

1 C. The policy interests of protecting the confidential personal information outweigh the
2 alleged need for discovery in this case

3 Even where inquiries could reasonably lead to the discovery of admissible evidence, courts
4 must still balance the proponent's interest in discovery of the information against any legitimate interest
5 of the other party. "[T]he initiation of a lawsuit, does not, by itself, grant plaintiffs the right to
6 rummage unnecessarily and unchecked through the private affairs of anyone they choose. A balance
7 must be struck." (*Ragge v. MCA/Universal Studios*, 165 F.R.D. 601, 605 (C.D. Cal. 1995) (quoting
8 *Cook v. Yellow Freight Sys., Inc.*, 132 F.R.D. 548, 551 (E.D. Cal. 1990)). Discovery based on mere
9 suspicion or speculation is nothing more than the proverbial "fishing expedition." (See, *Mackelprang*
10 *v. Fid. Nat'l Title Agency of Nev.*, 2007 U.S. Dist. LEXIS 2379, *7 (D. Nev. Jan. 9, 2007); see
11 also, *Costella v. Clark*, 2009 U.S. Dist. LEXIS 120566, *5 (N.D. Cal. Dec. 7, 2009).)

13 Where privacy concerns are implicated by discovery requests, the party requesting such
14 information "must show that the value of the information sought would outweigh the privacy
15 interests of the affected individuals." (*Case v. Platte County*, No. 8:03CV160, 2004 WL 1944777,
16 at *2 (D. Neb. June 11, 2004) (emphasis added); see also, *Walters v. Breaux*, 200 F.R.D. 271, 274
17 (W.D. La. 2001), acknowledging legitimate privacy concerns with respect to social security
18 numbers).)

20 Public policy concerns surrounding the protection of personal medical information are far
21 reaching. Generally, public policy concerns favor the protection of individual health information.
22 Similar privacy concerns surround the protection of other confidential information of non-parties,
23 including individuals' Social Security numbers, unlisted telephone numbers and addresses, and dates
24 of birth. A protective order is warranted where the requested discovery "contains highly personal
25 information." (*Knoll v. AT&T, et al.*, 176 F.3d 359 (6th Cir. 1999) (recognizing the need for
26 protection of information from non-parties including an individual's unlisted address and telephone
27 number, marital status, and medical background). In addition, many courts have found that social
28

1 security numbers are confidential and not reasonably calculated to lead to the discovery of admissible
2 evidence. (See, e.g., *Mike v. Dymon*, No. 95-2405-BEO, 1996 WL 674007, at *7 (D. Kan. Nov. 14,
3 1996) ("The court does not find that requests for social security numbers and dates of birth of all
4 individuals who provided information to answer the interrogatories are reasonably calculated to lead
5 to the discovery of admissible evidence."); *Beasley v. First Amer. Real Estate Info. Serv., Inc.*, No.
6 3-04-CV-1059-B, 2005 WL 1017818, at *2 (N.D. Tex. April 27, 2005) ("[T]he social security
7 numbers of employees are confidential and not reasonably calculated to lead to the discovery of
8 admissible evidence.").

10 **1. Plaintiff plans to distribute all information freely as she has previously done**

11 The approximate 650 pages of incident reports include home addresses, dates of birth, driver's
12 license numbers, and Social Security Numbers, in addition to the private health related information.
13 Venetian has produced these prior reports with all personal identification information redacted, in order
14 to preserve the privacy of the guests. All other information contained in the prior incident reports,
15 which include the date, time, place and circumstances related thereto have been produced. Plaintiff's
16 counsel and those within his circle clearly do not honor protective orders. Therefore, anything
17 produced in unredacted form will be circulated whether a protective order is in place or not. That is
18 quite evident here.
19

20
21 Should unredacted reports be produced without a protective order, the personal identification
22 information, the medical information contained in the reports, including brief medical histories of the
23 guests, as well as other private information, including dates and durations of the guests' stay with the
24 hotel, injuries sustained during the prior incidents, and the perception of consumption of alcohol of the
25 guests at the time of the incidents, could be used for any number of reasons by untold others wholly
26 unrelated to this lawsuit. If this information were so disclosed, without court ordered protection, it
27 would likely lead to the annoyance and aggravation of the individuals involved in prior incidents on
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1 Venetian's property; individuals who are not believed to have any personal knowledge or information
2 regarding any of the facts surrounding Plaintiff's alleged incident.

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

5 Disclosure of the guest information as it pertains to this litigation alone creates an issue for
6 Venetian, as it is potentially detrimental to its business interests to protect the confidential information
7 of its guests. Were Venetian to disclose this information without court ordered protection, subjecting
8 its customers to unrelenting contact by persons uninvolved with the litigation, it would likely diminish
9 the customer/client relationships which Venetian has extended extraordinary effort and resources
10 establishing. There is a recognized interest in protecting the disclosure of personal client information,
11 as unauthorized disclosure would likely be perceived negatively by customers and potential customers.
12 (See e.g., *Gonzales v. Google, Inc.*, 234 FRD 674, 684 (N.D.CA 2006) (disclosing client information
13 "may have an appreciable impact on the way which [the company] is perceived, and consequently the
14 frequency with which customers use [the company]".))
15

16 Guests who stay at Venetian do so with an expectation that their personal information
17 (especially when it involves health issues) will not be disclosed or disseminated freely without their
18 consent. Accordingly, Venetian respectfully requests that the private identification information of its
19 guests involved in prior incidents be protected from disclosure by anyone not involved in this litigation
20 as legal counsel, an expert witness, or otherwise.
21

22 **What has Plaintiff done to demonstrate her need for this information is so great that it**
23 **outweighs the privacy rights of Defendants' guests?** She provides the following:
24

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

1 (See *Objection* at 10, ln 18-24. Emphasis added.)

2 Plaintiff's explanation of why she *needs* unredacted information to potentially contact hundreds
3 of persons and share their personal information with the world makes absolutely no sense. Further,
4 there is not now, nor has there ever been, an argument by Defendants that Plaintiff *did not see the*
5 *liquid substance on the floor before she fell* in this matter, because Defendants' position has always
6 been that *here was no foreign substance on the floor.* (See Exhibit E.)
7

8 Certainly, if Plaintiff can find a factually similar circumstance among the sixty-four (64) prior
9 redacted incident reports previously provided that truly identify someone with something potentially
10 relevant to provide in that regard, the Defendants will provide it to Plaintiff for the limited purpose of
11 this litigation. If Plaintiff's rationale above is the best she can do to articulate a reason to get the *carte*
12 *blanch* personal information for guests of Defendants to make contact with these people and other
13 persons with them, and to then freely share it with the world, then her objection should fail on its face.
14

15 This is a slip and fall incident. Plaintiff has all the information she needs to argue notice.
16 Plaintiff has an expert witness who has prepared a report and is identified to testify at trial. How can
17 the testimony of someone who had an incident on a different day and time, at a different location
18 within the property, under entirely different circumstances, be used to rebut an argument for
19 comparative fault made by Defendants? We do not know, and Plaintiff apparently cannot explain it.
20 She just *needs* it all.
21

22 Plaintiff's assertion that Venetian is acting to "*safely violate discovery rules, ignore court*
23 *orders and selectively disclose information*" is classic projecting. (See *Objection* at 6, ln 1-3.) If
24 Defendants were guilty of such conduct, certainly there would be some mention of it in the March 13,
25 2019 hearing transcript or within the Discovery Commissioner's Report and Recommendation.
26 Plaintiff's allegation that Defendants have been "*hiding 80-85% of the incident reports of slip and falls*
27 *on its marble floors*" is just more unsubstantiated rubbish tossed out by Plaintiff in the *Objection* that
28

1 | should be stricken and ignored by the Court. (*See Objection* at 8, ln 1.)⁹ Moreover, the issue of how
2 | many incident reports were produced by Defendants in response to Plaintiff's discovery request was
3 | not at issue before the Discovery Commissioner. Plaintiff did not file a motion or countermotion, nor
4 | did she hold a conference as required by EDCR 2.34.

5 | Here is what Plaintiff has demonstrated in the Objection:

6 |
7 | 1. She received sixty-four (64) prior incident reports (consisting of about 650 pages) from
8 | Defendants, with contact information of all non-employees involved redacted;

9 | 2. She obtained the deposition testimony of former security officer/EMT Joseph Larson
10 | who opined that he may have responded to 100 or so slip/fall incidents over a nine year period - or
11 | about eleven (11) per year; and

12 | 3. Plaintiff has a retained expert, Thomas Jennings, prepared to testify that the subject fall
13 | area is slippery when wet, among other things.

14 |
15 | Still, however, Plaintiff claims she cannot quite make her case unless she can identify all those
16 | involved in prior incidents, name them as witnesses, contact them, prepare to bring them to trial to
17 | testify about their unrelated experiences, and then share them freely with others wholly unaffiliated
18 | with the present litigation. That is disingenuous, at best. Plaintiff is playing a game designed to
19 | distract the finder of fact from the real issue here; *to wit*: Plaintiff fell on November 4, 2016 while
20 | walking on a dry marble floor. All the smoke and mirrors she can muster will not change that fact.
21 | Certainly, subjecting hundreds of Venetian guests who may have knowledge of unrelated prior
22 | incidents to being harassed by Plaintiff and other legal offices unaffiliated with this matter will not get
23 | us any closer to the truth. Such an effort would serve no good purpose other than to harass Defendants
24 | and their guests.
25 |
26 |
27 |

28 | ⁹Plaintiff's counsel is free to use his creative math skills to invent numbers of prior incidents
occurring on Defendants' property.

**COUNTERMOTION TO STRIKE FACTS, EVIDENCE AND
ARGUMENTS NOT BRIEFED BELOW**

Defendants hereby move this Honorable Court to strike and disregard the following factual assertions and arguments not presented to the Discovery Commissioner in Defendants' Motion for Protective Order.

1. *During his deposition Mr. Larson indicated approximately 300-500 injury slip and fall injuries (sic) occurred on the marble floors at Venetian in the last five (5) years. (See id. at 2, ln 21-23.)* That is a complete misrepresentation of Mr. Larson's sworn testimony. First Mr. Larson has not been employed with Venetian for more than two (2) years; therefore, Plaintiff's representation is false on its face. Second, this fabrication had nothing to do with any issue before the Discovery Commissioner.

2. *Thus, when Venetian disclosed a mere 64 redacted incident reports Plaintiff instantly suspected the vast majority were missing. (See id. at 3, ln 1-2.)* This is simply Plaintiff's post motion justification for colluding with Mr. Goldstein so that Plaintiff's counsel could improperly obtain information protected pursuant to NRCP 26(c) in the *Smith* litigation.

3. Nothing related to Mr. Galliher's collusion with Mr. Goldstein was briefed before the Discovery Commissioner. It should not be considered here other than to demonstrate Plaintiff's unclean hands and complete disregard for Court determinations, by refusing to comply with the NRCP 26(c) protective order presently in place both in this matter and in the *Smith* matter involving Mr. Goldstein.

4. *"By hiding 80-85% of the incident reports of slip and falls on its marble floors, Venetian ensures the public will never determine the magnitude of the problem, will never have the opportunity to deter Venetian from wrongdoing, and will never be able to encourage Venetian to make their premises safer."* (See id. at 8, ln 1-5.) No evidence has ever been produced by Plaintiff to substantiate her claim that Venetian is hiding anything. Again, this issue was not brief before

1 the Discovery Commissioner, there was no EDCR 2.34 conference held by Plaintiff's counsel, and
2 it is unrelated to the DCRR. Therefore, this commentary and any argument related thereto should
3 not be allowed or given consideration here.

4 To the extent such argument is so considered, the Court should be aware that Plaintiff
5 herself testified that while spending approximately 3,000 hours on Defendants property between
6 December 2015 and November 2016, making multiple walks through Venetian property a day, she
7 never saw a foreign substance on the floor, never saw a person fall, and never even heard of such
8 an occurrence. (See Declaration of Michael A. Royal, Esq., paragraph 25; Exhibit J.) Also, former
9 employee Gary Shulman testified that in his fourteen (14) years working on the Venetian casino
10 floor as a Table Games Supervisor, the subject incident was the only occasion in which he can
11 recall having any personal knowledge of a guest slip and fall. (See Declaration of Michael A.
12 Royal, paragraph 22.) That kind of testimony does not agree with the creative accounting
13 promoted by Plaintiff in her presented analysis above. It is just more fabrication by Plaintiff
14 present a false narrative and justify her refusal to comply with the present protective order.
15
16

17 **COUNTERMOTION FOR ORDER DIRECTING RETURN OF ALL NRCP 26(c)**
18 **PROTECTED INFORMATION AND COUNTERMOTION FOR SANCTIONS**

19 1. **An NRCP 26(c) Protective Order is in place, there is no stay, and Plaintiff is in**
20 **blatant violation**

21 Rule 2.34(e), Eighth Judicial District Court Rules, provides the following: "*The*
22 *commissioner may stay any disputed discovery proceeding pending resolution by the judge.*"
23 (Emphasis added.) Plaintiff did not move for a stay of the Court's ruling on Defendants' motion
24 for an NRCP 26(c) protective order. Accordingly, the NRCP 26(c) protective order is the law of
25 the case. Despite that, Plaintiff has done nothing to comply with it. To the contrary, as Plaintiff
26 has demonstrated here, she strategically conspired with counsel in the *Smith* matter to take all
27 protected prior incident reports at issue before the Discovery Commissioner and have them filed
28

1 with the court, becoming public record, on March 12, 2019 - one day before the March 13, 2019
2 hearing before the Discovery Commissioner. (See Exhibits D and I.) Plaintiff should have
3 protected the documents prior to the March 13, 2019 hearing. Most certainly, Plaintiff should have
4 taken action following the March 13, 2019 hearing to comply with the DCRR. To the contrary,
5 Plaintiff has ignored it entirely. She and counsel in the *Smith* and *Cohen* matters have collectively
6 shown complete disregard for the rule of law. Defendants therefore respectfully submit that
7 Plaintiff is now subject to sanctions under NRCP 37(b)(2) for her blatant violation of the DCRR.

9 2. **Plaintiff should be ordered to take every possible step to retrieve information**
10 **protected per the Discovery Commissioner's April 2, 2019 DCRR and ensure it**
11 **is not improperly used by anyone outside this litigation**

12 There is a protective order in place. Plaintiff disregarded it, distributed the information,
13 obtained information from other attorneys in unrelated ongoing litigation, and seeks to benefit from
14 her refusal to comply. That alone should be sufficient to affirm the DCRR. However, Plaintiff
15 quickly distributed information she knew was deemed protected by Defendants before the Court
16 could hear this matter, then did nothing as counsel in other cases swiftly identified it in their
17 respective NRCP 16.1 disclosures. Therefore, Defendants respectively move this Honorable Court
18 to order that Plaintiff retrieve all information distributed in this matter to anyone outside this
19 litigation, with an order directing that such information cannot be used in any other matter, as
20 though there had been no inappropriate distribution by Plaintiff at all.

21 3. **Defendants move for appropriate sanctions**

22 The Nevada Supreme Court has held that "*a district court has the discretion to sanction a*
23 *party for its failure to comply with a discovery order. . . .*" (*Bahena v. Goodyear Tire & Rubber*
24 *Co.*, 235 P.3d 592, 596 (2010).) Therefore, this Honorable Court has discretion to impose
25 appropriate sanctions based on Plaintiff's complete failure to protect information she has shared
26 with persons outside the litigation. (Indeed, Plaintiff's sharing of information she knew Venetian
27
28

1 desired to be kept confidential prior to the issue being heard before the Discovery Commissioner
2 was a very calculated, premeditated end around to head off any potential adverse ruling by the
3 Court.)

4 The options available to the Court are set forth in NRCP 37(b)(2), which include
5 establishing certain disputed facts as true, striking certain claims or defenses, striking pleadings in
6 whole or in part, staying proceedings until the order is obeyed, or dismissal.

7
8 Plaintiff is under a legal obligation to comply with the Discovery Commissioner's Report
9 and Recommendation at issue. She has taken no steps to remedy the matter by retrieving
10 documents exchanged with other counsel in ongoing unrelated litigation against Defendants,
11 despite the Court order. In the meantime, Mr. Goldstein has used the prior incident reports (with
12 Plaintiff's knowledge and blessing) to support a motion for sanctions against Defendants which
13 hearing is set to be heard this week. Obviously, Plaintiff did not comply with the present Court
14 order because it would have impeded Mr. Goldstein's failed efforts against Venetian in the
15 Smith litigation. Yet, Plaintiff has the audacity to assert that Venetian is the one abusing discovery
16 and violating Court orders.

17
18 a. **Dismissal**

19 Based on Plaintiff's bad actions, Defendants hereby move for dismissal of the Complaint.
20 Plaintiff clearly fears she cannot win on the merits and has therefore elected to utilize unscrupulous
21 methods of discovery.¹⁰

22
23 b. **Establish a Disputed Fact**

24 Should the Court seek a lesser alternative, Defendants move for a finding that there was no
25 foreign substance on the floor, consistent with the evidence, and that Plaintiff pay Defendants' fees
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¹⁰See i.e. Declaration of Michael A. Royal, Paragraphs 20-21. See also Exhibit H.

1 and costs associated with having to both bring the Motion for Protective Order, and to respond to
2 the Objection to the Discovery Commissioner's Report and Recommendation.

3 c. **Bass-Davis Like Instruction**

4 Alternatively, the Court could fashion an instruction or finding under *Bass-Davis v. Davis*,
5 122 Nev. 442, 134 P.3d 103 (2006), providing Defendants with a rebuttable presumption
6 instruction that Defendants had no constructive notice of any foreign substance on the floor prior to
7 Plaintiff's fall, and preclude Plaintiff from using evidence obtained from any other pending
8 litigation involving the Venetian property. Defendants would further move for an award of its fees
9 and costs associated with the Motion for Protective Order, and to respond to the present Objection.
10

11 d. **Affirm and Order Document/Information Retrieval, with Fees/Costs**

12 At a minimum, Defendants move for a finding that the DCRR be affirmed, that all
13 information provided to Plaintiff by Defendants in this matter be protected under NRCP 26(c), that
14 Plaintiff be ordered to pay Defendants' fees and costs associated with having to bring the motion
15 for protective order and respond to this Objection, along with any additional monetary sanctions
16 the Court deems appropriate to prevent Plaintiff from so blatantly disregarding a Court order in the
17 future, and that Plaintiff be ordered undertake to reacquire all documents previously distributed to
18 counsel in other litigated matters, with an order stating that these documents were inappropriately
19 shared by Plaintiff. Finally, the order should relate to all discovery exchanged and deposition
20 transcripts. As noted in Paragraphs 20-21 of the Declaration of Michael A. Royal, Plaintiff in this
21 case purposely elicited testimony protected by attorney/client privilege from a witness and will no
22 doubt distribute it wildly to the world when the transcript is received.
23
24

25 **Defendants also move for leave under NRCP 30(a)(2)(A) to retake the deposition of**
26 **Gary Shulman, if deemed necessary.¹¹**
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28 ¹¹*See id.*

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IV.

CONCLUSION

Based on the foregoing, Defendants respectfully submit that the Discovery Commissioner's Report and Recommendation of April 2, 2019 should be affirmed, and that Defendants' counter-motion for sanctions under NRCP 37(b)(2) should be granted based on Plaintiff's refusal to obtain a stay from the DCRR and comply with the protective order now in place, as set forth above.

DATED this 22 day of April, 2019.

ROYAL & MILES LLP

By 

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of April, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **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)** to be served as follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or (with exhibits)
- ☐ to be served via facsimile; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand delivered;

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

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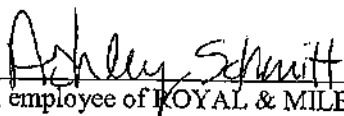

An employee of ROYAL & MILES LLP

EXHIBIT 10

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 CHRISTINA TONEMAH

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

On Friday, July 12, 2019
At 2:44 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

2 For the Plaintiff:

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- And -

KATHLEEN H. GALLAGHER, ESQ.

- And -

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15 * * * * *

18 I N D E X

20	WITNESS	PAGE
	CHRISTINA TONEMAH	
21	Examination By Mr. Galliher	3
	Examination By Mr. Royal	17
22	Further Examination By Mr. Galliher	24

25 -oOo-

1 **CHRISTINA TONEMAH,**
2 having been first duly sworn to tell the truth, the
3 whole truth and nothing but the truth, was examined
4 and testified as follows:

6 **EXAMINATION**

7 **BY MR. GALLIHER:**

8 Q Would you state your name, please.

9 A Christina Tonemah.

10 Q And where do you work?

11 A I'm retired. I worked at the Venetian
12 Palazzo as a pit manager for 17 and a half years.

13 Q All right, you answered my next question.
14 So tell me what a pit manager does.

15 A My responsibilities in this particular area
16 is all the table games outside the baccarat pit. So I
17 cover, like, anywhere from -- when I first go in maybe
18 30 games and by 1:30, 2:00, I have probably 75 games
19 on the main floor that I coordinate. I supervised all
20 floor supervisors, dealers, pit clerks.

21 Q So did you supervise Gary Shulman?

22 A Yes, I did.

23 Q And how do you know him?

24 A I worked with him for 17 and a half years.

25 Q How would you describe him as an employee?

1 A He was very good at what he does. He's
2 temperamental and pouty.

3 Q When you say "temperamental and pouty," tell
4 me.

5 A Well, he doesn't -- in my opinion, he's
6 not -- he didn't particularly like smoke very well,
7 manager suggestions that I would give him.

