingly, Sekera has the burden of establishing that the production of unredacted prior incident reports is both **relevant** to issues surrounding the November 4, 2016 incident and that the production of this discovery is **proportional** to the needs of the case in light of the above stated five factors. Petitioners have produced evidence of other slip/fall incidents from a foreign substance occurring at Venetian occurring prior to Sekera's incident of November 4, 2016. The information for each such report identifies the date of incident, area of the incident, and the facts surrounding the incident. Sekera argued this information was insufficient and she needed the personal information of the guests involved in each incident. Her only purported need for obtaining this private information was to contact these people in the event Petitioners will present arguments at trial related to comparative fault.⁴ Sekera also argued she has an unqualified right to share the guests' private information with anyone she desires.

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

⁴ See Appendix, Vol. 2, Tab 15 at VEN 214, ln 12-25; VEN 215, ln 1-14; VEN 222, ln 14-25; VEN 223, ln 1-11; VEN 234, ln 3-25; VEN 235, ln 1-18; Appendix, Vol. 3, Tab 20, VEN at VEN 469, ln 16-25; VEN 470, ln 1-12.

information. Sekera is required to show that her need for this information outweighs the guests' need to protect their private information. Sekera failed to make this showing in the District Court.

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

Pursuant to the July 31, 2019 Order, the District Court has herein provided Sekera with unfettered access to personal and sensitive information from non-parties to this action, which is not relevant to any claims or defenses in this matter. She has already been provided with redacted prior incident reports to establish issues associated with notice.

The Nevada Supreme Court has recognized that individuals have privacy interests that are protected from disclosure in discovery under NRCP 26(b)(1). *Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977). While Petitioners have not found Nevada case law applying the rule to individuals involved in prior incidents, the United States District Court for the District of Nevada has dealt with this issue and found in favor of protecting the privacy rights of third parties by redacting personal information.

In *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694, the plaintiff, who slipped and fell on a clear liquid within a Las Vegas Wal- Mart store, filed a motion to compel the defendant to produce evidence of

prior claims and incidents for the three (3) years preceding the subject incident.

The court evaluated the claim under the federal equivalent of NRCP 26(b)(1) and Nevada law as set forth in *Eldorado Club, Inc., supra* at 511, 377 P.2d at 176. In *Izzo*, the defense had previously produced a list of prior reported slip and falls.

The plaintiff sought the incident reports including personal information of the other Wal-Mart customers. The federal district court found that the burden on defendant and the privacy interests of the non-litigants outweighed the tangential relevance of the information to the issues in the lawsuit. (*Id.* at 4, 2016 U.S. Dist LEXIS at *11.) Similarly, in the instant matter, Sekera has shown no compelling reason under NRCP 26(b)(1) for the production of non-litigant individual's private information. Accordingly, the District Court should have granted Petitioner's motion for a protective order.

In *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502, the federal district court applying the federal equivalent of NRCP 26(b)(1) found that third parties have a protected privacy interest in their identities, phone numbers and addresses. In *Rowland*, Plaintiff sued the defendant for injuries after slipping and falling on a recently polished tile floor. The plaintiff sought to compel the defendant to identify by name (with phone numbers and addresses) any person who had previously complained about the subject flooring.

The court not only found the request to be overly broad, but also determined that it violated the privacy rights of the persons involved. It explained as follows:

Further, the Court finds that requiring disclosure of the addresses and telephone numbers of prior hotel guests would violate the privacy rights of third parties. ... "When the constitutional right of privacy is involved, 'the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced.'" *Artis v. Deere & Co.*, 276 F.R.D. 348, 352 (N.D. Cal. 2011) (quoting *Wiegele v. Fedex Ground Package Sys.*, 2007 U.S. Dist. LEXIS 9444, at *2 (S.D. Cal. Feb. 8, 2007)).

(*Id.* at *7.)

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

C. An Emergency Stay is Necessary to Prevent Irreparable Harm

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

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

V. CONCLUSION

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

DATED this 24 day of September, 2019.

ROYAL & MILES LLP

By 

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

CERTIFICATE OF COMPLIANCE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

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

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

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

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

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

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

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

Further affiant sayeth naught.



MICHAEL A. ROYAL, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 26 day of September, 2019, I served true and correct copy of the foregoing EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT, by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
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Attorneys for Real Party in Interest

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


An employee of Royal & Miles LLP

EXHIBIT “K”

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

Electronically Filed
Oct 28 2019 11:36 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

v.

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

PETITIONERS' REPLY BRIEF

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MEMORANDUM OF POINTS AND AUTHORITIES

I. General Reply to Sekera's Answering Brief

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Response to Sekera’s Given Procedural History

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

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

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

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

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

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

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

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

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

MR. GALLIHER: Yeah. I know.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Finally, defendant objects that responsive documents invade third parties' privacy rights. In California, the right to privacy is set forth in Article I, Section I of the California Constitution, as defendant cites (despite claiming Nevada law applies). *See* Defendant's Supp.

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

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

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

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

Further, the Court finds that requiring disclosure of the addresses and telephone numbers of prior hotel

guests would violate the privacy rights of third parties. “Federal courts ordinarily recognize a constitutionally-based right of privacy that can be raised in response to discovery requests.” *Zuniga v. Western Apartments*, 2014 U.S. Dist. LEXIS 83135, at *8 (C.D. Cal. Mar. 25, 2014) (citing *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 191 (C.D. Cal. 2006)). However, this right is not absolute; rather, it is subject to a balancing test. *Stallworth v. Brollini*, 288 F.R.D. 439, 444 (N.D. Cal. 2012). **“When the constitutional right of privacy is involved, ‘the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced.’”** *Artis v. Deere & Co.*, 276 F.R.D. 348, 352 (N.D. Cal. 2011) (quoting *Wiegele v. Fedex Ground Package Sys.*, 2007 U.S. Dist. LEXIS 9444, at *2 (S.D. Cal. Feb. 8, 2007)). **“Compelled discovery within the realm of the right of privacy ‘cannot be justified solely on the ground that it may lead to relevant information.’”** *Id.* Here, Plaintiff has not addressed these privacy concerns, much less demonstrated that her need for the information outweighs the third party privacy interests. Therefore, the Court will not require Defendant to produce addresses or telephone numbers in response to Interrogatory No. 5. Defendant is directed to file a supplemental response to Interrogatory No. 5, as limited by the Court. (*See id.* at *7-8. Emphasis added.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

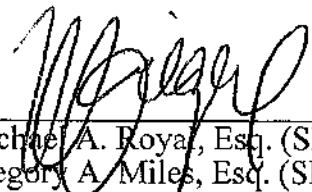
VI. CONCLUSION

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

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

DATED this 28 day of October, 2019.

ROYAL & MILES LLP

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CERTIFICATE OF COMPLIANCE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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

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

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

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

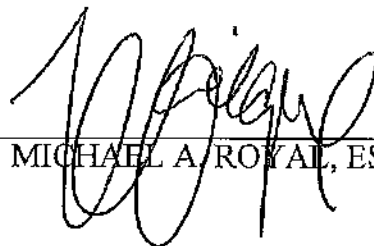
3. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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

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

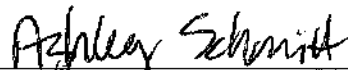
improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript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

Further affiant sayeth naught.

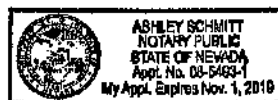


MICHAEL A. ROYAL, ESQ.

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



NOTARY PUBLIC in and for said
County and State



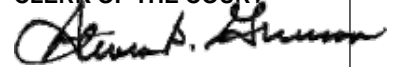
CERTIFICATE OF SERVICE

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**PLAINTIFF'S OBJECTION TO
DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS
DATED DECEMBER 2, 2019**

Hearing Requested

1 Pursuant to NRCP 16.3, Plaintiff JOYCE SEKERA submits her Objection to the Discovery
2 Commissioner's Report and Recommendations from December 2, 2019.

3 DATED this 16th day of December 2019.

4 CLAGGETT & SYKES LAW FIRM

5 /s/ Geordan G. Logan

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26 *Attorneys for Plaintiffs*

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **I.**

INTRODUCTION

23 This is a personal injury case arising out of a slip and fall in the Venetian Casino Resort, on
24 November 4, 2016 around 12:30 p.m. Plaintiff Joyce Sekera was walking through Venetian. As Joyce
25 passed the Grand Lux Café Restrooms, she slipped and fell on water on the black marble floors. On
26 the way down Plaintiff struck her skull on the pillar and her left elbow on the ground. The first
27 Venetian employee to come to Joyce's aid, Gary Shulman, confirmed there was water on the floor.¹

28 ¹ Dep. of Gary Shulman, pp. 8:06–10; 8:23–9:11; 10:8–17. Attached hereto as Ex. "1."

1 Mr. Shulman also testified that he met with Defense Counsel and told him there was water on the
2 floor, to which Defense Counsel responded “No, you didn’t, wink, wink” “no, no, there was nothing
3 wet there” and “No, you are mistaken. It wasn’t wet.”²

4 Over the last two years Plaintiff underwent low back injections, medial branch blocks and two
5 rounds of radio frequency ablations.³ In June, after Plaintiff’s most recent set of radio frequency
6 ablations failed, Dr. Smith opined “I do not see how this woman will be able to avoid surgical
7 treatment.” “Rhizotomies in my opinion will give her some temporary relief, but certainty not long-
8 term.”⁴ Plaintiff will thus be undergoing L5–S1 surgery in the near future.

9 During discovery Plaintiff requested Venetian provide similar incident reports from November
10 4, 2013 to present, a total of five years of reports. In response to this request, Venetian produced 64
11 redacted incident reports. Plaintiff requested Venetian provide the unredacted reports so Plaintiff could
12 identify witnesses to counter Venetian’s comparative negligence claim that Plaintiff should have seen
13 liquid on the floor before she fell. Venetian refused to produce the unredacted reports and filed a
14 Motion for Protective Order. On May 14, 2019 the Court ordered Defendant to provide unredacted
15 incident reports and stated that the *“Court does not see any legal basis upon which [the redacted
16 information] should have been precluded.”*⁵

17 On May 28, 2019 the Court granted Plaintiff’s motion to amend her complaint to add a claim
18 for punitive damages agreeing with Plaintiff’s argument that punitive damages were appropriate
19 because Venetian knew its marble floors were unreasonably slippery and posed a high risk to guests
20 but nonetheless refused to increase their slip resistance. In granting Plaintiff’s motion, the court noted,
21 *“it would be a disservice to the case to not allow discovery that could support punitive damages.”*⁶

22 On August 5, 2019, Plaintiff filed a Motion to Compel Testimony and Documents, and on the
23 same day, Defendants filed a Motion for Protective Order as to Plaintiff’s Request for Production of
24

25 ² *Id.* at 56:16–17; 23:21–22; 61:5–6.

26 ³ Pain Institute of Nevada Record, 2, July 10, 2019. Attached hereto as **Ex. “2.”**

27 ⁴ Western Regional medical record, July 8, 2019. Attached hereto as **Ex. “3.”**

28 ⁵ Register of Actions, May 07, 2019 (emphasis added). Attached hereto as **Ex. “4.”**

⁶ Register of Actions, May 28, 2019 (emphasis added). Attached hereto as **Ex. “5.”**

1 Incident Reports from May 1999 to Present. The Discovery Commissioner heard these matters on
2 September 18, 2019. In the December 2, 2019 Discovery Commissioners Report and
3 Recommendations, the Commissioner recommended that Venetian's production of unredacted
4 incident reports, information related to the testing of its floors, removal of carpeting, and the reporting
5 of claims and injuries be limited to a period of five years prior to the subject incident to the present.
6 Additionally, the Commissioner recommended restricting Venetian's production of testing data and
7 carpet removal to the Grand Lux Rotunda, and Venetian's production of prior or subsequent incident
8 reports to slip and falls on marble flooring on the casino floor.⁷

9 Plaintiff submits this objection to the report and recommendation, because Plaintiff believes
10 the Discovery Commissioner erroneously restricted Venetian's obligation to produce the discovery
11 necessary to support punitive damages as ordered by this Court.

12 II.

13 LEGAL ARGUMENT

14 **A. DEFENDANTS' PRODUCTIONS MUST NOT BE LIMITED TO FIVE YEARS PRIOR** 15 **TO SUBJECT INCIDENT AS ANY PUNITIVE DAMAGES AWARD MUST CONSIDER** 16 **THE REPREHENSIBILITY OF DEFENDANTS' REPEATED MISCONDUCT**

17 Pursuant to NRS 42.005, "where it is proven by clear and convincing evidence that the
18 defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition
19 to the compensatory damages, may recover damages for the sake of example and by way of punishing
20 the defendant."⁸

21 "Oppression means despicable conduct that subjects a person to cruel and unjust
22 hardship with conscious disregard of the rights of the person. . . . [E]xpress malice is
23 conduct which is intended to injure a person; implied malice is despicable conduct
which is engaged in with a conscious disregard of the rights . . . of others."⁹

24 Accordingly, Plaintiff must establish by clear and convincing evidence Defendants' conscious
25 disregard of the rights of others. Conscious disregard is defined by NRS 42.001 as "the knowledge of

26 ⁷ Register of Actions, September 18, 2019. Attached hereto as **Ex. "6."**

27 ⁸ Nev. Rev. Stat. Ann. § 42.005

28 ⁹ Bongiovi v. Sullivan, 122 Nev. 556, 581, 138 P.3d 433, 450–51 (2006) (internal quotes omitted).

1 the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid
2 those consequences.”¹⁰

3 To that end, evidence of Defendant’s extensive history investigating, managing, and litigating
4 slip and fall incidents on its marble flooring represents an essential element of *discovery that could*
5 *support punitive damages*. Afterall, the very essence of *Conscious Disregard* is **knowledge** of
6 probable harmful consequences and a deliberate **failure to act** to avoid those consequences. Simply
7 put, conscious disregard must not be constrained by artificial time limits because it is the very vastness
8 of the history which establishes the depth and width of Defendant’s conscious disregard.

9 Furthermore, in determining whether the amount of a punitive damages award violates the due
10 process clause, Nevada follows the federal factors.¹¹ These factors are: “(1) the degree of
11 reprehensibility of the defendant’s conduct, (2) the ratio of the punitive damage award to the actual
12 harm inflicted on the plaintiff, and (3) how the punitive damages award compares to other civil or
13 criminal penalties that could be imposed for comparable misconduct.”¹²

14 Consequently, Plaintiff must be permitted the opportunity to discover evidence relative to the
15 degree of reprehensibility of the Defendant’s conduct. “Perhaps the most important indicium of the
16 reasonableness of a punitive damages award is the degree of reprehensibility of the defendant’s
17 conduct.”¹³ “This principle reflects the accepted view that some wrongs are more blameworthy than
18 others.”¹⁴ Indeed, repeated misconduct is more reprehensible than a single action:

19 Certainly, evidence that a defendant has repeatedly engaged in prohibited conduct
20 while knowing or suspecting that it was unlawful would provide relevant support for
21 an argument that strong medicine is required to cure the defendant’s disrespect for the
22 law. Our holdings that a recidivist may be punished more severely than a first offender
23 recognize that repeated misconduct is more reprehensible than an individual instance
of malfeasance.¹⁵

24 ¹⁰ Nev. Rev. Stat. Ann. § 42.001

25 ¹¹ Bongiovi v. Sullivan, 122 Nev. at 582–83, 138 P.3d at 451–52.

26 ¹² Id., 122 Nev. at 582, 138 P.3d at 452 (internal quotes omitted).

27 ¹³ BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 575, 116 S. Ct. 1589, 1599 (1996).

28 ¹⁴ Id.

¹⁵ Id., 517 U.S. at 576–77, 116 S. Ct. at 1599–600.

1 What is more, the Nevada civil jury instruction on punitive damages instructs jurors:

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

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

- 6 1. **The reprehensibility of the conduct of the defendant;**
- 7 2. The amount of punitive damages which will have a deterrent effect on the
8 defendant in the light of defendant's financial condition.¹⁶

9 In the end, to determine the reprehensibility of the defendant's conduct, we consider, among other
10 factors, whether **"the conduct involved repeated actions or was an isolated incident."**¹⁷

11 Here, Plaintiff's discovery requests for incident reports and other documents related to the slip
12 resistance of the marble floors dating back to 2000 directly relate to the "reprehensibility" of
13 Venetian's conduct. Afterall, the more times individuals notified Venetian of the hazardous nature of
14 its marble floors, the more reprehensible is Venetian's conduct—and in the end, it is precisely this
15 degree of reprehensibility that the jury must consider in arriving at any award of punitive damages.

16 Likewise, the more times Venetian acknowledged the hazardous condition of its marble floors
17 and deliberately failed to remedy it, the more reprehensible Venetian's conduct. Because each prior
18 incident shows another time Venetian was notified of the issue, all prior incidents are relevant to the
19 jury's determination of the amount of punitive damages. Similarly, each unfavorable slip test report,
20 correspondence, or other document acknowledging the dangerous nature of the floor are necessary for
21 the jury's determination of the amount of punitive damages. For that reason, the incident reports and
22 other documents from 2000 to present go directly to the reprehensibility of Venetian's conduct, and
23 as a result these documents must not be subject to the five-year constraint imposed by the
24 Commissioner's recommendation.

25
26 ¹⁶ NEV. J.I. 10.20 BAJI 14.71.

27 ¹⁷ State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 409, 123 S. Ct. 1513, 1516 (2003); see
28 also Wyeth v. Rowatt, 126 Nev. 446, 475, 244 P.3d 765, 785 (2010) (analyzing reprehensibility by
considering the defendant's "conduct involved repeated actions").

1 **B. DEFENDANTS' PRODUCTIONS MUST NOT BE LIMITED TO THE FLOORING IN**
2 **THE GRAND LUX AREA BECAUSE ALL THE MARBLE FLOORING THROUGHOUT**
3 **THE CASINO FLOOR IS IDENTICAL**

4 On October 11, 2018, Joseph Larson, a Venetian employee, testified that he worked at the
5 Venetian as an Emergency Medical Technician security officer from 2008 until 2017.¹⁸ Mr. Larson
6 testified that in the nine years he worked at the Venetian as an EMT, he responded to 150 to 175 slip
7 and falls on marble flooring.¹⁹ He stated that the slip and fall events he responded to occurred on the
8 marble floors as opposed to the carpeted floors.²⁰ Additionally, Mr. Larson testified that the 150 to
9 175 slip and falls on marble flooring that he has responded to include marble flooring on the tenth
10 floor adjacent to the Bouchon Restaurant, marble flooring on the tenth floor where they have an
11 additional Venetian check-in area, and marble flooring in the suites.²¹ Mr. Larson went on to explain
12 the end result of the majority of these slip and fall events on the marble floors:

13 Q And in connection with this 175 or so falls that you are aware of – slip-and-
14 falls on marble floors, how many times was the customer or anyone else injured in the
15 fall?

16 A I would say about 80 percent of the time. And that's as far as, you know, what
17 they told us on initial assessment.

18 Q So at least about 80 percent of the time when you reported to the scene of the
19 fall as an EMT, injury was reported to you by whomever fell?

20 A Correct.²²

21 The bottom line is that the marble flooring at the Venetian is dangerous; the Venetian possesses
22 substantial knowledge of the dangerous flooring; the Venetian has chosen not to eliminate the danger.

23 It is worth noting that Venetian has already litigated the issue of whether areas outside the area
24 of the subject fall are relevant to this case. In fact, Venetian raised this very argument before both the

25 ¹⁸ Depo. Joseph Larson, Oct. 11, 2018, p. 5:8–20. Attached hereto as **Ex. “7.”**

26 ¹⁹ Id. at pp. 24:24–25:12.

27 ²⁰ Id. at p. 24:11–15.

28 ²¹ Id. at pp. 25:15–26:3.

²² Id. at p. 28:1–11.

1 Discovery Commissioner²³ and this Court.²⁴ In particular, Venetian argued in its response to Plaintiff's
2 objection to the Discovery Commissioner's April 2, 2019 report and recommendation: "Reports of
3 prior slip and fall incidents, which occurred on different circumstances, and on different dates, in
4 different areas of the property have no relevancy to the issue of whether Venetian had notice of any
5 condition contributing to Plaintiff's fall on November 4, 2016."²⁵ At the hearing, the Court heard the
6 argument and thereafter decided not to limit the scope of Plaintiff's request for production to the
7 immediate area of Plaintiff's fall (the Grand Lux Café rotunda).

8 Consequently, as Venetian previously raised—and failed to prevail—on this argument before
9 both the Discovery Commissioner and this Court, the proper place for Venetian's restatement of the
10 same argument is a motion for reconsideration, not a subsequent bite at the apple before either the
11 Discovery Commissioner or this Court.

12 As to the Commissioner's recommendation to limit discovery of the Venetian's replacing
13 carpeted floors with marble floors is concerned, such a recommendation does not permit Plaintiff to
14 adequately address Venetian's conscious disregard for the safety of its guests. As a result, such a
15 recommendation does not permit the jury the opportunity to consider the degree of reprehensibility
16 necessary for an award of punitive damages.

17 For instance, Former Venetian executive, Christina Tonemah testified that the Venetian ripped
18 up the carpet on the casino walkways and replaced that carpet with marble flooring around the same
19 time or a year after Palazzo opened.²⁶ Palazzo opened at the end of 2007. In describing this
20 replacement, Mr. Larson described the area as:

21 Traditionally right outside the area where the people are sitting, or usually it's
22 in the marble walkways that they recently—well, not recently, but a few years ago they
23 put in. That's where people seem to either slip or drop things all the time.²⁷

24
25 ²³ Defs.' Mot. for Protective Order, Feb. 1, 2019, pp. 7:25–8:1. Attached hereto as **Ex. "8."**

26 ²⁴ Defs.' Resp. to Pl.'s Objection DCRR, Apr. 23, 2019, p. 17:13–15. Attached hereto as **Ex. "9."**

27 ²⁵ Id.

28 ²⁶ Depo. Christina Tonemah, July 12, 2019 p. 25:9–23. Attached hereto as **Ex. "10."**

²⁷ Depo. Joseph Larson, Oct. 11, 2018, p. 48:21–49:2.

1 Thus, Venetian not only consciously disregarded the dangerous condition of its marble floors,
2 but they actually added to the hazard by significantly increasing the square footage of marble in their
3 casino. The choice surrounding this increased hazard including correspondence, work orders and other
4 documentation related to the 2008 remodel is thus relevant to punitive damages. The fact that the
5 remodel occurred eight years ago or that it occurred outside the Grand Lux Café rotunda is irrelevant
6 because these facts establish the breadth of Venetian's conscious disregard. Any document that
7 indicates Venetian knew its marble floors were hazardous and consciously disregarded that hazard is
8 admissible and relevant to prove Plaintiff's case for punitive damages.

9 Afterall, the issue is not where the remodel occurred it's whether Venetian knew its marble
10 floors were unreasonably slippery and posed a high risk to guests but nonetheless consciously
11 disregarded the danger. As such, all internal documents, memorandum or reports indicating Venetian's
12 concern regarding the increased number of incidents and/or the safety of the marble floors, regardless
13 of the location of those floors, are discoverable because they are relevant to conscious disregard.

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III.

CONCLUSION

Based upon the foregoing, Plaintiff requests that the Court grant Plaintiff's Objection to
Discovery Commissioner's Report and Recommendations.

DATED THIS 16th day of December 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of December 2019, I caused a true and correct copy of the foregoing **PLAINTIFF'S OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS** on the following person(s) by the following method(s) pursuant to NRCP 5(b):

Via E-Service
Michael A. Royal, Esq.
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CLAGGETT & SYKES LAW FIRM

/s/ Maria Alvarez
An Employee of CLAGGETT & SYKES LAW FIRM

EXHIBIT 1

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF GARY SHULMAN

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

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

Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

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14 * * * * *

15 I N D E X

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24 2018	

25 -oOo-

GARY SHULMAN 4/17/2019

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

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

Page 4

Page 6

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

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

3 (Pages 3 to 6)

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

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

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

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

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

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

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

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

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

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

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

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

1 Q Now, in your view, was there anything that
2 you were involved in before that six-month time frame
3 that you believe resulted in harassment and
4 intimidation?

5 A Yeah. There's a supervisor -- or an area
6 supervisor is the next level up. They got rid of the
7 term pit manager, so now it's table game supervisor,
8 area supervisor, and then you have like an assistant
9 casino manager.

10 The casino manager, Mike Connery(phonetic),
11 had brought us in maybe like eight months before all
12 this happened with the lady. Wanted to tell us that
13 we were going to be asked to watch more tables, we
14 were going to be asked to help each other out more.
15 If there's two people in one section, it's not that
16 busy, you see another person in another section that's
17 busier, then why don't you go over there and help.

18 So I found myself in a situation one day
19 where I was in Pit 4 with about I believe seven tables
20 to myself, which is quite a bit in that section. And
21 dealers were making mistakes; customers were upset
22 because I just couldn't service them, get them the
23 waitress, take their players card so they could get
24 rated and get their points for playing.

25 And I voiced my opinion on the way to break

1 to get me?"

2 He said, "Well, let me put it this way.
3 Every little thing you do is being watched, and
4 they're just waiting for you to make a mistake to
5 create a problem for you."

6 Q Well, now you've discussed this claim with
7 me in my office. Have you ever discussed this claim
8 with Mr. Royal? That's the gentleman next to you.

9 A Yeah.

10 No.

11 Q Okay. You've never discussed the claim with
12 him at any time?

13 A No. The last -- I only met with Mike Royal,
14 I believe it was on the 28th of November, 2018.

15 Q Well, so you did meet with Mr. Royal?

16 A I met with him, yeah, at the casino once.

17 Q At the casino?

18 A I thought you said did I meet with him after
19 these things happened.

20 Q No. I want to know if you met with him in
21 connection with the fall event which we're here about
22 today.

23 A Yes. I'm sorry, I did.

24 Q And when was this?

25 A November 28, 2018, I believe.

1 to another supervisor because I saw three other
2 supervisors in a pit, Pit 9, which is our salon, with
3 no players at all. And I made a comment to -- trying
4 to think of his name. I'll come up with his name.
5 I'll come up with it -- Ryan. Ryan Parker.

6 And I told him, "Really disappointed. You
7 know, I got dealers making mistakes. I got customers
8 complaining about service and there's three
9 supervisors in this section doing nothing, and I
10 thought we were supposed to help each other out."

11 And just, he kind of looked at me. He did
12 say, "Well, if you do find yourself needing help, call
13 us. We'll try and get some help." And then I went on
14 my way.

15 Then the next day I went into Pit 4, getting
16 the pit ready. We report at 11:45. One of the area
17 managers, his name is Abraham Ly, spelled L-y, came
18 over to me.

19 He said, "Between me and you, management is
20 really pissed off about that comment you made. Mike
21 Connery, the casino manager, takes that personally,
22 that you're suggesting that he doesn't know how to
23 staff the casino. And if I were you, I would be
24 watching your back. Management is out to get you."

25 I said to him, "What do you mean they're out

1 Q And where was this?

2 A This was in the back area of the salon in
3 one of the private rooms. The rooms aren't numbered,
4 it would probably be Number 1 of 2. I'm not sure, I
5 don't work in that section.

6 Q Can you tell me about the meeting?

7 MR. ROYAL: Hold on a second. I'm going
8 to -- you are getting into attorney-client information
9 related to our discussion with an employee at the
10 time, and I'm going to instruct him not to answer.

11 MR. GALLIHER: Well, he can instruct you,
12 but you can answer if you want to whether he instructs
13 you or not.

14 BY MR. GALLIHER:

15 Q Let me ask this question preliminarily. At
16 the time you met with Mr. Royal in November 2018, had
17 you hired him as your attorney?

18 A No.

19 Q Had you paid him a retainer or any money to
20 represent you in connection with anything?

21 A No.

22 Q Have you asked him to represent you in
23 connection with anything?

24 A No.

25 Q All right, so you met with him and you are

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

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

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

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

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

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

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

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

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

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

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

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

1 A Uh-huh.
2 Q Yes?
3 A Right now; yes.
4 Q You just need to say yes or no. That's why
5 I'm saying that.
6 A Okay.
7 Q At 12:36:57 you are approaching?
8 A Uh-huh.
9 Q Correct?
10 A Yes.
11 Q Okay. I'm going to stop right here at
12 12:37:01. Do you remember being in that particular
13 position when you first arrived at the scene, talking
14 to the -- the plaintiff is on the floor.
15 A Yes.
16 Q Do you remember there being a couple of
17 women standing around?
18 A Yes.
19 Q And do you remember seeing this woman who
20 would be to your right, she's got a cup in her hand?
21 A I don't remember her there. I mean, I was
22 pretty much looking at the lady.
23 Q Okay. The lady on the ground?
24 A Yeah.
25 Q Okay. I'm going to start this again. And

1 then there's this gentleman, a larger gentleman in a
2 suit who comes and stands behind the woman. I stopped
3 it at 12:37:05. You don't know who that is?
4 A Which one?
5 Q This gentleman in the dark suit.
6 A No, I don't know who that is.
7 Q Okay. So when you said -- okay. So at
8 12:37:12 on the video, you actually say something and
9 then you leave.
10 Can you tell us what you did at that point?
11 A I basically -- I don't really recall the
12 exact words, it's too long ago.
13 I said, "Okay. Everybody is here that you
14 need to help you. I hope you feel better," and I
15 left.
16 Q Okay. Just like that?
17 A I believe so; yeah.
18 Q Okay. Where was -- where was the liquid
19 that you saw on the floor? Because at that point, the
20 time I just stopped it, you were just standing barely
21 in front of the woman on the ground -- on the floor.
22 Where was the spill?
23 A I saw the spill. It's kind of in between
24 where the lady and this gentleman is.
25 Q Okay.

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

1 you say there was something on the floor.
2 A Okay.
3 Q Okay. Can you make that darker, please?
4 A Do you want to make a circle?
5 Q No, I just want you to darken your circle.
6 A This spot?
7 Q Yes.
8 Now, is that the only area where you saw
9 anything on the floor? Was there anywhere else?
10 A That's all I saw.
11 Q Okay. So, in other words, you didn't see
12 anything, looking at the photo, to the right of that;
13 is that correct?
14 A That's correct.
15 Q I'd like you to just initial down at the
16 bottom left. Put your initials and today's date of
17 4/17.
18 A Okay.
19 MR. ROYAL: We'll mark that as "A."
20 MR. GALLIHER: Make it a joint exhibit.
21 MR. ROYAL: Okay, I'm fine with that. Mark
22 it as "I."
23 (Plaintiff's Exhibit 1 marked for
24 identification.)
25 /////

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

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

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

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

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

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

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

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

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

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

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

1 Counsel went through this with you and he established
2 that I met with you and then within two months you
3 were terminated.
4 A No.
5 Q I mean he said I met with you in November of
6 2018.
7 A Right.
8 Q And you were terminated in January of 2019?
9 A Right.
10 Q So within two months of my meeting with you,
11 everything went south and you don't know what to think
12 of that; right?
13 A No, I really don't.
14 Q Okay. And you are sure about the timing?
15 A I mean as far as what I think about it, it
16 seems -- it leaves me feeling suspicious.
17 Q Okay.
18 A Okay -- that there is some ulterior motive
19 to terminate me.
20 Q Okay. And again, ulterior motives, you
21 think it has something to do with what you told me in
22 a meeting about what you saw when you arrived at the
23 scene?
24 A It could be.
25 Q Okay. I've never said anything like that to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 didn't see anything on the floor in front of the
2 woman. Nothing, no liquid or anything on the floor?
3 A No.
4 Q Okay. Is that correct?
5 A Correct.
6 Q Okay. All right, thank you.
7 A You are welcome.
8

9 FURTHER EXAMINATION
10 BY MR. GALLIHER:
11 Q Gary, you met with me last week and we
12 discussed this deposition in this case; is that right?
13 A Yes.
14 Q At any time during the meeting, did I advise
15 you to do anything other than tell the truth at
16 today's deposition?
17 A No.
18 MR. GALLIHER: Thank you.
19 MR. ROYAL: Thank you.
20 MR. GALLIHER: All right. We're done.
21 Thank you, Gary.
22 THE COURT REPORTER: Mr. Royal, did you want
23 a copy of both of these depositions?
24 MR. ROYAL: Yes, please.
25 (The deposition concluded at 4:37 p.m.)

REPORTER'S DECLARATION

STATE OF NEVADA)
)
COUNTY OF CLARK)

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

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

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

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

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

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

Pauline C. May, CCR 286, RPR

A	APPEARANCES	attorney 22:17	bit 8:2,9 10:4 16:4	20:23 21:16,17
A-18-772761-C 1:6	2:1	attorney-client 22:8	19:20 39:11 46:1	70:1
able 27:13 28:8 37:19	appeared 9:14 10:1	23:1	black 8:24 10:8	casinos 25:10
39:5	45:14	attorneys 54:3,4,7	14:20 37:21 39:8	catch 5:13 17:3 25:5
Abraham 20:17	approach 13:14	61:9	44:11,11	caused 59:2 63:23,25
Absolutely 27:25	approached 8:15 9:5	attractive 71:2	blue 14:20	68:4
54:24	9:24 13:3,15,23	Avenue 1:16 2:3	board 29:2	CCR 1:25 75:4,25
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EXHIBIT 2

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

OFFICE VISIT

Date of Service: July 10, 2019

Patient Name: **Joyce P Sekera**
Patient DOB:

PAIN COMPLAINTS

Neck
Low back

Mrs Sekera returns for follow up. She saw Dr. Smith yesterday and his notes say she got no relief from the RFA. She tells me this must be an error as she feels about 70% relief in her low back pain. Her memory isn't too good she tells me so can't remember exactly what he told her but that she would need surgery at some point. She has mild pain now, improved range of motion, has less AM pain, and walks longer / farther now.

Activities that aggravate the pain: Sitting and walking for prolonged periods

Activities that relieve the pain: Stretch and exercise

Description of the pain: Ache

Least pain throughout day (0-10): 3/10

Most pain throughout day (0-10): 3/10

Neck stiffness comes/goes and isn't too bothersome. She denies arm symptoms.

Activities that aggravate the pain: Turning to the left

Activities that relieve the pain: Heat

Description of the pain: Dull

Least pain throughout day (0-10): 0/10, no pain.

Most pain throughout day (0-10): 3/10

INTERIM HISTORY

Hospitalizations or ER visits: None

Changes in health: None

Problems with medications: None

Obtaining pain meds from other physicians: Patient denies.

New injuries or MVA's: No

Work Status: Unemployed

Therapy: Pt is not currently receiving physical or chiropractic therapy.

IMAGING/TESTING

MRI brain without contrast: Report dated 12/16/2016

Brain normal for age.

MRI cervical spine without contrast: Report dated 12/21/2016

Mild dextrocurvature with straightening of cervical lordosis.

C3-4: Mild bilateral facet hypertrophy.

C4-5: Mild bilateral facet hypertrophy. Mild left uncovertebral arthropathy.

C5-6: Mild disc protrusion with mild bilateral facet hypertrophy. Bilateral uncovertebral arthropathy with mild left greater than right neural foraminal stenosis.

C6-7: Mild broad disc protrusion AP diameter spinal canal 10 mm.

MRI lumbar spine without contrast: Report dated 12/21/2016

L1-2: Mild disc bulge.

L2-3: Minimal spondylosis and disc bulge.

L3-4: Mild disc bulge with mild facet and ligamentum flavum hypertrophy bilaterally. AP dimension of the spinal canal 11 mm.

L4-5: Left paracentral disc bulge with annular fissuring. Assessment and ligamentum flavum hypertrophy bilaterally. AP dimension spinal canal 11 mm.

L5-S1: Central disc bulge with facet hypertrophy bilaterally. AP dimension spinal canal 10 mm.

XRAYS cervical spine with Flex/Ext : Report dated 7/31/2018

Cervical spine straightening with mild degenerative disc disease at C5, there is 6 to a lesser degree. C4-C5. Multilevel mild spondylosis. Flexion and extension views demonstrate no ligamentous laxity or instability.

AP and lateral thoracic and lumbar spine with right and left lateral bending: Report dated 7/31/2018

Mild endplate osteophytosis of the mid thoracic and lumbar spine. Equal excursion of right and left lateral bending. No significant scoliosis measured on chronic exam.

X-ray lumbar spine with flexion and extension: Report dated 7/31/2018

Mild degenerative disc disease at L1-L2 m/L, 2-3 with multilevel mild spondylosis, most evident at L4-S1. Vascular calcifications noted with slight levoconvex curvature. No evidence of subluxation with flexion extension views.

Joyce P Sekera

CT lumbar spine: Without contrast: Report dated 7/31/2018

Mild levoscoliosis of the lumbar spine with anterior osteophyte formation at L1-L3. Moderate facet hypertrophy is seen at right L4-S1 levels and mild facet hypertrophy seen within the remainder of the lumbar spine.

Disc bulges causing mild spinal canal narrowing at L2-L3, L3-L4, and L4-L5 with bilateral lateral recess narrowing at L4-L5.

X-rays lumbar spine: Report dated 8/22/2018

Spurring seen mildly throughout lumbar spine, or focal involving L2-L3. Mild sclerosing of left SI joint.

PROCEDURES

03/09/2017

FJI B L5S1

Post injection: Complete resolution of usual pain

Sustained: No relief of usual pain.

05/08/2017

MBB B L5S1

Post Injection: Complete Resolution of usual pain.

Sustained: 2 days at 100% relief and pain eventually returned

11/30/2017

RFA B L5S1

Sustained: ROM has improve significantly, 80% resolution of usual pain. Tender ache with right side more than left.

06/20/2019

RFA B L5S1

Sustained: 70% reduction of usual pain with improved ROM again

MEDICAL HISTORY

Diabetes type 2, HbA1C 6.5

Memory impairment from mild TBI

Low back pain

ALLERGIES

No known drug allergies

MEDICATIONS

Metformin 500mg qd

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

SURGICAL HISTORY

No prior surgeries reported.

FAMILY HISTORY

Lung Cancer

SOCIAL HISTORY

Family Status: Single / not married , has children , lives with family

Occupation: Customer service / Unemployed

Habits: The patient smokes rarely. The patient does not drink. The patient denies recreational drug use.

SYSTEMS REVIEW

Constitutional Symptoms: Negative

Visual: Negative

ENT: Negative

Cardiovascular: Negative

Respiratory: Negative

Gastrointestinal: Negative

Genitourinary: Negative

Endocrine: Negative

Musculoskeletal: See HPI

Neurological: Negative

Hematologic: Negative

Integumentary: Negative

Psychological: Negative

VITAL SIGNS

Height: 66.00 Inches

Weight: 205.00 Pounds

Blood Press: 134/78 mmHg

Pulse: 82 BPM

BMI: 33.1

Pain: 03

PHYSICAL EXAMINATION**GENERAL APPEARANCE**

Appearance: Mild discomfort

Transition: Slight limited

Ambulation: Patient can ambulate without assistance.

Gait: Gait is normal

LUMBAR SPINE

Appearance: Grossly normal. No scars, redness, lesions, swelling or deformities.

Tenderness: Mild tenderness noted bilateral lower lumbar spine

Trigger Points: None noted.

Spasm: Mild spasm is noted in the paravertebral musculature.

Facet Tenderness: Facet joint tenderness is noted.

Spinous Tenderness: Spinous processes are non-tender.

ROM: Full ROM with mild pain on extension only

Straight Leg Raising: Negative at 90 deg bilaterally. Does not produce radicular pain.

PSYCHOLOGICAL EXAMINATION

Orientation: The patient is alert and oriented x3. No sign of impairment.

Mood / Affect: Mood is normal. Full affect.

Thought Process: Intact.

Memory: Intact.

Concentration: Intact.

Suicidal Ideation: None.

DIAGNOSIS

M47.817 LUMBOSACRAL FACET JOINT ARTHROPATHY / SPONDYLOSIS

M51.27 LUMBOSACRAL DISCOPATHY

M62.838 MUSCLE SPASM

PRESCRIPTIONS

None

PLAN

** RETURN: As needed when her pain returns

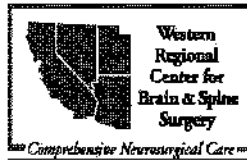
Katherine D Travnicek MD

Copy to: William Smith MD

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

EXHIBIT 3

William D. Smith, MD



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

Patient: Joyce P. Sekera

Patient #:

DOB:

Date of Encounter: 07/08/2019

History of Present Illness

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

Additional reasons for visit:

Transition into care is described as the following:

The patient is transitioning into care and a summary of care was reviewed.

Allergies

No Known Allergies 02/28/2018

No Known Drug Allergies 02/28/2018

Past Medical History

Cervical spondylosis with myelopathy

Other secondary scoliosis, lumbosacral region

Back pain, sacroiliac

Lumbar spondylosis with myelopathy

Family History

Mother: In good health

Father: Deceased

Brother 1: In good health

Sister 1: In good health

Social History

Occupation/Work Status: Retirement (Health Related)

Marital Status: Single

Children: 1.

Living situation: Lives with his mother.

Tobacco use: Current some day smoker; Smokes 1-2 cigarettes a week.

Alcohol Use: No alcohol use

Illicit drug use: Never

HIV risk factors: None

Highest recreation level prior to spine condition: No Response.

Other Problems

Unspecified Diagnosis

Past Surgical

None (02/28/2018)

Diagnostic Studies

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

Vitals

07/08/2019 06:27 AM

Weight: 200 lb Height: 66 in

Body Surface Area: 2 m² Body Mass Index: 32.28 kg/m²

Assessment & Plan

Back pain, sacroiliac 724.6 | M53.3

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

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

Lumbar spondylosis with myelopathy 721.42 | M47.16

- Patient Education: Low Back Pain: low back

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

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



William D. Smith, MD

EXHIBIT 4

REGISTER OF ACTIONS
CASE NO. A-18-772761-C

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

§
§
§
§
§
§

Case Type: **Negligence - Premises Liability**
Date Filed: **04/12/2018**
Location: **Department 25**
Cross-Reference Case Number: **A772761**

PARTY INFORMATION

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

EVENTS & ORDERS OF THE COURT

05/07/2019 **Objection to Discovery Commissioner's Report** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)
05/07/2019, 05/14/2019

Minutes

05/07/2019 9:00 AM

- No parties present. COURT NOTED a Stipulation and Order to Continue was received, and ORDERED, matter CONTINUED to the next available setting. CONTINUED TO: 05/14/19 9:00 A.M. CLERK'S NOTE: A copy of this minute order was electronically served on all registered parties. /sb 05/07/19

05/14/2019 9:00 AM

- Kathleen Galligher, Esq. present on behalf of Pltf. Extensive colloquy and argument regarding Pltf's. request for production of disclosures regarding people slipping and falling on the marble flaws at the business premises, the redacted reports received, Pltf's. request for unredacted reports, Deft's. request Pltf. stipulate to a privacy order, and if the parties listed in the reports would be willing to cooperate with Pltf. COURT ORDERED, the Discovery Commissioner's FINDINGS REVISITED. COURT STATED FINDINGS. To the extent unredacted incident reports are to be provided, Pltf. should not be precluded from knowing who these people are and from getting all of this information. Redaction should only apply to social security numbers and personal identifying information only if anything is filed. COURT thinks Commissioner Truman made an error here, it is relevant discovery. Court does not see any legal basis upon which this should have been precluded. COURT STRONGLY CAUTIONED, how this information is shared and who gets hold of it doesn't necessarily stop people from being upset as to how it is being shared. The Discovery Commissioner's FINDINGS REVERSED; unredacted incident reports are to be provided with no technically no limitation on how Pltf. utilizes them. COURT FURTHER ORDERED, the three Counter Motions DENIED on substantive grounds. COURT is not DENYING the Counter Motions on procedural grounds. Mr. Galliher to prepare the Order, provide a copy to opposing counsel for review as to form and content, and return it back to the Court within 10 days.

| [Parties Present](#)
[Return to Register of Actions](#)

EXHIBIT 5

REGISTER OF ACTIONS
CASE No. A-18-772761-C

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

§
§
§
§
§
§

Case Type: **Negligence - Premises Liability**
Date Filed: **04/12/2018**
Location: **Department 25**
Cross-Reference Case Number: **A772761**

PARTY INFORMATION

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

EVENTS & ORDERS OF THE COURT

05/28/2019 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)

Minutes

05/28/2019 9:00 AM

- Kathleen Galligher, Esq. present on behalf of Pltf. PLTF'S. MOTION FOR LEAVE TO AMEND THE COMPLIANT...DEFT'S. MOTION TO STRIKE ADDED EVIDENCE AND INFORMATION BY PLTF. IN REPLY TO DEFT'S. OPPOSITION TO PLTF'S. MOTION FOR LEAVE TO AMEND THE COMPLIANT AND TO STRIKE ALL UNAUTHENTICATED EVIDENCE, OR, ALTERNATIVELY, TO ALLOW DEFT'S. AN OPPORTUNITY TO RESPOND, ON ORDER SHORTENING TIME Extensive arguments regarding Pltf's. ability to add punitive damages, Deft's. concerns regarding representations made by Mr. Gary Shulman and if there was misrepresentation, if information in Pltf's. reply is accurate, if any information should be stricken, and prior recommendations made regarding Deft's. marble floors and discovery regarding the history of falls on the floors. COURT STATED FINDINGS, and ORDERED, Pltf's. Motion for Leave to Amend the Compliant GRANTED;it would be a disservice to the case to not allow discovery that could support punitive damages. Deft's. Motion DENIED. Mr. Galliher to prepare the Order, provide a copy to opposing counsel for review as to form and content, and return it back to the Court within 10 days. Upon Mr. Royal's inquiry, COURT ADVISED, It's prior Order regarding the Protective Order still STANDS.