8 Q So did he have any type of open rebellion?

9 A No, not with me.

10 Q So it appears, at least, there were times
11 where he might have disagreed with your instructions.

12 A Correct.

13 Q But you supervised him for how long?

14 A For eight hours a day.

15 Q Over how many years?

16 A 17 years.

17 Q And during that time frame, did you issue
18 any disciplinary action against him?

19 A To the best of my ability to remember,
20 actual written down incidents, no. Verbal coaching,
21 yes.

22 Q Did you give verbal coaching to other
23 employees?

24 A Yes.

25 Q Was he worse or better?

1 A No, no. I mean average.

2 Q All right. So he was basically an average
3 employee from a disciplinary standpoint?

4 A Correct.

5 Q But you indicated that apparently he was
6 skilled in terms of his position?

7 A Yes.

8 Q And could you tell me what you base that on,
9 because I don't know what he does.

10 A Well, he would supervise dealers and games
11 up to six, eight games at a time. And what we call
12 the novelty pit which is like Texas Hold 'Em,
13 Caribbean Stud, three-card poker, whatever other crazy
14 game war that they come up with, plus roulette, plus
15 blackjack, and he was a dice floorman also.

16 Q A "dice" what?

17 A "Floorman." Supervisor they call them
18 nowadays.

19 Q All right, so sounds like he supervised
20 numerous different games.

21 A Yes.

22 Q And at least it's your opinion that he did
23 that competently?

24 A Yes.

25 Q Did you have any other personal

1 disagreements with Mr. Shulman, other than what we
2 have talked about, in terms of having to verbally
3 coach him?

4 A Not really. I don't talk politics or
5 religion at work.

6 Q Smart. All right. Now, the only thing we
7 know about you is you were named as a witness in this
8 case. Do you have any idea why?

9 A Probably because I was the manager of the
10 whole floor area, and floor supervisors would call me
11 if there was an incident anywhere on the floor in
12 their area that they dealt with.

13 Q And do you recall receiving a call from
14 Mr. Shulman on the date of this fall?

15 A This particular date and time, no, but it
16 was not unusual in a year to get four to six calls of
17 someone slipping, falling, drinks spilled, things like
18 that.

19 Q And when you talk about slipping, falling,
20 drinks spilled, are we talking about the marble floor?

21 A Or carpet. Wherever. Wherever it is, I
22 have to supervise and report that. That's why I carry
23 a cell phone. It's automatically at surveillance,
24 notify security, notify EMT and film the incident.

25 Q And is that when someone from the casino is

1 the person who notices either the spill or the fall?

2 A If anybody reports it to a floorman, which
3 myself -- those are the steps I have to take.

4 Q So as I understand you are telling me, if
5 there's a fall, if there is a spill, it would be the
6 obligation of your underlings in the casino to notify
7 you of that event?

8 A Uh-huh.

9 Q Is that yes?

10 A Yes.

11 Q And then your obligation at that point in
12 time is to notify whom?

13 A I would notify surveillance.

14 Q And after you notify surveillance, would you
15 notify anyone else?

16 A No, they usually -- the steps that are in
17 place is, because I cover such a large area, I would
18 call surveillance, zero in on the area and I would
19 say, Call the EMT or security.

20 Those are the ground rules which I worked
21 under in the casino business for over 40 years.

22 Q So during -- you were at the Venetian, you
23 said, for 17 and a half years?

24 A Yes.

25 Q And during your 17 and a half years, can you

1 give me your best estimate of how many times you made
2 that call to surveillance?

3 A I'd say probably four to six times a year,
4 maybe.

5 Q Is that your best estimate?

6 A That's my best estimate.

7 Q We have some video surveillance in this
8 case; do you understand that?

9 A Uh-huh.

10 Q Is that yes?

11 A Yes.

12 Q By the way, when I --

13 A I understand.

14 Q We're just making the record so don't -- I'm
15 not being rude. Let's go back to the video
16 surveillance.

17 I saw -- Mr. Royal showed it to me before
18 the deposition. I see you are on the video
19 surveillance for about four seconds.

20 A Correct.

21 Q And it looks like you had a phone in your
22 hand and you walk over to someone on the floor.

23 A Correct.

24 Q And do you remember whether you had a
25 conversation with that person or not?

1 A I do not remember having a conversation.
2 All's I usually say is -- look at the situation, say,
3 "Don't move, stay right there, security is on the
4 way."

5 Q Is that what you probably would have done in
6 this case?

7 A Absolutely.

8 Q And then you are on the phone, so are you
9 phoning someone at the same time that you are over at
10 the scene of the fall?

11 A In this particular incident, as soon as it
12 was reported to me by Gary, I get on the phone. My
13 phone rings constantly because at this particular
14 time -- he was surprised I knew that it happened on a
15 Friday, and it had to be before 1:00 because I'm busy
16 opening games from 12:30 to 1:00 in an area that's
17 further away. That's why it took me longer to get
18 there.

19 Q Do you have an idea how long it took you to
20 get there after you received a phone call from
21 Mr. Shulman?

22 A Maybe a minute and a half. Maybe. I'm not
23 positive of that time. If I could recall exactly
24 where I was when I got that call, it would be get
25 better, but I only see myself very quickly on that.

1 Q Do you know whether or not the woman that
2 was on the floor said anything?

3 A No.

4 Q You don't know or she didn't?

5 A I don't know if she said anything to me
6 because I know at this particular time, not only was I
7 opening games, assigning dealers and answering phone
8 calls -- and I don't stick around after I report it to
9 security and surveillance to get a name and everything
10 unless it's a bad accident, like if someone's
11 unconscious, passes out, heart attack. Then I'm more
12 attentive and on top of that.

13 Q And you mentioned reporting to security and
14 surveillance. Are those two separate calls?

15 A No, it's one call. Because when you are a
16 pit manager and you have that cell phone, when you
17 call surveillance, they know you need an area covered
18 and you need help sent to that area.

19 Q So would it be fair to state that your
20 initial call -- when you talk about surveillance, are
21 we talking about the surveillance within the security
22 department?

23 A The eye in the sky. It covers everything.

24 Q So when you're making that call, you are
25 making a call to the eye in the sky?

1 A Correct.

2 Q When we talk about the term security and
3 surveillance, that would be one in the same; that
4 would be the eye in the sky?

5 A Correct.

6 Q So the call you made in this case would have
7 been to the eye in the sky?

8 A Correct.

9 Q So would you have made more than one call?

10 A Just the one. Had she been unconscious, I
11 would have made more.

12 Q If she would have been unconscious, who
13 would you have called?

14 A I would have called surveillance, they would
15 have called security. I would have gotten on the
16 phone with EMTs.

17 Q And I think we have earlier established
18 that, you recall during your tenure at the Venetian --
19 and, by the way, you worked strictly at the Venetian?

20 A I worked both Venetian and Palazzo.

21 Q So when we talk about the four to six calls
22 that you remember, is that when you were employed at
23 both places, the Venetian and Palazzo, or just the
24 Venetian?

25 A Just the Venetian.

1 Q So divide it up for me. How much time did
2 you spend employed at the Palazzo and versus Venetian?

3 A Well, when you are assigned there, you are
4 working both casinos.

5 Sometimes I would be relief and relieve two
6 pit managers over here and two over at the Palazzo,
7 and I would be going back and forth between the
8 atrium, the waterfall sometimes, moving.

9 Q So it sounds like most of your time is spent
10 at the Venetian.

11 A The last two years I was there, yes.

12 Q Now, give me an idea of the hierarchy. You
13 supervise the table supervisors. You are a pit --

14 A Pit manager. At the time I was called pit
15 manager.

16 Q And who supervises you?

17 A Shift manager.

18 Q And who supervises the shift manager?

19 A Casino manager.

20 Q And when you talk about shift manager, is
21 that like one person per shift that's in charge?

22 A There's one person on the Venetian side and
23 one shift manager on the Palazzo side.

24 Q And how many of your capacity -- we used to
25 call them pit bosses.

1 A That's what I was, pit boss.

2 Q So how many pit bosses?

3 A There were only two. They had one outside,
4 which was me, and one inside the baccarat room which
5 is someone else.

6 Q So there's one shift manager, two pit bosses
7 per shift?

8 A Correct.

9 Q And how many floor supervisors, table
10 supervisors?

11 A It could vary between -- on weekends we
12 usually -- now, this was an estimate only. Sometimes
13 up to 35.

14 Q And that would be strictly the Venetian?

15 A Correct.

16 Q Now, during your time at the Venetian, has
17 anyone ever told you or have you been made aware of
18 the fact that the marble floors at the Venetian are
19 dangerous when wet?

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

21 **BY MR. GALLIHER:**

22 Q You can answer.

23 A Oh. Yes.

24 Q And who is it that made you aware of this or
25 did you -- were you aware of it yourself?

1 A I'm aware of it myself because of working in
2 the business for 40 years. I know the difference
3 between carpet areas and marble areas.

4 Q So would you agree with me that a marble
5 floor, when wet, is more dangerous than a carpeted
6 area when wet?

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

8 **THE WITNESS:** That's hard to say.

9 **BY MR. GALLIHER:**

10 Q Well, how about more slippery?

11 A It could be slippery because of your shoes
12 or -- heels are slipperier than tennis shoes, you
13 know, those apples-and-oranges type things.

14 Q I understand. But is it your understanding
15 that the marble floors at the Venetian were slippery
16 when wet?

17 A Can be.

18 Q And have you ever witnessed a fall yourself
19 on the marble floors at the Venetian?

20 A Yes.

21 Q On how many occasions?

22 A That I can -- probably three or four.

23 Q And when did those occur on the marble
24 areas?

25 A Either -- we call them the pathways. The

1 pathways between the games, whichever direction you
2 are going, or in front of that circular area.

3 Q But the pathways are marble?

4 A Yes.

5 Q And then from what I understand, the
6 pathways separate carpeted areas because the casino
7 itself is carpeted and the poker room is carpeted.

8 A Well, the casino -- the casino floor
9 consists of carpet, pathway, carpet. All of that is
10 our casino floor. We don't distinguish, you know,
11 carpet you stay on, marble you don't. You know, it's
12 all my area.

13 Q How about where the tables are located? Are
14 they located on a carpeted area or are they also
15 located on marble?

16 A They are located on carpet.

17 Q And would that also be true of the poker
18 rooms?

19 A Yes.

20 Q And the baccarat room as well?

21 A Yes.

22 Q Are there other rooms where there are table
23 games located where marble floors are located?

24 A Just what you see when you walk in and the
25 baccarat area. But it -- quote, unquote, where the

1 table games sit, it's usually carpeted.

2 Q And do you know why that's the case?

3 A Yes. It's for cushion and comfort for
4 people who stand for six hours to eight hours a day.

5 Q Is there any -- are there any safety
6 concerns in terms of having carpet in those locations
7 versus marble?

8 A No.

9 Q So no one's ever made you aware or ever told
10 you that, Hey, we carpet the casino area -- I'm
11 talking about where the table games are located --
12 because we feel they're safer for the customers?

13 A No.

14 Q So the same for the baccarat room and poker
15 room?

16 A Uh-huh.

17 Q Is that yes?

18 A Yes.

19 Q Okay. So did you actually see the fall in
20 this case?

21 A No.

22 Q So the only thing you know about the fall is
23 the four seconds of video that you were shown?

24 A Correct.

25 Q And that will take you through what we

1 talked about already?

2 A Correct.

3 Q Have you understood all my questions today?

4 A Yes.

5 Q Anything you want me to repeat or rephrase
6 for you?

7 A No.

8 Q Thank you.

9 **MR. ROYAL:** I'm going to ask you a few
10 questions. I'm going to show you the video and I'm
11 going to start it --

12

13 **EXAMINATION**

14 **BY MR. ROYAL:**

15 Q Okay. I'm going to start it -- I'm going to
16 start it at 12:39:03 and make a reference to VEN019.

17 At 12:39:04, you walk into the scene from
18 the -- into the camera I should say, at the top right.

19 A Yeah. I'm coming from Pit 8.

20 Q Okay. And is that you -- your right hand
21 has a phone up to your ear?

22 A Yes.

23 Q Okay. By that time, you are on the phone --
24 or strike that. Let me just show you the rest of
25 this.

1 Okay. I'm going to stop it at 12:39:08.
2 What are you doing at that point?

3 A I'm pointing at her, asking her to stay
4 where she is, that I have alerted surveillance --
5 surveillance, security. To me they're the same. So
6 that's -- you know, and I believe I asked her, "Are
7 you okay?" And she nodded.

8 Q Okay.

9 A This person I don't know, other than I
10 believe he's either head of housekeeping or -- they
11 dress them different. That's a uniform, I can tell
12 you that.

13 Q Okay. You are talking about the large
14 man --

15 A Yeah.

16 Q -- standing between -- he's standing, kind
17 of blocking the woman on the ground?

18 A Correct.

19 Q Okay. Then you walk out of the scene at
20 12:39:12.

21 A Correct.

22 Q All right, and we don't see you again. At
23 this point, do you just go back to your shift?

24 A I go back over, yes. I'm always on the
25 clock, always. That's even considered on the clock.

1 From that, after I asked her if she is okay, told her
2 not to move, surveillance arrives and stuff, I go back
3 over to my other area, which is called Pit 1, because
4 I'm opening games at quarter to 1:00.

5 Q Okay, so we just had you leave the area.
6 Now I'm back at 12:39:28. Do you recognize Gary
7 Shulman?

8 A Yes.

9 Q Okay. So tell me what is -- Gary Shulman,
10 when the incident occurred, I'll represent to you that
11 he was one of the first people to come and talk to the
12 woman on the floor. Okay?

13 A Correct.

14 Q So what is the responsibility -- or what was
15 the responsibility at this particular time of a table
16 games supervisor like Gary Shulman when he comes upon
17 a scene like this?

18 A He would call me.

19 Q And then what?

20 A And then he's free to move on because I know
21 his name. I recognize him in case I need his name for
22 anything, or if the security or surveillance calls me,
23 I can tell them which floorman was there.

24 Q Okay. Does he -- if there's no one on
25 the -- strike that.

1 If there's no one around the person who is
2 on the floor in this case, I mean is there -- what
3 responsibility would he have, if any, any table
4 supervisor, to stay at the scene until you arrive?

5 A They really are not required to stay at the
6 scene unless they are -- to my knowledge, unless they
7 are severely hurt, knocked out, whatever.

8 Q Okay. And in this particular case, you
9 don't remember that being the case --

10 A No --

11 Q -- is that correct?

12 A -- no.

13 Q Anything about what you observed in your
14 interaction with the woman in the tape that she was
15 unconscious?

16 A No.

17 Q Okay. Are you aware of when -- you don't
18 remember the call you got from Gary Shulman?

19 A No, per se I do not, other than obviously
20 you see me walking to the scene. So he had to make me
21 aware that someone had fallen.

22 Q Okay. If he had come upon the scene and
23 just ignored it and didn't call you and you found out
24 about it later, would there be --

25 A I would ask him why.

1 Q Why would you ask him that?

2 A Because our -- when you work in the casino,
3 you don't just watch the games. You observe
4 everything around your area.

5 From what I see there, I'm -- I can assume
6 Gary is either going on break because he started at
7 five until 12:00. He's probably going on his break
8 since it's after 12:30, 12:25. So I don't know if
9 that's his break time, but it looks like he walks onto
10 this.

11 Because where that is, it's a round circular
12 area with pillars here and here and over here and
13 here, and the restrooms are here. And this pathway
14 that you see him coming there is by the roulette pit
15 and pit -- they keep moving the pits. So that would
16 have been Pit 5, I believe. Yeah, I think.

17 Q So if he came upon the scene and he doesn't
18 make a phone call, just goes to the bathroom and lets
19 someone else handle it, is that --

20 A Well, they have been told that -- the
21 Venetian's very careful to tell floormen to observe
22 and report: See something, say something.

23 It's been that since the day the Venetian
24 opened its doors. It's you are trained to -- there
25 used to be things on the wall that states that: See

1 something, say something. So if you see somebody,
2 call. You need to report it.

3 Q So if he didn't on this particular occasion
4 report it, is that something that would initiate some
5 kind of coaching from you?

6 A If it was reported to me that he didn't do
7 that, probably. Either I would have to or they would
8 have called a shift manager.

9 Q Are you aware that Gary Shulman was
10 terminated?

11 A I have heard that since I left there. Like
12 I said, I left in January -- January 23, 2017, when I
13 left.

14 Q Do you know anything related to the --

15 A No, I don't.

16 Q -- circumstances of his termination?

17 A No, I don't. I have not spoken to him since
18 I left.

19 Q And just to go back. I want to make sure
20 I'm clear on those four or six falls a year that you
21 recall on floors.

22 Are those solely on marble floors?

23 A No. One was on carpet where she slipped by
24 a slot machine. Intoxication. But she wasn't knocked
25 unconscious or anything, she just misstepped, slipped,

1 got up. I don't know what she did because I was never
2 questioned about it. My thing is you go over, you
3 ask, "Are you okay? Please don't move. Security is
4 on the way."

5 Q All right. So when you said four to six
6 falls a year --

7 A Within a 12-month period.

8 Q But are those falls any kind of falls? You
9 said intoxication, is why I ask.

10 A It's very -- some people will drop their
11 drink and just keep on walking and not worry about it.
12 The next person comes along and steps in it. Some
13 people catch themselves on a chair, some people fall.

14 But, you know, very few do -- in a year's
15 period did I really deal with. I cleaned up a lot of
16 spills as in seeing it dropped and then pulling chairs
17 to cover it or putting down towels and immediately
18 getting on my little cell phone and calling PAD.
19 That's our process.

20 Q The reason I ask is these four to six falls
21 a year, you said one was on carpet. I'm just asking
22 about -- this is an estimate, four to six falls a year
23 on floors. I'm trying to make sure I understand what
24 floors are we talking about.

25 A I've only dealt with the one in the slot

1 area one time in 17 years. The others are in the
2 pathways which are the marble areas.

3 **MR. ROYAL:** Okay. That's all I have.

4
5 **FURTHER EXAMINATION**

6 **BY MR. GALLIHER:**

7 Q I have a few more. The questions about what
8 would happen if Gary Shulman didn't call you, do you
9 remember those questions?

10 A Yes, uh-huh.

11 Q But in this case, Gary Shulman did call you.

12 A Yeah, because you see me coming into the
13 area. Therefore, he had to have called me. I'm
14 assuming because I --

15 You have to understand that I walk the area
16 a lot because this is the beginning of my shift. I'm
17 opening games and assigning. I'm running for at least
18 the first hour and a half like a chicken with my head
19 cut off, trying to make sure all the floormen are in
20 their spots. I'm covering all that.

21 When that first break comes, that first
22 break they get -- and they have changed their breaks,
23 so I don't know if it was quarter to or quarter after.
24 You know, those things have changed.

25 From what I saw, I'm assuming that Gary's

1 walking down the pathway because he's going on break.
2 Which, either he's going to the bathroom, then on his
3 break and going to the food court. Because the
4 floormen in their suits can have lunch in the food
5 court area.

6 I don't know what Gary was doing, but, yes,
7 Gary must have called me. I'm assuming he did.
8 That's the only way I probably knew about it.

9 Q Okay. During the time that you were
10 employed at the Venetian in the casino, was there a
11 time where the entirety of the casino was carpeted?

12 A Wow. I believe when we first opened, the
13 first five years, everything was carpeted.

14 Q And was there a time when --

15 A Everything but the grand hallway.

16 Q I'm talking specifically about the casino.
17 We talked about the marble walkway.

18 A Correct.

19 Q Do you remember when the marble walkways
20 were installed?

21 A During their refurbishing probably after we
22 had been open -- probably the year after or the year
23 of the Palazzo opening, I would assume.

24 Q Do you remember what year that would be?

25 A No.

1 Come on, give me a break. I'm 68 years old.

2 Q That's okay, I understand. But what I'm
3 getting at, basically, there was a time at least where
4 the carpeted portion of the casino, which is now the
5 marble walkway portion of the casino, was replaced.
6 In other words, the carpet --

7 A To the best of my recollection; yes. Yes.

8 Q And you mentioned in your testimony that you
9 would take it on your own volition to secure an area
10 where there was a spill that you saw.

11 A Correct.

12 Q And how many times did that happen? Your
13 best estimate.

14 A Probably on holiday weekends three, four
15 times. During the week, not that often.

16 Q So three or four times you would spot the
17 spill yourself --

18 A Correct.

19 Q During the weekends, you would spot it and
20 then you would secure it?

21 A Correct.

22 Q And tell me how you do that.

23 A If it's in the middle of the pathway, I
24 would put chairs around it and put paper towels or
25 towels down to soak it up.

1 Q Did you put up cones or anything like that?

2 A I didn't have access to cones. That's why I
3 used table game chairs.

4 Q So you would basically surround the spill
5 area with the chairs from the table games?

6 A Correct, or stand there and have people
7 around me.

8 Q And that would happen, as your best
9 estimate, three or four times on holiday weekends and,
10 rather, not too often during the week?

11 A Correct.

12 Q That be correct?

13 A Correct.

14 Q As a pit boss, did you -- were you required
15 to go to the scene of a fall if there was no injury
16 claimed?

17 A Well, every -- I mean if I got a call on one
18 from a floorman, of course I had to go.

19 Q Did the floormen, were they instructed to
20 call you if there was any fall or if there was an
21 injury fall?

22 A If there was an injury fall or -- or, well,
23 a fall, you know.

24 Q All right. So do you know?

25 A I'm trying to think. They always call me

1 with everything. It was like being a mom of 38 to 40
2 kids plus 150 dealers, so...

3 Q So there wasn't really any protocol. It
4 would be up to the table supervisor that he was to
5 call you regarding the call?

6 A Most were very diligent about doing their
7 jobs, you know. We are encouraged to watch out for
8 our guests.

9 Q You are talking about the people who were
10 diligent doing their job. Gary Shulman would have
11 been diligent because he called you?

12 A Yes.

13 Q Thank you.

14 **MR. ROYAL:** Nothing further.

15 **MR. GALLIHER:** All right. Chris, thank you.

16 (The deposition concluded at 3:11 p.m.)
17
18
19
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25

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, **CHRISTINA TONEMAH**, commencing on Friday, July 12, 2019 at the hour of 2:44 p.m.

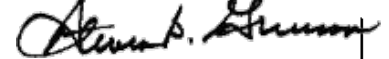
That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

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



1 **OPPS**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

4 Gregory A. Miles, Esq.

5 Nevada Bar No. 4336

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12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

18 Plaintiff,

19 v.

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

27 Defendants.

Hearing Requested

28 **DEFENDANTS' OPPOSITION TO PLAINTIFF'S OBJECTION TO DISCOVERY
COMMISSIONER'S REPORT AND RECOMMENDATION DATED DECEMBER 2, 2019**

29 Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC
30 (hereinafter collectively "*Venetian*"), by and through their counsel of record, ROYAL & MILES LLP,
31 hereby files DEFENDANTS' OPPOSITION TO PLAINTIFF'S OBJECTION TO DISCOVERY
32 COMMISSIONER'S REPORT AND RECOMMENDATION DATED DECEMBER 2, 2019.

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

1 This Opposition is based upon the Points and Authorities below, the papers and pleadings filed
2 herein, and any oral argument allowed at the hearing on this matter.

3 DATED this 23 day of December, 2019.

4 ROYAL & MILES LLP

5
6 By 

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

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I.**

18 **NATURE OF OPPOSITION**

19 Defendants respectfully submit that Plaintiff's position that she is entitled to exponential *carte*
20 *blanche* access to records dating back to 1999 with an expanded scope including the common area of
21 the entire Venetian property based on a punitive damages claim is entirely unfounded. This is a slip
22 and fall incident arising from an alleged foreign substance in an area that Plaintiff walked hundreds
23 of times safely as an employee working daily on the Venetian property for approximately eleven (11)
24 months prior to the subject incident. Of significant note, there is a dispute of whether a foreign
25 substance existed at the time of Plaintiff's fall. Moreover, a Venetian employee assigned to patrol the
26 area of Plaintiff's fall inspected the area within three (3) minutes of the subject incident and found it
27 to be dry. That same employee returned minutes later after the fall, inspected the area and again
28 confirmed there was still no foreign substance on the floor. Further, several hundred patrons are seen
walking through the subject area on surveillance footage previously submitted to the Court without the

1 slightest hint of a spill or foreign substance on the floor. In addition, Plaintiff's experts acknowledge
2 that the subject floor is perfectly safe when dry - and Defendants have an entire department dedicated
3 to maintaining them.

4 Plaintiff is doing everything she can to avoid having to focus on the actual incident facts and
5 is now using the Court's ruling allowing a claim of punitive damages to bury Defendants in discovery
6 involving the entire property over a period of twenty (20) years. For reasons discussed herein below,
7 Defendants contend that the Discovery Commissioner properly limited the scope to the very area where
8 the incident occurred, the area of which Plaintiff was intimately familiar by virtue of her employment,
9 the same area where Plaintiff denied having ever previously seen any kind of foreign substance on the
10 floor or even heard of someone slipping and falling thereon during her preceding eleven (11) months
11 of employment.
12

13
14 **II.**

15 **DECLARATION OF MICHAEL A. ROYAL**

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

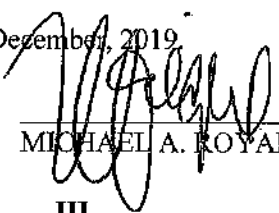
18 MICHAEL A. ROYAL, ESQ., being first duly sworn, under oath deposes and states:

19 1. I am an attorney duly licensed to practice law in the State of Nevada and I am counsel
20 for Venetian Casino Resort, LLC, and Las Vegas Sands, LLC, in connection with the above-captioned
21 matter. I have personal knowledge of the following facts and if called upon could competently testify
22 to such facts.
23

24 2. I declare that the exhibits identified herein below are true and correct copies of
25 documents produced in or otherwise related to this matter, and move the Court to take judicial notice
26 of the following cases attached hereto.
27
28

1	EXHIBIT	TITLE
2	A	Transcript of Joyce Sekera Deposition (taken March 14, 2019), selected pages
3	B	Discovery Commissioner's Report and Recommendation, filed April 4, 2019
4	C	Peter Goldstein Declaration (dated February 13, 2019)
5	D	Order Granting Motion to Amend Complaint to Include Claim for Punitive Damages and Denying Defendants' Motion to Strike (filed June 27, 2019)
6	E	Deposition Transcript of Maria Cruz (taken April 17, 2019)
7	F	Surveillance Footage of Incident (VEN 019)
8	G	Defendant's Limited Objection to Discovery Commissioner's Report and Recommendation Dated December 2, 2019 (with selected exhibits)
9	H	Defendant's Objection to Discovery Commissioner's Report and Recommendation Dated August 9, 2019 (with no exhibits)
10	I	Deposition Transcript of Thomas Jennings (taken July 2, 2019) (selected pages)
11	J	Deposition Transcript of David Elliott (taken February 13, 2009) (selected pages)
12		<i>Farina v. Desert Palace, Inc., Case No. A542232</i>

14 DATED this 23 day of December, 2019.

15 
16 MICHAEL A. ROYAL

17 III.

18 **PERTINENT FACTS AND EVIDENCE**

19 This litigation arises from a slip and fall incident from an alleged liquid substance on the
20 Venetian floor in the Grand Lux rotunda on November 4, 2016. The incident involving Plaintiff
21 occurred in the course and scope of her employment with Brand Vegas, LLC, where she had been
22 working at a kiosk located in the Grand Canal Shops within the Venetian property for the preceding
23 eleven (11) months. Plaintiff testified in deposition that she had successfully walked through the
24 Grand Lux rotunda area several hundred times in the course of her employment prior to the subject
25

1 incident.¹ Plaintiff further testified that in the eleven (11) preceding months she worked on and within
2 the Venetian property for 50-70 hours per week (without having taken any vacation time), she was not
3 aware of even one occasion when she either saw a spill on the floor, was advised by someone else that
4 a spill existed, came upon the scene of someone who had fallen on the floor or that she had even heard
5 of such an occurrence.² Plaintiff asserts that she slipped and fell on November 4, 2016 due to the
6 alleged presence of a foreign substance on the floor which she did not see before or after her fall.³

7
8 Plaintiff filed a cause of action for negligence. Accordingly, Plaintiff initially requested
9 incident reports from Defendants dating back to November 4, 2013. Defendants produced redacted
10 prior incident reports from November 4, 2013 to November 4, 2016, which Plaintiff improperly shared
11 with counsel outside this litigation while a motion for protective order was pending before the
12 Discovery Commissioner.⁴

13
14 This Honorable Court granted Plaintiff's motion for leave to amend the Complaint and add a
15 cause of action for punitive damages on June 27, 2019.⁵ Consequently, Plaintiff has taken the position
16 that she is now entitled to a much broader, exponential range of discovery - to include documents and
17

18
19 ¹See Exhibit A, *Deposition Transcript of Joyce Sekera* (taken March 14, 2019) at 86:13-25;
20 87:1-8; 87:23-25; 88:1-20.

21 ²See *id.* at 75:5-25; 76:1-25; 77:1-16.

22 ³See *id.* at 90:1-23. See also *Plaintiff's Objection* (filed December 12, 2019) at 2:26-27
(Plaintiff asserting that there was water on the floor).

23 ⁴Defendants filed a Motion for Protective Order regarding production of these prior incident
24 reports on February 2, 2019, Plaintiff shared them with counsel in another matter on February 7, 2019
25 and the documents were attached to a motion filed with the court in another proceeding. (See Exhibit
26 B, *Discovery Commissioner's Report and Recommendation* (filed April 4, 2019); Exhibit C,
27 *Declaration of Peter Goldstein, Esq.* (dated February 13, 2019), providing that the prior incident
reports at issue before the Discovery Commissioner were provided to Mr. Goldstein by Plaintiff's
counsel in this matter on February 7, 2019.)

28 ⁵See Exhibit D, *Order Granting Motion to Amend Complaint to Include Claim for Punitive
Damages and Denying Defendants' Motion to Strike* (filed June 27, 2019).

1 information from 1999 to the present, with a scope that includes the entire common area of the
2 Venetian tower.

3 Once again, this is a slip and fall case arising from an alleged temporary transitory condition
4 which Plaintiff is trying to convert from a negligence action to one of strict liability based on prior
5 incident reports. Missing from Plaintiff's motion is actual evidence that Venetian flooring falls below
6 industry standards for four star hotels, that it does not comply with Clark County building codes, and/or
7 that its flooring is somehow different than comparable properties on the Las Vegas Strip. Plaintiff is
8 simply focused on acquiring more information about prior incidents to build a punitive damages case,
9 without first establishing that there is anything actually wrong with the floor.

11 The fact remains that Defendants dispute there was any foreign substance on the floor.
12 Moreover, Defendants had (and continue to have) an entire department dedicated to cleaning and
13 maintaining the subject flooring, with policies and procedures in place which were followed on the
14 date of the subject incident by former Venetian employee Maria Cruz, who inspected the subject area
15 within three minutes of the fall and testified that she did not see anything on the floor at that time.⁶ Ms.
16 Cruz further testified that she responded to the scene with two coworkers shortly after Plaintiff's fall
17 and confirmed that she did not see any foreign substance on the floor.⁷ Further, surveillance footage
18 of the area in the thirty (30) minutes preceding the subject incident depicts hundreds of patrons walking
19 through successfully without any hint of a spill or foreign substance on the floor.⁸ Plaintiff insists that
20 the Court ignore those facts and instead grant her *carte blanche* access to twenty (20) years of records
21 to satisfy her curiosity and build upon her claim of "reprehensible" conduct by Defendants.
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23
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26 ⁶See Exhibit E, *Deposition Transcript of Maria Cruz* (taken April 17, 2019) at 31:19-25; 32:1-
25; 33:1-14; 34:8-25; 35:21-25; 36:1.)

27 ⁷*Id.*

28 ⁸See Exhibit F, *Surveillance Footage of Incident* (VEN 019).

1 Also missing from Plaintiff's Objection (and most of her filings with the court) is a focus on
2 the actual facts surrounding the incident. Instead, she appears intent on pointing to other slip and fall
3 events which she, as a full-time employee working on the same Venetian property for thousands of
4 hours over an eleven (11) month period of time, claims to have been entirely unaware. By Plaintiff's
5 own experience and testimony, events like the one she had on November 4, 2016 are the rare
6 exception, not the rule - especially where there is no foreign substance involved.
7

8 Something we now see in nearly every Court filing by Plaintiff are out of context, misleading
9 references to the testimony of former Venetian employee, Gary Shulman, in an ongoing attempt to
10 relay an unrelated false premise - *to wit:* that defense counsel met with Mr. Shulman prior to the
11 opening of discovery in this case on June 28, 2018 and told him to lie under oath - before he was ever
12 disclosed as a witness.⁹ Defendants have had to repeatedly respond to these assertions both before this
13 Honorable Court, before the Discovery Commissioner and even in the presently pending matter before
14 the Nevada Court of Appeals.¹⁰ Defendants further note that the issue surrounding Mr. Shulman's
15 testimony is the subject of an Objection filed by Defendants on August 22, 2019, which remains before
16 this Honorable Court.¹¹ Suffice to say that Defendants deny the gross misrepresentations of Mr.
17 Shulman and take issue with Plaintiff constantly wielding them as a sword to mislead the Court.
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25 ⁹See *Plaintiff's Objection* (filed December 12, 2019) at 2:26-27; 3:1-4.

26 ¹⁰See Exhibit G, *Defendants' Limited Objection to Discovery Commissioner's Report and*
27 *Recommendations Dated December 2, 2019* (filed December 16, 2019), Exhibit K at 24-27.

28 ¹¹See Exhibit H, *Defendants' Objection to Discovery Commissioner's Report and*
Recommendations Dated August 9, 2019 (filed August 22, 2019).

1 Plaintiff has represented in the Objection that she will “be undergoing L5-S1 surgery in the near
2 future.”¹² First, to Defendants’ present knowledge, this does not presently appear to be the case, based
3 on the latest medical records produced by Plaintiff. Second, and more importantly, it has nothing to
4 do with the pending issue surrounding Plaintiff’s demand for *carte blanche* discovery for a period of
5 twenty (20) years in a slip and fall case where Plaintiff was intimately familiar with the property and
6 where Defendants employee, Maria Cruz, did her job by patrolling the subject fall area within three
7 (3) minutes of the fall.

9 Regarding the September 18, 2019 hearing before the Discovery Commissioner, the reason
10 given by the Discovery Commissioner for expanding the scope of prior incident reports from the Grand
11 Lux rotunda to the casino level of the Venetian property was based on the determination that because
12 Venetian voluntarily initially produced sixty-four (64) redacted prior incident reports to Plaintiff which
13 extended to the entire casino level of the property (not limited to the Grand Lux rotunda area), that she
14 ordered any other production of incident reports to be like expanded, to which Defendants filed a
15 separate objection with this Court on December 16, 2019.¹³

17 Plaintiff is seeking to pummel Defendants with massive discovery without sufficient
18 consideration of the factors set forth in NRCP 26(b)(1). Plaintiff’s assertion that the marble flooring
19 in the all areas of the property is the same is unfounded. Testimony from Plaintiff’s expert, Thomas
20 Jennings, provides that testing for coefficient of friction on the Venetian marble floors can differ based
21 on a variety of factors.¹⁴ Also, Plaintiff named witness, expert David Elliott, PE, previously testified
22

24 ¹²See Plaintiff’s Objection to Discovery Commissioner’s Report and Recommendations Dated
25 December 2, 2019 (filed December 16, 2019) at 3:8.

26 ¹³See Exhibit G at Exhibit B (*Transcript of Proceedings Before the Discovery Commissioner*
27 (September 18, 2019) at 22:3-25; 23:1-9; 27:1-8.

28 ¹⁴See Exhibit I, *Deposition Transcript of Thomas Jennings* (taken July 2, 2019) at 16:18-
25; 17:1-3; 70:1-8; 72:8-23; 73:1-8 (noting that testing of an area within 100 feet of the Sekera fall
tested substantially different).

1 in February 2009 that Venetian is an exemplary property on the Las Vegas Strip, stating the following
2 in deposition: "You can go into the Venetian. I do a lot of work for the Venetian and consulting and
3 litigation, and their tile is slip resistant with wet, and it looks good."¹⁵ Plaintiff, previously used this
4 deposition testimony from Mr. Elliott to support her motion for leave to amend to add a claim for
5 punitive damages, now effectively asks the Court to ignore it entirely and provide her with *carte*
6 *blanche* access to twenty (20) years of records simply to satisfy her desire to amass more evidence of
7 incidents she can potentially use to support a punitive damages claim.
8

9 The Discovery Commissioner properly limited discovery to the preceding five (5) years. As
10 noted, Defendants take issue in a separate objection with the recommendation that they produce
11 subsequent incident reports and prior incident reports beyond the area of the Grand Lux rotunda.¹⁶
12

13 III.

14 DISCUSSION

15 A. Standard of Review

16 Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:

17 *Unless otherwise limited by order of the court in accordance with these rules, the scope*
18 *of discovery is as follows: Parties may obtain discovery regarding any nonprivileged*
19 *matter that is relevant to any party's claims or defenses and proportional to the needs*
20 *of the case, considering the importance of the issues at stake in the action, the*
21 *amount in controversy, the parties' relative access to relevant information, the*
22 *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.)

23 Plaintiff must therefore demonstrate that the desired discovery is **relevant** to her claims here
24 and that it is **proportional** to the needs of the case with five factors: 1) importance of issues at stake;
25

26
27 ¹⁵See Exhibit J, *Deposition Transcript of David Elliott* (taken February 13, 2009), at 34:18-21,
28 *Farina v. Desert Palace, Inc.*, Case No. A542232.

¹⁶See Exhibit G, *generally*.

1 2) amount in controversy; 3) parties' relative access to relevant information; 4) parties' resources; the
2 importance of the discovery in resolving contested issues; and 5) the burden of proposed discovery vs.
3 the likely benefit.

4 1. **Relevancy**

5 Under the first prong of this test, for information to be discoverable, it must be "relevant to any
6 party's claim or defense." (*Id.*) The phrase "reasonably calculated to lead to the discovery of
7 admissible evidence" has been omitted from the previous rule. The word "relevant" has been provided
8 as one of the driving factors in weighing discovery issues.
9

10 Recall that Plaintiff was not a normal guest/patron of the Venetian property at the time of the
11 incident, but was instead a pseudo employee, someone assigned a Venetian employee parking pass and
12 ID badge to gain special access to the property. She worked on property for nearly a year prior to the
13 incident and, as discussed further herein, Plaintiff walked the Grand Lux rotunda area many hundreds
14 of times without incident until November 4, 2016 - the only difference being the alleged existence of
15 a foreign substance reportedly causing her to fall.
16

17 What is "relevant" about incidents occurring anywhere other than the Grand Lux rotunda area
18 where Plaintiff fell? In her incident description presented within the Objection filed by Plaintiff, she
19 writes that Plaintiff "slipped and fell on water on the black marble floors."¹⁷ Plaintiff's repeated
20 reference to the floor as "black" suggests that flooring color played a role in her fall (*i.e.* Plaintiff being
21 unable to see something on the floor due to its color). What other areas of the Venetian floor are
22 likewise black in color that may present the same kind of visual issues for pedestrians? The subject
23 incident occurred in a very high traffic area of the property, which Plaintiff's expert Tom Jennings said
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28 ¹⁷See Plaintiff's Objection to Discovery Commissioner's Report and Recommendations Dated
December 2, 2019 (filed December 16, 2019) at 2:25-26 (emphasis added).

1 can itself impact coefficient of friction.¹⁸ Mr. Jennings acknowledged that his test results in two
2 different areas of Venetian marble flooring within 100 feet of one another are significantly different
3 (.90 COF (dry) / .40 COF (wet) v. .70 COF (dry) / .33 COF (wet)), which is precisely why Defendants
4 requested that the Discovery Commissioner limit the scope of discovery to the Grand Lux rotunda
5 area.¹⁹ To draw comparisons of other areas of the floor with less traffic, not surrounded by food and
6 beverage establishments (as the Grand Lux rotunda), with lighter colored flooring (*i.e.* not "black")
7 without something more than an argument that all stone/marble flooring is the same throughout the
8 property is not enough to open up the kind of *carte blanche* discovery sought by Plaintiff. Further,
9 prior incident information sought by Plaintiff relates to slip/falls from a foreign substance. Here, the
10 most credible evidence (*i.e.* the surveillance footage, in addition to all responding witnesses but for
11 disgruntled former employee Gary Shulman) supports the conclusion that there was no foreign
12 substance on the floor. Thus, Plaintiff's request for prior incidents involving foreign substances does
13 not reach the level of being substantially similar in area of incident or event.²⁰ Also, keep in mind that
14 Plaintiff was very familiar with the Grand Lux rotunda area, as a full-time employee working on the
15 property. Plaintiff has not established such familiarity of other areas throughout the property by
16 Plaintiff. She has not met the relevancy prong of NRCP 26(b)(1).

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20 ¹⁸See Exhibit J at 71:11-25; 72:1-22; 73:1-8.

21 ¹⁹See *id.*

22 ²⁰Per *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962), "it is error to
23 receive 'notice evidence' of the type here [prior incident reports] for the purpose of establishing the
24 defendant's duty"). However, in order for evidence of any prior incidents to be admissible, Plaintiff
25 must demonstrate that the prior incidents are substantially similar. (See *Galloway v. McDonalds
26 Restaurants of Nevada*, 102 Nev. 534, 536, 728 P.2d 826, 827-28 (1986); *Southern Pacific v. Harris*,
27 83 Nev. 471, 483, 395 P.2d 767 (1964).) In fact, many courts require a high degree of substantial
28 similarity. (See *e.g.*, *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1191 (10th Cir. 2009); *Pau v.
Yosemite Park and Curry Co.*, 928 F.2d 880, 889 (9th Cir.1991); *Jackson v. Firestone Tire & Rubber
Co.*, 788 F.2d 1070, 1082-83 (5th Cir.1986); *Brooks v. Chrysler Corp.*, 786 F.2d 1191, 1195
(D.C.Cir.1986); *Borden, Inc. v. Florida East Coast Ry. Co.*, 772 F.2d 750, 754 (11th Cir.1985);
Koloda v. General Motors, 716 F.2d 373, 376 (6th Cir. 1983); *Gardner v. Southern Ry. Sys.*, 675 F.2d
949, 952 (7th Cir. 1982); *McKinnon v. Skil Corp.*, 638 F.2d 270, 277 (1st Cir.1981).

1 As also discussed further herein below, Plaintiff has claimed to have reports of 196 prior
2 incidents occurring in the Grand Lux rotunda area; therefore, Defendants respectfully submit that
3 Plaintiff is in possession of more than sufficient "relevant" information she needs to make her case for
4 constructive notice and/or dangerous condition, with that information reportedly confined to the Grand
5 Lux rotunda area. Nevada law does not allow for exponential, boundless discovery just because
6 Plaintiff has received leave to add a claim for punitive damages.
7

8 **2. Proportionality**

9 Even if the Court deems the information "relevant", that alone is insufficient. Under the second
10 part of the NRCP 26(b)(1) test, to be discoverable, information must be "proportional to the needs of
11 the case." The rule provides six factors to consider: 1) "the importance of the issues at stake in action";
12 2) "the amount in controversy"; 3) "the parties' relative access to relevant information"; 4) "the parties'
13 resources; 5) the importance of the discovery in resolving the issues" and 6) "whether the burden or
14 expense of the proposed discovery outweighs its likely benefit."²¹ Defendants have previously
15 produced a total of sixty-eight (68) prior incident reports and Plaintiff claims to have a total of 196.²²
16 Requiring Defendants to produce additional prior incident reports beyond the Grand Lux rotunda area
17 and beyond the date of the subject incident serves no good purpose other than to burden and harass
18 Defendants.
19
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21

22
23 ²¹NRCP 26(b)(2)(C) further limits discovery, requiring the Court to limit the frequency or
24 extent of discovery if the Court determines that the discovery sought is (1) "unreasonably cumulative
25 or duplicative, or can be obtained from some other source that is more convenient, less burdensome,
26 or less expensive"; (2) "the party seeking discovery has had ample opportunity to obtain the
27 information by discovery in the action;" or (3) "the proposed discovery is outside the scope permitted
28 by Rule 26(b)(1)." Courts, thus, have a "duty to pare down overbroad discovery requests under Rule
26(b)(2)." (See *Rowlin v. Alabama Dep't. of Pub. Safety*, 200 F.R.D. 459, 461 (M.D. Ala. 2001)
(referencing application of FRCP 26(b)(2)).)