[Parties Present](#)
[Return to Register of Actions](#)

EXHIBIT 6

REGISTER OF ACTIONS
CASE No. A-18-772761-C

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

§
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§
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§
§

Case Type: **Negligence - Premises Liability**
Date Filed: **04/12/2018**
Location: **Department 25**
Cross-Reference Case Number: **A772761**

PARTY INFORMATION

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

EVENTS & ORDERS OF THE COURT

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

Minutes

09/18/2019 9:30 AM

- (I) Defendants' Motion for Protective Order as to Plaintiff's Request for Production of Incident Reports from May 1999 to Present, Motion to Compel Information and Documents of Prior Incident Reports Provided to Plaintiff Expert Thomas Jennings and Identified in His May 30, 2019 Rebuttal Report and for Leave to Retake the Jennings Deposition to Address the 196 Prior Claims Referenced in His Report at Plaintiff's Expense (II) Plaintiff's Motion to Compel Testimony and Documents (III) Plaintiff's Reply in Support of Her Motion to Compel Testimony and Documents, Opposition to Defendants' Countermotion for Rule 11 Sanctions and Countermotion for Rule 11 Sanctions COMMISSIONER RECOMMENDED, Countermotion to Strike False Accusations Levied by Plaintiff in "I. Introduction" and "Legal Argument" Section "III.D." with Appropriate Sanctions is OFF CALENDAR as it does not relate to the Motion under EDCR 2.20(f). Commissioner stated Judge Delaney already made specific rulings in this case. Mr. Royal stated Plaintiff slipped and fell while working at the Venetian, and it was a transitory and temporary condition. Argument by Mr. Royal. Commissioner will limit production to five years before this incident. Argument by Mr. Galliher. Commissioner stated counsel could file an Order to Show Cause on discovery. Mr. Galliher requested the Commissioner set a deadline to produce unredacted Reports. Argument by Mr. Royal. COMMISSIONER RECOMMENDED, (I) Defendants' Motion for Protective Order is GRANTED IN PART and DENIED IN PART; 1) Plaintiff demand for information is PROTECTED as written, but it is appropriate given Judge Delaney's Rulings; Deft will provide the Reports from 11-4-11 to the present, and UNREDACT Reports; 2) is PROTECTED as written, but Mr. Royal can tailor it as Directed on the record; 3) testing from 2011 to the date of this incident in the Grand Lux Rotunda is allowed; 4) is PROTECTED; 5) any prior or subsequent Reports that deal with slip and falls on marble flooring; any Incident Reports for five years before the incident as Directed on the record. Mr. Royal requested a limitation to the Grand Lux area. Arguments by counsel. COMMISSIONER RECOMMENDED, marble floor is limited to slip and falls on the casino floor for five years prior to the present. Mr. Galliher confirmed the punitive damages claim is still alive. For that reason, Commissioner allowed subsequent Reports. COMMISSIONER RECOMMENDED, 6) Tom Jennings is Directed to produce information of prior incidents that he reviewed; 7) any prior

Incident Reports in Plaintiff's possession must be produced to Deft; 8) deposition is allowed to be continued, and Plaintiff will not pay for it; Topics 6 through 18 concern the computer data, and these Topics are tailored as Directed on the record. COMMISSIONER RECOMMENDED, (II) Plaintiff's Motion to Compel Testimony and Documents is GRANTED IN PART and DENIED IN PART as stated; (III) Plaintiff's Reply in Support of Her Motion to Compel Testimony and Documents, Opposition to Defendants' Countermotion for Rule 11 Sanctions and Countermotion for Rule 11 Sanctions is (II) Plaintiff's Motion to Compel Testimony and Documents is GRANTED IN PART and DENIED IN PART as stated. COMMISSIONER RECOMMENDED, alternative relief was provided pursuant to EDCR 2.34(e); do not produce documents until two weeks after the Final Order is filed, and the Writ would Stay that period of time. Mr. Royal to prepare the Report and Recommendation, and Mr. Galliher to approve as to form and content. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution. CLERK'S NOTE: Minute Order amended 9-27-19. jl

[Parties Present](#)

[Return to Register of Actions](#)

EXHIBIT 7

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 JOSEPH LARSON

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

On Thursday, October 11, 2018
At 2:15 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

2 For the Plaintiff: KEITH E. GALLIHER, JR., ESQ.
-And-
3 GEORGE J. KUNZ, ESQ.
Galliher Law Firm
4 1850 East Sahara Avenue
Suite 107
5 Las Vegas, Nevada 89104
(702) 735-0049
6

7 For the Defendants: MICHAEL A. ROYAL, ESQ.
Royal & Miles LLP
8 1522 West Warm Springs Road
Henderson, Nevada 89014
9 (702) 471-6777
10
11
12
13
14

15 * * * * *

17 I N D E X

18 WITNESS	PAGE
JOSEPH LARSON	
19 Examination By Mr. Galliher	3
Examination By Mr. Royal	37
20 Further Examination By Mr. Galliher	83

21	
22 EXHIBITS	PAGE
Plaintiff's:	
23 1 Venetian Security report	3
24 2 Color photographs	3

25 -o0o-

JOSEPH LARSON 10/11/2018

Page 3

Page 5

1 (Plaintiff's Exhibits 1 and 2 marked for
2 identification.)
3 JOSEPH LARSON,
4 having been first duly sworn to tell the truth, the
5 whole truth and nothing but the truth, was examined
6 and testified as follows:

7
8 EXAMINATION

9 BY MR. GALLIHER:

10 Q Would you state your name, please.
11 A Joseph Larson.
12 Q Your business address.
13 A I don't have one.
14 Q All right. Your home address.
15 A
16
17 Q Have you ever had your deposition taken
18 before?
19 A Yes.
20 Q Do you understand today that you are under
21 oath?
22 A Yes.
23 Q The oath you've taken carries with it the
24 same solemnity as if you were testifying in court
25 before a judge and a jury?

1 Q How long have you been unemployed?
2 A Since March of 2017.
3 Q Since before March of 2017, where were you
4 working?
5 A Before that?
6 Q Yes.
7 A At the Venetian.
8 Q So what years did you work at the Venetian?
9 A I started in 2008, I think in the summer.
10 In 2008 and then, yeah, I quit on March 2017.
11 Q And was there a reason that you quit?
12 A The reason I quit was, I was I guess tired
13 of being an EMT. I had been an EMT for about a decade
14 so I felt it was time to make a career shift.
15 Q So when you worked at the Venetian from 2008
16 to 2017, were you an EMT the entire time?
17 A EMT security officer.
18 Q And when we talk about that, that's an
19 Emergency Medical Technician security officer?
20 A Correct.
21 Q Give me a brief description of your duties
22 as an EMT security officer.
23 A The primary duties of my job were to respond
24 to any medical incidents or any serious incidents that
25 occurred on the property. The additional functions of

Page 4

Page 6

1 A I understand that.
2 Q Also carries with it the penalties of
3 perjury?
4 A I understand that.
5 Q General background first. How long have you
6 lived in Las Vegas?
7 A I moved here two thousand -- towards the end
8 of 2007, beginning of 2008.
9 Q How far did you go in school?
10 A Some college.
11 Q And where did you get your college?
12 A Many places, various colleges.
13 Q Let's start and make it simpler. Where did
14 you last go to college?
15 A Last go to college? CSN.
16 Q Here in Las Vegas?
17 A Yes.
18 Q What years did you attend CSN?
19 A It would have been when I got here, so
20 probably around 2008. I'm not exactly sure on the
21 year.
22 Q Let's talk a little bit about employment.
23 Since you don't have a business address, you are
24 currently not employed?
25 A Currently unemployed.

1 my job were to also work as a security officer. We
2 weren't ever posted anywhere, we were free to roam
3 around the property as needed.
4 Q What training did you have in EMT work?
5 A I received my EMT-Basic in San Diego and
6 then when I moved out here, I got my
7 EMT-Intermediate -- which is now called an Advanced
8 EMT certification -- when I arrived here so I could
9 work.
10 Q So are you still an EMT-Intermediate?
11 A No, I have --
12 Q Did you give up your certification?
13 A Correct.
14 Q So you don't have any intentions to reenter
15 the EMT field?
16 A Correct.
17 Q Do you have any aspirations in terms of what
18 field you want to enter?
19 A I'm currently in a cybersecurity scholarship
20 program.
21 Q Tell me what that is for old people.
22 A Okay. There's a company called Cisco. They
23 manufacture a lot of the networking hardware and
24 infrastructure and things like that for companies,
25 businesses, you know, whoever wants to buy the

3 (Pages 3 to 6)

1 equipment.
 2 Cisco itself is putting on a cybersecurity
 3 program for a select number of students as a
 4 scholarship program. You apply, you test in, they
 5 give you a scholarship to pay for your training, and
 6 then you take a test at the end.
 7 Q Where do you go after you take a test?
 8 A Once I pass a test, I'll be applying for
 9 cybersecurity jobs.
 10 Q With Cisco or elsewhere?
 11 A Anywhere.
 12 Q I presume that's a job that pays better.
 13 A Yeah, I would say so.
 14 Q All right. That's a good reason.
 15 A Sure.
 16 Q All right. We're here to talk to you about
 17 a fall incident that happened at the Venetian while
 18 you were there. And I presume -- have you had an
 19 opportunity to review the report that you prepared for
 20 today's deposition?
 21 A I have, yes.
 22 Q So let me show you this that's been marked
 23 as Exhibit 1 to your deposition and ask you if that's
 24 a true and correct copy of the report you reviewed.
 25 A All of the pages?

1 A Yes, yeah. These would all be things that I
 2 either entered by typing or checking a box.
 3 Q So is everything in these first five pages
 4 true and correct to the best of your knowledge?
 5 A Yes.
 6 Q Do you remember anything about this event
 7 other than what's contained in this report?
 8 A No.
 9 Q Then let's look at the VEN017. That's the
 10 next page after the first five.
 11 A Yeah.
 12 Q And can you tell me if any of the print --
 13 or the writing on this page is your writing?
 14 A All of the handwriting is mine except for
 15 the signature line.
 16 Q All right, so everything is yours except for
 17 the signature line. What about the next page which is
 18 VEN018?
 19 MR. ROYAL: Can I just ask for
 20 clarification? There's two signature lines.
 21 THE WITNESS: Oh, I apologize. Yeah, the
 22 second line with the "X" mark.
 23 BY MR. GALLIHER:
 24 Q And let me see what you are looking at. The
 25 reason I ask that, Mike, is I'm looking at this page

1 Q Yes.
 2 A Yeah.
 3 Q Now, the report there has the Bates stamp
 4 numbers from VEN005 through 009, and then switch to
 5 VEN017 and then 018. See that at the lower right-hand
 6 portion of the report?
 7 A Yes, sir.
 8 Q As we look at the report, I note that your
 9 name appears -- at least typed in -- 00025821 on the
 10 first five pages; am I correct? At the same location,
 11 lower left?
 12 A Yes; correct.
 13 Q Is that an entry that you made or that
 14 someone else made?
 15 A I believe that is what -- when you print out
 16 a report from the system, it just basically shows who
 17 typed up the report.
 18 So when something happens on property and
 19 you are assigned to report through dispatch, that's
 20 assigned to your name, basically your identity in the
 21 computer system. So I believe that's just an
 22 automatic stamp that gets added to this printout.
 23 Q Now, as you look at this report -- I'm
 24 referring to the first five pages initially -- is this
 25 information that you entered into the system?

1 and I'm not seeing a signature line.
 2 Oh, talking about a signature line under
 3 "Joyce Sekera"?
 4 A Yeah.
 5 Q For some reason, I'm looking at this page
 6 and it looks like it's cut off at the end.
 7 MR. ROYAL: Yeah, yes. And by the way, I
 8 had inquired about that and I don't know that we have
 9 what's cut off too.
 10 BY MR. GALLIHER:
 11 Q So these are handwritten entries that you
 12 made based upon your specific observation of Joyce
 13 Sekera?
 14 A Correct.
 15 Q And again, everything on this page is true
 16 and correct to the best of your knowledge?
 17 A Yes.
 18 Q So as we go to the next page, we've got --
 19 you see there's some -- you got security officer time,
 20 1326, and some printing where it starts with "marble
 21 flooring."
 22 See that?
 23 A Yes.
 24 Q Is that your handwriting?
 25 A Yes.

1 Q So you made those entries as well?
 2 A Correct.
 3 Q How is it that you were dispatched to the
 4 scene of the fall? Do you remember?
 5 A I don't remember exactly, but I mean,
 6 security dispatch would have contacted me on the radio
 7 and told me where to go.
 8 Q And do you remember how long after the fall
 9 you arrived at the scene?
 10 A I don't recollect.
 11 Q And the reason I ask you, I'm looking at the
 12 first page which is VEN005 and if you look up where it
 13 says "Date and Time and Day of occurrence," see that?
 14 A Yes, sir.
 15 Q And it says 11/4/16, 12:39, Friday, to
 16 11/4/16, 13:31 Friday. Is that correct?
 17 A That's what it says, yeah.
 18 Q So as I read that, looks like that's a
 19 52-minute difference between the time that it starts
 20 and the time that it ends.
 21 A Basically --
 22 Q See that?
 23 A -- I would say.
 24 Q Can you explain to me how we have this 52
 25 minutes?

1 A So what I'm gathering this says is when the
 2 call started in the system, so when dispatch put it
 3 into their system, and then 13:31 would be the time
 4 that I cleared from my call.
 5 Q So between the time that you were called to
 6 the scene and the time you left the scene was 52
 7 minutes?
 8 A Yes.
 9 Q And again, we're going to go through a few
 10 things in this report with you --
 11 A Yeah.
 12 Q -- if that's okay?
 13 A Sure.
 14 Q By the way, just so you know, looking at the
 15 same page we've got, "TM, one of one, Chavez, Rafael."
 16 Do you see that a little lower in the page?
 17 A Yes.
 18 Q And we just deposed Mr. Chavez, he's a
 19 member of your facilities department.
 20 A Yes.
 21 Q He told us he didn't arrive to the scene
 22 until about 30 or 45 minutes until after the fall.
 23 Does that square with your recollection?
 24 A Time line-wise, I'm not sure of the exact
 25 minutes, yeah, that's normal procedure for us, for him

1 to respond after the incident.
 2 Q Do you know if you entered the name "Chavez,
 3 Rafael" there or if someone else did?
 4 A I did.
 5 Q On the lower right-hand-side portion of the
 6 page, it says "Approved by Michael Dean." Who is he?
 7 A That would be the supervisor.
 8 Q And then on the upper -- again to the upper
 9 portion of the report under Venetian Security there's
 10 handwritten, "RC00008621." See that?
 11 A Yes.
 12 Q And what would that be?
 13 A I do not know.
 14 Q Is it like a report number? Event number?
 15 A The event number would be the case number in
 16 the upper right where it says is 1611V-0680.
 17 Q All right. So it would be the case number,
 18 that's the upper right; correct?
 19 A Yeah.
 20 Q And you don't know what is meant by the
 21 handwritten RC00008621?
 22 A Yeah, I don't know what that means.
 23 Q Let's go then to the next page, VEN006.
 24 Again, is this information that you entered?
 25 A Yes. This information would be check boxes

1 that I clicked.
 2 Q And so what happens is that you check a box,
 3 you click a box, so to speak, and it automatically
 4 prints out?
 5 A It would just add that information to the
 6 report.
 7 Q And that also applies to the information on
 8 VEN007?
 9 A Yes, that's correct.
 10 Q And when we talk about the -- looks like
 11 more of the narrative report, which is VEN008 and
 12 nine. All information you entered?
 13 A Yes.
 14 Q And everything in that, those two pages, is
 15 true and correct to the best of your knowledge?
 16 A Yes.
 17 Q You don't have a recollection of this event,
 18 other than what's contained in these two pages?
 19 A Not independent of what I wrote.
 20 Q So you are going to stick with what's in
 21 these pages?
 22 A Correct.
 23 Q Now I'm just curious about something. As
 24 the -- did you respond to this fall as the EMT, as
 25 security, or both?

1 A I would have responded to this as EMT.
 2 Q Do you know whether or not there was another
 3 security officer that responded to the scene other
 4 than you?
 5 A I believe there was, but I'm not exactly
 6 sure.
 7 Q Well, if you -- the reason I ask that
 8 question, as I read the report, it pretty much talks
 9 about your evaluation physically of Joyce Sekera as an
 10 EMT; is that right?
 11 A Correct.
 12 Q And, for example, there's reference made in
 13 the upper portion of VEN008 to, "I noted that a Public
 14 Areas Department team member was on scene and mopping
 15 the floor in the area."
 16 See that?
 17 A Uh-huh.
 18 Q Is that yes?
 19 A Yes. I'm sorry.
 20 Q And that's something that you saw?
 21 A Yes, that's what I observed.
 22 Q Did you have any conversations with that
 23 team member -- that public area department team
 24 member, about what it was that they were mopping?
 25 A I did not. I did not have a conversation.

1 localized to the axillary line.
 2 See that? I'm talking about page 009 now.
 3 A Sorry, wrong page.
 4 Q Up at the top, first paragraph.
 5 A Oh. Okay, I see it.
 6 Q I'll read it again, just make sure I'm
 7 reading it correctly.
 8 "She added that she was beginning to feel
 9 minor pain and soreness to her left lower back and
 10 left side," in parentheses, "localized to the axillary
 11 line."
 12 See that?
 13 A Yes.
 14 Q What's the axillary line?
 15 A It is kind of an imaginary line that goes
 16 down your armpit across the side of your body.
 17 Q So it sounds like she had pain both in her
 18 left lower back and left side; is that right?
 19 A Yes.
 20 Q Now, again confirming everything else that
 21 you stated in this, these two pages, is true and
 22 correct to the best of your knowledge?
 23 A Yes.
 24 Q Now, there were apparently also some
 25 photographs taken at the scene. Are you aware of

1 Q Do you know if anybody else from security
 2 had a conversation with that person?
 3 A I don't know.
 4 Q So as you testify here today, you know there
 5 was mopping of the flooring in the area occurring, but
 6 you don't know what was being mopped up?
 7 A Correct.
 8 Q The rest of the report talks about your
 9 physical observations of your examination of Joyce
 10 Sekera; is that right?
 11 A Uh-huh. Yes; correct.
 12 Q And looks like, if I am reading my
 13 information correctly, we know, first of all, that
 14 there was a fall?
 15 A Yes.
 16 Q Right?
 17 A Yes.
 18 Q And we know there was an injury?
 19 A Yes.
 20 Q And the injury initially that you noted was
 21 to her left elbow?
 22 A That's correct.
 23 Q Then later you added that -- you stated that
 24 she added she was beginning to feel minor pain and
 25 soreness to her left lower back and left side

1 that?
 2 A I'm aware, yeah.
 3 Q Did you take them?
 4 A I would have; yes.
 5 Q Let me show you what we've marked for
 6 identification as Exhibit 1 to your deposition. And
 7 Mike was kind enough to give better copies than we
 8 had. Take a look at those and tell me if those are
 9 true and correct copies of all the photographs that
 10 you took.
 11 A Yes, these would be photographs I've taken.
 12 Q Now, did you take any other photographs
 13 other than those?
 14 A If I did, they would be attached. I don't
 15 recall taking any other pictures.
 16 Q Do you know if any other security officers
 17 took photos?
 18 A I'm not aware.
 19 Q And as you testify here today, you don't
 20 have a recollection of whether or not any other
 21 security officers presented at this scene of the fall?
 22 A Independently, no.
 23 Q Are there any documents that would have been
 24 prepared in the event that another security officer
 25 had arrived at the scene?

1 A Nothing officially, unless he would have
2 done a voluntary statement. But if the officer that
3 was on scene before me, if he didn't actually witness
4 anything and was just responding, we wouldn't ask him
5 to write a voluntary statement.

6 Q Do you have a recollection of whether or not
7 there was an officer there before you arrived?

8 A I'm not sure.

9 Q If there was an officer there before you
10 arrived, would that information be contained in the
11 report that we have just talked about?

12 A If he wasn't a witness to the incident, I
13 wouldn't have included him.

14 Q And what about witnesses to the fall? Is
15 that something that you would have taken care of in
16 terms of interviewing and getting statements from
17 them?

18 A Potentially, yes, if we had identified any
19 witnesses. But at that time, I was more concerned
20 about her well being.

21 Q So would it be fair to state that your focus
22 was on caring for Joyce Sekera as a result of her
23 injuries from the fall, rather than locating and
24 obtaining statements from witnesses?

25 A Yeah. That's my primary duty.

1 Q And you don't recall whether or not there
2 was any other security officer at the scene of the
3 fall to help you to the extent of contacting
4 witnesses, if there were any, and getting statements
5 from them?