²²Pursuant to the DCRR, Plaintiff is to produce all of the other incident information she has
collected to Defendants. (See Exhibit A at 9:26-28.)

1 The District Court has the discretion to "bar or limit discovery to prevent, among other things,
2 an undue burden" on a party.²³ Plaintiff is seeking expansive, massive discovery over a twenty (20)
3 year period, well beyond February 2009 when Plaintiff witness David Elliott testified that Venetian
4 was an exemplary property on the Las Vegas Strip. Further, Plaintiff has not made a showing to the
5 Court that Venetian has been anything but forthright in responding to discovery responses requesting
6 prior incidents. She has merely offered anecdotal testimony of former non-management level Venetian
7 employees who offered non-binding observations that do not establish anything which would justify
8 allowing for the kind of discovery Plaintiff now seeks.²⁴ The massive discovery Plaintiff is seeking
9 is not proportional to the facts and circumstances here.
10

11
12 ²³*Club Vista Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 224, 229, 276 P.3d 246, 249
13 (2012).

14 ²⁴In *RKF Retail Holdings, LLC v. Tropicana Las Vegas, Inc.*, 2017 U.S. Dist. LEXIS 104850
15 (D. Nev. July 6, 2017) (*19-*22) (quoting *In re Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562,
16 563 (D. Ariz. 2016)), the court related the following in regards to the application of Rule 26(b)(1) to
17 such issues:

18 *Relevancy alone is no longer sufficient-discovery must also be proportional to the*
19 *needs of the case. The Advisory Committee Note makes clear, however, that the*
20 *amendment does not place the burden of proving proportionality on the party seeking*
21 *discovery. The amendment "does not change the existing responsibilities of the court*
22 *and the parties to consider proportionality, and the change does not place on the party*
23 *seeking discovery the burden of addressing all proportionality considerations." Rule*
24 *26, Advis. Comm. Notes for 2015 Amends. Rather, "[t]he parties and the court have*
25 *a collective responsibility to consider the proportionality of all discovery and consider*
26 *it in resolving discovery disputes." Bard, 317 F.R.D. at 564.*

27 *Generally, the party opposing discovery has the burden of showing that it is irrelevant,*
28 *overly broad, or unduly burdensome. Graham v. Casey's General Stores, 206 F.R.D.*
29 *251, 253-4 (S.D. Ind. 2000); Fosbre v. Las Vegas Sands Corp., 2016 U.S. Dist. LEXIS*
30 *1073, 2016 WL 54202, at *4 (D. Nev. Jan. 5, 2016); Izzo v. Wal-Mart Stores, Inc., 2016*
31 *U.S. Dist. LEXIS 17701, 2016 WL 593532, at *2 (D. Nev. Feb. 11, 2016). When a*
32 *request is overly broad on its face or when relevancy is not readily apparent, however,*
33 *the party seeking discovery has the burden to show the relevancy of the request. Desert*
34 *Valley Painting & Drywall, Inc. v. United States, 2012 U.S. Dist. LEXIS 145771, 2012*
35 *WL 4792913, at *2 (D. Nev. Oct. 9, 2012) (citing Marook v. State Farm Mut. Auto. Ins.*
36 *Co. 259 F.R.D. 388, 394-95 (N.D. Iowa 2009)). The 2015 amendments to Rule 26(b)*
37 *have not changed these basic rules, although they must now be applied with a greater*
38 *degree of analysis and emphasis on proportionality. (Emphasis added.)*

1 **B. The Discovery Commissioner Properly Limited Pre-Incident Discovery to Five Years**

2 Defendants have objected to the portion of the Discovery Commissioner's report and
3 recommendation regarding post incident reports and expanding the scope beyond the Grand Lux
4 rotunda area in a separate objection filed December 16, 2019. In Plaintiff's argument for additional
5 information to beef up her punitive damages claim at trial, she fails to provide the Court with even one
6 prior incident in her possession (of the sixty-eight (68) previously produced by Defendants) which is
7 substantially similar to the subject incident. She is merely focused on numbers (as she has always
8 been), without providing the Court with further information and analysis.

10 Plaintiff's reference to former Venetian EMT, Joseph Larson, where he provides an estimation
11 of his responses to incidents over a nine (9) year period with Venetian, fails to note that as for the
12 subject incident he did not find objective evidence of a foreign substance on the floor, that Plaintiff
13 denied a head injury at the scene and that he objectively palpated Plaintiff for a head injury with
14 negative results.²⁵ Mr. Larson further testified that he had responded to slip/falls not involving foreign
15 substances in the past, noting that such events are "usually related to footwear or somebody not being
16 cautious about where they're stepping" which "are pretty common."²⁶

18 Plaintiff's reference to testimony from former Venetian employee, Chris Tonemah, omits
19 testimony she presented that in her seventeen (17) years of experience at the Venetian property, she
20 only witnessed three or four slip and falls on the Venetian marble floor.²⁷ Moreover, in quoting from
21 the deposition of Gary
22

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26 ²⁵See Plaintiff's Objection to Discovery Commissioner's Report and Recommendations Dated
December 2, 2019, Exhibit 7 at 40-44; 82:10-19.

27 ²⁶See *id.* at 81:19-25; 82:1-3.

28 ²⁷See *id.*, Exhibit 10 at 14:18-22.

1 Shulman in her Objection filed with the Court, Plaintiff failed to mention that in his thirteen (13) years
2 working on the Venetian casino floor this was the only time he had ever witnessed a fall.²⁸

3 This is frankly why Plaintiff is so focused on sheer numbers of prior incidents and not actual
4 facts. Plaintiff's testimony that she never even heard of a slip/fall while working daily on the Venetian
5 property for eleven (11) months, coupled with like testimony from Mr. Shulman and Ms. Tonemah,
6 does not support Plaintiff's argument that Defendants have engaged in punitive, reprehensible conduct
7 justifying *carte blanche* discovery back twenty (20) years just to potentially obtain more numbers to
8 be recklessly tossed around to fit her narrative.

10 Plaintiff has not presented credible information that "the marble flooring at the Venetian is
11 dangerous" - much less that Venetian has engaged in deviant punitive conduct.²⁹ The mere fact that
12 a floor may become slippery when wet does not make it "dangerous" nor does it present evidence of
13 punitive conduct. Again, Venetian has marble flooring consistent with other like four star hotels
14 within the hospitality industry, which flooring is compliant with Clark County codes, Venetian has an
15 entire department dedicated to maintaining the subject flooring and, in fact, had an employee so
16 engaged at the incident scene within three (3) minutes of Plaintiff's fall. The known facts do not
17 justify the kind of discovery Plaintiff is seeking. Defendants otherwise reference arguments set forth
18 in Defendants' Limited Objection to Discovery Commissioner's Report and Recommendations Dated
19 December 2, 2019, filed December 16, 2019.
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27 ²⁸See *id.*, Exhibit 1 at 5:24-25; 6:1-5; 14:10-12.

28 ²⁹Quoting from *Plaintiff's Objection to Discovery Commissioner's Report and Recommendations Dated December 2, 2019* at 7:19-20.

V.

CONCLUSION

Based on the foregoing, Defendants respectfully submits that Plaintiff's Objection to Discovery Commissioner's Report and Recommendations Dated December 2, 2019, wherein Plaintiff is requesting an exponentially broader scope than that recommended by the Discovery Commissioner, should be denied. The discovery order should be limited to prior incidents of five (5) years within the Grand Lux rotunda area only, where the subject incident occurred, where the marble is "black" (as Plaintiff has described), which Plaintiff walked frequently in the eleven (11) months preceding the subject incident.

DATED this 23 day of December, 2019.

ROYAL & MILES LLP

By 

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Nevada Bar No. 4336

1522 W. Warm Springs Rd.

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of December, 2019, and pursuant to NRCP 5(b),

I caused a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S
OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION**

DATED DECEMBER 2, 2019 to be served as follows:

☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
(with exhibits on CD)
to be served via facsimile; and/or

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

_____ to be hand delivered;

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

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Ashley Schmitt
An employee of ROYAL & MILES LLP

EXHIBIT “A”

Deposition of:

Joyce P. Sekera

Case:

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

Date:

03/14/2019



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Page 5	Page 7
<p>1 HENDERSON, NEVADA, THURSDAY, MARCH 14, 2019;</p> <p>2 10:00 A.M.</p> <p>3 -oOo-</p> <p>4</p> <p>5 (Counsel agreed to waive the court</p> <p>6 reporter requirements under Rule</p> <p>7 30(b)(4) of the Nevada Rules of Civil</p> <p>8 Procedure.)</p> <p>9</p> <p>10 Thereupon,</p> <p>11 JOYCE P. SEKERA,</p> <p>12 was called as a witness, and having been first duly</p> <p>13 sworn, was examined and testified as follows:</p> <p>14</p> <p>15 EXAMINATION</p> <p>16 BY MR. ROYAL:</p> <p>17 Q. Would you please state your full name?</p> <p>18 A. Joyce P. Sekera.</p> <p>19 Q. What's the middle name?</p> <p>20 A. Patricia.</p> <p>21 Q. Okay. And have you gone by any other names?</p> <p>22 A. Joy. That's it.</p> <p>23 Q. Okay. But your last name's always been Sekera?</p> <p>24 A. Yes.</p> <p>25 Q. My name is Mike Royal. I represent the</p>	<p>1 A. It was at Santa Fe.</p> <p>2 Q. And can you give me an idea of when that fall</p> <p>3 occurred?</p> <p>4 A. I can't remember because it's been so many</p> <p>5 years ago.</p> <p>6 Q. Was it in the '90s?</p> <p>7 A. No. No.</p> <p>8 Q. The '80s?</p> <p>9 A. No, no. I want to say 2010. I can't remember.</p> <p>10 But it wasn't yesterday.</p> <p>11 Q. I got it.</p> <p>12 So maybe within the last ten years?</p> <p>13 A. Yeah. Yes.</p> <p>14 Q. Okay. And did that -- so it obviously went to</p> <p>15 litigation because you provided a deposition; is that</p> <p>16 right? You had an attorney, you were sworn in, and you</p> <p>17 had attorneys asking questions like this?</p> <p>18 A. Yeah, but it was just -- it was downtown, I</p> <p>19 remember, and that was it. I didn't go to court or</p> <p>20 anything.</p> <p>21 Q. Okay. But was there a court reporter present?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And were there a couple of attorneys</p> <p>24 present?</p> <p>25 A. Just mine and one more.</p>
Page 6	Page 8
<p>1 Venetian in litigation that is pending that you brought</p> <p>2 related to an incident that occurred on November 4th,</p> <p>3 2016.</p> <p>4 This deposition is an opportunity for me, as</p> <p>5 legal counsel for the Venetian, to ask questions of you</p> <p>6 and receive your responses under oath.</p> <p>7 Do you understand that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Have you ever done this before, a deposition?</p> <p>10 A. Years and years and years ago. I kind of</p> <p>11 forgot.</p> <p>12 Q. Okay. Just once?</p> <p>13 A. Just once.</p> <p>14 Q. What was that in regards to?</p> <p>15 A. I was a -- it was a witness deposition.</p> <p>16 Q. What was the nature of the case?</p> <p>17 A. My mom, she had fallen.</p> <p>18 Q. She had fallen?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Was that in Las Vegas?</p> <p>21 A. Yes.</p> <p>22 Q. And was that a casino or a hotel or place --</p> <p>23 supermarket?</p> <p>24 A. It was at a casino.</p> <p>25 Q. What was the name of the casino?</p>	<p>1 Q. Okay. And tell me what happened to your mom in</p> <p>2 that fall.</p> <p>3 A. She -- we were in the buffet. That was it, we</p> <p>4 were in the buffet.</p> <p>5 Q. Okay. And you're in the buffet and did you see</p> <p>6 the accident?</p> <p>7 A. Yeah. I was right there.</p> <p>8 Q. And what happened?</p> <p>9 A. She slipped and fell by the salad bar.</p> <p>10 Q. And what kind of injuries did your mom have?</p> <p>11 A. I can't remember every -- I just know that she</p> <p>12 had fallen. I'm not sure what she hit, but it was -- I</p> <p>13 can't remember exactly.</p> <p>14 Q. Did she go to the hospital?</p> <p>15 A. Yes.</p> <p>16 Q. Did she get treatment after the hospital?</p> <p>17 A. Yes.</p> <p>18 Q. Did she have injuries to her back?</p> <p>19 A. Yes.</p> <p>20 Q. Did she have injuries to her neck?</p> <p>21 A. Yes.</p> <p>22 Q. Did she have injuries to either of her arms</p> <p>23 that you recall?</p> <p>24 A. Yes. And her head.</p> <p>25 Q. And her head. Okay.</p>

Page 53	Page 55
<p>1 Q. Okay. You're not claiming knee injuries in 2 this case; is that right?</p> <p>3 A. No.</p> <p>4 MR. KUNZ: In the case of falling off the bed? 5 I'm sorry. I didn't mean to interrupt.</p> <p>6 BY MR. ROYAL:</p> <p>7 Q. Yeah. You're not claiming in this case that 8 you sustained injuries to either of your knees; is that 9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. So when you say you had an incident where you 12 fell off the bed and you got your knees checked, you're 13 not claiming that's related to anything associated with 14 this litigation?</p> <p>15 A. No. When you asked me another incident, 16 that's --</p> <p>17 Q. Right. No. I'm glad you told me. I just 18 want to make sure. That's why I'm asking the question.</p> <p>19 A. Yes.</p> <p>20 Q. It's a separate unrelated event --</p> <p>21 A. Okay.</p> <p>22 Q. -- is that right?</p> <p>23 When you fell off the bed and you hurt your 24 knee --</p> <p>25 A. Oh, that's something different.</p>	<p>1 Q. Give me an idea of how much you smoke now.</p> <p>2 A. Sometimes three a week.</p> <p>3 Q. Three packs?</p> <p>4 A. No. Three cigarettes.</p> <p>5 Q. How much were you smoking in November 2016?</p> <p>6 A. Oh, I have no idea. Because I was never a 7 chain smoker or smoker, smoker.</p> <p>8 Q. But was it different than three cigarettes a 9 week?</p> <p>10 A. When I was working there?</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. So how often?</p> <p>14 A. I don't remember that.</p> <p>15 Q. Did you typically take smoke breaks when you 16 were working for Brand Vegas?</p> <p>17 A. When we went to the restroom or it could be one 18 or two if it was really slow.</p> <p>19 Q. Okay. So it was something that you did once or 20 twice a day typically?</p> <p>21 A. Yeah, but not every day.</p> <p>22 Q. Okay. I noted that you have a history of 23 arthritis; is that correct?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Yes?</p>
Page 54	Page 56
<p>1 Q. Okay. And that's not -- you're not claiming 2 that rolling off the bed was caused by anything related 3 to this case?</p> <p>4 A. No.</p> <p>5 Q. Is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. You mentioned diabetes. 8 When were you diagnosed with diabetes?</p> <p>9 A. I want to say last year. And it was pre. And 10 then when I went back, he said I didn't have it. And 11 then when I went back for blood work, pre, so that's why 12 I'm taking it.</p> <p>13 Q. Okay. You're not claiming that no doctor -- 14 has any doctor told you that your diabetes diagnosis has 15 anything to do with what happened in this incident?</p> <p>16 A. It has -- no.</p> <p>17 Q. So the answer is no?</p> <p>18 A. Correct.</p> <p>19 Q. Are you a smoker?</p> <p>20 A. Yes.</p> <p>21 Q. How many years have you been a smoker?</p> <p>22 A. On and off. I mean, I'm not a big smoker as 23 far as pack, pack, pack. Once in a while.</p> <p>24 Q. Have you been smoking for more than 25 years?</p> <p>25 A. Not consistent, no.</p>	<p>1 A. Well, I would say it's -- what do you call it? 2 My grandmother had it, my mother --</p> <p>3 Q. Hereditary?</p> <p>4 A. Thank you.</p> <p>5 Q. When were you first diagnosed with arthritis?</p> <p>6 A. I have no idea.</p> <p>7 Q. Are you claiming, if you know -- strike that. 8 Has any doctor indicated to you that any 9 arthritis that you have, any arthritic condition is 10 associated with your fall at the Venetian?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. Were you diagnosed with arthritis before 13 your fall in November 2016?</p> <p>14 A. I don't remember.</p> <p>15 Q. Okay. Where does this arthritis affect you, 16 what part of your body?</p> <p>17 A. I don't know.</p> <p>18 Q. Would it be your hands? your joints? your toes?</p> <p>19 A. Sometimes my hands, they tingle, but I don't 20 know.</p> <p>21 Q. Okay. Do you have sore joints?</p> <p>22 When it says "arthritis," I have a note here 23 that you had preexisting arthritis, so I'm just trying 24 to get an idea of what --</p> <p>25 A. I can't remember the doctor that said, "It's</p>

Page 57	Page 59
<p>1 hereditary and you do have a" -- I don't know. I</p> <p>2 couldn't give you a date or a doctor.</p> <p>3 Q. Okay. I'm going to ask you a few more</p> <p>4 questions about your job.</p> <p>5 So you started with Brand Vegas on I think you</p> <p>6 said December 26, 2015, and you worked full time for</p> <p>7 that employer until the date of the incident,</p> <p>8 November 4, 2016; correct?</p> <p>9 A. Correct.</p> <p>10 Q. And when I say "full time," I mean 40 hours a</p> <p>11 week or more.</p> <p>12 A. Yes.</p> <p>13 Q. I saw -- and I'm going off memory, but I saw --</p> <p>14 what were your general work hours?</p> <p>15 A. 9:00 to 7:00.</p> <p>16 Q. So how many days a week?</p> <p>17 A. In the beginning, seven.</p> <p>18 Q. So you were working more than 40 hours;</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Did you get paid overtime?</p> <p>22 A. You know, I can't remember. I can't say for</p> <p>23 sure.</p> <p>24 Q. Okay. How long did you work seven days a week?</p> <p>25 Because you said in the beginning.</p>	<p>1 I'm not sure, so I'd rather not guess.</p> <p>2 Q. No. That's okay. So you were paid an hourly</p> <p>3 rate --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- somewhere between let's say 7 and \$10?</p> <p>6 A. Yes.</p> <p>7 Q. We can verify the hourly rate. It's not a big</p> <p>8 deal. Okay?</p> <p>9 You were also paid commissions. Tell me how</p> <p>10 the commissions worked.</p> <p>11 A. We never knew that. They would just give us so</p> <p>12 much money.</p> <p>13 Q. Well, I mean --</p> <p>14 A. It was 25 cents a ticket maybe on one, 50 cents</p> <p>15 on another one. That's how it went. It depends on the</p> <p>16 show and what they were paid.</p> <p>17 Q. Okay. So as I understand it, you were working</p> <p>18 at a kiosk for Brand Vegas on one of three different</p> <p>19 kiosk areas in the Grand Canal Shoppes?</p> <p>20 A. Yes.</p> <p>21 Q. And you would go there anywhere from five to</p> <p>22 seven days a week working 9:00 to 7:00 -- 9:00 a.m. to</p> <p>23 7:00 p.m.; correct?</p> <p>24 A. Correct.</p> <p>25 Q. You were paid an hourly rate, plus you got a</p>
Page 58	Page 60
<p>1 A. I don't keep notes. I didn't have a schedule.</p> <p>2 I just knew I had to be there. And I knew in the</p> <p>3 beginning when they were starting they needed the help</p> <p>4 because it was only a couple of us, so...</p> <p>5 Q. So you were willing to work however many days</p> <p>6 they needed you?</p> <p>7 A. Yes.</p> <p>8 Q. And how were you paid by Brand Vegas?</p> <p>9 A. A check.</p> <p>10 Q. That was a bad question.</p> <p>11 Let me ask you: Were you paid hourly?</p> <p>12 A. Yes.</p> <p>13 Q. And what was your hourly pay?</p> <p>14 A. I'm very bad. I didn't even keep those stubs,</p> <p>15 so I don't -- I can't tell you. I don't remember. I</p> <p>16 thought it was \$10, but I can't say for sure so I'm not</p> <p>17 going to.</p> <p>18 Q. Okay. So you were paid hourly.</p> <p>19 And were you paid commissions, like --</p> <p>20 A. Yes.</p> <p>21 Q. So it was hourly plus commissions.</p> <p>22 How were your commissions based?</p> <p>23 A. Oh, it was 7.25, maybe.</p> <p>24 Q. You think your rate might have been 7.25?</p> <p>25 A. It could have been 7.25 now. See, that's why</p>	<p>1 commission based upon tickets sold?</p> <p>2 A. Tickets sold, yeah.</p> <p>3 Q. The commission, as I understand your testimony,</p> <p>4 would be different depending on the show or the event?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Some might be a dollar, some might be 25</p> <p>7 cents, you know, it depends?</p> <p>8 A. Yes.</p> <p>9 Q. Were you encouraged to push certain shows when</p> <p>10 people would stop by?</p> <p>11 A. We just told them about Venetian shows, and</p> <p>12 then the rest of the shows on the Strip, we had a book</p> <p>13 with all of them.</p> <p>14 Q. I see.</p> <p>15 So how many shows did you sell for?</p> <p>16 I mean, strike that. That was a bad question.</p> <p>17 You mentioned there's other -- you mentioned</p> <p>18 Venetian.</p> <p>19 What other properties were you kind of selling</p> <p>20 tickets for when you were working for Brand Vegas?</p> <p>21 A. Almost all of them on the Strip. I don't</p> <p>22 remember exactly each one.</p> <p>23 Q. That's okay.</p> <p>24 If I were to --</p> <p>25 A. David Copperfield I can remember. We didn't</p>

Page 73	Page 75
<p>1 take any escalators or anything after that to get to</p> <p>2 your kiosk?</p> <p>3 A. I could, yes, an escalator up, I think. I'm</p> <p>4 sorry. It's been a while and I do not remember. I just</p> <p>5 remember we didn't have a designated area for so long;</p> <p>6 that we could park anywhere. And the employee thing</p> <p>7 is -- I just can't remember if I got my badge or not</p> <p>8 because it was right at the end.</p> <p>9 Q. Okay. What did the badge look like? Do you</p> <p>10 know?</p> <p>11 A. (Shakes head.)</p> <p>12 Q. Did you have a name tag?</p> <p>13 A. I had a Brand Vegas name tag.</p> <p>14 Q. Where would you wear it, what part of your</p> <p>15 clothing?</p> <p>16 A. Sometimes here, sometimes here (indicating),</p> <p>17 depending what I wore.</p> <p>18 Q. But it would be on the front?</p> <p>19 A. Yes, it would be on the front.</p> <p>20 Q. On the left or the right up around your</p> <p>21 shoulder -- or, you know, between your shoulder and your</p> <p>22 chest?</p> <p>23 A. (Nods head.)</p> <p>24 Q. Is that correct?</p> <p>25 A. Yes.</p>	<p>1 employment?</p> <p>2 A. No. Only if we had a question which the guest</p> <p>3 wanted that particular seat and they couldn't have it</p> <p>4 because it was reserved for the hotel, so...</p> <p>5 Q. Okay. The time that -- it sounds to me like</p> <p>6 you were spending anywhere from 40 to 60 hours a week at</p> <p>7 the Venetian.</p> <p>8 A. Yes.</p> <p>9 Q. Does that sound right?</p> <p>10 A. Yes.</p> <p>11 Q. And that would be pretty much from December 26,</p> <p>12 2015, until the date of the incident?</p> <p>13 A. Yes.</p> <p>14 Q. Did you take any vacations?</p> <p>15 A. No, I did not. And I was always there at least</p> <p>16 an hour or two prior.</p> <p>17 Q. What does that mean? Prior to what?</p> <p>18 A. Prior to my shift starting.</p> <p>19 Q. So if your shift started at 9:00, you would</p> <p>20 arrive at 7:00?</p> <p>21 A. Yeah, because I would set up all the computers</p> <p>22 for everybody.</p> <p>23 Q. And you're not paid for that time?</p> <p>24 A. No.</p> <p>25 Q. So you actually would have been there from,</p>
Page 74	Page 76
<p>1 Q. Okay.</p> <p>2 A. I could have had an employee badge, but I don't</p> <p>3 remember. And it was left there. I don't have anything</p> <p>4 from there.</p> <p>5 Q. Okay. Did anyone tell you why they wanted you</p> <p>6 to have an employee badge?</p> <p>7 A. They wanted to know who was on property and so</p> <p>8 they did the background checks and stuff.</p> <p>9 Q. Did they do a background check of you?</p> <p>10 A. Yes.</p> <p>11 Q. Who is "they"?</p> <p>12 A. The Venetian. Whoever they have do that to get</p> <p>13 this badge because I remember reading it.</p> <p>14 Q. Did you have to fill out any forms?</p> <p>15 A. Yes.</p> <p>16 Q. Do you remember who you filled them out for?</p> <p>17 Was it something that your employer required or was it</p> <p>18 something that Venetian required?</p> <p>19 A. Venetian required.</p> <p>20 Q. Okay. Do you remember approximately when you</p> <p>21 filled the form out?</p> <p>22 A. No. It was very close to my fall, so that's</p> <p>23 why probably it's -- I don't remember.</p> <p>24 Q. Okay. Did you interact very often with the</p> <p>25 Venetian personnel at the box office as part of your</p>	<p>1 like, what, 7:00 to 7:00?</p> <p>2 A. Pretty much, or at least 8:00 to 7:00.</p> <p>3 Q. Okay. I'm just doing the math in my head here.</p> <p>4 That's a lot of hours. So you're talking about -- you</p> <p>5 could actually be working 80 hours a week.</p> <p>6 A. Yeah.</p> <p>7 Q. Does that sound right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 A. And that wasn't every day, but I tried to help</p> <p>11 people because -- and have it all ready for them when</p> <p>12 they walked on the shift.</p> <p>13 Q. So during the time that you work there for</p> <p>14 sounds like -- I'm going to say 50 to 70 hours a week</p> <p>15 maybe --</p> <p>16 Does that sound about fair?</p> <p>17 A. Fair.</p> <p>18 Q. -- were you ever aware of any incidents where</p> <p>19 guest or employees would slip and fall?</p> <p>20 A. No.</p> <p>21 Q. The times that you were working at this booth,</p> <p>22 you don't recall ever responding to someone who had</p> <p>23 fallen; is that correct?</p> <p>24 A. I would say yes. I don't remember helping</p> <p>25 anybody.</p>

Page 77	Page 79
<p>1 Q. Okay. When you would go to -- let's say on</p> <p>2 breaks, use the restroom and stuff, do you recall ever</p> <p>3 seeing security responding to somebody on the floor,</p> <p>4 anything like that?</p> <p>5 A. No.</p> <p>6 Q. Did you ever have any conversations that you</p> <p>7 can recall prior to your fall with hotel -- Venetian</p> <p>8 hotel security about incidents occurring on property?</p> <p>9 A. No. I didn't really know anybody there.</p> <p>10 Q. Okay. So prior to your incident of November 4,</p> <p>11 2016, is it fair to say that you were never aware of</p> <p>12 anyone slipping and falling at the Venetian property?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. That was a correct statement; is that</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. So for all the time that you were at the</p> <p>18 Venetian working for Allstate Ticketing and Tours and</p> <p>19 then for Brand Vegas, the only fall that you're aware of</p> <p>20 occurring at the Venetian property was your fall?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Do you recall during the time that you</p> <p>23 worked at the Venetian property -- now I'm going to</p> <p>24 expand it from any time that you're working there from</p> <p>25 1995 until 2016, I'm just going to ask you all of your</p>	<p>1 happened, it was, like, once.</p> <p>2 Q. Okay. But I'm asking if you have a specific</p> <p>3 memory --</p> <p>4 A. No.</p> <p>5 Q. -- of something like that.</p> <p>6 A. Oh, no.</p> <p>7 Q. Okay. So that's -- that's one of those things</p> <p>8 where I don't want you to speculate. If you have a</p> <p>9 specific memory, "Oh, yeah, I remember once or twice" --</p> <p>10 A. Okay.</p> <p>11 Q. Do you have a specific memory?</p> <p>12 A. No.</p> <p>13 Q. Okay. All right. Did you -- in all your time</p> <p>14 working at the Venetian talking with people, selling</p> <p>15 tickets, people walking by, casual conversation, even</p> <p>16 people that you were working with in your kiosk with</p> <p>17 that other company, okay, do you recall speaking with</p> <p>18 anyone who made any reference to any slip-and-falls that</p> <p>19 occurred on the company?</p> <p>20 A. No.</p> <p>21 Q. This would be a good time to take a break</p> <p>22 because I'm going to move into something else.</p> <p>23 Let's go off the record.</p> <p>24 (A short recess was taken from 11:41 a.m.</p> <p>25 to 11:48 a.m.)</p>
Page 78	Page 80
<p>1 experience as an employee where you were working at a</p> <p>2 kiosk at the Venetian property, do you recall ever</p> <p>3 seeing foreign substances on the floor?</p> <p>4 A. I have to just say this. When I worked for</p> <p>5 Allstate Ticketing, they didn't acquire the Venetian</p> <p>6 kiosk till a few years before, so earlier they weren't</p> <p>7 there. From '96 to -- I just can't remember the date.</p> <p>8 You said from '96 to...</p> <p>9 Q. Okay. Thank you. But what I'm trying to do is</p> <p>10 you said you were probably at the Venetian 10 to 20</p> <p>11 times over the 15 years --</p> <p>12 A. Yeah, not a lot.</p> <p>13 Q. Okay. That's when you were at Allstate?</p> <p>14 A. Right.</p> <p>15 Q. And then you were there it sounds like almost</p> <p>16 every day for almost close to a year --</p> <p>17 A. Oh, for Brand, yes.</p> <p>18 Q. -- for Brand Vegas; correct?</p> <p>19 A. Yes.</p> <p>20 Q. All right. And during all that time,</p> <p>21 collectively, you don't recall ever seeing a substance</p> <p>22 on the floor, like somebody spilled a drink or something</p> <p>23 like that?</p> <p>24 A. Oh, sure, I might have and I might have called</p> <p>25 housekeeping. See, I don't remember that. If that</p>	<p>1 BY MR. ROYAL:</p> <p>2 Q. So off the record we were talking about this</p> <p>3 2008 motor vehicle accident. I just wanted to make sure</p> <p>4 I'm clear on this because I think you did have American</p> <p>5 Family Insurance --</p> <p>6 A. Yes, I did.</p> <p>7 Q. -- auto insurance; right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And we think that that may have been</p> <p>10 some litigation involving an accident your daughter was</p> <p>11 involved in and you owned the car?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. You don't remember specifically, but</p> <p>14 we're kind of -- that's kind of what we're guessing</p> <p>15 because you weren't involved in an auto accident?</p> <p>16 A. Yes. That's right. That's correct.</p> <p>17 Q. Okay. I wanted to clear that up.</p> <p>18 So let's go to the day of the incident.</p> <p>19 What time did you arrive on the Venetian</p> <p>20 property that day?</p> <p>21 A. I cannot guess on that. Again, sometimes I'm</p> <p>22 there at 7:00, 7:30, or 8 o'clock most of the time.</p> <p>23 Q. Okay. And your normal routine when you get to</p> <p>24 work is to -- I assume things are locked up?</p> <p>25 A. Everything's locked up.</p>

Page 81	Page 83
<p>1 Q. So when you get there --</p> <p>2 A. Or in the cupboard.</p> <p>3 Q. Okay. So you had a key?</p> <p>4 A. No. They were just doors shut.</p> <p>5 Q. So they weren't locked?</p> <p>6 A. (Shakes head.)</p> <p>7 Q. So you had, like, laptops and stuff there?</p> <p>8 A. Yeah, that we would set up. Yes.</p> <p>9 Q. And that stuff was kept somewhere without a</p> <p>10 lock?</p> <p>11 A. With a credit card machine.</p> <p>12 Yes.</p> <p>13 Q. That's crazy.</p> <p>14 Okay. Was it like that at every kiosk?</p> <p>15 A. No. The Tao one had one. And they did have a</p> <p>16 key, but it didn't always work, the lock.</p> <p>17 Q. Okay. Regardless whether you had to unlock</p> <p>18 something or not, you would show up at the kiosk?</p> <p>19 A. Yes. Set up the phone and the credit card</p> <p>20 machine and the computer.</p> <p>21 Q. Okay. And how long did that typically take?</p> <p>22 A. Just depending. Sometimes it didn't go on</p> <p>23 right away. You had to work with it.</p> <p>24 Q. So at least by 9 o'clock you're ready to go?</p> <p>25 A. Oh, definitely. All booths, yes.</p>	<p>1 Q. Okay. On that particular day, do you remember</p> <p>2 taking any breaks between the time of your arrival until</p> <p>3 the break you took at the time of the incident?</p> <p>4 A. No, I don't.</p> <p>5 Q. At the time of the incident, as I recall, you</p> <p>6 had -- you were carrying a beverage in your left hand.</p> <p>7 Do you remember that?</p> <p>8 A. Could have been a coffee cup. That's all I can</p> <p>9 figure at that time.</p> <p>10 Q. So the incident happened around noon, 12:30, I</p> <p>11 think, p.m.; right?</p> <p>12 A. Yes.</p> <p>13 Q. Is that typically when you would take a lunch</p> <p>14 break?</p> <p>15 A. Yes.</p> <p>16 Q. Were you on a lunch break at the time this</p> <p>17 incident occurred?</p> <p>18 A. Yes.</p> <p>19 Q. Now, if you had a cup of coffee in your hand --</p> <p>20 I think it might have had a lid on it --</p> <p>21 A. Yes.</p> <p>22 Q. -- where -- do you know where you bought that?</p> <p>23 A. No.</p> <p>24 Q. It's not something you would have bought and</p> <p>25 brought with you to the property, is it, on your way</p>
Page 82	Page 84
<p>1 Q. And how many tickets would you typically sell</p> <p>2 in a day? I know it's going to vary, but...</p> <p>3 A. There could be anywheres from two maybe up to</p> <p>4 40, 50. It just depended what was going on at the</p> <p>5 hotel.</p> <p>6 Q. So if it's busy because there's a convention or</p> <p>7 something like that --</p> <p>8 A. Correct.</p> <p>9 Q. -- there's going to be people looking for stuff</p> <p>10 to do. More people and more -- more people are going to</p> <p>11 come by and ask you for information?</p> <p>12 A. Right.</p> <p>13 Q. Typically how many people -- just give me an</p> <p>14 estimate of -- will just stop and get information and</p> <p>15 not buy tickets?</p> <p>16 A. Oh, God, that was all day long. That drove us</p> <p>17 nuts, but we did it.</p> <p>18 Q. With a smile?</p> <p>19 A. Yes.</p> <p>20 Q. So it was pretty rare to sell tickets</p> <p>21 proportionately --</p> <p>22 A. You tried to fit it in, yes.</p> <p>23 Q. So between 8:00 a.m. and noon on the day of the</p> <p>24 incident, do you remember if you sold any tickets?</p> <p>25 A. I do not.</p>	<p>1 from home?</p> <p>2 A. I don't think so.</p> <p>3 Q. You typically would buy something like that at</p> <p>4 the property?</p> <p>5 A. Or somebody would for us, yes.</p> <p>6 Q. Okay. So you had a -- you don't remember if</p> <p>7 you got it at -- I don't know. There's a place called</p> <p>8 The Coffee Bean or different --</p> <p>9 A. Oh, was that upstairs in my area?</p> <p>10 Q. Yes.</p> <p>11 A. Yeah. Okay.</p> <p>12 Q. It's kind of close to the escalator.</p> <p>13 A. Yes, it is. Yes.</p> <p>14 Q. So you think --</p> <p>15 A. I do remember Coffee Bean.</p> <p>16 Q. But did you buy coffee that morning at The</p> <p>17 Coffee Bean?</p> <p>18 A. That, I don't remember.</p> <p>19 Q. Okay. So you were taking a break and -- you</p> <p>20 were taking a lunch break.</p> <p>21 Where were you planning on going for lunch on</p> <p>22 the day of the incident?</p> <p>23 A. I couldn't tell you. I just always go to the</p> <p>24 restroom first and...</p> <p>25 Q. Okay. You say you always go to the restroom.</p>

Page 85	Page 87
<p>1 A. Well, when I have to go, yes, but --</p> <p>2 Q. Let me back up.</p> <p>3 As I understand it, you're working at your</p> <p>4 kiosk, you're ready to take a break. You go to the</p> <p>5 escalator that's close to The Coffee Bean.</p> <p>6 A. No. Right around the corner the elevator down</p> <p>7 because then you can just go right to the restroom.</p> <p>8 Q. Okay. So you didn't take --</p> <p>9 A. I didn't take the escalator, no.</p> <p>10 Q. Is there a security guard posted there, do you</p> <p>11 know, at that level?</p> <p>12 A. I do not know that.</p> <p>13 Q. Okay. How close to those elevators -- strike</p> <p>14 that.</p> <p>15 Where the incident happened, the elevators</p> <p>16 you're talking about, where are they located?</p> <p>17 A. If I'm at that booth -- because Coffee Bean is</p> <p>18 right over there -- I go around the corner to these --</p> <p>19 it's a little corner really where the elevators sit.</p> <p>20 There's nothing else there. And I would get out of the</p> <p>21 elevator, turn left, and go straight to the restroom.</p> <p>22 Q. Get out of the elevator, turn left?</p> <p>23 A. Yes, because it's, like, an L-shaped --</p> <p>24 Q. Let me ask you this: Do you know where the</p> <p>25 Grand Cafe --</p>	<p>1 A. At least, yes.</p> <p>2 Q. And so that would be from the time that you</p> <p>3 started at the -- on December 26, 2015, until the</p> <p>4 incident; correct?</p> <p>5 A. Yes.</p> <p>6 Q. So you're used to this path. You always take</p> <p>7 the elevator and you kind of --</p> <p>8 A. Yes, uh-huh.</p> <p>9 Q. Okay. You always --</p> <p>10 A. Oh, sorry.</p> <p>11 Why are you laughing at me?</p> <p>12 Q. No, no. We're laughing just because you're</p> <p>13 interrupting. She knows --</p> <p>14 A. Sorry.</p> <p>15 Q. That's okay. In normal conversation, this is</p> <p>16 how it goes. But when we're on the record, we have to</p> <p>17 be a little more patient. We both have been doing it.</p> <p>18 Let me start over. I can't remember where I</p> <p>19 was.</p> <p>20 MR. KUNZ: It was a path you normally take.</p> <p>21 BY MR. ROYAL:</p> <p>22 Q. Yeah, okay.</p> <p>23 You took the elevator every day. You didn't go</p> <p>24 all the way around to the escalator?</p> <p>25 A. Yes.</p>
Page 86	Page 88
<p>1 A. Oh, yes, yes.</p> <p>2 Q. Okay. Where is the elevator in relation to the</p> <p>3 Grand Cafe?</p> <p>4 A. Well, you have the Grand Cafe, it's right</p> <p>5 across, because the elevator is here. It's in a little</p> <p>6 nook. Then to the right is that and then the restrooms.</p> <p>7 Q. Okay. I think I got it now. It's coming into</p> <p>8 my head here because there's the elevator lobby with all</p> <p>9 the guests. We're not talking about that.</p> <p>10 A. Oh, no, no, no.</p> <p>11 Q. This is a different elevator?</p> <p>12 A. (Nods head.)</p> <p>13 Q. So you come down the elevator. I understand</p> <p>14 where the nook is. And now I get it when you say you</p> <p>15 turn to your left and it's a straight shot --</p> <p>16 A. Exactly, yes.</p> <p>17 Q. -- to the bathrooms; right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So you're walking to the bathroom on</p> <p>20 your break and -- is that the bathroom that you would</p> <p>21 typically use during breaks?</p> <p>22 A. Yes.</p> <p>23 Q. And more than once a day?</p> <p>24 A. Could be.</p> <p>25 Q. But at least once a day?</p>	<p>1 Q. Is that correct?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Yes?</p> <p>4 A. Well, it depended if I went to get a salad or</p> <p>5 something and then go to the restroom. Every day I</p> <p>6 can't tell you or every moment exactly.</p> <p>7 Q. And I understand that, and I'm just trying to</p> <p>8 get your routine. Okay?</p> <p>9 But let's say --</p> <p>10 A. But that bathroom was most convenient.</p> <p>11 Q. So every day you would take a break and you</p> <p>12 would use the bathroom that you were headed to the day</p> <p>13 of the incident?</p> <p>14 A. Yes.</p> <p>15 Q. Was there -- so you had -- you leave your</p> <p>16 kiosk, you take the elevator, you've got a cup of</p> <p>17 coffee, and you're planning to use the restroom and then</p> <p>18 you're going to get some lunch or smoke or -- I don't</p> <p>19 know what your -- what were your plans?</p> <p>20 A. That -- that was it, to go to the restroom.</p> <p>21 Q. And then get something to eat?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Yes?</p> <p>24 A. Yes.</p> <p>25 Q. Were you going to go to the food court?</p>