6 A I don't recall if there was other officers
7 there.

8 Q If there were statements taken, is that
9 something that would be part of her?

10 A If a statement was taken, yes.

11 Q And when you reviewed the report in
12 connection with today's deposition, the only
13 information that you reviewed is the information that
14 we have previously discussed in this report?

15 A Correct.

16 Q There was nothing else in the file that you
17 saw, other than this report and your photographs?

18 A Correct.

19 Q As far as you know, there were no other
20 witnesses that were identified or statements obtained
21 from?

22 A Correct.

23 Q Now, you were at the Venetian in the
24 security department part as an EMT for approximately
25 nine years?

1 A Yes.

2 Q Is there any type of rule that a person
3 can't walk through the Venetian with a drink in their
4 hand?

5 A As far as I know, we didn't have any rules
6 like that.

7 Q In other words, if I were a customer at the
8 Venetian and I decided to buy a bottle of water or a
9 drink from one of the businesses located nearby, I
10 decided to walk through the Venetian, would you stop
11 me and tell me I couldn't drink?

12 A No.

13 Q So as far as you know, there's no
14 prohibition at the Venetian that would make it -- not
15 unlawful, but some cause for stopping a customer
16 saying, Hey, you can't drink that here?

17 A The only provision that I'm aware of -- in
18 fact, I don't even know if I would call it that. Call
19 it policy. There was a policy on having an actual
20 bottle of liquor. Like a bottle of Jack Daniels, say
21 for example, you couldn't walk around with that. A
22 simple beer, simple drink, would be fine, but no
23 actual, like, bottles of hard liquor you could get at
24 a convenience store.

25 Q And you are aware that you can buy hard

1 liquor inside the convenience store at the Venetian?

2 A Yes.

3 Q So the fall occurred near the restroom
4 adjacent to the Grand Lux Cafe; right?

5 A Correct.

6 Q That's a marble floor?

7 A Correct.

8 Q Is that the first fall that you were aware
9 of on a marble floor at the Venetian when you worked
10 there?

11 A First fall?

12 Q Yes, ever.

13 A No, that wasn't the first.

14 Q Give me an idea of how many falls you
15 personally attended to when you were at the Venetian
16 in security.

17 A Like an actual number?

18 MR. ROYAL: I'm sorry --

19 BY MR. GALLIHER:

20 Q I'm asking for your best estimate.

21 MR. ROYAL: Are you asking falls on marble
22 floors or just any falls?

23 BY MR. GALLIHER:

24 Q We can clarify that after he answers the
25 first question and I can go from there.

1 A I know off the top of my head, I wrote -- in
2 nine years' time, I wrote about 2600 reports.
3 Q Okay.
4 A Of those being slip-and-falls, that's hard
5 to say. Because of those 2600 reports I wrote, that
6 would include also security details, that would
7 include trespasses, serious incidents, other types of
8 medical.
9 Q Well, maybe just give me your best estimate.
10 I don't expect you to be exact unless your memory is a
11 lot better than mine.
12 MR. ROYAL: Object to form.
13 Go ahead and answer.
14 THE WITNESS: My best guess over nine
15 years --
16 MR. ROYAL: He's not asking you to guess, by
17 the way.
18 BY MR. GALLIHER:
19 Q Best estimate.
20 A Okay, best estimate. Best estimate, I would
21 say maybe 300.
22 Q Okay. So of those 300 as your best
23 estimate -- by the way, just so you know the
24 difference between a best estimate and a guess, if I
25 were to ask you how long this conference table was

1 marble flooring inside the Venetian?
2 A I would say a little more than half.
3 Q So maybe somewhere between, let's say, 150
4 and 200?
5 A Yeah.
6 Q Would that be fair?
7 A Yeah.
8 Q All right. Yes?
9 A I would say 150 to, like, 175. I wouldn't
10 go the full 200.
11 Q So 150 to 175; would that be fair?
12 A That's right.
13 Q Is that a --
14 A That's a good estimate.
15 Q By the way, there's also marble flooring on
16 the fifth floor adjacent to the Bouchon Restaurant and
17 also where they have the other additional check-in
18 area at the Venetian?
19 A That would be the 10th floor.
20 Q The 10th floor. Were you responsible for
21 responding to falls there?
22 A Anywhere on property I was responsible.
23 Q So when we talk about the 150 to 175
24 slip-and-falls on marble floors, we're talking about
25 throughout the hotel, whether it be the first level or

1 from one side to the other, you could give me the best
2 estimate because you can see it.
3 If I were to ask you how long is my desk in
4 my office from one side to the other side, it would be
5 a guess. Why? Because you hadn't seen it.
6 So your best estimate is that you wrote
7 approximately 200 reports involving slip-and-fall
8 events at the Venetian during the nine years that you
9 were there?
10 A Correct.
11 Q Now when I talk about slip-and-falls, would
12 it be fair to state that the slip-and-falls would
13 occur on the marble flooring as opposed to the
14 carpeted areas?
15 A Between the two of those options? Yes.
16 Q So when you talk about the reports that you
17 wrote, would it be fair to state that those reports --
18 when we're talking about slip-and-falls, that
19 generally they would involve the marble floor?
20 A I wouldn't say a large number of them
21 because we also respond to slip-and-falls even on the
22 concrete in the sidewalk out in the front of the
23 property, the pool deck upstairs.
24 Q So can you narrow the number of reports that
25 you wrote regarding slip-and-falls occurring on the

1 the tenth level?
2 A Correct. And that also includes the suites
3 as well.
4 Q And we talk about the suites, we talk about
5 the suites that have marble floors?
6 A All of them, yes.
7 Q How many suites are there?
8 A Between the Venetian and Palazzo, a little
9 over 7000.
10 Q 7000 suites?
11 A Yes.
12 Q So all of the rooms have marble floors?
13 A Yes, in the bathroom areas.
14 Q Apart from the bathroom areas, any other
15 areas inside the suites that have marble floor?
16 A Just the bathroom and the main entryway.
17 Q So during that nine years when you were
18 there and a security officer, how many times did you
19 respond to falls occurring inside the suites on the
20 marble floors in the bathroom?
21 A That would include the 150 to 175.
22 Q What I'm trying to distinguish between is
23 the falls that occurred inside the suites versus the
24 falls that occurred on the ground floor and the 10th
25 level.

1 A Okay. So of that 150 to 175, how many were
2 in the suites that we're tracking?
3 Q Right.
4 A I would estimate that it was -- nine years
5 is a long time. I apologize.
6 Q That's okay.
7 A I would say probably 75 --
8 Q So --
9 A -- would have occurred in the suites.
10 Q So best estimate is 75 or so occurring in
11 the suites and 100 or so occur outside the suites on
12 the floor, either on the ground floor or the tenth
13 floor?
14 A In the public areas; yeah.
15 Q How many hours a day did you work as an EMT?
16 A Eight hours.
17 Q Did you respond to those fall events because
18 of your training as an EMT or because you were a
19 security officer or both?
20 A Because I was an EMT.
21 Q So would it be fair to state that you
22 responded to these calls to determine whether or not
23 there were injuries?
24 A Yes, and to determine the extent of their
25 injuries.

1 Q Did you venture beyond the Venetian or did
2 you stick with Venetian and somebody else took care of
3 the Palazzo?
4 A Normally someone else took care of the
5 Palazzo. If they were busy, we would cover their side
6 for any calls and vice versa.
7 Q So when you give me the 175 number, is that
8 strictly Venetian or is that Venetian and Palazzo?
9 A That's both.
10 Q And can you apportion between the two? In
11 other words, how many at the Venetian versus how many
12 at the Palazzo?
13 A I don't know if I could estimate that only
14 because -- I say that only because I worked at the
15 Palazzo in the beginning and I transferred over to the
16 Venetian a couple years after.
17 Q Did the Palazzo have the same marble floors
18 as the Venetian?
19 A They had carpet. Their casino floor was
20 mostly carpet. Their suites were the same in terms of
21 bathroom and entryway being marble. Public areas, I
22 don't think they had marble on their floor.
23 Q So if the Palazzo didn't have marble on
24 their floors, the slip-and-falls that occurred in the
25 public areas would have occurred primarily in the

1 Q And in connection with this 175 or so falls
2 that you are aware of -- slip-and-falls on marble
3 floors, how many times was the customer or anyone else
4 injured in the fall?
5 A I would say about 80 percent of the time.
6 And that's as far as, you know, what they told us on
7 initial assessment.
8 Q So at least about 80 percent of the time
9 when you reported to the scene of the fall as an EMT,
10 injury was reported to you by whomever fell?
11 A Correct.
12 Q Did you work an eight-hour shift?
13 A Yes.
14 Q How many days a week?
15 A Five days.
16 Q Were there any other EMT security officers
17 on duty while you were on duty?
18 A Yes.
19 Q And how many other EMT security officers
20 would be on duty when you were on duty?
21 A Including myself, it would be two.
22 Q So it would be two per shift?
23 A Two per shift per side and some days it
24 would be three. By "per side," I mean Venetian and
25 Palazzo. Palazzo had their own EMTs as well.

1 Venetian?
2 MR. ROYAL: I'm going to object to form.
3 BY MR. GALLIHER:
4 Q By the way, he gets to object. You get to
5 answer unless he tells you not to.
6 MR. ROYAL: Go ahead.
7 THE WITNESS: I apologize. I'm sorry, can
8 you repeat the question?
9 BY MR. GALLIHER:
10 Q We've established, based on your testimony,
11 the Palazzo is primarily carpeted when we're talking
12 about the public areas. The suites are the same as
13 the Venetian to the extent they have marble on the
14 bathroom areas; right?
15 A Correct.
16 Q The Venetian has the marble floors in the
17 public areas, both on the casino floor, hotel floor
18 and the 10th floor?
19 A Correct. I would add that as I'm thinking
20 about it -- it's been two years, year and a half since
21 I've been there.
22 The main entryway to the Palazzo where the
23 front desk is and their statue water feature is, and
24 the floor below that is all marble. So the casino
25 floor is --

1 Q So at least as you testify here today, you
2 are unable to give me any quantification, so to speak,
3 of what percentage of falls you investigated at the
4 Venetian versus the Palazzo?
5 A I -- I would be unable to.
6 Q And that includes slip-and-falls?
7 A Correct.
8 Q And I think we have established previously
9 there was roughly 175 slip-and-fall events that you
10 personally investigated?
11 A My estimate; yes.
12 Q And 80 percent of the time the people were
13 injured?
14 A Correct.
15 Q Now, you said there were two EMTs per shift.
16 Was that at the Venetian, Palazzo or both?
17 A Both.
18 Q So was it two plus two equals four or just
19 two together?
20 A Correct. And depending on scheduling and
21 depending on the shift, some shifts had more EMTs than
22 others. On day shift and the shift I worked, it was
23 between two and three EMTs.
24 Q So was it between two and three EMTs for the
25 Venetian?

1 A That would fall on the shift manager or the
2 assistant shift manager.
3 Q When you say shift manager or assistant
4 shift manager, is that of the security department?
5 A Yes.
6 Q And do you remember the names of the
7 security manager or assistant security manager while
8 you were there?
9 A George Valley(phonetic) would have been --
10 November 2016, George Valley would have been the shift
11 manager. Michael Dean I think was a new addition at
12 that time, if I recall correctly, and I think Jacob
13 Johnson was the other assistant manager.
14 Q Let me shift gears again, go downstairs.
15 We're adjacent to the area where the fall happened,
16 which is next to the restroom areas by the Grand Lux
17 Cafe.
18 With me?
19 A Yes.
20 Q Do you know whether or not there are any
21 businesses in, let's say, within a 100-foot radius of
22 where the fall occurred that sell drinks?
23 A There would be -- at Grand Lux Cafe, they
24 had a small bistro.
25 Q Bakery?

1 A Yes, and that just depends on scheduling.
2 But more often than not, it was two.
3 Q What about the swing shift when -- I
4 presume -- a casino was busier, was there more EMTs?
5 A The Venetian had four EMTs scheduled, you
6 know, with varying days off. The Palazzo had three
7 and then that switched for overnight. The Venetian
8 had three EMTs on their overnight, the Palazzo had
9 four EMTs on their overnight.
10 Q What was the reason for that?
11 A I don't know.
12 Q You weren't part of the plan?
13 A No. Yeah, I didn't schedule anything.
14 Q So the total number of EMT security
15 officers, such as yourself, at the Venetian would vary
16 between two and four depending upon the shift --
17 A Correct.
18 Q -- and the conditions?
19 For example, if there was a major convention
20 there, I would presume they would have more EMTs on
21 the shift than the normal EMTs because of the volume
22 of customers.
23 A Depending on the day, yeah, it would change.
24 Q And who was responsible for scheduling the
25 EMT security officers?

1 A Like a bakery where you could order coffee
2 or a pastry.
3 Q Water?
4 A Probably. I never shopped there.
5 Q And if you walked down the hallway to the
6 left past the restrooms, is there a food court?
7 A There is a food court around the corner.
8 Q Do you know how many businesses occupy the
9 food court?
10 A I don't know.
11 Q And then as you walk past the food court
12 around the corner, there is Bouchon Bakery?
13 A Bouchon Bakery, that would be the opposite
14 direction of the food court.
15 Q What I'm getting at is this -- I'll try to
16 show you with my hand as best I can. We've got the
17 Grand Lux Cafe. To the immediate -- as we face it to
18 the immediate left, we've got the bakery.
19 A Yes.
20 Q And then to the immediate right, we've got
21 the restrooms?
22 A All the way to the right; yes.
23 Q And then past the restrooms to the right, as
24 you walk down that hallway, you've got the food court?
25 A Yes.

1 Q And that's where the physical business --
2 there are five businesses in the food court. So if we
3 go past the food court to the right and go around the
4 corner, do you recall seeing the Bouchon Bakery there?
5 A From your diagram, it would be -- it would
6 be -- as you are facing Grand Lux Cafe, as you look to
7 the right, you would see the escalators. Underneath,
8 on the backside of the escalators, was Bouchon Bakery
9 and then again to the right would be the restrooms,
10 and then to the right would be the food court.
11 Q As you go around the corner, the Bouchon
12 Bakery is behind the escalator -- we'll talk about
13 that in a minute.
14 To the right of the Bouchon Bakery, is there
15 a shop that sells hard liquor, beer, wine, water?
16 A A gift store; yes.
17 Q But it sells those items?
18 A Yes.
19 Q And then at the top of the escalator, is
20 there a Coffee Bean?
21 A A Coffee Bean? Yes.
22 Q At the top?
23 A Yes, at the top of the escalator.
24 Q And do you know whether or not they sell --
25 apart from coffee, do you know whether or not they

1 Q So as you testify here today, you don't have
2 any axe to grind against the Venetian or have any bad
3 feelings against the Venetian?
4 A Not at all.
5 Q Have you understood all my questions?
6 A Yes.
7 Q Anything you want me to repeat or rephrase
8 for you?
9 A No.
10 MR. ROYAL: I have a few questions.
11
12 EXAMINATION
13 BY MR. ROYAL:
14 Q All right. Let's go back to -- I think we
15 marked it as Exhibit 1. Do you have it in front of
16 you? Now, I just -- let's see. Look at VEN005. So
17 this indicates up at the top 12:39 on Friday,
18 November 4, 2016, and then at 13:31 on Friday you
19 cleared.
20 So you were involved in this incident for,
21 looks like, almost an hour. Look about right?
22 A Yes.
23 Q Okay. The information that's on this
24 particular page where it says "Joyce Sekera," where
25 did you get that? There's a home address, phone

1 sell soft drinks, bottled water?
2 A I imagine they would.
3 Q I just want to know whatever you remember.
4 Do you remember whether or not there was a
5 cooler inside the Coffee Bean inside where all the
6 drinks were displayed in bottles?
7 A I don't remember.
8 Q For example, if I were to buy bottled water
9 at the Coffee Bean and if I were to go down the
10 escalator into the area adjacent to the Grand Lux and
11 the restroom and I had my bottled water and you saw
12 me, you wouldn't be stopping me and telling me I
13 couldn't drink the water?
14 A Correct.
15 MR. GALLIHER: I want to take a little bit
16 of a break. We may be almost done.
17 (Short Break.)
18 BY MR. GALLIHER:
19 Q As I understood what you testified earlier,
20 you left the Venetian because you decided you didn't
21 want to be an EMT any longer.
22 A Yeah. I mean it's a little deeper than
23 that, but...
24 Q But you didn't leave under bad terms?
25 A No, not at all.

1 number and so forth.
2 A That would have been provided to me, which I
3 would have written down on the medical release, which
4 is VEN017.
5 Q And who provided that?
6 A I completed that with her.
7 Q With who?
8 A With Joyce. I'm sorry.
9 Q Okay.
10 A So any information that would have been
11 verbally given to me and I would have copied it down
12 on this form.
13 Q Which is "this form"? You mean VEN017?
14 A Correct.
15 Q Let's go to that, then.
16 Okay. So I think we have established that
17 everything on this particular page is in your
18 handwriting except for it says Signature with an "X"
19 and a circle around the "X."
20 A Correct.
21 Q Okay. All right. There's an indication
22 where it says "LV Tour," with an arrow, "GCS." Do you
23 know what that means?
24 A That would be Grand Canal Shops.
25 Q And what is LV Tours; do you know?

1 A I believe that's the company she worked for.
 2 Q Is that information she gave?
 3 A Yes.
 4 Q And how about above that? There's some
 5 abbreviations, "WFA," and just tell us what all that
 6 is.
 7 A That's a physical descriptor. That would be
 8 white female, 5'6", 160 pounds, brown eyes, brown
 9 hair.
 10 Q Is that information she gave you?
 11 A That's what I observed.
 12 Q All right. So some of the things on here,
 13 on this particular page, is information that you
 14 observed; other information is information she
 15 provided to you?
 16 A During the assessment and interview; yes.
 17 Q Okay. Now, when you were completing this
 18 particular form, do you recall where you completed
 19 this? Was it at the accident scene; do you remember?
 20 A It would have been a combination of both.
 21 Q "Both" what?
 22 A I'm sorry. So when responding to the scene,
 23 I usually jot down a few notes and then I would have
 24 completed the form with her on assessment -- on
 25 further assessment of the left elbow injury.

1 Q Okay. Where did you get the information
 2 that you just read to us?
 3 A That would have been from me talking to her.
 4 Q So where it says, "fell backwards onto base
 5 of pillar," that's not something you witnessed; right?
 6 A Correct.
 7 Q And then where it says negative loss of
 8 consciousness, negative H/N/B means -- what again?
 9 A Head, neck or back pain.
 10 Q So when it says negative LOC, did you have a
 11 conversation? Did you ask if there was loss of
 12 consciousness?
 13 A Yes.
 14 Q Why did you ask that -- why would you ask
 15 that?
 16 A For any slip-and-fall we always ask that.
 17 It's pretty much the three standard questions that
 18 everyone is asked.
 19 Q So you asked about loss of consciousness
 20 which she denied?
 21 A Correct.
 22 Q You asked about injuries to the head, neck
 23 or back, which she initially denied?
 24 A Yes.
 25 Q You asked if she was weak or dizzy, which

1 Q Okay. Now, as I recall -- or at least it
 2 appears that you indicated that you left the area to
 3 do your assessment. Is that correct?
 4 A Yes.
 5 Q All right, we'll get to that. So when you
 6 say "both," some of this was completed at the scene
 7 and some was completed in a different area?
 8 A Correct. The initial assessment, what I do
 9 on scene is determine that there's no life-threatening
 10 injuries, that she's able to stand and care for
 11 herself and that we don't need an ambulance
 12 immediately. Which would be most of this top line
 13 stuff -- I'm sorry. Here in the middle of the page it
 14 will say S, slash, F, slip-and-fall, fell backwards
 15 onto base of pillar, then negative LOC, which is
 16 negative loss of consciousness, negative H/N/B for
 17 negative head, neck, back pain. And then negative
 18 weak, dizzy.
 19 So as long as she wasn't displaying anything
 20 like that, we know that we would be able to move her
 21 without having to call an ambulance.
 22 Q So you just read on VEN017 where it says
 23 Venetian, Palazzo EMT. That's where your handwriting
 24 starts there starting with "S/F."
 25 A Correct.

1 she denied?
 2 A Correct.
 3 Q Go to the next line starting with the "L"
 4 that's circled and just read across if you would.
 5 A Okay. It would be left elbow and then the
 6 arrow symbol and then positive "C" would be
 7 tenderness, and then negative would be -- negative
 8 "IC" would be no instability or crepitation.
 9 Q Is that something that -- or how do you get
 10 that information? Is that by your assessment or is
 11 that from a report? In other words, she's giving you
 12 that information?
 13 A This would be my assessment. So the
 14 tenderness would be, as we palpate or feel the injury,
 15 they would tell us if touching it would increase the
 16 pain which would be the tenderness.
 17 And then instabilities or crepitation would
 18 be any issues with the bone, if we felt anything
 19 shifting or if the joint didn't feel whole or correct
 20 or stable.
 21 Q Okay. Now, there's a notation under where
 22 it say "pillar" in that first line that you read where
 23 it says "S/F," and under "pillar" there's a line down
 24 with an arrow. Can you read that?
 25 A Guarded posterior cranium.

1 Q What does that mean?
 2 A So from what she told me and what was
 3 documented in the report was that, when she fell she
 4 put her hand behind her head as she fell to protect
 5 her head. So the guarded posterior would be the rear
 6 and cranium is head, so she guarded the back of her
 7 head as she fell at the base of the pillar.
 8 Q Okay. When you did this examination, did
 9 you palpate anything other than the left elbow that
 10 you recall?
 11 A Normally we would palpate -- yes. We would
 12 palpate the head, neck and back, the spinal column for
 13 any additional pain.
 14 Q Okay. And tell us about your palpation of
 15 the head. How does that work; how did you do that?
 16 A Usually we would just kind of feel around
 17 the back of the skull. We feel for any depressions or
 18 anything that's shifting, anything that doesn't feel
 19 stable. Check for blood on gloves while doing that,
 20 because a lot of open injuries in the hairline get
 21 concealed pretty well.
 22 So we just kind of take a general feel of
 23 the entire cranium or head.
 24 Q When you did that in this case, did you note
 25 any complaints of tenderness?