Page 89	Page 91
<p>1 A. Very rarely.</p> <p>2 Q. Okay. Where would you go to eat typically?</p> <p>3 A. They had that little snack shop to the left. I</p> <p>4 can't remember the names.</p> <p>5 Q. Snack shop to the left?</p> <p>6 A. And then the Bouchon Bakery. Is that upstairs</p> <p>7 or down? I don't know.</p> <p>8 Q. I think there's one downstairs, but...</p> <p>9 A. That's the one I went to. They had good</p> <p>10 salads.</p> <p>11 Q. Tell me about -- we're at the date of the</p> <p>12 incident. You've come down the elevator, you've turned</p> <p>13 left, you're walking almost a straight shot to the</p> <p>14 women's restroom. Tell me what happened.</p> <p>15 A. I walked out, focussing on the people because</p> <p>16 it's very crowded there a lot of times because -- during</p> <p>17 the convention. And I was going to the restroom and the</p> <p>18 next thing I know, my -- that's the one thing I can</p> <p>19 remember, is my feet in front of me as I went down hard.</p> <p>20 Q. Okay. When you -- as you're approaching this</p> <p>21 area, did you notice anything unusual about the floor?</p> <p>22 A. No. My eyes were up here looking at the people</p> <p>23 trying not to hit somebody.</p> <p>24 Q. You weren't scanning the floor --</p> <p>25 A. No.</p>	<p>1 Q. Because your initial complaint was your left</p> <p>2 elbow.</p> <p>3 Do you remember striking your left elbow?</p> <p>4 A. Yes, I do. Hard on the marble, yes.</p> <p>5 Q. Do you remember -- other than your left elbow,</p> <p>6 do you remember striking your head?</p> <p>7 A. My shoulder.</p> <p>8 Q. Your left shoulder?</p> <p>9 A. Uh-huh, because it was on the left side because</p> <p>10 I was trying to -- I just went -- it happened so quick.</p> <p>11 Q. Okay. Let's -- I'm trying to take it one frame</p> <p>12 at a time here.</p> <p>13 So you struck your left shoulder -- I'm sorry.</p> <p>14 Strike that.</p> <p>15 Your feet go out in front of you, you strike</p> <p>16 your left elbow, and you remember striking your left</p> <p>17 shoulder -- part of your shoulder; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember striking your hip, your left</p> <p>20 hip? That's something you remember?</p> <p>21 A. I kind of remember just bouncing and I hit so</p> <p>22 hard, but I don't know -- I don't remember -- it's hard.</p> <p>23 Q. Okay. Do you recall what happened to your</p> <p>24 drink that you were carrying?</p> <p>25 A. No, I do not.</p>
Page 90	Page 92
<p>1 Q. -- as you're walking; right?</p> <p>2 Is that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Were you in a hurry?</p> <p>5 A. No.</p> <p>6 Q. Do you remember if you had the beverage in your</p> <p>7 right or left hand?</p> <p>8 A. No.</p> <p>9 Q. So you remember your feet going out quickly in</p> <p>10 front of you?</p> <p>11 A. Yes.</p> <p>12 Q. Tell me about as you fell.</p> <p>13 What do you remember about the fall itself, how</p> <p>14 you landed?</p> <p>15 A. I just remember landing hard. Whether it was</p> <p>16 my back, my butt, I don't know. I just remember going</p> <p>17 backwards and I was dazed. I mean, shocked. I can't --</p> <p>18 I don't remember. That's what kills me. I don't</p> <p>19 remember --</p> <p>20 Q. Okay.</p> <p>21 A. -- exactly what was on the floor or...</p> <p>22 Q. Right.</p> <p>23 A. I know it was liquid because my pants felt wet.</p> <p>24 Q. Okay. So let me get back to the fall.</p> <p>25 A. Okay.</p>	<p>1 Q. Okay. Do you recall if any -- so you don't</p> <p>2 recall if any of part of your drink spilled when you</p> <p>3 fell?</p> <p>4 A. No.</p> <p>5 Q. You said that after the fall you're shocked and</p> <p>6 dazed, something you're not expecting; right?</p> <p>7 A. Correct.</p> <p>8 Q. You felt immediate pain in your left elbow?</p> <p>9 A. Yes.</p> <p>10 Q. Did you feel immediate pain in your left</p> <p>11 shoulder?</p> <p>12 A. Yes. My neck, my head, yes.</p> <p>13 Q. Okay. You felt immediate pain in your head?</p> <p>14 A. Again, I fell on my left side hard. And I'm</p> <p>15 not 90 pounds, so when I fell hard, yeah, I felt it, the</p> <p>16 pain, the whole side, the left side.</p> <p>17 Q. So when you say "the whole side," was it the</p> <p>18 left side of your head?</p> <p>19 A. It just went down from my neck down.</p> <p>20 Q. Okay. Now, so I'm pointing to, like, the back</p> <p>21 part of your head.</p> <p>22 Do you recall any part of your head striking</p> <p>23 anything?</p> <p>24 A. Yes. I remember just bouncing.</p> <p>25 Q. Okay. So did you have a sore spot on your head</p>

Page 93	Page 95
<p>1 from when you fell?</p> <p>2 A. Yes.</p> <p>3 Q. Was it, like, a bump or just sore when you</p> <p>4 touched it?</p> <p>5 A. Sore when I touched it.</p> <p>6 Q. Okay. And so you have the left side of your</p> <p>7 head, the left -- or then your neck. I'm going to say</p> <p>8 the left side of your neck only because you've been</p> <p>9 pointing to your left side; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And then your left shoulder and your left</p> <p>12 elbow?</p> <p>13 A. Elbow.</p> <p>14 Q. Okay. What do you remember right after the</p> <p>15 incident? What's the next thing you remember? People</p> <p>16 coming to you and seeing if you're okay?</p> <p>17 A. I remember people in my face, "Are you okay?</p> <p>18 Are you okay?" That's all I remember. I just -- I</p> <p>19 don't know what you call it. For me to not remember,</p> <p>20 it's hard.</p> <p>21 Q. Okay. How long were you on the floor?</p> <p>22 A. That, I do not know.</p> <p>23 Q. Do you remember someone from security coming to</p> <p>24 speak with you?</p> <p>25 A. Is that the, like, paramedic?</p>	<p>1 your shirt?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Yes?</p> <p>4 A. Yes.</p> <p>5 Q. Anywhere else?</p> <p>6 A. I didn't -- again, when I hit hard, I do not</p> <p>7 remember a lot from back then, but I do remember being</p> <p>8 wet.</p> <p>9 Q. Okay. And I understand that. And I'm not</p> <p>10 trying to badger you. I'm just trying to get as best</p> <p>11 information I can when you say you felt wet, so I just</p> <p>12 want to know what parts of your body you felt wet.</p> <p>13 So you've indicated the left rear and you think</p> <p>14 maybe --</p> <p>15 A. Back.</p> <p>16 Q. -- the low-back area; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Any other areas where you recall specifically</p> <p>19 that were wet?</p> <p>20 A. I do not recall.</p> <p>21 Q. Okay. So as I understand it, you fell -- you</p> <p>22 didn't see anything on the floor before your fall;</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. You've described your fall. You didn't see</p>
Page 94	Page 96
<p>1 Q. EMT?</p> <p>2 A. The EMT, yes.</p> <p>3 Q. Do you remember --</p> <p>4 A. He was trying to help me up.</p> <p>5 Q. Do you remember anything about your</p> <p>6 conversation with him?</p> <p>7 A. No. I remember him walking me upstairs and</p> <p>8 fixing my arm so that I could drive to the hospital.</p> <p>9 That's all.</p> <p>10 Q. Do you remember -- you said there was liquid on</p> <p>11 your pants?</p> <p>12 A. Yes.</p> <p>13 Q. Where on your pants?</p> <p>14 A. Back side.</p> <p>15 Q. The back left side?</p> <p>16 A. Yes.</p> <p>17 Q. Can you describe -- is it your rear end?</p> <p>18 A. Yes.</p> <p>19 Q. So your left rear end?</p> <p>20 A. Yes.</p> <p>21 Q. Was it --</p> <p>22 A. And my back, so...</p> <p>23 Q. The back of your shirt?</p> <p>24 A. Yes.</p> <p>25 Q. So it was on the left rear end and the back of</p>	<p>1 anything on the floor after your fall? You didn't</p> <p>2 examine the floor and say, "There's something there"?</p> <p>3 A. No, I did not.</p> <p>4 Q. So what I said was correct?</p> <p>5 A. Correct. Yes. The EMT came and walked me</p> <p>6 upstairs.</p> <p>7 Q. Okay. When you stood -- do you remember people</p> <p>8 showing up with mops or anything like that?</p> <p>9 A. I just remember people yelling.</p> <p>10 Q. Okay. When you -- where were you -- or strike</p> <p>11 that.</p> <p>12 I understand that from the fall area you went</p> <p>13 to kind of a back-of-the-house place.</p> <p>14 A. Yeah. I don't even know where they took me.</p> <p>15 Q. That was somewhere in the security office or...</p> <p>16 A. Yes.</p> <p>17 Q. And while you were there, can you just tell us</p> <p>18 what happened?</p> <p>19 A. I remember sitting in a chair and him trying to</p> <p>20 talk to me, and he looked at my arm and then he started</p> <p>21 putting a brace on it or -- I don't know what they call</p> <p>22 it, but -- that's all I remember.</p> <p>23 Q. Okay. Then what happened after he put the</p> <p>24 sling on?</p> <p>25 A. He walked me to the car and I -- it was over</p>

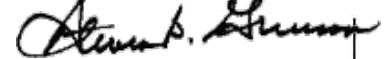
Page 97	Page 99
<p>1 here. And I'm right-handed, so I drove right to</p> <p>2 Centennial Hospital.</p> <p>3 Q. Okay. Before he walked you to your car, did he</p> <p>4 take -- did you go back to your kiosk?</p> <p>5 A. Yes. I remember -- I told him I left my -- no.</p> <p>6 I left -- I left something there. I'm not sure what it</p> <p>7 was, but I left something. I remember him walking me to</p> <p>8 the booth to get it.</p> <p>9 Q. Okay. So you picked up -- the security officer</p> <p>10 walked with you from the medical room, or where he put</p> <p>11 the sling on, to your kiosk where you had last worked?</p> <p>12 A. Correct. Correct.</p> <p>13 Q. You picked up whatever it was --</p> <p>14 A. I don't know what it was, a book. I don't know</p> <p>15 what it was, but I got it.</p> <p>16 Q. And that's the last time that you've ever been</p> <p>17 to your kiosk, a kiosk?</p> <p>18 A. Yes.</p> <p>19 Q. Then he walked you out, and according to his</p> <p>20 report, you went to the eighth floor and then you drove?</p> <p>21 A. Then I must have -- yes, and then I went right</p> <p>22 to the hospital.</p> <p>23 Q. Okay. I'm going to show you what we'll mark as</p> <p>24 Exhibit C.</p> <p>25 ///</p>	<p>1 Q. Do you remember him asking you questions about</p> <p>2 where you worked?</p> <p>3 A. No, but I must have told him upstairs in the</p> <p>4 shops, yeah. I don't know. I don't remember.</p> <p>5 Q. Then the next -- I already asked you about the</p> <p>6 next sentence, but I'll read it. "I noted that a public</p> <p>7 areas department team member was on scene and mopping</p> <p>8 the floor in the area."</p> <p>9 Does that refresh your recollection about</p> <p>10 mopping, people being around mopping?</p> <p>11 A. (Reading document.)</p> <p>12 I'll be honest, I can't remember.</p> <p>13 Q. Okay. The next sentence, "Sekera apologized</p> <p>14 for falling and did not appear to be in any immediate</p> <p>15 distress."</p> <p>16 Do you remember anything like that, apologizing</p> <p>17 for falling?</p> <p>18 A. No.</p> <p>19 Q. Okay. The next paragraph, the second sentence,</p> <p>20 it reads, "She stated she was walking through the area</p> <p>21 when she slipped in what she believed was water on the</p> <p>22 floor." I'll stop there.</p> <p>23 Does that refresh your recollection? Do you</p> <p>24 remember telling anyone you thought there was water on</p> <p>25 the floor?</p>
Page 98	Page 100
<p>1 (Exhibit C was marked.)</p> <p>2 BY MR. ROYAL:</p> <p>3 Q. This is a security report identified as</p> <p>4 VEN 008009. It's called a narrative report and it's two</p> <p>5 pages.</p> <p>6 Have you seen this before?</p> <p>7 A. Never.</p> <p>8 Q. Okay. I'm just going to direct you to a few</p> <p>9 things that are written here and see -- this is one of</p> <p>10 those times where I'm going to show you something and</p> <p>11 see if it helps you remember.</p> <p>12 A. Okay.</p> <p>13 Q. Look at the first paragraph, and it indicates</p> <p>14 in the second sentence, it says, "I arrived on scene and</p> <p>15 met with Las Vegas Tours (business located in Grand</p> <p>16 Canal Shoppes) Employee Sekera, Joyce who was seated on</p> <p>17 the marble flooring."</p> <p>18 A. Right.</p> <p>19 Q. Do you remember being seated on the marble</p> <p>20 flooring after your fall?</p> <p>21 A. I remember after falling -- well, yeah. I</p> <p>22 remember when he -- the EMT came to me, I was like this,</p> <p>23 I remember.</p> <p>24 Q. Being seated?</p> <p>25 A. Yes, on the floor still. I didn't move.</p>	<p>1 A. No, I do not.</p> <p>2 Q. The next sentence. "She reported that she fell</p> <p>3 backwards and put her right hand behind her head to</p> <p>4 protect it."</p> <p>5 Does that refresh your recollection about</p> <p>6 anything?</p> <p>7 A. No. Again, when I hit hard, I -- everything's</p> <p>8 a blur.</p> <p>9 Q. Continuing on, "She landed on the marble floor</p> <p>10 and her left elbow struck the base of the pillar next to</p> <p>11 her."</p> <p>12 Does that refresh your recollection about</p> <p>13 anything?</p> <p>14 A. I just remember falling backwards and hitting.</p> <p>15 That's all.</p> <p>16 Q. Okay. The next sentence, "She denied striking</p> <p>17 her head during the fall and denied losing consciousness</p> <p>18 prior to or after falling."</p> <p>19 Do you recall having that discussion?</p> <p>20 A. No, I do not.</p> <p>21 Q. The next sentence, "She denied any head pain,</p> <p>22 neck pain, back pain, weakness, dizziness, or nausea at</p> <p>23 that time."</p> <p>24 Do you recall having that conversation?</p> <p>25 A. No.</p>

Page 101	Page 103
<p>1 Q. "I noted that she was guarding her left elbow 2 and reported she was only experiencing pain there at the 3 time." 4 Does that refresh your recollection about 5 anything you've testified to? 6 A. I'm sorry? 7 Q. Let me restate it. I'll paraphrase. 8 A. Okay. 9 Q. He says you were guarding your left elbow. 10 That would make sense because your elbow hurt; 11 correct? 12 A. Right. 13 Q. And that probably was the most prominent thing 14 that hurt at the time. 15 Does that sound right? 16 I'm asking you. 17 A. Elbow, neck, yes. All of it. 18 Q. Okay. Head, shoulder, neck, elbow? 19 A. Yes. 20 Q. Do you remember guarding your left elbow, 21 holding your left elbow? 22 A. I don't remember, but it would feel natural to 23 do that if I hit on that side and... 24 Q. "She stated she was embarrassed" -- next 25 sentence. "She stated she was embarrassed, to which I</p>	<p>1 presented with an abrasion." 2 Do you remembering there being an abrasion on 3 your left elbow? 4 A. I just remember being very sore. 5 Q. Do you remember him examining you by maybe -- 6 he says -- he used the word "palpation" where he might 7 be touching certain areas that you say are sore, like 8 your shoulder, your neck, your head, your back, 9 anything? 10 A. No. 11 Q. You don't remember that? 12 A. No. 13 Q. He indicates here that you had limited range of 14 motion in your left elbow due to increase in pain on 15 movement. 16 Do you remember that? 17 A. I just remember I was really sore. I don't 18 remember anything that involved him touching me or... 19 Q. Do you remember having a conversation with this 20 officer about workers' compensation? 21 A. Who? What? 22 Q. Let's go to the next page. 23 A. Okay. 24 Q. And we'll go to the first full paragraph 25 starting with "Sekera."</p>
Page 102	Page 104
<p>1 offered to assist her to a more private area." 2 Do you recall that conversation? 3 A. No. 4 Q. Next sentence, "She agreed and was assisted to 5 a standing position." 6 Do you remember being assisted to a standing 7 position? 8 A. I remember two gentlemen helping me up, yes. 9 Q. From the floor to a standing position? 10 A. Yes. 11 Q. "I asked if she felt any new pain, weakness, 12 dizziness, or nausea, to which she denied at that time." 13 Do you remember that conversation? 14 A. No. 15 Q. "She agreed to be assessed in the medical room 16 and refused wheelchair assistance." 17 Do you remember that? 18 A. I do not. 19 Q. "She was able to ambulate on her own to the 20 medical room and was able to sit without assistance." 21 Do you remember doing that? 22 A. No. I remember him helping me in the room on a 23 chair. 24 Q. Okay. The next paragraph, first sentence on 25 VEN 008, "Sekera's left elbow was exposed which</p>	<p>1 A. Okay. 2 Q. "Sekera agreed to seek further medical 3 attention but refused ambulance transport." 4 Do you remember having that conversation? 5 A. No, but I would do that. I would get my car 6 out of there and go to the hospital if I could drive, 7 and I had my -- you know, I'm right-handed, so I knew I 8 could get there. 9 Q. Okay. Do you remember refusing ambulance 10 transport? 11 A. No. 12 Q. It says, next sentence, "She stated her job did 13 not provide workers' compensation and did not know where 14 she should go." 15 Do you remember that conversation? 16 A. No. 17 Q. Did you have questions at the time about 18 whether you had workers' compensation? 19 A. No. It had nothing to do with that. No. That 20 was not in my mind. I wanted to make sure I was okay. 21 And, no, I definitely don't. 22 Q. The next sentence is, "After some discussion, 23 she opted to self-transport to Centennial Hills 24 Hospital, as it was close to her home." 25 Do you remember that?</p>

Page 105	Page 107
<p>1 A. No, but that would sound right.</p> <p>2 Q. The next sentence, "She refused to complete a</p> <p>3 voluntary statement for the incident and completed a</p> <p>4 medical release."</p> <p>5 Do you remember that at all?</p> <p>6 A. No.</p> <p>7 Q. "She was escorted to her booth in the Grand</p> <p>8 Canal Shoppes, collected her belongings, and was</p> <p>9 escorted to her vehicle in the team member garage on</p> <p>10 Level 8."</p> <p>11 Does that sound correct?</p> <p>12 A. Yes. I did go to the booth with him, yeah.</p> <p>13 Q. Okay. What about the rest of it, that you were</p> <p>14 escorted to the team member garage on Level 8?</p> <p>15 A. Yes. I remember him escorting me, yes.</p> <p>16 Q. To Level 8?</p> <p>17 A. I don't remember the level.</p> <p>18 Q. Okay.</p> <p>19 A. Yeah.</p> <p>20 Q. He refers to this as the team member garage.</p> <p>21 Do you know what that references?</p> <p>22 A. Most likely I had a badge and I just don't</p> <p>23 remember it because it was right at the end and I didn't</p> <p>24 have it -- I don't have it. So I don't know if I got it</p> <p>25 or not or...</p>	<p>1 my understanding is that's a picture of your left elbow.</p> <p>2 A. Okay.</p> <p>3 Q. You haven't seen these pictures before?</p> <p>4 A. Never.</p> <p>5 Q. Okay. You can't say whether that is or isn't</p> <p>6 your left elbow; right?</p> <p>7 A. You're right, but it's a shirt that looks</p> <p>8 familiar.</p> <p>9 Q. Okay. Let's go to the next one.</p> <p>10 VEN 037, I guess it looks like these are a</p> <p>11 picture of your shoes?</p> <p>12 A. Yes.</p> <p>13 Q. Can you identify those as your shoes?</p> <p>14 A. Yes.</p> <p>15 Q. It's like a Wizard of Oz moment. Did you tap</p> <p>16 these shoes with your heel? Sorry. That was</p> <p>17 inappropriate.</p> <p>18 Okay. Let's go to the next one, VEN 038.</p> <p>19 That's another picture of your shoes?</p> <p>20 A. Yeah. I'm sorry. Yes.</p> <p>21 Q. Do you recognize your purse in the photo?</p> <p>22 A. No. And I don't have that one right now, so...</p> <p>23 Q. What do you mean you don't have that one?</p> <p>24 A. I mean I don't know about the purse. I don't</p> <p>25 remember the purse.</p>
Page 106	Page 108
<p>1 It was a parking badge.</p> <p>2 Q. I see. Okay. That's it for that.</p> <p>3 I just have -- oh, I forgot about these. You</p> <p>4 know what, I'm just going to give you a set of photos,</p> <p>5 and we'll mark these as Exhibit D.</p> <p>6 (Exhibit D was marked.)</p> <p>7 BY MR. ROYAL:</p> <p>8 Q. I'm just going to show you these. We're going</p> <p>9 to go through some of these and I'm going to ask you if</p> <p>10 they refresh your recollection about anything you</p> <p>11 testified to.</p> <p>12 MR. KUNZ: He'll be referring to these numbers</p> <p>13 here.</p> <p>14 THE WITNESS: Okay.</p> <p>15 BY MR. ROYAL:</p> <p>16 Q. I don't really like the order of these</p> <p>17 necessarily, but we'll take them in order.</p> <p>18 The first one, VEN 035, do you recognize</p> <p>19 yourself in the photo?</p> <p>20 A. The shirt and the pants, yeah.</p> <p>21 Q. Do you remember somebody taking pictures --</p> <p>22 A. No.</p> <p>23 Q. -- when you were in the medical room?</p> <p>24 A. Definitely not.</p> <p>25 Q. The next page, VEN 036, I'll represent to you</p>	<p>1 Q. Do you recognize the shoes?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Let's go to the next one, VEN 039.</p> <p>4 Do you recognize what's depicted here?</p> <p>5 A. Oh, yeah. The elevator is over here, yes.</p> <p>6 Q. Okay. So you commented that the elevator would</p> <p>7 be to the left of this photo from this particular</p> <p>8 vantage point?</p> <p>9 A. Yes.</p> <p>10 Q. And you were walking in the direction of that</p> <p>11 man in the white shirt and shorts at the time the</p> <p>12 accident occurred?</p> <p>13 MR. KUNZ: There's two of them.</p> <p>14 MR. ROYAL: Oh, you're right, you're right.</p> <p>15 That was bad of me.</p> <p>16 BY MR. ROYAL:</p> <p>17 Q. You see the column there?</p> <p>18 A. Yes.</p> <p>19 Q. There's a man with a white shirt and shorts</p> <p>20 right next to the column and he's facing the bathroom.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Is that sort of the direction that you were</p> <p>24 walking at the time of the incident?</p> <p>25 A. That's correct.</p>