1 A Okay. Plus CMS, it's -- CMS is shorthand
 2 for circulation motor and sensory. So in the left arm
 3 we would assist at the -- assess at the fingertips
 4 whether there was circulation going past the elbow.
 5 So in the form of what we would call a like
 6 a capillary test where you press on the nail bed and
 7 see how quickly blood would return. Motor, we would
 8 ask them to move their fingers, and then sensory, if
 9 they can feel at the tips of their fingers.
 10 She reported -- and that's written here,
 11 tingling in left P2 and P3. That's phalanges -- or
 12 phalanx for the individuals, phalanges for both. P2
 13 is the index finger, P3 is the middle finger.
 14 And then after that I wrote "Limited ROM,"
 15 that's range of motion, due to pain. So she didn't
 16 have full movement of the elbow joint due to the pain
 17 that she was reporting.
 18 Q All right. So everything you just read to
 19 us related to the left elbow?
 20 A Correct.
 21 MR. GALLIHER: Wait a minute. Objection,
 22 you stated he was talking about two fingers.
 23 MR. ROYAL: Okay. You are right. You are
 24 right.
 25 /////

1 A No.
 2 Q Tell us about the neck down to the low back,
 3 when you did that assessment.
 4 A So for the neck, we would do mainly the
 5 spinal region. We wouldn't do anything from, like,
 6 the sides of the back, but we would do the spinal
 7 region.
 8 So neck would be the cervical spine from the
 9 bottom of the head to the top of shoulders, and the
 10 rest would be the thoracic spine all the way down to
 11 the sacrum.
 12 Q And you did that in this case after you did
 13 the palpation of the head?
 14 A Correct.
 15 Q Were there complaints of pain from the neck
 16 down to the low back when you did -- on palpation that
 17 you recall?
 18 A If it's not written here, it wasn't stated.
 19 Q I don't know because I can't tell exactly
 20 from your writing. Do you see anything like that?
 21 A No, no, I don't.
 22 Q Why don't you read to us. I'm going to
 23 point to, it says plus CMS and just go ahead and read
 24 down to where it says -- or just to the end of the
 25 line.

1 BY MR. ROYAL:
 2 Q Everything you just said related to your
 3 examination of the left elbow?
 4 A Left elbow and left arm, yes.
 5 Q Were there any other body parts during your
 6 examination where she exhibited -- Ms. Sekera
 7 exhibited limited range of motion due to pain?
 8 A No.
 9 Q All right, down, then it says left --
 10 auxiliary pain?
 11 A Axillary pain.
 12 Q Excuse me. What is that?
 13 A That would be that armpit line, that
 14 imaginary line straight down the armpit.
 15 MR. GALLIHER: On the left side?
 16 THE WITNESS: Left side, correct.
 17 BY MR. ROYAL:
 18 Q Okay. Tell us what that indicated to you,
 19 if anything.
 20 A Any indication -- I mean it could have been
 21 numerous things. It indicated to me -- I mean I
 22 didn't witness the fall so I don't know exactly how
 23 she landed, but towards the end she was reporting left
 24 axillary pain and soreness there.
 25 But not to jump ahead, but left flank and

1 lateral back pain would be also just left back side.
2 So I mean it could be any number of things if she
3 landed on at the base of the pillar.

4 What it would indicate to me is she maybe
5 made contact there and she maybe wasn't feeling it
6 because maybe the pain in her elbow was masking other
7 pain.

8 Because I did notate a little below that
9 that there was an increase, there's an arrow up and
10 seven out of 10, that was her pain in the area at the
11 time.

12 Q Pain for what?

13 A At the left elbow.

14 Q Did she give you a pain -- degree of pain in
15 anything other than the left elbow, that seven out of
16 10?

17 A No.

18 Q She didn't rate this back pain?

19 A No.

20 Q This lateral back pain, was that -- did she
21 explain about that after you had already done your
22 palpation? Was it during when you were palpating the
23 spine?

24 A That would have been towards the end. It's
25 stated in the narrative.

1 Q Okay, we'll go to the narrative. That's
2 okay. Let's just read the rest of this as we can.
3 So there's -- go ahead and read it, what you
4 can. I realize a little bit's cut off here, but to
5 the degree you can just read the rest of it, under
6 where it says left flank.

7 A Okay. So at the angle, that's positive
8 video, and I'm not sure if that's from surveillance or
9 security control. It would be one of those two
10 entities that told me that we had video of the
11 incident. And below that is just kind of the quick
12 notes I took while they were talking to me on the
13 phone which would be left foot slipped, 30 minutes
14 prior, no spill, below that.

15 Q Do you know what that means?

16 A That would have been -- they reviewed
17 coverage 30 minutes before the fall and they said no
18 spill was observed.

19 MR. GALLIHER: And I'll allow the testimony,
20 but it's hearsay. But you can go ahead and answer.

21 THE WITNESS: But they didn't observe any
22 spill in the video footage.

23 BY MR. ROYAL:

24 Q Did you ever observe any spill?

25 A I did not see any wet areas.

1 Q Did Ms. Sekera indicate to you she had
2 observed any spill at any time, that you recall?

3 A She said she had slipped and -- I think what
4 I said in the report was that something like water,
5 but I never observed what she stated she slipped in.

6 Q Okay. Let's go through the rest of this on
7 017.

8 A So continuing, that's "RX," which would be
9 treatment, which is splint to left elbow, slash FA,
10 which is forearm. And below that is positive CMS
11 which is -- what that indicates is after we apply a
12 splint to somebody, we want to reassess their injury
13 and anything distal or further down the body, so that
14 would be the fingertips.

15 So we would reevaluate CMS at the fingertips
16 again after the splint to make sure the splint isn't
17 doing any damage or hindering anything.

18 After that it goes negative triangle, which
19 is delta or change. So negative change. There is a
20 "P" with a line above it that's post, after. So
21 negative change after application.

22 And then that's negative HX, which is
23 history.

24 Q What does that mean?

25 A That would be no history of injury to that

1 elbow.

2 Q Prior to the fall?

3 A Correct.

4 Q And that's information obtained from where?

5 A The assessment interview, speaking with her.

6 Q Okay. So let's go to, still on Exhibit 1,
7 VEN006. You asked about -- this was called the case
8 MO, and you were asked about I guess how you put this
9 information together. You said you checked boxes.

10 A Correct.

11 Q On a computer program you used?

12 A Correct.

13 Q When did you complete this report? Did it
14 say here?

15 Look at the VEN006 at the bottom by your
16 name. It says date and time, it says 15:30. What's
17 that?

18 A That would be November 4, 2016, at 3:30 p.m.

19 That, I believe -- and I'm not 100-percent sure
20 because I normally don't see these printouts. These
21 aren't what we normally look at in the report system,
22 but I think that's the time the report was submitted.

23 Q So if that's accurate, you would have
24 prepared this report within two hours of clearing?

25 A Correct.

1 Q All right. Look at where it says, under "MO
2 data," it says "Incident Information." About the
3 fourth line down says "PHI, outside vendor." What is
4 that?
5 A "PHI" is protected health information and
6 then "outside vendor" would be not a Palazzo Venetian
7 team member and not a guest of the hotel. So that
8 would be somebody who is a temp worker or somebody who
9 works in a business on the Venetian Palazzo property
10 that's not officially employed by the Venetian or
11 Palazzo.
12 Q Then you have Surface Conditions: Dry,
13 marble, flat.
14 A Correct.
15 Q Why did you select dry as opposed to wet?
16 A The reason I did that is because that was my
17 assessment of the area, and that was done on an
18 accident scene check which is VEN018.
19 Q Let's go to -- still in Exhibit 1, VEN007.
20 This is called a Person Profile. Is this the same
21 kind of form you fill out -- in other words, where you
22 get on and you click boxes?
23 A Correct.
24 Q Just give us -- based on what you clicked
25 here under "MO information," give us a summary of at

1 incident that you recall?
2 A Not that I'm aware of. Not that I would
3 recollect.
4 Q Still on the first paragraph, let's go to
5 the second-to-last sentence. It says "Sekera
6 apologized for falling and did not appear to be in any
7 immediate distress."
8 Do you have any independent recollection of
9 that initial conversation with Ms. Sekera where she
10 apologized?
11 MR. GALLIHER: Other than what's in the
12 report?
13 MR. ROYAL: Right.
14 BY MR. ROYAL:
15 Q I'm asking, do you have an independent
16 recollection of that conversation?
17 A Outside of this report, no.
18 Q Then you write, "I did not note any obvious
19 injuries or threats of life."
20 When you say you didn't note any obvious
21 injuries, what are you referring to?
22 A Any pools of blood, any obvious fractures.
23 Anything that you could just look at somebody and
24 understand something's not right about their
25 condition.

1 least what you indicated to be Ms. Sekera's state of
2 mind --
3 A Okay.
4 Q -- at the time you were doing your
5 assessment.
6 A That would be the patient assessment and
7 speech. When I clicked, Patient is alert, airway
8 status open, breathing adequate, circulation present,
9 patient has a trauma, slash, injury, abrasions,
10 tenderness and that her speech was normal.
11 Q At any time during your assessment, did she
12 have any -- did she exhibit any signs of a concussion
13 or anything of that nature?
14 A Nothing that was immediately noticeable.
15 Q Let's go to your VEN008, 009. This is a
16 narrative report.
17 All right, a few questions from this. It
18 says you arrived on scene and met with Las Vegas Tours
19 employee Sekera, Joyce.
20 Do you know what Las Vegas Tours is?
21 A I'm not exactly sure what they do. I know
22 they have a couple booths up in the Grand Canal Shops,
23 but I don't know exactly what they sell. I mean I
24 would imagine it's tours, but I'm not --
25 Q Had you ever seen Ms. Sekera before this

1 Q Okay, next sentence -- or rather the next
2 paragraph says, "Sekera was alert, oriented to person,
3 place, time and events."
4 At what point -- does this report indicate
5 at what point you had this particular conversation
6 with her to make that determination? Was it during
7 your initial assessment or was it later?
8 A This would be the initial assessment. This
9 would be right when I walked up and started talking to
10 her.
11 Q Okay. So the next sentence says "She stated
12 that she was walking through the area when she slipped
13 in what she believed was water on the floor."
14 See that?
15 A Yes.
16 Q When you say "She stated" in this report,
17 what is -- what does that indicate? What is that
18 meant to indicate? Can you explain that?
19 A In this, in my report writing, if I don't
20 add quotations, it's not a direct quote of what they
21 said. This would just be a paraphrase of what she
22 explained to me happened before she ended up on the
23 floor.
24 Q Okay. So she said she believed water was on
25 the floor. Did she ever identify to you anything else

1 beyond saying it was on the floor? Did she describe
2 it? Did she give any indication about size or
3 location?
4 A No, not that I can recall.
5 Q The next sentence says "She reported that
6 she fell backwards and put her right hand behind her
7 head to protect it."
8 When you say "She reported," is that any
9 different than when you said "She stated"?
10 A No.
11 Q Do you recall -- okay. Then it says, the
12 next sentence, "She landed on the marble floor and her
13 left elbow struck the base of the pillar next to her."
14 You didn't say "she reported" or "she
15 stated" prior to that particular statement. Is there
16 a reason for that?
17 A That would have been a continuation of the
18 previous sentence --
19 Q Okay.
20 A -- because obviously I wouldn't have seen
21 it.
22 Q Okay. The next sentence, "She denied
23 striking her head during the fall and denied losing
24 consciousness prior to or after falling."
25 Do you see that?

1 A Yes.
2 Q When you say "She denies," would you explain
3 to us how we're supposed to read that in this report?
4 A So that would be me asking her just
5 basically that: Did you feel like you were going to
6 pass out or did you pass out before falling, before
7 being on the floor? And do you remember being on the
8 floor and everything up until seeing me, is basically
9 how I would put it.
10 And then that's just kind of a paraphrasing
11 of that conversation.
12 Q Okay. So when we read this and it says she
13 denied striking her head, that indicates you had a
14 conversation with her?
15 A Correct. I would have asked her, you know,
16 how she fell, did her head hit anything; and then in
17 line with that, it would be other questions about loss
18 of conscious or levels of consciousness.
19 Q Okay. So as you sit here today and as you
20 read this report so far, does any of this refresh your
21 recollection as to any of the conversation you
22 actually had with Ms. Sekera?
23 A The exact conversation, no. No, I --
24 outside of what's written here, I have no independent
25 recollection of this conversation.

1 Q The next sentence, "She denied any head
2 pain, neck pain, weakness, dizziness or nausea at that
3 time."
4 Again, when you use the words "She denied,"
5 what does that indicate to us?
6 A That would be her saying, no, to basically
7 any of those things: Do you have any head pain, neck
8 pain, back pain? The weakness and dizziness would
9 have been included in the loss of consciousness
10 conversation.
11 Q Okay. So up to this point in paragraph 2,
12 other than the first sentence where you said she was
13 alert, oriented to person, place and time, pretty much
14 what we've been reading is information she has
15 provided to you; is that correct?
16 A Yes, correct.
17 Q All right. The next sentence says "I noted
18 she was guarding her left elbow and reported she was
19 only experiencing pain there at that time."
20 See that?
21 A Correct.
22 Q Okay. So you observed -- tell us about what
23 you observed in that sentence versus what information
24 she gave to you.
25 A So from what I typed there, guarding is

1 basically kind of protecting or shielding. So a lot
2 of times people, when they're guarding an injury, they
3 won't put their hands directly over it, but they'll
4 guard like a body part near it. I didn't exactly
5 explain that she was holding an arm across her chest
6 or anything like that.
7 But guarding in the medical assessment is
8 usually something along those lines, that the patient
9 is protecting the injury from any further movement or
10 anything affecting it.
11 Q Okay. The next sentence, "She was
12 embarrassed, to which I offered to assist her to a
13 more private area." Again she stated she was
14 embarrassed, I should say.
15 That, again, was conversation you had with
16 Ms. Sekera?
17 A Yes.
18 Q Okay, let's continue. "She agreed and was
19 assisted to a standing position."
20 Did you do that?
21 A I would have, yeah.
22 Q Then it says, "I asked if she felt any new
23 pain, weakness, dizziness or nausea, to which she
24 denied at that time."
25 Can you explain to us why you would ask that

1 a second time? Looks like you had already covered
2 that before.

3 A So like I said previously with the
4 splinting, anytime we change a condition for a
5 patient, you always want to reassess. So anytime you
6 do something you want to reassess: Is this hurting
7 you more? Does this make you feel better?

8 And then usually when somebody falls,
9 picking them back up, you know, sometimes people will
10 feel a little weak or dizzy, in my experience doing
11 that job. So that became just a normal question I
12 would ask whenever I would assist anybody to stand,
13 regardless of injury, is if there was any weakness or
14 dizziness upon standing up.

15 Q Okay. Continuing it says, "She agreed to be
16 assessed in the medical room and refused wheelchair
17 assistance."

18 What's the medical room?

19 A The medical room is a section of the
20 security office that the EMT stage out of. We have
21 our own computers, or own phone, own private area that
22 wasn't under camera coverage. Because most of the
23 security office had camera coverage because obviously
24 we wouldn't want any cameras in the medical room. So
25 the medical room is a more private place that I could

1 get her to and then finish the assessment there.

2 Q How did you get to the medical room from the
3 scene when you first met Ms. Sekera?

4 A From the report, looks like we walked
5 because she refused the wheelchair.

6 Q Do you remember anything about that walk?

7 A No.

8 Q Do you remember her having any trouble
9 ambulating from the accident scene to the medical
10 room?

11 A No. And if she did, I would have put her in
12 a wheelchair anyway.

13 A lot of times you would get a patient who
14 would overestimate their ability to walk. There were
15 ways that we could have conversations with people to
16 make them understand that, you know, if it's from a
17 previous fall, we don't want them falling again. We
18 don't want things getting worse.

19 So even though a wheelchair is
20 embarrassing -- a lot of people said it was
21 embarrassing, we would always prefer that route to
22 having them fall again, and most people were
23 understanding of that.

24 And that was part of us walking with them.
25 We wanted to make sure that they didn't appear

1 unstable or were able to walk on their own without
2 assistance.

3 Q Now, this next paragraph, it goes from -- it
4 goes on to VEN009, starting with the last paragraph.
5 This appears to be just details associated with your
6 assessment -- your assessment of the left elbow.

7 A The paragraph that ends on 008?

8 Q I'm sorry. Secure left elbow.

9 A Yeah, that would be my assessment of the
10 injury.

11 Q Now, I'm just sort of looking at this
12 chronologically the way you drafted this. Does this
13 sort of refresh your recollection as to where you did
14 this extensive left elbow assessment? Whether it was
15 at the accident scene or the medical room?

16 A This would have happened in the medical
17 room.

18 Q Okay. Now going on to VEN009 at the top
19 starting with "She added." "She added that she was
20 beginning to feel minor pain and soreness in her left
21 lower back and left side localized to the axillary
22 line."

23 Can you explain what that means again?

24 A So that would have been during my
25 conversation with her. This would have been after

1 treatment because all my report writing is
2 chronological. That would have been after treatment
3 of her elbow.

4 So once it was splinted -- let's see,
5 splinted and slinged, she began to report minor pain
6 and soreness, left lower back and left side. So that
7 would have been at the end of my assessment.

8 And usually for writing like this to be a
9 little more concise, throughout the entire call we
10 usually ask if they want an ambulance, if they want to
11 see a doctor or seek any further medical attention.
12 And the way I wrote my reports is that that would be
13 towards the end.

14 I mean if somebody says yes to an ambulance,
15 obviously that would be chronologically reported. But
16 to make the report more concise, I added the seeking
17 medical attention part towards the end of those
18 reports.

19 Q I'm going to ask you one more time about
20 this minor pain and soreness to her left lower back
21 and left side, localized to the axillary line, because
22 I'm not clear on where this is.

23 Where is the pain in the left lower back?
24 Is it like in the kidney area? Is it on the side or
25 the spine?

1 A Okay. So, yeah, it would be the area -- so
2 imagine on the left side, the invisible line like the
3 middle of the armpit going all the way down towards
4 the flank, which would be just above the beltline and
5 then around to the back.

6 Q So you've indicated going to the back either
7 to the spine or -- how far to the middle of the back?

8 A Yeah, usually -- I don't know if it was to
9 the spine. If it's not documented, I'm not exactly
10 sure how far it extended.

11 Q Okay. All right. Now on VEN009 starting
12 with "Sekera agreed to seek medical attention."

13 See that?

14 A Yes.

15 Q Okay. Then it says, "but refused ambulance
16 transport." That means what? That means you had a
17 conversation about whether you should call an
18 ambulance?

19 A Yes.

20 Q The next sentence says, "She stated her job
21 did not provide worker's compensation."

22 Do you know why that would be part of your
23 conversation?

24 A The reason that's in there is because she
25 was a third party -- I'm sorry. What was the exact

1 worked at the property, but wasn't exactly a team
2 member with us.

3 Those employees on our property do have
4 access to our back-of-house areas, so it's not against
5 anything for me to bring her back to a secure area
6 like that. And in the case of a guest, if they ask
7 for more privacy, there are other areas near the
8 casino floor that we could assess them that isn't the
9 medical room.

10 Q Okay. Back to VEN009, Exhibit 1, and it
11 indicates, "She refused to complete a voluntary
12 statement for the incident."

13 Can you explain what that indicates or
14 reads?

15 A Sure.

16 So our policy for reporting injuries to
17 outside vendors or third-party employees on property
18 was that they would fill out the medical release,
19 which is VEN017.

20 They would fill out the medical release and
21 they were given the option of completing a voluntary
22 statement for their employer. But, like, it's implied
23 it's a voluntary statement. If they don't want to
24 complete any paperwork for their injury, they don't
25 have to.

1 phrasing? On VEN006, "PHI, outside vendor."

2 Because she was in line with, like, a temp
3 worker or somebody who works at the Venetian Palazzo,
4 but is not employed by the Venetian Palazzo, we would
5 ask them if they had worker's compensation only
6 because that would require them to report to their
7 manager and that would require them to fill out the
8 worker's compensation paperwork.

9 And that -- mostly we saw temp workers for
10 injuries, but that's for third-party stuff like this.
11 And they had their own worker's comp, but most people
12 aren't aware of how to engage that conversation with
13 the manager or how to start the worker's compensation
14 process.

15 So that's just the normal thing we ask them,
16 anybody that's not employed by the Venetian Palazzo.
17 Only because, like I said, they have to report to the
18 manager and let them know they were injured.

19 Q That brings up another question. Is it
20 unusual to take someone from, let's say, the public
21 area back to the medical room? Just a normal guest?

22 A I wouldn't take a guest back to the medical
23 room.

24 Q Why did you on this occasion?

25 A Because she was an outside vendor. She

1 Q And you said "She was escorted to her booth
2 in the Grand Canal Shops, collected her belongings and
3 was escorted to her vehicle in the team member garage
4 on Level 8."

5 Do you see that?

6 A Yes.

7 Q Can you explain, to the best you can, what
8 that means?

9 A So after all the paperwork and photographs
10 were completed and everything I had -- everything I
11 needed I had, I offered to walk her back up to where
12 she worked, collect her belongings -- I guess I don't
13 know what that entailed and probably a purse, but
14 that's just guessing -- and then she was escorted to
15 her vehicle.

16 So I walked with her basically just to make
17 sure she was okay. Only because she was injured and
18 she was also complaining of the additional things, but
19 didn't want to go by ambulance.