Page 109	Page 111
<p>1 Q. This particular photo, this represents the</p> <p>2 bathroom that you were going to at the time of the</p> <p>3 incident?</p> <p>4 A. Yes.</p> <p>5 Q. And this is the bathroom that you would</p> <p>6 typically use at least once a day when you were working</p> <p>7 at the Venetian?</p> <p>8 A. Yes.</p> <p>9 Q. And typically to get to the bathroom, you would</p> <p>10 either go down the elevator or go down the escalator,</p> <p>11 both of which would be off to the left of the photo in</p> <p>12 this vantage point?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Let's go to the next photo. I'll</p> <p>15 represent to you my understanding is is that you'll see</p> <p>16 the column here and that this VEN 040 represents the</p> <p>17 area where you fell.</p> <p>18 Do you recognize it?</p> <p>19 A. Yes.</p> <p>20 Q. As you look at this photo, does anything about</p> <p>21 this photo refresh your recollection to anything you</p> <p>22 testified to at this point?</p> <p>23 A. I'm looking at the pillar and I know they have</p> <p>24 a pillar. I don't remember the floor per se, but I</p> <p>25 fell --</p>	<p>1 if you can. If you can't do it, I'll move on.</p> <p>2 A. Yeah. I don't think I can because I'm not sure</p> <p>3 how close I was to the pillar. I just know it was</p> <p>4 between the bathroom and in front of the pillar.</p> <p>5 Q. How about if we do this --</p> <p>6 A. Okay.</p> <p>7 Q. How about if I just have you put an "X" on the</p> <p>8 pillar to identify that as the pillar that was closest</p> <p>9 to the area of your fall? Can you do that?</p> <p>10 A. Yes. Thank you.</p> <p>11 Q. Okay. Just put an "X" on the pillar, and as I</p> <p>12 understand it, it's going to be next to that guy in the</p> <p>13 shorts and --</p> <p>14 MR. KUNZ: And this is VEN 039?</p> <p>15 MR. ROYAL: Correct.</p> <p>16 MR. KUNZ: So VEN 039, here's the guy. So</p> <p>17 where do you think it was?</p> <p>18 BY MR. ROYAL:</p> <p>19 Q. Just identify the pillar.</p> <p>20 A. Oh, just of the pillar?</p> <p>21 Q. Just the pillar.</p> <p>22 A. Okay.</p> <p>23 (Complies.)</p> <p>24 Q. Okay. So you've made a circle. That</p> <p>25 identifies the pillar that was closest to you when you</p>
Page 110	Page 112
<p>1 Q. Near a pillar?</p> <p>2 A. If this is the same area.</p> <p>3 Q. So let's go back one to VEN 039.</p> <p>4 A. Oh, that's -- yeah.</p> <p>5 Q. So what I'm going to have you do, I think,</p> <p>6 is -- I am going to pull out a marker, if I can find</p> <p>7 one.</p> <p>8 I'm going to have you circle the pillar and</p> <p>9 kind of the area --</p> <p>10 A. See, I --</p> <p>11 Q. If you can.</p> <p>12 A. I can see a pillar. I know they have a pillar</p> <p>13 before that restroom. As far as the floor exactly</p> <p>14 where, I couldn't tell you.</p> <p>15 Q. I understand. What I'm looking for is for you</p> <p>16 to draw just a circle to represent the general area.</p> <p>17 A. Where I was walking?</p> <p>18 Q. Right, at the time you fell.</p> <p>19 So, for example, we know that you fell</p> <p>20 somewhere within, let's say, five or six feet of this</p> <p>21 pillar, would that be a fair statement?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So if I were to ask you to take this and</p> <p>24 just kind of circle -- you can make it as wide as you</p> <p>25 want -- circle an area on this photo that shows your --</p>	<p>1 fell; correct?</p> <p>2 A. Correct.</p> <p>3 Q. What I want you to do is just on the bottom</p> <p>4 left there, put your initials and today's date.</p> <p>5 A. (Complies.)</p> <p>6 Q. Let's see. Let me just ask you this -- do you</p> <p>7 have a question about what you just marked?</p> <p>8 A. No.</p> <p>9 Q. Okay. Let me ask you this: Let's go to 040,</p> <p>10 and if I were to represent to you that this is the same</p> <p>11 pillar that you marked in VEN 039, are you able to draw</p> <p>12 a circle over the general area where the slip occurred</p> <p>13 in this photo? Either you can or can't.</p> <p>14 A. See, this photo is showing me it could be</p> <p>15 anywhere in the Venetian because it's so big. And if</p> <p>16 you say it's the same pillar --</p> <p>17 Q. Correct.</p> <p>18 A. -- I just don't know the distance on where I --</p> <p>19 Q. So here's my question -- it's a "yes" or</p> <p>20 "no" -- and I'm just asking, as I understand it, looking</p> <p>21 at 0 -- VEN 040, you're not able to -- assuming that the</p> <p>22 pillar that's represented there is the same pillar where</p> <p>23 you fell, you're not able to look at that and say,</p> <p>24 "Okay. This is the general area where I fell," and</p> <p>25 circle it?</p>

EXHIBIT “B”



DCRR

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Nevada Bar No. 4370

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Nevada Bar No. 4336

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Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION**

Hearing Date: March 13, 2019, 9:00 am

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

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

I.

FINDINGS

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

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

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

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

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

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II.

RECOMMENDATIONS

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

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

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

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

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

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1 IT IS FURTHER RECOMMENDED that the motion is otherwise denied.

2 DATED this 2nd day of April, 2019.

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4 
5 DISCOVERY COMMISSIONER


6 Submitted by:

7 **Royal & Miles LLP**

8 
9 Michael A. Royal, Esq.
10 Nevada Bar No. 4370
11 1522 W. Warm Springs Road
12 Henderson, NV 89014
13 *Attorneys for Defendants*
14 *VENETIAN CASINO RESORT, LLC and*
15 *LAS VEGAS SANDS, LLC*

Reviewed by:

THE GALLIHER LAW FIRM


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

1 IT IS FURTHER RECOMMENDED that the motion is otherwise denied.

2 DATED this _____ day of _____, 2019.

3
4 _____
DISCOVERY COMMISSIONER

5 Submitted by:

6 **Royal & Miles LLP**

7
8 _____
9 Michael A. Royal, Esq.
10 Nevada Bar No. 4370
11 1522 W. Warm Springs Road
12 Henderson, NV 89014
13 *Attorneys for Defendants*
14 *VENETIAN CASINO RESORT, LLC and*
15 *LAS VEGAS SANDS, LLC*

Reviewed by:

THE GALLIHER LAW FIRM

16
17 _____
18 Keith E. Galliher, Jr., Esq.
19 Nevada Bar No. 220
20 1850 E. Sahara Avenue, Suite 107
21 Las Vegas, NV 89014
22 *Attorney for Plaintiff*

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5 **NOTICE**

6 Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being
7 served with a report any party may file and serve written objections to the recommendations.
8 Written authorities may be filed with objections, but are not mandatory. If written authorities
9 are filed, any other party may file and serve responding authorities within seven (7) days after
10 being served with objections.

11 **Objection time will expire on April 18 2019.**

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

13 _____ Mailed to Plaintiff/Defendant at the following address on the _____ day of
14 _____ 2019:

15 ☒ Electronically filed and served counsel on April 4, 2019, Pursuant to
16 N.E.F.C.R. Rule 9.

17
18 The Commissioner's Report is deemed received three (3) days after mailing or e-serving
19 to a party or the party's attorney, or three (3) days after the clerk of the court deposits a
20 copy of the Report in a folder of a party's lawyer in the Clerk's office. E.D.C.R. 2.34(f).

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22 By: 
23 COMMISSIONER DESIGNEE
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EXHIBIT “C”

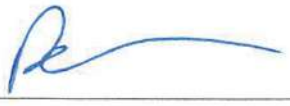
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- [illegible]


1
2 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and
3 correct.

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

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8 Signed: 

9 Peter Goldstein, Declarant
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EXHIBIT “D”



1 **ORDER**

2 THE GALLIHER LAW FIRM

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16 Attorneys for Plaintiff

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 JOYCE SEKERA, an Individual,

14 Plaintiff,

15 v.

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

24 Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: 25

**ORDER GRANTING MOTION TO
AMEND COMPLAINT TO INCLUDE
CLAIM FOR PUNITIVE DAMAGES
AND DENYING DEFENDANTS'
MOTION TO STRIKE**

25
26 The above-entitled matter having come on for hearing pursuant to Plaintiff's Motion To
27 Amend Complaint To Include a Claim for Punitive Damages and Defendant's Motion To Strike,
28

JUN 13 2019

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

1 Plaintiff having appeared by and through her attorneys, KEITH E. GALLIHER, JR., ESQ., and
2 KATHLEEN H. GALLAGHER, ESQ., of THE GALLIHER LAW FIRM, and Defendant having
3 appeared by and through it's attorney MICHAEL A. ROYAL, Esq., of ROYAL & MILES LLP, the
4 Court having reviewed the moving papers, opposition thereto, reply to said opposition, and having
5 reviewed the papers prepared in connection with Defendant's Motion to Strike and having further
6 heard the oral arguments of counsel and being fully advised in the premises, and good cause
7 appearing therefore;

9 **IT IS HEREBY ORDERED** that Plaintiff's Motion To Amend Complaint To Include A
10 Claim For Punitive Damages be and the same hereby is **GRANTED**, the Court finding that it would
11 be a disservice to the case to not allow discovery that could support punitive damages;


12 **IT IS FURTHER ORDERED** that Plaintiff should promptly serve her Amended Complaint
13 upon counsel for Defendant;

14 **IT IS FURTHER ORDERED** that counsel for Defendant shall have twenty (20) days from
15 the date of service to answer or otherwise respond to said complaint;


16 **IT IS FURTHER ORDERED** that Defendant's Motion to Strike be and the same hereby is
17 **DENIED.**

18
19
20
21
22 Submitted by:

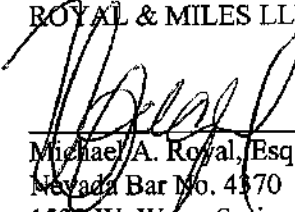
23 THE GALLIHER LAW FIRM

24 
25 _____
26 Keith E. Galliher, Jr., Esq.
27 Nevada Bar No. 220
28 1850 E. Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
Attorney for Plaintiff


KATHLEEN DELANEY
DISTRICT COURT JUDGE

 Approved as to form:

ROYAL & MILES LLP.



Michael A. Royal, Esq.
Nevada Bar No. 4370
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Henderson, Nevada 89014
Attorney for Defendant

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1 Plaintiff having appeared by and through her attorneys, KEITH E. GALLIHER, JR., ESQ., and
2 KATHLEEN H. GALLAGHER, ESQ., of THE GALLIHER LAW FIRM, and Defendant having
3 appeared by and through it's attorney MICHAEL A. ROYAL, Esq., of ROYAL & MILES LLP, the
4 Court having reviewed the moving papers, opposition thereto, reply to said opposition, and having
5 reviewed the papers prepared in connection with Defendant's Motion to Strike and having further
6 heard the oral arguments of counsel and being fully advised in the premises, and good cause
7 appearing therefore;

8
9 **IT IS HEREBY ORDERED** that Plaintiff's Motion To Amend Complaint To Include A
10 Claim For Punitive Damages be and the same hereby is **GRANTED**, the Court finding that it would
11 be a disservice to the case to not allow discovery that could support punitive damages;

12 **IT IS FURTHER ORDERED** that Plaintiff should promptly serve her Amended Complaint
13 upon counsel for Defendant;

14
15 **IT IS FURTHER ORDERED** that counsel for Defendant shall have twenty (20) days from
16 the date of service to answer or otherwise respond to said complaint;

17 **IT IS FURTHER ORDERED** that Defendant's Motion to Strike be and the same hereby is
18 **DENIED**.


19
20 KATHLEEN DELANEY
21 DISTRICT COURT JUDGE

22 Submitted by:

Approved as to form:

23 THE GALLIHER LAW FIRM

ROYAL & MILES LLP.

24
25 
26 Keith E. Galliher, Jr., Esq.
27 Nevada Bar No. 220
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Attorney for Plaintiff

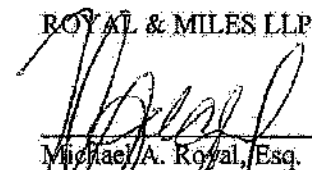
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Michael A. Royal, Esq.
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1522 W. Warm Springs Road
Henderson, Nevada 89014
Attorney for Defendant

EXHIBIT “E”

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 MARIA CONSUELO CRUZ

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

On Wednesday, April 17, 2019
At 2:00 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

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

6 For the Defendants: MICHAEL A. ROYAL, ESQ.
7 Royal & Miles LLP
1522 West Warm Springs Road
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(702) 471-6777

* * * * *

I N D E X

20 WITNESS	PAGE
MARIA CONSUELO CRUZ	
21 Examination By Mr. Galliher	3
Examination By Mr. Royal	30
22 Further Examination By Mr. Galliher	41

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MARIA CONSUELO CRUZ 4/17/2019

Page 3

1 GRACIA M. FELDMAN, SPANISH INTERPRETER,
2 having been first duly sworn to interpret Spanish into
3 English and English into Spanish, interpreted as
4 follows:
5 MARIA CONSUELO CRUZ,
6 having been first duly sworn to tell the truth, the
7 whole truth and nothing but the truth, was examined
8 and testified as follows:
9
10 EXAMINATION
11 BY MR. GALLIHER:
12 Q Would you state your name, please.
13 A Maria Consuelo Cruz.
14 Q Your address.
15 A I live at 911 Melrose Drive, Las Vegas,
16 Nevada 89101.
17 Q Is that a home?
18 A Yes.
19 Q Do you own the home or rent it?
20 A It's mine.
21 Q Have you ever had your deposition taken
22 before?
23 A No.
24 Q Do you understand today we're going to take
25 your testimony under oath?

Page 4

1 A Yes.
2 Q The oath you've taken today carries with it
3 the same solemnity as if you were testifying in court
4 before a judge or a jury.
5 Do you understand that?
6 A Yes.
7 Q It also carries with it the penalties of
8 perjury. Do you know what "perjury" means?
9 A I would be fined.
10 Q Perjury means lying under oath.
11 A Oh. Okay.
12 Q Do you understand?
13 A Yes.
14 Q A little general background on you first.
15 How long have you lived in Las Vegas?
16 A Almost 16 years.
17 Q Where did you come from?
18 A I came from my country in Guatemala, but I
19 lived in California for about 13 years before.
20 Q So you have lived 29 years in the United
21 States?
22 A Yes.
23 Q Are you married?
24 A No. I was married.
25 Q Do you have any children?

Page 5

1 A Yes.
2 Q How many?
3 A Three.
4 Q And how old are you?
5 A 34, 36, and 39.
6 Q Do any of your children still live with you?
7 A One lives with me.
8 Q And which one would that be?
9 A The middle one.
10 Q All right. Are you presently working?
11 A Oh, yes. I work.
12 Q And where do you work now?
13 A Me?
14 Q Yes.
15 A At the Plaza Hotel.
16 Q The Plaza downtown?
17 A Yes.
18 Q How long have you been at the Plaza?
19 A It's going to be two years and two months.
20 Q What do you do at the Plaza?
21 A Casino porter.
22 Q Were you ever employed at the Venetian?
23 A Yes, for 13 years.
24 Q And why did you leave Venetian and go to the
25 Plaza?

Page 6

1 A Problems.
2 Q Were they problems with you at the Venetian?
3 A Yes.
4 Q Can you tell me what the problems were?
5 A It's personal.
6 Q Well, I understand that. Did you leave the
7 Venetian voluntarily or were you fired?
8 A I was fired.
9 Q And do you believe the firing was justified?
10 A No, but -- but if they do it, there's
11 nothing that I could say.
12 Q How long were you out of work before you
13 went to the Plaza after leaving the Venetian?
14 A A week.
15 Q So let's back up, then, to your time at the
16 Venetian.
17 What was your position when you worked at
18 the Venetian?
19 A Casino porter.
20 Q Were you a casino porter for the entire 13
21 years you worked at the Venetian?
22 A No, I was a maid for one year.
23 Q Is that -- were you a maid when you first
24 started at the Venetian for one year?
25 A Yes.

3 (Pages 3 to 6)

1 Q Then, were you a casino porter for the next
2 12 years?

3 A Yes.

4 Q Tell me what a casino porter does at the
5 Venetian.

6 A Cleans slot machines, takes care of the
7 floors, no spills, no trash, vacuum, clean bathrooms,
8 pick up the trash and customer service.

9 Q When you say "customer service," what do you
10 mean?

11 A We are aware if the customer needs something
12 and offer assistance.

13 Q When you worked at the Venetian, did you
14 work in a specific area of the hotel?

15 A No, they moved us around. They switched us
16 to a different station every day.

17 Q Do you know how many stations there are on
18 the ground floor at the Venetian?

19 A Gosh, so many. That's a very large casino.

20 Q Do you know how many casino porters work the
21 same shift that you worked at the Venetian when you
22 worked there?

23 A Like 20, maybe, or 24.

24 Q Is that your best estimate?

25 A Approximation.

1 to 8:00.

2 Q And did it ever change?

3 A Those were shifts, you know, that for a
4 season you would work like that, and then they would
5 be switched.

6 Q My question is, was the graveyard shift ever
7 from 11:00 to 7:00 and then changed from 12:00 to
8 8:00 like the other shifts?

9 A Yes. When one shifts, the three of them
10 change.

11 Q Did you work one shift more than any of the
12 other shifts?

13 A No.

14 Q When I say worked more, did you spend more
15 time working the day shift versus the afternoon shift
16 versus the evening shift?

17 A I was more at night.

18 Q And when you talk "more at night," you are
19 talking about the 11:00 a.m. -- or 11:00 p.m. to
20 7:00 a.m. or 12:00 a.m. to 8:00 a.m. shift?

21 A What happened is, while we worked from
22 11:00 to 7:00 and then somehow we were switched from
23 midnight to 8:00 a.m. It was not me, the one who was
24 switched.

25 Q But it's your recollection that most of the

1 Q All right. So when you were working at the
2 Venetian as a casino porter, there were approximately
3 20 other casino porters working the same shift?

4 A Yes.

5 Q And do you understand I'm talking strictly
6 about the Venetian and not the Plaza?

7 A Yes.

8 Q So when we're talking about 20 casino
9 porters, we're talking strictly about the Venetian?

10 A Yes.

11 Q Did you have a specific shift that you
12 worked at the Venetian?

13 A I was working for some time in the
14 afternoon, then later on in the night shift, and then
15 during toward the end, in the morning.

16 Q So you actually worked all three shifts at
17 the Venetian when you were employed there as a casino
18 porter?

19 A Yes, yes.

20 Q What are the hours of the morning shift?

21 A It used to be from 7:00 to 3:00, and then it
22 was switched to from 8:00 to 4:00 in the daytime.

23 Q And then what about the afternoon shift?

24 A It was from 3:00 to 11:00, and then it was

25 3:00 -- 4:00 to 12:00, and graveyard was from midnight

1 time when you worked at the Venetian, you worked the
2 evening shift?

3 A Yes.

4 Q We call it graveyard. Do you understand
5 what I mean?

6 A Yes.

7 Q You talked earlier about one of your duties
8 as a casino porter was to clean and maintain the
9 floors.

10 A Yes.

11 Q When you talk about the floors, I'm talking
12 strictly now about the ground floor. Is that where
13 you worked?

14 A Yes.

15 Q So for the 13 years that you were employed
16 at the Venetian, you would work on the ground floor?

17 A When I was in the day shift; yes.

18 Q And --

19 A Also when I was in the graveyard shift. But
20 since they would switch us around to different
21 stations, there were times when I was assigned to the
22 small tower and another day I would be assigned close
23 to the food court.

24 But they were the ones -- say somebody does
25 not show up for a shift, and then we are placed in a

1 different station.
 2 Q All right. So as I understand it, you are
 3 saying most of the time you would work on the ground
 4 floor, but on occasion you would be called upon to
 5 work near the food court or, as you referred to it,
 6 the small tower?
 7 A Oh, no. Food court is the ground floor,
 8 yes.
 9 Q I understand. When you worked the small
 10 tower, did you work the ground floor or did you work
 11 another floor?
 12 A No. I was on the third floor, below the
 13 fourth floor.
 14 Q Did you ever work the same floor as the
 15 Bouchon Restaurant was located?
 16 A Oh, yes.
 17 Q Is the Bouchon Restaurant in the small
 18 tower?
 19 A Yes.
 20 Q So when you worked in the small tower, did
 21 you work on the same floor as the Bouchon Restaurant?
 22 A Yes.
 23 Q How would you describe the floors at the
 24 Venetian? In other words, what their composition is.
 25 A Well, I guess they are floors, they call it

1 tile or --
 2 Q Marble?
 3 A -- marble, and they shampoo a lot -- no, no,
 4 not shampoo. There is wax.
 5 Q All right. So the floors, the ground floor
 6 of the Venetian, the floors are marble?
 7 A They are marble.
 8 Q And the floor where the Venetian is located
 9 or the Bouchon Restaurant is located, is that also
 10 marble?
 11 A Yes. All around it.
 12 Q You talked earlier about the marble floors
 13 being cleaned. Can you tell me how that's done?
 14 A Me or who?
 15 Q Well, if you did the cleaning.
 16 A We were just trying to see that there were
 17 no spills and no trash, but the special cleaning was
 18 done by their graveyard shift.
 19 Q And when we talk about "special cleaning,"
 20 did you ever do any special cleaning yourself?
 21 A No, not me. That's done with a special
 22 machinery. I can't use them.
 23 Q And that's a machine that you did not
 24 operate?
 25 A No, no. I couldn't.

1 Q Did you have a specific area that you were
 2 supposed to keep watch on when you were working as
 3 casino porter?
 4 A Usually by the restaurants or around the
 5 restaurants in the food court, because that also
 6 includes the area where the dealers are.
 7 Q And was that -- when you talk about the
 8 restaurants, are we talking about the Lux Cafe?
 9 A All of that, all around it. The stations
 10 were pretty large.
 11 Q When you say pretty large, can you give me
 12 an idea of how large the stations were?
 13 A Like -- I don't know if you know the place.
 14 From where the bathrooms are, all the way around the
 15 corner where the bathrooms are going by the security
 16 podium. It also includes where the escalators are,
 17 close to the elevators.
 18 Q And does it include the areas that are next
 19 to the Lux Cafe in the food court?
 20 A Yes.
 21 Q So when you worked that area, were you the
 22 only person responsible for making sure that area was
 23 clean?
 24 A No. From the stairs where the escalators,
 25 to that side, there was someone else.