20 More often than not -- and I think everybody
21 is different about it as far as EMTs. If somebody is
22 injured on property and I have the ability to walk
23 with them, I'll do it only because they are on our
24 property and I'm caring for them. I always take it
25 upon myself to escort injured team members or

1 employees.
2 Q So in this case, from the accident scene,
3 where did you walk with her?
4 A So from the accident scene, it would have
5 been through the hotel -- the elevator lobby to the
6 back of house, to the security office, and the medical
7 room in the security office where the rest of the
8 report was finished, paperwork was collected.
9 And then we would have gone from the medical
10 room back out to the casino floor and then her booth,
11 which is where she worked up on the second floor out
12 of the Grand Canal Shops. And then she would have
13 collected her stuff and I would have walked with her
14 to wherever her car was parked.
15 Q Okay. Did you indicate, anywhere in your
16 report, any concerns related to her ability to operate
17 a vehicle on her own?
18 A Not in the report itself, but I would have
19 asked her. And it's not documented, so I can't say.
20 Q Okay. So once you -- what happened after
21 you got to the team member garage? Strike that. Let
22 me ask another question.
23 This team member garage, what is that? On
24 Level 8, what's a team member garage?
25 A Where all the employees park their vehicles

1 have to do an accident scene check. That is policy
2 for us to complete.
3 I don't remember this exact incident, but my
4 normal procedure is to go where the incident happened,
5 take a look around and just evaluate the area, see if
6 there's anything uneven, see if there's any
7 obstruction, see if there's just anything that might
8 present a hazard.
9 Because if there is something present -- and
10 this was done in conjunction with facilities. So if
11 there was something present, I would need to stand
12 there and make sure nobody else got injured from it or
13 tripped on something or slipped on something. So it
14 would be on me to make sure either nobody else slipped
15 or fell in that area, and that was done with the PAD
16 department.
17 Q The next line down says, "A previous wet
18 spill was reported and cleaned by PAD."
19 When you refer to a previous wet spill, what
20 information did you have other than Ms. Sekera saying
21 that she believed she stepped in water?
22 A As far as my recollection, she was the only
23 one that told me.
24 Q And is there anything in your report
25 indicating whether or not Ms. -- other than Ms. Sekera

1 and they walk onto the property.
2 Q Then after you walked her to -- Ms. Sekera
3 to her car, last paragraph indicates that you returned
4 to the area; is that right?
5 A Yes.
6 Q Did you -- you don't have an independent
7 recollection of that, do you?
8 A No, not outside of the report.
9 Q Okay. Now, it says, "Video coverage is
10 available per surveillance."
11 Do you recall ever reviewing any actual
12 surveillance?
13 A I'm not allowed to look at the video
14 coverage.
15 Q Okay. So you haven't?
16 A No.
17 Q On VEN018, if you could go to that for a
18 minute. Your notes indicate, "Defects noted, explain
19 in detail." It says "Marble flooring appears flat,
20 even and dry."
21 See that?
22 A Yes.
23 Q Do you recall what you did to make that
24 determination or not?
25 A So for this -- any slip-and-fall, we always

1 saying she believes she slipped in water, any other
2 objective observation you made about the existence of
3 water prior to this slip-and-fall?
4 A No.
5 MR. ROYAL: Did we mark those?
6 MR. GALLIHER: They're marked as 2.
7 MR. ROYAL: Can I look at those?
8 BY MR. ROYAL:
9 Q I just ask you, on Exhibit 2, on these
10 photographs that we looked at, there's VEN035, I
11 assume you took that photo.
12 A Yes.
13 Q All those photos; right?
14 A Correct.
15 Q Was that taken in the -- can you just tell
16 us where this was taken.
17 A That would be the medical room.
18 Q Okay. And how about Photo 036?
19 A Also in the medical room.
20 Q And that's of the left elbow?
21 A Yes.
22 Q And how about 037?
23 A Medical room.
24 Q Do you know why you took that picture?
25 A It's policy for us to photograph shoes if

1 we're able to. Tops and bottoms of shoes.
 2 Q And 038?
 3 A Medical room.
 4 Q Okay. That's the bottom of the shoe?
 5 A Correct.
 6 Q 039?
 7 A That's the area of incident.
 8 Q Do you remember when this one was taken,
 9 039? Would that have been after you returned to the
 10 scene?
 11 A Yes. That photograph, I don't know exactly
 12 when that was taken, but my normal operation was to
 13 take photographs during the accident scene check.
 14 Q All right. So VEN014, you took that?
 15 A Yes.
 16 Q And in this particular photograph or
 17 anywhere around this pillar, did Ms. Sekera ever point
 18 to you and say, "This is where I believe the water
 19 was"?
 20 A Not to my recollection.
 21 Q All right, 041, that's also of where you
 22 found Ms. Sekera?
 23 A Yes.
 24 Q On 042, why did you take this photo?
 25 A That would be the pillar she pointed to as

1 the falling event.
 2 Q And other than her left elbow, did she
 3 complain to you about anything else striking the
 4 pillar?
 5 A Striking the pillar? No.
 6 Q Did she complain to you about anything else
 7 striking the floor or any other object other than her
 8 left elbow?
 9 A No.
 10 Q Okay. And this last photo, 0043, you took
 11 that and that was of the incident area?
 12 A Yes.
 13 Q Okay. I just have a couple more here. I'm
 14 going to show you --
 15 MR. ROYAL: Off the record for a second?
 16 (Discussion off the record.)
 17 BY MR. ROYAL:
 18 Q And I'm trying to remember what I -- for the
 19 record, I've got up here the surveillance photo of the
 20 incident starting at 12:43:15.
 21 And it's still right now, but do you
 22 recognize yourself?
 23 A Looks like me.
 24 Q And would that be you on the right with the
 25 backpack?

1 A Yes.
 2 Q There's an officer in a blue uniform -- I'm
 3 sorry, there is a man in a blue uniform. Do you see
 4 that?
 5 A Yes.
 6 Q Do you know who that is?
 7 A Not off the top of my head.
 8 Q Counsel had asked on direct whether or not
 9 there was another security officer there. Does
 10 looking at this, still at 12:43:15, at all refresh
 11 your recollection?
 12 A No.
 13 Q I'm not left-handed so this is a little
 14 tricky. Hang on. So I've let it -- it's now rolling,
 15 it's 12:43:22. You are bending over.
 16 You are talking to -- I assume that's
 17 Ms. Sekera.
 18 A I believe so.
 19 Q Okay. Is this the first time you've seen
 20 this footage?
 21 A Yes.
 22 Q Does anything that you are seeing at this
 23 point refresh your recollection --
 24 A No.
 25 Q -- about anything you testified to?

1 A No, not independently.
 2 Q Hold on one second.
 3 MR. ROYAL: Give me a second here.
 4 BY MR. ROYAL:
 5 Q Okay. I'm going to show you now video
 6 starting at 12:44:45. Ms. Sekera is now standing up
 7 and you are in -- is that a white shirt --
 8 A Yes.
 9 Q -- white uniform?
 10 A That's correct.
 11 Q And then we still have this other officer
 12 here in the blue uniform. We don't know who he is at
 13 this point; is that right?
 14 A I don't recognize him.
 15 Q So I'm just going to hit Go here, so it's
 16 rolling at 12:44:45 forward. You see the officer in
 17 the blue uniform, looks like he's gone somewhere else
 18 and just you and Ms. Sekera are walking from the scene
 19 and you've got the wheelchair; right?
 20 A Yes.
 21 Q And where are you going at this particular
 22 point?
 23 A To the medical room.
 24 Q Okay. So these cameras at 12:45:14, they
 25 depict you going into what looks like the elevator

1 lobby area.
 2 A Yes.
 3 Q And at 12:45:25 you are going through this
 4 door, and where does that lead?
 5 A To the back of house.
 6 Q Are guests typically allowed back there?
 7 A No.
 8 Q Okay, 12:45:40 we see you again with the
 9 wheelchair and Ms. Sekera in the back hall, and it
 10 just continues as you are going towards the medical
 11 room.
 12 Looking at any of this, does it refresh your
 13 recollection as to anything you testified to today?
 14 A Nothing outside the report.
 15 Q At 12:46:05, that's you and Ms. Sekera
 16 walking towards the camera?
 17 A Yes.
 18 Q At this particular time, does she at least
 19 appear to have difficulty ambulating to you?
 20 A No.
 21 Q Do you have an idea of the estimated
 22 distance that you walked from the incident scene to
 23 the medical -- to this room you are going into at
 24 12:46:42?
 25 A Total distance walked?

1 Q It's okay, best guess.
 2 A My best estimate is a couple hundred feet.
 3 Maybe -- trying to do the math in my head because each
 4 pace is about three steps or each pace is about
 5 two feet.
 6 Q You know what? It's not --
 7 A I don't know.
 8 Q So at 12:46:54, that's when you -- just
 9 because you disappeared, that's when you go into the
 10 medical room?
 11 A Correct.
 12 Q So I want you to -- all right, now I'm going
 13 to show you footage -- oh, boy. I'm going to show you
 14 footage starting at 13:02:37, and you said there's no
 15 cameras in the room where you were doing your
 16 assessment.
 17 A Correct.
 18 Q All right. So at 13:02:39, that looks like
 19 you and Ms. Sekera coming from the medical room.
 20 A Yes.
 21 Q All right. So according to at least the
 22 time difference there, looks like your assessment in
 23 the medical room was somewhere close to about 15
 24 minutes.
 25 A Yeah -- yes.

1 Q All right. So from this point, I'll just --
 2 I'll represent to you that this -- maybe I'll just
 3 kind of speed this up -- that this shows you walking
 4 back from the medical room, the same -- looks like the
 5 same course that you took to get there.
 6 Would you agree?
 7 A Yes.
 8 Q Okay. I'm at 13:04:06. We see you coming
 9 from those rooms that lead to the back area, and then
 10 now you are out in the common area -- the guest area?
 11 A Yes.
 12 Q Okay. At this point, we're -- at this point
 13 you are going where?
 14 A Back up to her booth or place of employment.
 15 Q So I'm going to speed this up a little bit.
 16 Now at 13:05:25, what are we seeing here? You see
 17 yourself and Ms. Sekera?
 18 A Yes.
 19 Q Where is that?
 20 A That's up in the Grand Canal Shops.
 21 Q Okay. It's a floor above?
 22 A Yes.
 23 Q A floor above where the incident occurred;
 24 is that right?
 25 A Not exactly, but, yeah.

1 Q What do you mean "Not exactly"?
 2 A Not like directly on top of it, but a floor
 3 above it.
 4 If you were to pinpoint exactly where it was
 5 above it, it would be further down that hallway on the
 6 left side of the video there.
 7 Q But it was one floor above?
 8 A Yeah.
 9 Q Okay. I'm going to speed it up quite a bit
 10 here. We're now at 13:13:08. Looks like you are
 11 backtracking, basically going back to the area that
 12 you came once you went up to the Grand Canal Shops. I
 13 don't know if you can tell.
 14 A Yeah, yeah.
 15 Q And at this point you are headed towards
 16 the --
 17 A The garage.
 18 Q Okay. We just watched at 13:08 -- 13:08:50,
 19 up to 13:09. Now it's continuing at this point, she's
 20 in a sling, she's walking on her own and just headed
 21 towards -- looks like the elevator.
 22 A Correct.
 23 Q And that's the elevator to get to the
 24 parking area?
 25 A Correct.

1 Q Okay, now it's at 13:10:08. Looks like you
2 are getting onto an elevator. Is this to go up to the
3 team member parking garage?
4 A To Level 8; yeah.
5 Q Okay. This looks like it ends at 13:10:32.
6 As you and Ms. Sekera are getting out of the elevator
7 on that particular floor to the team member parking,
8 see that?
9 A Yes.
10 Q Does anything that we just went over refresh
11 your recollection as to anything that is beyond, you
12 know, either what you can see in the video or what's
13 in your report that we have covered marked as
14 Exhibit 1?
15 A Nothing stands out.
16 Q If Ms. Sekera had complained to you about
17 anything else during the time that you were doing this
18 escort, either to the medical room or from the medical
19 room to the garage, is that something that you would
20 have typically included in your report?
21 A Yes.
22 MR. ROYAL: I just got a couple more
23 questions here.
24 BY MR. ROYAL:
25 Q You were asked about prior incidents and

1 very good about obstructions and things that people
2 could trip over.
3 More often than not, it was a slip over a
4 trip, but I couldn't give you a number.
5 Q Of the 150 to 175 that you estimated, how
6 many of those related to slips on marble floors where
7 there was no foreign substance?
8 A No foreign substance?
9 MR. GALLIHER: Again, I'll object on grounds
10 of foundation. There's no foundation for your
11 testimony, but you may answer.
12 THE WITNESS: Can you repeat the question?
13 BY MR. ROYAL:
14 Q Do you understand what I mean by foreign
15 substance?
16 A Yeah, like a fluid or anything like that.
17 Q Yeah. So of the 150 to 175 -- or let me ask
18 it this way.
19 Do you recall if you responded to any falls
20 or slips on a marble floor that did not involve a
21 foreign substance?
22 MR. GALLIHER: Same objection. You may
23 answer.
24 THE WITNESS: A slip that did not involve --
25 there might be a handful of those. It's usually

1 best estimates and so forth about slip-and-falls. I
2 want to cover a couple things about that.
3 There are occasions when you respond to
4 incidents like this where there are more than one EMT
5 that responds?
6 A Yeah, yeah, that's happened.
7 Q On some of those estimates that you
8 provided, how many of those would include other EMTs
9 responding with you?
10 A I wouldn't be able to estimate that.
11 Q Would it be more than 10 percent? More than
12 20 percent?
13 A I would say maybe 50 percent.
14 Q Of those 175 that you -- or I'll say 150 to
15 175, which is what my notes indicate you said.
16 How many of those falls on marble floors
17 were trips versus slips?
18 A I don't know if I would be able to estimate
19 that.
20 Q Are you -- when you said 175 or up to 175,
21 would that include just slips with a foreign substance
22 or was it any kind of a fall on a marble floor?
23 A More often than not it was a slip. If it
24 was a trip, it would be an unusual circumstance only
25 because they were very good -- PAD and facilities were

1 related to footwear or somebody not being cautious
2 about where they're stepping. Those are pretty
3 common.
4 BY MR. ROYAL:
5 Q Does that have anything to do with why you
6 take pictures of shoes?
7 A Yeah, yes. Actually, yeah. We take shoes
8 to document evidence of how good of footwear the
9 person was wearing when they're on our flooring.
10 Q Okay. As you sit here today, you didn't
11 make any conclusions as to whether or not there was
12 any kind of foreign substance on the floor that caused
13 Ms. Sekera to fall in this particular incident;
14 correct?
15 A That's correct; I didn't observe anything.
16 Q The only information you had is that she
17 said to you she believed she stepped in water?
18 A Correct.
19 Q As you -- do you recall or did you see
20 anything in your report related to Ms. Sekera
21 complaining that her pants were wet after the fall?
22 A No. I didn't document and it wasn't
23 discussed.
24 Q Did she say anything to you other than she
25 believed there was water on the floor?

1 A Aside from that, no.
 2 Q Did she indicate to you -- do you recall her
 3 indicating to you whether she had anything in her hand
 4 at the time she fell? A beverage of any kind?
 5 A I don't independent recall that, but the
 6 video coverage showed me that she had a white cup in
 7 her hand.
 8 Q Did she ever indicate to you, as you
 9 recall -- if you recall -- that she felt liquid on the
 10 floor with her hand after the fall?
 11 A I don't recall that.
 12 Q If she told you that, typically is that
 13 something you would put in your report?
 14 A Yes.
 15 Q Did she exhibit anything that indicated to
 16 you that she was dazed and confused as a result of the
 17 fall, based on your observation or based on your
 18 reporting?
 19 A No, no. I didn't see anything like that.
 20 MR. ROYAL: Okay. That's all my questions.
 21
 22 FURTHER EXAMINATION
 23 BY MR. GALLIHER:
 24 Q Back to me. Let's start with VEN018.
 25 And I think we established earlier that the

1 Q And no one else reported it to you; right?
 2 A That would be her saying that to me; yes.
 3 Q Who reported to you that the previous wet
 4 spill was cleaned by PAD?
 5 A I would attribute that to the phrasing,
 6 then, because I observed PAD cleaning when I arrived
 7 on scene. She would be the one that told me that the
 8 wet spill was there.
 9 Q So let's go back to VEN008, first paragraph,
 10 and -- all right. "I" -- meaning you, "noted that a
 11 Public Areas Department team member was on scene and
 12 mopping the floor in the area."
 13 Correct?
 14 A Correct.
 15 Q Now, would that indicate to you that there
 16 must have been something wet on the floor because
 17 somebody was mopping it up?
 18 MR. ROYAL: Objection, foundation; calls for
 19 speculation.
 20 THE WITNESS: Potentially? If I didn't see
 21 anything, I wouldn't -- I mean if I didn't see
 22 anything, I wouldn't make a notation of it.
 23 So if I saw a wet spill, I would make a
 24 notation of it in the report.
 25 /////

1 handwriting at the top half of the page where it
 2 says -- starts with "Marble flooring" was your
 3 handwriting.
 4 A Correct.
 5 Q And what exactly is PAD? Is that Public
 6 Areas Department?
 7 A Correct, yeah.
 8 Q So I'm reading the sentence that Mr. Royal
 9 read to you and I want to ask you about it. It says
 10 "A previous wet spill was reported and cleaned by
 11 PAD"; is that right?
 12 A Yes.
 13 Q That's what you wrote down?
 14 A Yes.
 15 Q How would Ms. Sekera know that PAD cleaned
 16 it?
 17 MR. ROYAL: Objection, form.
 18 THE WITNESS: So this statement was -- this
 19 observation was made by me. It wouldn't be anything
 20 that she said to me.
 21 BY MR. GALLIHER:
 22 Q Well, but earlier you testified that the
 23 previous wet spill was reported and you said that was
 24 Ms. Sekera.
 25 A Yes.

1 BY MR. GALLIHER:
 2 Q Remember something. You didn't come
 3 immediately after the fall, you came after it was
 4 cleaned up.
 5 A Correct.
 6 Q And what I'm asking you is that, you made a
 7 specific note in your report that there was a Public
 8 Areas Department team member on the scene mopping the
 9 floor in the area; right?
 10 A Correct. They had a mop and they were
 11 mopping through the area. I didn't see a puddle of
 12 anything being mopped up. I just saw that they
 13 were -- they had a mop in their hand.
 14 Q Did you walk over to where the Public Area
 15 Department person was and ask them what they were
 16 mopping up?
 17 A No.
 18 Q Did you go over and look to see whether the
 19 mop was wet?
 20 A No.
 21 Q Did you go over to look to see whether or
 22 not there was a wet spot that was being mopped?
 23 A No.
 24 Q So all you know is that in the immediate
 25 vicinity of the fall, there was a Public Areas

1 Department team member mopping the floor --
 2 A Correct.
 3 Q -- right?
 4 A That's what I saw.
 5 Q And go back to VEN018. So what we've got is
 6 a wet spill is reported and you said that was reported
 7 by Ms. Sekera, and then we have your personal
 8 observation that the floor was being mopped in the
 9 area of the fall; right?
 10 A Yes.
 11 Q Now, the assessment that you performed, I
 12 want to talk to you a little bit about that. That
 13 would be VEN017. With me?
 14 A Yes.
 15 Q Sounds to me like the assessment was
 16 performed roughly 15 to 20 minutes after the fall.
 17 Would that be fair?
 18 A I didn't follow the time stamps exactly.
 19 Q Well, the reason I ask is because when we
 20 talk about VEN018, the next page, it bears the time of
 21 13:26. Do you see that?
 22 A Yes.
 23 Q And that would be -- the fall was reported
 24 to you on 12:39.
 25 A Yes.

1 Q Same date?
 2 A Yes.
 3 Q So if I do my math correctly, it looks like
 4 you've got about 45 minutes that elapsed between the
 5 time the fall was reported to you and the time
 6 that you completed VEN018.
 7 A Correct.
 8 Q Would that right?
 9 A That would be correct.
 10 Q And then if we go back to VEN017, you've got
 11 the time there at 12:57. You see that?
 12 A Yes.
 13 Q So if we do the math, the fall was reported
 14 to you at 12:39, you do the assessment at 12:57. By
 15 my math, that's roughly 18 minutes; would that be
 16 fair?
 17 A The time inputted on here would be the time
 18 that I signed.
 19 Q Okay. So did you perform the assessment
 20 before 12:57?
 21 A Yes, the assessment was completed before
 22 12:57.
 23 Q So how long did the assessment take?
 24 A I don't remember the exact time we got to
 25 the room on the time stamps, but whatever time we got

1 to the room and then 12:57 on here.
 2 Q So we know that the assessment, then, would
 3 have been performed sometime between the time the fall
 4 was reported to you and 12:57 p.m.?
 5 A Yes.
 6 Q And so that would be roughly within that
 7 18-minute time frame post fall you performed the
 8 assessment?
 9 A Yes.
 10 Q Now, you mentioned in response to
 11 Mr. Royal's questions that you don't usually see the
 12 printouts which we have identified as VEN005 through
 13 009.
 14 Is that right?
 15 A Correct.
 16 Q Okay. So what do you normally see?
 17 A On the computer screen, it's kind of like a
 18 tab system. Like it would be, like, think of like a
 19 web browser with multiple tabs. It's kind of like a
 20 system like that. There's different areas for input
 21 and the area of the screen is just a blank space.
 22 That is just a printout of all the information I put
 23 in there, but what we see is not anything close to
 24 this when we're actually writing the report.
 25 Q So when you're looking at the computer

1 screen when you're writing the report, you are
 2 checking boxes?
 3 A Yes.
 4 Q And when you check the boxes, it comes back
 5 in printed form in the report which we previously
 6 discussed; is that correct?
 7 A Yeah. Not all the reports we complete are
 8 printed. It just stays in the system electronically.
 9 For cases like this, we just print it out and it comes
 10 out in this form which is not something I see very
 11 often.
 12 Q Apart from 017 and 018, do you recall if
 13 there was anything that was prepared in handwriting in
 14 connection with this fall event?
 15 A No, it would just be these two forms.
 16 Typically it would be a voluntary statement as well,
 17 but she declined.
 18 Q Now, you have been asked to describe the
 19 nature of the fall. In other words, what happened in
 20 connection with the fall, you are basing your
 21 description upon what Ms. Sekera told you?
 22 A Yes.
 23 Q And you haven't seen the video surveillance
 24 of the fall itself?
 25 A Of the fall; no.

1 Q So you would agree with me that all the
2 questions would be answered by the video surveillance
3 showing the fall?
4 In other words, what hit, what didn't hit,
5 how hard the fall was, the video surveillance would be
6 the best evidence of that?
7 A Yes.
8 Q A couple of other things that weren't
9 mentioned in Mr. Royal's examination of you that I
10 wanted to address.
11 Look at VEN009. The one thing it doesn't
12 mention is -- you said she refused ambulance
13 transport; right?
14 A Yes.
15 Q However, in the same paragraph -- and tell
16 me if I'm reading this correctly. It says, "After
17 some discussion, she," meaning Ms. Sekera, "opted to
18 self transport to Centennial Hills Hospital as it was
19 close to her home."
20 You see that?
21 A Yes.
22 Q That's what she told you she was going to
23 do?
24 A Yes.
25 Q In other words, she was going to go to the

1 Q And that would be the time that you filled
2 this out?
3 A That would be the time I looked at the area.
4 Q All right. So in other words, when you
5 looked at the area and found it to be flat, even and
6 dry, you were roughly, by my calculations, 45 minutes
7 after the fall.
8 A I believe so, yeah.
9 Q Because the fall was reported at 12:39;
10 right?
11 A Yes.
12 Q So 13:26 would be about 45 minutes later?
13 A Yes.
14 Q All right. So VEN018 was completed by you
15 as a result of an inspection of the floor 45 minutes
16 after the fall?
17 A Yes.
18 Q Thank you. That's all I have.
19 MR. ROYAL: Nothing else.
20 THE COURT REPORTER: Mr. Royal, did you want
21 to order a copy of this transcript?
22 MR. ROYAL: Yes, please.
23 (The deposition concluded at 4:05 p.m.)
24
25

1 hospital?
2 A Yes.
3 Q And then let's go with page VEN0007.
4 A Okay.
5 Q Something else that wasn't talked about when
6 we were talking about your assessment of Ms. Sekera.
7 The middle of the page, it says, "Odor of
8 intoxicants," do you see that?
9 A Yes.
10 Q And what did you indicate?
11 A "None."
12 Q So she was not -- did not smell of alcohol
13 or wasn't under the influence of alcohol at the time?
14 A She didn't have the mannerisms of it; no.
15 Q And she didn't smell -- you didn't smell --
16 A No.
17 Q If you had, you would have noted that in the
18 report?
19 A Yeah, yes; absolutely.
20 Q And then we talk about when you inspected
21 the floor area where the fall occurred. And as I read
22 that, looks like -- and I'm referring to VEN018.
23 A Okay.
24 Q And you note the time, 13:26.
25 A Correct; yes.

REPORTER'S DECLARATION

STATE OF NEVADA)
COUNTY OF CLARK)

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

That I reported the taking of the deposition of the witness, JOSEPH LARSON, commencing on Thursday, October 11, 2018 at the hour of 2:15 p.m.

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

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

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

Dated at Las Vegas, Nevada this _____ day of _____, 2018.

Pauline C. May, CCR 286, RPR

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yeah 5:10 7:13 8:2	12:39 11:15 37:17	2007 4:8	
9:1,11,21 10:4,7	87:24 88:14 93:9	2008 4:8,20 5:9,10,15	
11:17 12:11,25	12:43:15 72:20 73:10	2016 33:10 37:18	
13:19,22 18:2	12:43:22 73:15	50:18	
	12:44:45 74:6,16	2017 5:2,3,10,16	
	12:45:14 74:24		

EXHIBIT 8

Steven D. Grierson

MPOR

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

ROYAL & MILES LLP

1522 West Warm Springs Road
Henderson Nevada 89014
Tel: (702) 471-6777
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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,

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

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.

Before the Discovery Commissioner

DEFENDANTS' MOTION FOR PROTECTIVE ORDER

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

///

///

///

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

1 This Motion 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 1 day of February, 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 **NOTICE OF MOTION**

16 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

17 PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing

18 **DEFENDANT'S MOTION FOR PROTECTIVE ORDER**, on for hearing before the Discovery

19 Commissioner on the ___ day of March 8, 2019, at the hour of 9:00 a.m. of said day,

20 or as soon thereafter as counsel can be heard.

21 DATED this 1 day of February, 2019.

22 ROYAL & MILES LLP

23 By 

24 MICHAEL A. ROYAL, ESQ.

25 Nevada Bar No. 4370

26 1522 W. Warm Springs Rd.

27 Henderson, NV 89014

28 *Attorney for Defendants*

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DECLARATION OF MICHAEL A. ROYAL, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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

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

3 8. That Mr. Galliher thereafter contacted me to discuss his objection to Venetian having
4 provided redacted reports, and we once again discussed Venetian's agreement to provide unredacted
5 documents with a Rule 26(c) stipulation. Mr. Galliher explained that, in his view, any person involved
6 in one of the disclosed prior incidents on Venetian property is a potential witness in this case. He
7 further stated his intention to contact any or all of the persons involved in the prior incidents. I
8 expressed concern that the information relating to these non-party patrons could not only be improperly
9 used in this litigation, but that it could also be passed along to other counsel or persons wholly
10 unrelated to this action and used for other purposes (subjecting these guests to further intrusions into
11 their privacy). After respectfully considering my stated concerns, Mr. Galliher and I were unable to
12 reach an agreement.
13

14 9. That on January 23, 2019, I sent correspondence to Mr. Galliher again outlining
15 Venetian's position and offering to resolve this dispute by requesting a phone conference with the
16 Discovery Commissioner. (See Exhibit C, *Correspondence from Michael Royal, Esq., to Keith*
17 *Galliher, Esq.*, dated January 23, 2019.) Shortly thereafter, Mr. Galliher contacted me by phone and
18 agreed to have my office reach out to the Discovery Commissioner's office as suggested in an effort
19 to resolve this dispute expeditiously.
20

21 10. That my office was subsequently advised by the Discovery Commissioner's office that
22 a phone conference to resolve this dispute could not be arranged, but that a motion would need to be
23 filed.
24

25 11. That on January 29, 2019, I advised Mr. Galliher that a motion would need to be filed,
26 and that the sole issue from Venetian's perspective is its desire for a Rule 26(c) protective order.
27
28

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

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

6 Executed on 1 day of February, 2019.

7
8 
9 Michael A. Royal, Esq.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11
12 **I.**

13 **STATEMENT OF FACTS**

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

19
20 In the course of discovery, Plaintiff requested that Venetian provide three (3) years of prior
21 incident reports. (See Exhibit A, attached hereto.) Venetian produced sixty-four (64) incident reports
22 in redacted form (nearly 650 pages of documents), as Plaintiff would not agree to execute a stipulation
23 and order to protect the information pursuant to NRCP 26(c). Plaintiff now demands that all of the
24 nearly 650 pages produced responsive to her request be unredacted without providing the requested
25 protection by Venetian.
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II.

ARGUMENT

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

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

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

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

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

The objective of discovery rules is to limit discovery to relevant matters, and to prevent "fishing expeditions" by restricting litigants to discovery that only implicates matters raised by them in the pleadings. (See FED. R. CIV. P. 26(b), Advisory Committee Note, Amendments to Federal Rules

1 of Civil Procedure, at 388-90). Pursuant to the Nevada Rules of Civil Procedure, the court in which
2 the action is pending may make any order/recommendation which justice requires to protect a party
3 so that certain discovery abuses do not occur. (See NRCP 26). The compulsion of production of
4 irrelevant information is an inherently undue burden. (See *Jimenez v. City of Chicago*, 733 F. Supp.
5 2d 1268, 1273 (W.D. Wash. 2010) (citing, *Compaq Computer Corp. v. Packard Bell Elecs.*, 163
6 F.R.D. 329, 335-336 (N.D.Cal.1995)).

7
8 A. **This is the kind of circumstance NRCP 26(c) is designed to address**

9 In the instant case, Plaintiff is using discovery in a manner that is unduly burdensome by
10 requesting the production of personal and sensitive information from non-parties to this action;
11 information which is not otherwise relevant to any claims or defenses of this case. Plaintiff is
12 demanding the production of personal identification information, including Social Security numbers,
13 dates of birth, driver's license numbers, home addresses, and telephone numbers of individuals who
14 do not have any personal knowledge of the incident at issue. Once produced, this identification
15 information would be used to correlate non-parties with sensitive health information included in the
16 previously produced incident reports. It is not disputed by Plaintiff that the individuals involved in the
17 prior incidents are not parties to this action, and are not percipient witnesses to Plaintiffs alleged
18 accident.
19

20
21 Plaintiff cannot reasonably articulate how the identity of individuals involved in prior incidents
22 on Venetian's premises, with no relation to Plaintiffs case, could be relevant to any issue of Plaintiff's
23 claim. Plaintiff's personal injury litigation stems from the allegation that Plaintiff slipped and fell on
24 a marble floor. Individuals involved in prior slip-and-fall incidents would be unable to provide any
25 information regarding the alleged hazard which Plaintiff contends caused her fall. Reports of prior slip
26 and fall incidents, which occurred on different circumstances, and on different dates, in different areas
27 of the property have no relevancy to the issue of whether Venetian had notice of any condition
28

1 contributing to Plaintiff's fall on November 4, 2016. (*See Eldorado Club, Inc. v. Graff*, 78 Nev. 507
2 (1962); *Southern Pac. Co. v. Harris*, 80 Nev. 426, 431 (1964).)

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

12
13
14 **B. The policy interests of protecting the confidential personal information outweigh the**
15 **alleged need for discovery in this case**

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

25
26
27 ¹Recall that Venetian contends that Plaintiff's fall had nothing to do with a foreign substance
28 being on the floor; regardless, Venetian provided Plaintiff with sixty-four (64) prior incidents involving
a foreign substance on the floor.

1 Cal. 1995) (*quoting Cook v. Yellow Freight Sys., Inc.*, 132 F.R.D. 548,551 (E.D. Cal. 1990)).
2 Discovery based on mere suspicion or speculation is nothing more than the proverbial "*fishing*
3 *expedition*." (*See, Mackelprang v. Fid. Nat'l Title Agency of Nev.*, 2007 U.S. Dist. LEXIS 2379, *7
4 (D. Nev. Jan. 9, 2007); *see also, Costella v. Clark*, 2009 U.S. Dist. LEXIS 120566, *5 (N.D. Cal.
5 Dec. 7, 2009).)

6
7 Where privacy concerns are implicated by discovery requests, the party requesting such
8 information "*must show that the value of the information sought would outweigh the privacy interests*
9 *of the affected individuals.*" (*Case v. Platte County*, No. 8:03CV160, 2004 WL 1944777, at *2 (D.
10 Neb. June 11, 2004); *see also, Walters v. Breaux*, 200 F.R.D. 271, 274 (W.D. La. 2001),
11 acknowledging legitimate privacy concerns with respect to social security numbers).)

12 Public policy concerns surrounding the protection of personal medical information are far
13 reaching. Generally, public policy concerns favor the protection of individual health information.
14 Similar privacy concerns surround the protection of other confidential information of non-parties,
15 including individuals' Social Security numbers, unlisted telephone numbers and addresses, and dates
16 of birth. A protective order is warranted where the requested discovery "*contains highly personal*
17 *information.*" (*Knoll v. AT&T, et al.*, 176 F.3d 359 (6th Cir. 1999) (recognizing the need for
18 protection of information from non-parties including an individual's unlisted address and telephone
19 number, marital status, and medical background). In addition, many courts have found that social
20 security numbers are confidential and not reasonably calculated to lead to the discovery of [admissible
21 evidence]. (*See, e.g., Mike v. Dymon*, No. 95-2405-EEO, 1996 WL 674007, at *7 (D. Kan. Nov.
22 14, 1996) ("*The court does not find that requests for social security numbers and dates of birth of all*
23 *individuals who provided information to answer the interrogatories are reasonably calculated to lead*
24 *to the discovery of admissible evidence.*"); *Beasley v. First Amer. Real Estate Info. Serv., Inc.*, No.
25 3-04-CV-1059-B, 2005 WL 1017818, at *2 (N.D. Tex. April 27, 2005) ("*[T]he social security*
26
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1 *numbers of employees are confidential and not reasonably calculated to lead to the discovery of*
2 *admissible evidence.").*

3 In this case, the personal identification information withheld is arguably not otherwise relevant
4 to Plaintiff's claim, nor is it likely to lead to the discovery of admissible evidence. As such, the value
5 of the information sought arguably does not outweigh the privacy interests of the affected individuals.
6 **However, Venetian is nevertheless willing to produce unredacted copies with an NRCP 26(c)**
7 **protective order, as the incident reports at issue in this case contain the sensitive, and private**
8 **information of individuals who are not parties to this lawsuit, and who are not believed to have**
9 **any information regarding the facts or circumstances surrounding Plaintiffs allegations.**
10

11 The hundreds of pages of incident reports include home addresses, dates of birth, driver's
12 license numbers, and Social Security Numbers. Venetian has produced these prior reports with all
13 personal identification information redacted, in order to preserve the privacy of the guests. All other
14 information contained in the prior incident reports have been produced. Should unredacted reports be
15 produced without a protective order, the personal identification information, the medical information
16 contained in the reports, including brief medical histories of the guests, as well as other private
17 information, including dates and durations of the guests' stay with the hotel, injuries sustained during
18 the prior incidents, and the perception of consumption of alcohol of the guests at the time of the
19 incidents, could be used for any number of reasons by untold others wholly unrelated to this lawsuit.
20 If this information were so disclosed, without court ordered protection, it would likely lead to the
21 annoyance and aggravation of the individuals involved in prior incidents on Venetian's property;
22 individuals who are not believed to have any personal knowledge or information regarding any of the
23 facts surrounding Plaintiff's alleged incident.
24

25 Disclosure of the guest information as it pertains to this litigation alone creates an issue for
26 Venetian, as it is potentially detrimental to its business interests to protect the confidential information
27
28

of its guests. Were Venetian to disclose this information without court ordered protection, subjecting its customers to unrelenting contact by persons uninvolved with the litigation, it would likely diminish the customer/client relationships which Venetian has extended extraordinary effort and resources establishing. There is a recognized interest in protecting the disclosure of personal client information, as unauthorized disclosure would likely be perceived negatively by customers and potential customers. (See e.g., *Gonzales v. Google, Inc.*, 234 FRD 674, 684 (N.D.CA 2006) (disclosing client information "may have an appreciable impact on the way which [the company] is perceived, and consequently the frequency with which customers use [the company]").)

Guests who stay at Venetian do so with an expectation that their personal information will not be disclosed or disseminated without their consent. Accordingly, Venetian respectfully requests that the private identification information of its guests involved in prior incidents be protected from disclosure by anyone not involved in this litigation as legal counsel, an expert witness, or otherwise.

III.

CONCLUSION

Based on the foregoing, Venetian respectfully submits that it has presented good cause to this Honorable Court to issue an order protecting the confidential personal identification information of non-parties to this action. Venetian has made every effort to reasonably cooperate with discovery, including the production of three years of prior incident reports, with guest identification information redacted. Plaintiff's request to obtain un-redacted versions of these reports without an NRCP 26(c) protective order is unreasonable. Therefore, Venetian moves this Honorable Court for a protective

///

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/ / /

1 order, that the unredacted information sought by Plaintiff not be disclosed for any purpose not directly
2 related to this litigation.

3 DATED this 1 day of February, 2019.

4 ROYAL & MILES LLP

5
6 By 

7 MICHAEL A. ROYAL, ESQ.

8 Nevada Bar No. 4370

1522 W. Warm Springs Rd.

Henderson, NV 89014

9 *Attorney for Defendants*

10 *VENETIAN CASINO RESORT, LLC and*

11 *LAS VEGAS SANDS, LLC*
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 1 day of February, 2019, and pursuant to NRCP 5(b), I
3 caused a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR PROTECTIVE**
4 **ORDER** to be served as follows:

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

7 _____ to be served via facsimile; and/or

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

11 _____ to be hand delivered;

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

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

17 *Attorneys for Plaintiff*

18 Facsimile: 702-735-0204

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

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

EXHIBIT 9



ROPP

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

ROYAL & MILES LLP

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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

**RESPONSE TO PLAINTIFF'S OBJECTION TO DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS DATED APRIL 2, 2019, COUNTERMOTION TO
STRIKE FACTS AND ARGUMENTS NOT BRIEFED BEFORE THE DISCOVERY
COMMISSIONER, COUNTERMOTION FOR ORDER DIRECTING PLAINTIFF
TO COMPLY WITH PROTECTIVE ORDER BY RETRIEVING ALL INFORMATION
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
Tel: (702) 471-6777 • Fax: (702) 531-6777

1 COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS
2 SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL &
3 MIILES LLP, and hereby files this RESPONSE TO PLAINTIFF'S OBJECTION TO DISCOVERY
4 COMMISSIONER'S REPORT AND RECOMMENDATIONS DATED APRIL 2, 2019,
5 COUNTERMOTION TO STRIKE FACTS AND ARGUMENTS NOT BRIEFED BEFORE THE
6 DISCOVERY COMMISSIONER, COUNTERMOTION FOR ORDER DIRECTING PLAINTIFF TO
7 COMPLY WITH PROTECTIVE ORDER BY RETRIEVING ALL INFORMATION DISTRIBUTED
8 TO PERSONS OUTSIDE THE LITIGATION, AND COUNTERMOTION FOR APPROPRIATE
9 SANCTIONS UNDER NRCP 37(b)(2). This Response is based on the pleadings and papers on file,
10 the memorandum of points and authorities contained herein, the affidavit of counsel, the attached
11 exhibits and any argument permitted by this Court at the time set for hearing.
12

13 DATED this 22 day of April, 2019.
14

15 ROYAL & MIILES LLP

16 By 
17

18 Michael A. Royal, Esq.

19 Nevada Bar No. 4370

20 1522 W. Warm Springs Rd.

21 Henderson, NV 89014

22 Attorney for Defendants

23 VENETIAN CASINO RESORT, LLC and

24 LAS VEGAS SANDS, LLC
25
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1 **DECLARATION OF MICHAEL A. ROYAL, ESQ.**

2 STATE OF NEVADA)
3) ss.
4 COUNTY OF CLARK)

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

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

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

12 3. On or about August 16, 2018, Plaintiff served Plaintiff's Request for Production of
13 Documents and Materials to Defendant in which Plaintiff requested reports related to slip and falls
14 occurring within three years preceding the subject incident to the present.

15 4. Defendants objected to providing information related to any incident reports following
16 the subject incident of November 4, 2016, and produced a total of sixty-four (64) prior incident reports
17 from November 4, 2013 to November 4, 2016.¹

18 5. I had discussions with Mr. Galliher regarding Defendants' desire to keep such
19 information protected pursuant to NRCP 26(c), which was memorialized in correspondence dated
20 December 17, 2018.

21 6. Mr. Galliher refused to execute a stipulation to provide NRCP 26(c) protection of
22 information requested, which included the names, addresses, phone numbers, dates of birth, Social
23 Security Numbers, and other identifying information.

24
25
26
27 ¹Even though Defendants maintain Plaintiff slipped on a dry marble floor, they nevertheless
28 produced prior incidents occurring from guests slipping on a foreign substance on the Venetian casino
level common areas for the three preceding years.

1 Security information, and HIPAA protected information related to alleged injuries and first responder
2 care provided to involved guests of the Defendants.

3 7. Despite Mr. Galliher's refusal to stipulate to an NRCP 26(c) order, I sent him a total
4 of sixty-four (64) incident reports from November 4, 2013 through November 4, 2016 in redacted form
5 to protect the identity of involved persons, which Defendants not only deemed irrelevant (*see* footnote
6 1), but that Defendants insist they have an obligation to protect.

7
8 8. Mr. Galliher thereafter contacted me to discuss his objection to Venetian having
9 provided redacted reports, and stated his desire to name sixty-four (64) additional witnesses to testify
10 about their particular incidents and experiences on Defendants' property. During that conversation,
11 Mr. Galliher did not relay his theory that this evidence is relevant to address Defendants' anticipated
12 arguments of comparative fault, as indicated in Plaintiff's Objection, filed with the court. (*See*
13 *Plaintiff's Objection* at 2, ln 6-8.) Further, Mr. Galliher did not then advise that he had been meeting
14 privily with other attorneys handling presently litigated matters against Venetian and producing
15 information to them which he knew Venetian desired to be protected under NRCP 26(c). Mr. Galliher
16 likewise did not advise that he had been receiving information from the same attorneys in other
17 litigated matters which were under NRCP 26(c) protective orders.

18
19 9. Mr. Galliher first set forth his rationale for client's need for unfettered access all persons
20 identified in the prior incident reports during argument at the March 13, 2019 hearing, which is
21 presented as follows in pertinent part:
22

23 *MR. GALLIHER: . . . the comparative negligence issue is a big one because invariably*
24 *juries will come back and apportion the negligence in the case. It's a little -*

25 *DISCOVERY COMMISSIONER: But the comparative negligence of another party*
26 *versus your own party wouldn't be relevant to this action.*

27 *MR. GALLIHER: Well, I disagree, and I'll tell you why. If you've got a situation like*
28 *this where people are slipping on the same floor on liquid - and all the floors'*
identical, it's not like it's different -- and these people don't see the liquid before they
fall, which is why they fall, why would that not be relevant to the question of

1 comparative negligence? Because if five people didn't see it, or ten people didn't see
2 it, why should my client have seen it? Very relevant. I mean, remember, we're not
3 talking just about admissibility, because that's the call that's going to be made by
4 Judge Delaney. We're talking about discoverability, that's all.

5 (See Exhibit A, Transcript of Hearing Before the Discovery Commissioner (March 13, 2019) at 9, ln
6 4-21, emphasis added)

7 10. In response to Mr. Galliher's never previously articulated commentary regarding use
8 of witnesses involved in unrelated incidents occurring on Defendants' property with entirely dissimilar
9 fact patterns in order to contest comparative fault arguments, I advised the Discovery Commissioner
10 that the facts of this case are unique from each of the sixty-four (64) redacted reports of prior incident
11 provided to Plaintiff, as this incident does not involve a foreign substance on the floor. (See *id.* at 4,
12 ln 12-23; 10, ln 14-20.) Yet, in good faith, Defendants nevertheless produced the redacted reports.
13 As a compromise, I offered to provide Mr. Galliher with unredacted information for specific prior
14 incidents where he can show substantially similar facts, which the Discovery Commissioner agreed
15 to be fair.

16 11. Mr. Galliher advised the Court during the March 13, 2019 hearing that he has been
17 sharing information obtained in this case with attorneys presently representing parties in unrelated
18 litigation against Venetian - despite the fact that he knew from the beginning of Venetian's desire to
19 have it protected. One such attorney is Peter Goldstein, Esq., who I understand to be operating under
20 an NRCP 26(c) Protective Order in the matter of *Carol Smith v. Venetian*, case no. A-17-753362-C.
21 Mr. Galliher acknowledged that he obtained protected information from Mr. Goldstein regarding prior
22 incidents obtained from Venetian in the *Smith* matter and compared it with requested NRCP 26(c)
23 protected information he obtained from Venetian in this matter.² (See *id.* at 7, ln 13-25; 8, ln 1-8.)
24
25

26
27 ²It is my understanding that Mr. Goldstein was operating under an NRCP 26(c) Protective
28 Order, in the *Smith* litigation, which he clearly did not honor by sharing prior incident information with
Mr. Galliher, who then used that information to raise issues which were not addressed in the motion
for protective order or in Plaintiff's opposition thereto.

1 12. During the March 13, 2019 hearing, Mr. Galliher attempted to portray Defendants in
2 an unfair light, raising issues not briefed before the Court or raised in the Opposition regarding his
3 sharing of protected information regarding prior incident reports with Mr. Goldstein in *quid pro quo*
4 fashion. In addition, Mr. Galliher has also been distributing other information obtained in this case
5 (which he knew Venetian had requested to be protected) with George Bochanis, Esq., in the matter of
6 *Cohen v. Venetian Casino Resort, LLC*, case no. A-17-761036-C.³
7

8 13. When I discovered that Mr. Galliher not only wanted unredacted information for the
9 sixty-four (64) prior incident reports identified and produced by Defendants, but that he also intended
10 to both contact them and share their personal information with anyone, any way, and anywhere for
11 whatever purpose he fancied (as he had already accomplished with Attorneys Goldstein and Bochanis),
12 I argued at the March 13, 2019 that any such reports produced must remain in redacted form and
13 likewise be protected pursuant to NRCPP 26(c).⁴
14

15 14. The Discovery Commissioner ordered as follows: "*the reports that are to be produced,*
16 *they are to be redacted for the names and the contact information for all witnesses and individuals*
17 *who reported incidents.*" (See *id.* at 12, ln 9-11.) She added: "*there are privacy and HIPAA issues*
18 *that are to be considered, and so my inclination is not to disclose the names and contact information*
19 *for all people on all reports.*" (*Id.* at 12, ln 24-25; 13, ln 1.)
20

21 15. Mr. Galliher did not reveal that he was freely sharing and comparing prior incident
22 reports with Mr. Goldstein, Mr. Bochanis or any other attorney unrelated to this litigation prior to the
23 hearing of March 13, 2019, despite the fact that he was aware of the issue and Defendants' desire for
24

25 ³Mr. Galliher attached a DCRR from the *Cohen* matter as Exhibit 4 to his Opposition to the
26 Motion for Protective Order, and made reference to "*three different defense firms representing The*
Venetian in these three different cases; they're all different." (See Exhibit A at 7, ln 17-21.)

27 ⁴It seems apparent that this private guest information shared by Mr. Galliher with Mr. Goldstein
28 and Mr. Bochanis (perhaps among others), would be used in some kind of depository for access by
others for the purpose not only of identifying prior incidents, but also of making unwanted repeated
contact with these persons. (See Exhibit A at 11, ln 10-25.)

1 NRCP 26(c) protection as of mid-December 2018, and despite the fact that a motion for protection was
2 pending before the Court.⁵ This appears to have been very much by design, so Mr. Galliher could share
3 all information he knew Venetian deemed worthy of protection before the matter could be ruled upon
4 by the Discovery Commissioner.

5 16. The Discovery Commissioner's Report and Recommendation was filed April 2, 2019.
6 (See Exhibit B.)
7

8 17. Following the March 13, 2019 hearing, I sent correspondence to Mr. Galliher advising
9 that I had reconciled an alleged discrepancy in production of prior incident reports, an issue raised for
10 the first time by Mr. Galliher during the March 13, 2019 hearing, which was not an issue before the
11 court, where Mr. Galliher claimed to have compared documents he obtained from Mr. Goldstein in the
12 *Smith* litigation. (See Exhibit C, *Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*,
13 dated March 25, 2019.)
14

15 18. It is Defendants' position that production of certain information provided in prior
16 incident reports is an invasion of privacy, that said information is not necessary for Mr. Galliher to
17 present evidence and make arguments related to notice, comparative fault, etc., and his stated desire
18 to contact any and all such prior patrons personally is the very kind of fishing expedition contemplated
19 by *Schlatter v. Eighth Jud. Dist Court*, 561 P.2d 1342 (Nev. 1977).
20

21 19. **There is no stay in place as to the Discovery Commissioner's Report and**
22 **Recommendation of April 2, 2019**, and to my knowledge Mr. Galliher has not made any effort to
23 comply with the NRCP 26(c) order by retrieving the protected information he has already shared with
24 Mr. Goldstein and Mr. Bochanis regarding the sixty-four (64) prior incidents produced in this matter,
25 which are protected pursuant to NRCP 26(c). To the contrary, Mr. Goldstein and Mr. Bochanis are
26

27
28 ⁵Mr. Galliher did not comply with EDCR 2.34 by discussing this issue with me prior to
presenting it before the Discovery Commissioner at the March 13, 2019 hearing.

1 in fact presently using the NRCP 26(c) protected information provided to them by Mr. Galliher in their
2 respective litigated matters against Venetian without any regard for the Discovery Commissioner's
3 ruling that the protective order is presently in place. (See NRCP 37(b)(2); *Bahena v. Goodyear Tire*
4 *& Rubber Co.*, 235 P.3d 592, 597 (2010).) (See Exhibit D, *Smith v. Venetian Casino Resort, LLC*,
5 Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's Motion for
6 Terminating Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant to NRCP
7 Rule 37 (March 12, 2019), with exhibits.)

9 20. I attended the deposition of former Venetian employee, Gary Shulman, at the office of
10 Plaintiff's counsel on April 17, 2019. While this deposition occurred well after the April 2, 2019
11 DCRR at issue here, events unfolding at the deposition are germane to pending issues before the Court.
12 I first met Mr. Shulman on June 28, 2018, when he was employed as a Table Games Supervisor for
13 Venetian Casino Resort, LLC. On that date, Mr. Shulman and I discussed his recollection of events
14 while he was on a shift break at my client's property. Mr. Shulman's employment was terminated on
15 or about January 23, 2019. I was unaware of Mr. Schulman's termination until a few weeks prior to
16 his deposition. Mr. Shulman refused to meet with me before his April 17, 2019 deposition. At the
17 outset of the deposition, I learned that Mr. Shulman had, in fact, met with Mr. Galliher a few days
18 earlier and related to Mr. Galliher certain facts and communications Mr. Shulman had with me during
19 his employment in my capacity as legal counsel for Venetian in this matter. Over my objection, Mr.
20 Shulman testified about conversations he had with me where the witness made false claims against me,
21 personally, which put me in a very difficult and troubling position. Mr. Galliher was well aware of the
22 ambush he had set for me at the deposition and contended that I had no right to prevent this former
23 employee of revealing what I considered to be privileged communications to Mr. Galliher on the
24 record. I was unprepared to adequately cross Mr. Shulman on issues raised, as Mr. Galliher did not
25 provide any prior warning that a former employee witness would be making salacious allegations
26
27
28

1 against me personally, based on private communications he had with Mr. Galliher. Without question,
2 Mr. Galliher knew what was coming. Mr. Galliher also knew that there was no effective way for me
3 to cross-examine Mr. Shulman without getting into our privileged communications.

4 21. **I fully expect that Mr. Galliher intends to provide a copy of Mr. Shulman's**
5 **deposition transcript with Mr. Goldstein and Mr. Bochanis, among many others, as part of his**
6 **ongoing practice (as he has already done with the deposition transcript of Joseph Larson, EMT,**
7 **which has been identified under NRCP 16.1 by both Mr. Goldstein in the *Smith* litigation and also by**
8 **Mr. Bochanis in the *Cohen* litigation). In the case of Mr. Shulman's deposition, Mr. Galliher elicited**
9 **information he knew was deemed protected by attorney/client privilege from the witness, over**
10 **objection, knowing that it would essentially turn me into a witness. I will be moving to strike all**
11 **testimony elicited from Mr. Shulman in this matter based on Mr. Galliher's conduct, and most**
12 **certainly contend that the NRCP 26(c) order presently in place should preclude Mr. Galliher**
13 **from sharing deposition transcripts, such as that of Mr. Shulman where confidential**
14 **communications with legal counsel have been elicited and shared.**

15
16
17 22. Mr. Shulman also testified in his approximate 14 years working on the casino floor of
18 Defendants' property, the subject incident of November 4, 2016 was the only occasion where he was
19 aware of a guest falling on the marble floor.

20
21 23. I discovered on April 22, 2019 that on April 19, 2019, Mr. Goldstein filed *Plaintiff's*
22 *Supplemental Opposition to Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to*
23 *Strike* in the matter of *Smith* matter. (See Exhibit I.) In that document filed with the court, Mr.
24 Goldstein actually attached a copy of the pending *Plaintiff's Objection to Discovery Commissioner's*
25 *Report and Recommendations Dated April 2, 2019*, along with an affidavit related to the production
26 of all prior incident reports from the instant matter of *Sekera*, which was attached to the March 12,
27 2019 Reply filed by Mr. Goldstein. (See *id.* Compare Exhibit D.)
28

1 24. The timing of the Goldstein disclosure in the matter of *Smith* is critical. Mr. Goldstein
2 received documents which were the subject of a motion for protective order while the issue was
3 pending before the court, and actually filed them to support a motion one day before the Discovery
4 Commissioner granted the Defendants' motion for protective order. The April 19, 2019 filing by Mr.
5 Goldstein demonstrates that both he and Mr. Galliher are working in concert to defy a Court Order in
6 order to promote their respective causes. The fact that Mr. Goldstein has attached the pending
7 Objection filed by Mr. Galliher as an exhibit to the April 19, 2019 filing by the court in *Smith* is further
8 evidence of that.
9

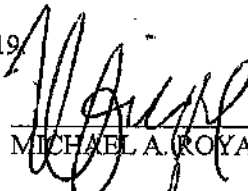
10 25. Plaintiff testified in deposition on March 14, 2019 that she worked from December 2015
11 to November 2016 for as much as 50-70 hours a week, with no vacations, during which time she made
12 many hundreds of walks through the incident area without incident. (See Exhibit J, *Transcript of Joyce*
13 *Sekera Deposition* (taken March 14, 2019) at 75-79.) Plaintiff further testified that she never saw a
14 foreign substance on the floor of Defendants' property. (See *id.*)
15

16 26. I further declare that the exhibits identified in this response and counter-motion, as
17 outlined below, are true and correct copies of documents produced in or otherwise related to this
18 matter.
19

EXHIBIT	TITLE
A	Recorder's Transcript of Hearing [On] Defendant's Motion for Protective Order (March 13, 2019)
B	Discovery Commissioner's Report and Recommendation (April 2, 2019)
C	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated March 25, 2019
D	<i>Smith v. Venetian Casino Resort, LLC</i> , 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 (March 12, 2019), with exhibits
E	Surveillance Footage of Subject Incident (VEN 019)
F	Narrative Report (VEN 008-09)

EXHIBIT	TITLE
G	Acknowledgment of First Aid Assistance & Advice to Seek Medical Care (VEN 017)
H	Correspondence from Michael Royal to Keith Galliher, Esq., dated April 19, 2019
I	<i>Smith v. Venetian Casino Resort, LLC</i> , Plaintiff's Supplemental Opposition to Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Strike (April 19, 2019)
J	Transcript of Joyce Sekera Deposition (March 14, 2019), pp 75-79

Executed on 22 day of April, 2019


MICHAEL A. ROYAL, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF RELEVANT FACTS

This litigation arises from a November 4, 2016 incident occurring when Plaintiff fell in a lobby area of the Venetian while taking a break from her work station where she was employed as a salesperson for Brand Vegas, LLC, working pursuant to an agreement between Venetian and her employer, Brand Vegas, LLC, to sell tickets to Venetian events. At around 12:36 pm, as Plaintiff was en route to the women's bathroom located on the Venetian casino level near the Grand Lux Café, while carrying a covered beverage in her left hand, Plaintiff stepped with her left foot, then slipped and fell to the floor.

The cause of Plaintiff's fall is in dispute, as Venetian denies that there was any foreign substance on the floor at the time the incident occurred. This is very clear from surveillance footage of the incident. (See Exhibit E.)⁶ Regardless, Venetian produced sixty-four (64) prior incident reports

⁶Mr. Galliher misrepresented what is depicted on the surveillance footage to the Discovery Commissioner in the March 13, 2019 hearing. (See Exhibit A at 5, ln 17-23.) Surveillance footage was offered by Defendants to the Discovery Commissioner at the March 13, 2019 hearing in the event

1 from November 4, 2013 through November 4, 2016, in redacted form, to protect the privacy of its
2 patrons, with the understanding that Plaintiff desired the prior incident reports to argue notice and
3 related theories of liability. Plaintiff refused to protect the privacy of information related to the prior
4 incident reports, and demanded that they be produced in unredacted form so that she can not only use
5 them in the present litigation to contact those involved in prior incidents, but also that she may share
6 their personal information with others outside the litigation in uncontrolled and unfettered fashion,
7 including but not limited to Mr. Goldstein and Mr. Bochanis (which Plaintiff's counsel has already
8 accomplished, despite Defendants' request for a protective order, its motion for a protective order, and
9 a present DCRR providing for an NRCP 26(c) protective order).

11 Following a hearing on March 13, 2019, the Discovery Commissioner ruled that the sixty-four
12 (64) prior incident reports produced by Venetian in this matter must remain in redacted form and that
13 they are protected pursuant to NRCP 26(c). (See Exhibit B.) To Venetian's knowledge, Plaintiff has
14 taken no action to honor the Discovery Commissioner's determination by requesting return of
15 information her counsel produced to counsel representing parties against Venetian in other
16 matters. To the contrary, that protected information is being used by counsel for plaintiffs in
17 other ongoing Venetian litigation with impunity and complete disregard for the ruling presently
18 in place.⁷ Since Plaintiff has not moved to stay the Discovery Commissioner's Report and
19

20
21 she wanted to review it to gain perspective regarding the alleged condition of the floor in light of
22 Defendants' very liberal NRCP 34 production to Plaintiffs. (See *id.* at 10, ln 14-20.) The subject
23 incident occurs at 12:36:50 of the video. (See Exhibit E.) At 12:33:53, just under three minutes
24 earlier, Venetian PAD employee Maria Cruz walks through the subject area with a broom and dust pan,
25 and testified in deposition on April 17, 2019 that she did not see anything on the floor at that time.
26 (See *id.*) Numerous people walk through the area over the following three minutes with absolutely no
27 indication of any foreign substance on the floor. At 12:39:37, the camera zooms in close to the slip
28 area and there is nothing identified from the video on the floor. Maria Cruz testified in deposition on
29 April 17, 2019 that she did not see anything on the floor when she returned to the area with other PAD
30 personnel at 12:39:54. Plaintiff denies she ever saw anything on the floor before or after the incident,
31 but related that the left side of her pants were wet. (See Exhibits F and G.)

32 ⁷As noted in the above Declaration, Paragraphs 20-21, Mr. Galliher has been sharing deposition
33 transcripts with counsel in other cases, despite the fact that a Rule 26(c) protective order is in place.

1 Recommendation, Plaintiff is presently in blatant violation of the Rule 26(c) protective order.
2 (See NRCP 37(b)(2); *Bahena v. Goodyear Tire & Rubber Co.*, 235 P.3d 592, 597 (2010).) Plaintiff
3 rang a bell she knew could not be unring here by both eliciting and sharing protected information.
4 Even as late as April 19, 2019, the documents which are the subject of the Objection to the DCRR now
5 before the Court have been filed with the court hearing the *Smith* matter. (See Exhibits D and I.) There
6 is no stay in place, the documents at issue are under a protection order, and they are now being shared
7 and used by counsel outside this litigation with virtual impunity.⁸

9 II.

10 NATURE OF RESPONSE

11 Defendants have provided Plaintiff with sixty-four (64) prior incident reports over a period of
12 three (3) years. The number of prior incident reports produced by Defendants' to Plaintiff in this
13 matter is not at issue. The only matter brought before the Discovery Commissioner was Defendants'
14 Motion for Protective Order. Defendants moved to have information related to the sixty-four (64) prior
15 incidents protected pursuant to NRCP 26(c), and to keep the information in redacted form. Plaintiff
16 did not raise the issue of what she now refers to as "*Venetian's scheme of hiding evidence and*
17 *disobeying court orders*" (see *Objection* at 4, ln 11-2) until the March 13, 2019 hearing. Now, in the
18 Objection, Plaintiff has added facts and arguments that were neither briefed nor presented to the
19 Discovery Commissioner in oral argument at the March 13, 2019 hearing.

20 Despite having very unclean hands, Plaintiff now comes before This Honorable Court and
21 portrays herself as a victim in need of relief. Accordingly, Defendants not only respectfully submit that
22 the Discovery Commissioner's Report and Recommendation be adopted by the District Court, but
23

24
25
26 See also Exhibit H, *Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*, dated April
27 19, 2019.

28 ⁸Plaintiff has actually allowed documents protected by the pending DCRR to become part of
the public record, and does so without the slightest concern.

1 move to strike Plaintiff's arguments related to actions she has taken "To verify Venetian's compliance
2 with the discovery request" which included improperly obtaining information from Mr. Goldstein,
3 who was under an NRCP 26(c) protective order in the *Smith* litigation, which issue was not briefed
4 before the Discovery Commissioner below but was merely thrown out by Mr. Galliher during the
5 March 13, 2019 hearing in sandbag fashion, and further moves the Court to issue sanctions against
6 Plaintiff for her continued refusal to comply with the Rule 26(c) order presently in place.
7

8 III.

9 ARGUMENT

10 A. Defendants Appropriately Sought and Obtained an NRCP 26(c) Protective Order

11 Rule 26 (b)(1), Nevada Rules of Civil Procedure, governs the scope of discovery, and provides
12 for protection of both parties and other persons, against annoyance, embarrassment, oppression, or
13 undue burden or expense. Rule 26(c), Nevada Rules of Civil Procedure, reads as follows in pertinent
14 part:
15

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

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

1 The objective of discovery rules is to limit discovery to relevant matters, and to prevent "fishing
2 expeditions" by restricting litigants to discovery that only implicates matters raised by them in the
3 pleadings. (See FED. R. CIV. P. 26(b), Advisory Committee Note, Amendments to Federal Rules
4 of Civil Procedure, at 388-90). Pursuant to the Nevada Rules of Civil Procedure, the court in which
5 the action is pending may make any order/recommendation which justice requires to protect a party
6 so that certain discovery abuses do not occur. (See NRCP 26). The compulsion of a party to produce
7 irrelevant information is an inherently undue burden. (See *Jimenez v. City of Chicago*, 733 F. Supp.
8 2d 1268, 1273 (W.D. Wash. 2010) (citing, *Compaq Computer Corp. v. Packard Bell Elecs.*, 163
9 F.R.D. 329, 335-336 (N.D. Cal.1995)). Here, the private information Plaintiff desires has no good,
10 relevant purpose other than to harass, vex and annoy Defendants and their guests by not only making
11 direct contact themselves, but sharing the personal information of all such guests with the world.
12 Plaintiff's actions are, in a word, unbelievable. The fact that Plaintiff has obtained NRCP 26(c)
13 protected information from counsel in other ongoing litigated matters and refuses to abide by the
14 pending NRCP 26(c) ruling by the Court is likewise very troubling.

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

18 Plaintiff claims entitlement to all unredacted information related to the sixty-four (64) prior
19 incident reports, and to do whatever she pleases with personal information provided on unredacted
20 reports of prior incidents, including freely sharing them with anyone in any forum, in any manner
21 whenever and however she chooses. Plaintiff cares nothing for the rights of those persons identified
22 in the prior incident reports. Here, Plaintiff is seeking the very kind of *carte blanche* information
23 (*fishing expedition*) the Nevada Supreme Court has so objected to in its holding of *Schlatter v. Eighth*
24 *Judicial Dist. Court*, 93 Nev. 189, 192 (1977). Contrary to what she would have this Court believe,
25 Plaintiff is not a victim.
26
27
28

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 exchange with Plaintiff, from her initial complaints to his physical examination. (See Exhibit F,
2 *Narrative Report*, VEN 008-09; Exhibit G, *Acknowledgment of First Aid Assistance & Advice to Seek*
3 *Medical Care*, VEN 017.) Defendants have Plaintiff's personal information for use in this litigation;
4 however, it does not assert *carte blanche* right to freely disseminate Plaintiff's information wherever
5 and however it pleases.

6
7 Plaintiff cannot reasonably articulate how the identity of individuals involved in prior incidents
8 on Venetian's premises, with no relation to Plaintiff's case, without any similar facts or circumstances,
9 could be remotely relevant to any of Plaintiff's claims here. Her personal injury litigation arises from
10 the allegation that Plaintiff slipped and fell on a marble floor. Individuals involved in prior slip-and-
11 fall incidents would be unable to provide any information regarding the alleged hazard which Plaintiff
12 contends caused her fall. Reports of prior slip and fall incidents, which occurred on different
13 circumstances, and on different dates, in different areas of the property have no relevancy to the issue
14 of whether Venetian had notice of any condition contributing to Plaintiff's fall on November 4, 2016.
15 (See *Eldorado Club, Inc. v. Graff*, 78 Nev. 507 (1962); *Southern Pac. Co. v. Harris*, 80 Nev. 426,
16 431 (1964).)

17
18 Venetian has very good reason to request protection for its prior guests - as Plaintiff holds their
19 privacy rights in complete disregard - much like her ongoing disregard for the present NRC 26(c)
20 order in place. Venetian's concern is that such information can be disseminated to the public in a
21 multitude of ways, and passed onto other persons having nothing to do with this litigation, thereby
22 subjecting the persons identified herein to multiple contacts by persons, who have access to their
23 personal information, including events, injuries, care provided, etc. (Plaintiff has already demonstrated
24 how this process works.) Plaintiff's desire to obtain this information and share it with the world serves
25 absolutely no good purpose and is very bad public policy.
26
27
28