1 Q And when you say "to that side," are you
 2 talking about the side that's adjacent to the food
 3 court and the Bouchon Bakery?
 4 A No, the Grand Lux Cafe.
 5 Q And so what I'm trying to determine is, it
 6 sounds like you are splitting the area in two
 7 stations. Would that be correct?
 8 A Correct, yes. Uh-huh.
 9 Q Were you ever responsible for making sure
 10 that one station versus the other station was safe?
 11 A Yes. That's our duty.
 12 Q Was there a concern on your part about what
 13 would happen if there was water or liquid on these
 14 floors?
 15 A Yes, even though it wasn't my station.
 16 Q And were these floors -- when they were wet,
 17 were they slippery?
 18 A Yes, because we are pretty careful. Even
 19 just a little tiny spill of coffee, we would clean it
 20 up.
 21 Q And why would you do that?
 22 A It was -- otherwise, we would have been
 23 disciplined. That was our job.
 24 Q And did you -- did you have an understanding
 25 that the floors, when they were wet, were dangerous to

1 your customers?
 2 MR. ROYAL: Objection, form.
 3 THE WITNESS: Yes, yes.
 4 BY MR. GALLIHER:
 5 Q So you knew the floors, when they were wet,
 6 they were slippery and dangerous to customers?
 7 MR. ROYAL: Same objection.
 8 THE WITNESS: Yes.
 9 BY MR. GALLIHER:
 10 Q And did you --
 11 A You don't move away from them.
 12 Q Did you find that yourself, or did anyone at
 13 the Venetian tell you that the floors were dangerous
 14 when they were slippery?
 15 MR. ROYAL: Objection, form.
 16 THE WITNESS: No. We are pretty
 17 conscientious about it and we have seen videos.
 18 BY MR. GALLIHER:
 19 Q So my question is, do you know if -- who
 20 were your supervisors?
 21 A Oh, gosh. I had so many.
 22 Q Do you know what their titles were -- job
 23 titles were?
 24 A Supervisor.
 25 Q Did your supervisors ever tell you that the

1 floors at the Venetian, the marble floors, were
 2 slippery and dangerous when wet?
 3 A Of course.
 4 Q Is that why you kept a close -- you tried to
 5 keep a close eye on the floors, to make sure they
 6 didn't get wet?
 7 A Yes. We had a radio. If they were pretty
 8 wet, we needed to call to have someone come help us.
 9 Q And when you see a floor that was pretty
 10 wet, who did you call to come help you?
 11 A Our supervisor, that we call the supervisor
 12 to ask for someone to come.
 13 Q And when you asked for someone to come, who
 14 would usually come?
 15 A Whoever it was close by.
 16 Q So was it another casino porter?
 17 A Yes.
 18 Q Now, when you worked as a casino porter, did
 19 you use or carry around any specific equipment?
 20 A Yeah, our cleaners, a broom and a dust mop.
 21 Q Did you say "cleaners"?
 22 A No, no, towels.
 23 Q So how many towels would you carry?
 24 A Two.
 25 Q Were they cloth towels?

1 A Yes.
 2 Q All right. So you carried cloth towels, a
 3 broom and a dust mop with you when you worked as a
 4 casino porter?
 5 A Yes. We also had a locker as well.
 6 Q So what was in the locker?
 7 A More towels, glass cleaner, towels for vomit
 8 and red bags.
 9 Q And what?
 10 A Red bags.
 11 Q Red bags?
 12 A For -- for throw-ups.
 13 Q Anything else?
 14 A No, not that I can remember.
 15 Q So when you saw a larger spill on the floor
 16 at the Venetian and called for help, did that usually
 17 mean that someone would come to the spill with a mop?
 18 A Yes, with a bucket.
 19 Q So for the larger spills, someone would come
 20 by and clean it up with a mop and a bucket; is that
 21 right?
 22 A Yes, uh-huh. And also the security would be
 23 close by.
 24 Q All right. So what I'm trying to get at is,
 25 when you talked about calling for help earlier when

1 you saw a larger spill, that would usually mean that
 2 another casino porter would come to the scene of the
 3 spill with a mop and a bucket?
 4 A Yes. If it was large, we would say: Please
 5 send someone with a bucket.
 6 Because there are people that have
 7 containers with ice and sometimes they drop it on the
 8 floor, so we have to call someone.
 9 Q Have you ever seen situations where people
 10 spill water on the floor?
 11 A Yes, yes. That's why we are keeping an eye.
 12 Otherwise, you have to follow them to see where that
 13 spill is coming from.
 14 Q What about soft drinks?
 15 A Same; we clean. It's just the same; we're
 16 cleaning everything.
 17 Q But what I'm trying to get at, though, is
 18 have you ever seen spills at the Venetian, when you
 19 were employed there as a casino porter, involving soft
 20 drinks?
 21 A No, not that. Mostly water, because people
 22 carry some ice coolers.
 23 Q Have you ever seen people carrying water
 24 bottles?
 25 A Yes.

MARIA CONSUELO CRUZ 4/17/2019

Page 19

1 Q So do you actually know where the water
2 would come from? Whether it would come from the ice
3 or whether it would come from a bottle?
4 MR. ROYAL: Objection, form.
5 THE WITNESS: No. When the water spill is
6 from a water cooler, you can see the water coming from
7 it.
8 BY MR. GALLIHER:
9 Q When you say water cooler, what do you mean?
10 A An ice cooler.
11 Q So people carry ice coolers over those
12 floors?
13 A Yes.
14 Q Now, have you ever seen anyone use the food
15 court and leave the food court with drinks?
16 A Sometimes, yes.
17 Q And how about the Bouchon Bakery; have you
18 ever seen anyone order drinks from the Bouchon Bakery
19 and leave from it?
20 A No, hu-huh.
21 Q Have you ever seen anyone walk around with
22 liquor or alcohol in a glass or cup?
23 A Everyone does it in the casino; yep.
24 Q So would it be fair to say that you have
25 seen that?

Page 20

1 A Oh, yes.
2 Q Now I want you to isolate, on a given
3 shift -- we'll say the day shift.
4 On the average, what's your best estimate of
5 how many spills you would see during the day shift
6 when you were a casino porter at the Venetian?
7 A Sometimes I did, but I did not work always
8 at the same station.
9 Q Well, I understand. What I'm looking for is
10 your best estimate of the number of times on one shift
11 that you would see spills when you were employed at
12 the Venetian.
13 MR. ROYAL: Object to form.
14 THE WITNESS: At times two or three times.
15 BY MR. GALLIHER:
16 Q Would that be an average?
17 A Yes.
18 Q And we're talking about spills that would be
19 in the area that you were responsible for?
20 A The floor close to the food court and Lux
21 Cafe, it's floor. But there are areas that are
22 carpeted.
23 Q Well, I'm talking strictly about the marble
24 floors.
25 A In rare occasions.

Page 21

1 Q So are you saying that on rare occasions,
2 you would see spills on the floor, the marble floors,
3 next to the Lux Cafe or the food court?
4 A Not spills -- spills, but say that someone
5 just dropped a little bit of a soda.
6 Q And if someone dropped a little bit of soda,
7 that's something that you would clean up?
8 A Yes, yes.
9 Q And why would you do that?
10 A Because I had to. I was being paid to do
11 that.
12 Q And was there a concern about whether or not
13 the floor was dangerous with that little bit of liquid
14 on it?
15 MR. ROYAL: Objection, form.
16 THE WITNESS: Yes. It also gets stained.
17 BY MR. GALLIHER:
18 Q And is that why you cleaned it up, to
19 protect the customers?
20 A Yes.
21 Q That was your job; right?
22 A Yes, and I would also get tips.
23 Q When you say you get tips, who would give
24 you tips?
25 A The guests, when they say that you are

Page 22

1 keeping an eye to make sure that they didn't fall.
2 Q During your time at the Venetian, had you
3 ever seen a customer fall on liquid on the marble
4 floor?
5 A Yes.
6 Q And how many occasions?
7 A The one I recall is a lady that fell with a
8 coffee.
9 Q And you recall a lady that fell with a
10 coffee?
11 A Yes.
12 Q And how do you recall that?
13 A Well, we were cleaning and suddenly I think
14 a lady came out with a coffee from a bakery, the
15 Bouchon Bakery on the first floor.
16 Q And so was that a fall that you personally
17 saw?
18 A Well, we saw her fall and we were close by.
19 I had been checking the floor.
20 Q So is that the only time that you've seen a
21 customer fall at the Venetian on the marble floor?
22 A Oh, many, but they were drunk.
23 Q So you've seen a lot of drunk people fall on
24 the marble floor at the Venetian?
25 A No, just that they had fallen because they

7 (Pages 19 to 22)

1 were drunk.
 2 Q And how do you know that?
 3 A Because you can see it.
 4 Q Did you witness those falls?
 5 A Yes.
 6 Q So how many of these falls did you witness?
 7 A Well, about three I would say, the ones that
 8 I watched.
 9 Q When you saw these people that you described
 10 as drunk fall, were they hurt?
 11 A These people were not alone. There were
 12 other drinkers.
 13 Q All right. But my question is when you saw
 14 these people fall, were they hurt?
 15 MR. ROYAL: Objection, form.
 16 THE WITNESS: I don't know because we can't
 17 get involved with that. And if they're drunk, they
 18 get up. They are to get up on their own or someone
 19 picks them up.
 20 BY MR. GALLIHER:
 21 Q So it sounds to me like you are saying you
 22 don't know whether they were hurt or not.
 23 A Well, no. No.
 24 Q Is that right?
 25 A Yes, because if they were drunk, they would

1 just get up and go. We can't stick our hands in that
 2 situation.
 3 Q I understand. But you don't know whether
 4 those people, when they got up, were hurt?
 5 A No.
 6 Q We're here today basically to -- because
 7 we're involved in a lawsuit as a result of a fall
 8 occurring on November 4, 2016. It happened in the
 9 early afternoon hours.
 10 A Early wasn't it?
 11 Q Yeah. Do you know?
 12 A I was in that morning shift.
 13 Q So how is it that you know which fall I'm
 14 talking about?
 15 A Because I was sent the video.
 16 Q And you were sent the video by whom?
 17 A I don't know who.
 18 Q So you've seen the video showing the fall?
 19 A Yes.
 20 Q So you didn't see the fall until you saw the
 21 video?
 22 A No, I remember that lady.
 23 Q Do you remember seeing the lady fall?
 24 A Yes.
 25 Q All right. So you were sent a video that

1 showed a fall on November 4, 2016; right?
 2 A Yes.
 3 Q And you watched the video?
 4 A Yes.
 5 Q And that fall was a fall that you personally
 6 saw when it occurred?
 7 A Yes. I was there.
 8 Q So when you talked about a fall involving a
 9 lady with coffee, is that the fall you were talking
 10 about?
 11 A She's the one.
 12 Q So how is it that you determined that she
 13 fell carrying coffee?
 14 A Because I was there.
 15 Q Did anyone discuss this fall with you?
 16 A No, but I remember it. But I no longer work
 17 at the Venetian.
 18 Q I understand. Did you meet with anyone in
 19 preparation for today's deposition?
 20 A I just received some documents stating that
 21 I had to come.
 22 Q Did you -- so you did not meet with anyone
 23 to discuss today's deposition?
 24 A No.
 25 Q Did you discuss today's deposition with

1 anyone over the telephone?
 2 A I was only called and told to be here today.
 3 Q So what I'm trying to determine is, where
 4 did you form your opinion that the lady was carrying
 5 coffee?
 6 A Because I know that she was coming from
 7 purchasing coffee.
 8 Q And you testified that she was coming from
 9 purchasing coffee at the Bouchon Bakery; right?
 10 A I think so, because she was coming down next
 11 to the area where they sell coffee.
 12 Q So you did not discuss your testimony of
 13 today's deposition with anyone before you showed up?
 14 A No.
 15 Q And I want to make sure I'm clear on this:
 16 That you personally witnessed this fall when it
 17 happened, separate and apart from what you saw in the
 18 video?
 19 A Yes.
 20 Q So you actually saw the fall twice. You saw
 21 the fall in person when it happened and then you saw
 22 it again on the video; is that right?
 23 A Yes, yes. I was there. I was cleaning in
 24 the surroundings.
 25 Q When the video was sent to you, was it sent

1 to you in a letter?
 2 A No.
 3 Q How was it sent to you?
 4 A I don't know. I received -- no. The next
 5 day I received these papers.
 6 Q Well, my question was, how was the video
 7 sent to you?
 8 A I don't know.
 9 Q Well, did you receive it at your home?
 10 A No, my phone.
 11 Q All right. So the video that you described
 12 was sent to you on your telephone?
 13 A Uh-huh, yes.
 14 Q And you don't know who sent it?
 15 A No.
 16 Q Did the sender identify themselves in any
 17 way to tell you who sent it to you?
 18 A No. I was only mailed these papers and then
 19 I was called from the telephone.
 20 Q All right. When you say you were called
 21 from the telephone, did the call from the telephone
 22 result in the video being sent to you?
 23 A I believe so. That's how I got it.
 24 Q So when the person called you on the
 25 telephone, did they identify themselves?

1 Q So when the person that talked to you on the
 2 telephone about this case, did they tell you they were
 3 from the Venetian?
 4 A Yes. It was from the Venetian, about an
 5 accident that happened at the Venetian.
 6 Q Did the video that was sent to you, was it
 7 accompanied by any type of a message?
 8 A No.
 9 Q No text or anything of that nature?
 10 A No. I was only sent the video and that
 11 paper that I received.
 12 Q All right. So you were sent the video, you
 13 were sent the paper, which is the subpoena to today's
 14 deposition.
 15 A And I don't even know why.
 16 Q And you weren't sent anything else?
 17 A No. I don't even know why I'm here.
 18 Q So have you understood all my questions
 19 today?
 20 A Yes.
 21 Q Anything you want me to repeat or rephrase
 22 for you?
 23 A No.
 24 MR. GALLIHER: Pass the witness.
 25 /////

1 A Yes. I was told that it was from here.
 2 Q From where?
 3 A From this page, what it says on this page.
 4 Q So did someone tell you that the video was
 5 coming from my office?
 6 A No, no. I didn't pay attention. They only
 7 send me a video and this letter stating that I had to
 8 be here. And I don't know why I'm involved in this.
 9 Q I'm still trying to figure out how you
 10 received the video.
 11 So when the person called you on the
 12 telephone, did they -- how did they get your telephone
 13 number?
 14 MR. ROYAL: I'm going to -- I'm sorry -- a
 15 belated objection as to form.
 16 Go ahead.
 17 BY MR. GALLIHER:
 18 Q So when the person called, did you ask them
 19 how they got your telephone number?
 20 A No, but since it was coming from the
 21 Venetian, they know my telephone number.
 22 Q All right. So then, you knew that the video
 23 that was being sent to you on your telephone was
 24 coming from the Venetian; is that right?
 25 A Yes.

1 EXAMINATION
 2 BY MR. ROYAL:
 3 Q Okay. I just have a few questions for you.
 4 A Again?
 5 Q I'm going to show you -- strike that.
 6 You testified that you saw a video, and I'm
 7 going to show you what's been identified -- I'm not
 8 sure how you want to do this, but I've got it right
 9 here.
 10 MR. GALLIHER: Okay. Just for the record,
 11 you are showing her your -- the video on computer.
 12 MR. ROYAL: Exactly.
 13 BY MR. ROYAL:
 14 Q So it's been identified as VEN019. And I
 15 have a laptop and I'm going to try and turn this so
 16 you can see it with the witness as best I can. A
 17 little bit tricky here. One second. You can scoot
 18 back just a little bit.
 19 Okay. I'm just going to -- and what I'm
 20 going to do for the record, I'm just going to indicate
 21 numbers so we can identify what we're looking at.
 22 Right now it's paused. It's at 12:31:33 of the -- of
 23 the footage.
 24 Do you recognize the area?
 25 A That's in front of the Grand Lux Cafe.

MARIA CONSUELO CRUZ 4/17/2019

Page 31

1 Q And when you said that you patrolled an
2 area -- strike that. What would this --
3 When you're assigned to work this area, what
4 would the area be called?
5 A Station 2.
6 Q Okay. And you kind of broadly told us what
7 you did in Station 2. Did that include cleaning the
8 restroom?
9 A No, not -- the bathrooms were something
10 separate.
11 Q Okay. So you weren't cleaning bathrooms?
12 A No, no.
13 Q Do you know who was cleaning bathrooms on
14 the day this happened?
15 A I don't remember.
16 Q Okay. So if you are not cleaning bathrooms,
17 what was your general job -- strike that. Let me ask
18 it again.
19 Looking at VEN019 at 12:31:33, does this
20 depict an area that you would have been patrolling on
21 the day of the incident?
22 A That's called the rotunda. It's a big round
23 circle and then you take the hallway on the way to the
24 corner. Around the corner by security that passes in
25 front of the Grand Lux Cafe, that's Station 2.

Page 32

1 Q Okay. Okay. I'm going to let this run
2 starting at 12:33:10, and I'm going to make it go a
3 little bit faster to kind of move it along here.
4 There's a -- at 12:33:35, there's a woman
5 approaching a man. He's looking down. Do you know
6 who that woman is?
7 A No.
8 Q I want you to watch from the left over here.
9 Okay. It's 12:33 -- I'm going to go back here, sorry.
10 12:33:52. I want -- there's a woman coming from the
11 left with a broom and so forth.
12 Do you recognize that person?
13 A No. Maybe it was me.
14 Q Well, that's my question. I want you to
15 watch again.
16 A I think I am.
17 Q Okay.
18 A Yes.
19 Q Do you think that was you?
20 A Yes, it's me. It's me.
21 Q So starting at -- I want to get the times
22 right. So starting at 12:33:52, on the left side
23 that's a person. You think that's you?
24 A I think so.
25 Q Okay. And what was -- what did you notice?

Page 33

1 What was that person doing?
2 A Me?
3 Q Yeah. What were you doing?
4 A Checking around.
5 Q Okay.
6 A We went to the bathroom to check the towels
7 to get a clean towel.
8 Q Okay. Do you recall, or can you tell
9 watching this at 12:33:52, whether or not you noticed
10 there was anything on the floor in the area to your
11 immediate right?
12 A No, no. I was -- I would have walked right
13 over it.
14 Q You didn't see anything?
15 A No.
16 Q All right. You were -- okay.
17 I'm going to continue and we're now moving
18 ahead to about 12:38:40, we'll call it. There is a
19 woman depicted sitting on the floor and a couple of
20 men in suit jackets.
21 Do you remember this scene as it's depicted
22 here generally?
23 A You mean where she fell?
24 Q Yes. Do you remember seeing something
25 similar to this?

Page 34

1 A That's not the lady that fell.
2 Q Well, okay. Let's move to --
3 A Or this is her.
4 Q Okay. At 12:39:37 we see a PAD -- a male
5 PAD person. Do you know who that is kind of at the
6 top of the screen? Okay. I'm just trying to identify
7 people. Maybe you can't tell from this.
8 At 12:39:48, do you see yourself?
9 A Yes.
10 Q Okay. And that's you on the right?
11 A As I said, the other one is David.
12 Q There is a man with a bucket at 12:39:51.
13 Who is that?
14 A That's David.
15 Q David Martinez?
16 A Yes, uh-huh.
17 Q Now he's pointing to someone at 12:40:01.
18 Do you know who that is?
19 A I don't know.
20 Q Okay. Now, Mr. Martinez, you see him
21 mopping up an area?
22 A But it wasn't wet there.
23 Q Okay. Do you know -- well, that was my
24 question. You see him -- we're at 12:40:15. He's got
25 a bucket.

10 (Pages 31 to 34)

1 What's your recollection of what he was
2 doing at this particular time depicted here on the
3 video?
4 A It seems like she dropped something -- she
5 spilled some coffee.
6 Q Okay. Did you actually see anything on the
7 floor?
8 A No.
9 Q And then I'm going to fast-forward a little
10 here. Okay. I'm going to go back.
11 At 12:41:07, do you see yourself?
12 A Before she fell, you mean?
13 Q No. I'm looking at -- right now it's at
14 12:41:09, the video. Do you see yourself in the
15 video?
16 A Yes.
17 Q Okay, I'm going to let it run now. What are
18 you doing?
19 A Drying whatever the other one has been
20 cleaning.
21 Q Okay. So just tell me the process. You've
22 got a towel on the floor that you are using under your
23 foot.
24 A To dry whatever. To dry whatever is being
25 wet by the other one with a bucket, but there was

1 but...
2 Q Okay. So...
3 A What happened to -- the floor right there
4 you see is waxed.
5 THE COURT REPORTER: I'm sorry, I'm having a
6 hard time.
7 THE INTERPRETER: "It was waxed."
8 THE COURT REPORTER: Could you repeat the
9 whole response?
10 MR. ROYAL: Well, I don't think there's a
11 question pending, but go ahead.
12 THE WITNESS: The floor is heavy with wax
13 right there.
14 BY MR. ROYAL:
15 Q Okay. Now, do you remember cleaning the
16 area beyond what we watched on the video as you
17 remember what you did?
18 A Yes. We clean the entire surroundings.
19 People left beer, soda, coffee.
20 Q When you say the entire surroundings, what
21 were you making reference to?
22 A Well, look, we have to be careful going
23 around this column because the floor -- everything
24 that has to do with cleaning.
25 Q Well, okay. I just want to make sure. I'm

1 nothing there.
2 Q I see, okay.
3 So when Mr. Martinez goes over an area with
4 a mop, your job was to follow with a dry towel?
5 A Well, yes. At that moment, yes.
6 Q Okay. Now I'm going to go back. I'm going
7 to go back to -- okay. I'm going to go back to
8 12:36:49 and I want you to watch. I'm going to start
9 it.
10 A They are in suits.
11 Q Is that something that you recall seeing,
12 what we just watched there? I stopped it at 12:36:58.
13 A Yes. I remember the lady falling.
14 Q Did you ever talk to the lady who was --
15 A No, you can't. You can't.
16 Q Do you remember hearing any conversations
17 between the lady who fell and anyone else as you were
18 at the scene?
19 A No, because the security guards are the ones
20 that speak to them.
21 Q Okay. You didn't hear any of the
22 conversation?
23 A No.
24 Q Now, I heard you say something about shoes.
25 A Some people fake falls to get something,

1 going to show you -- I'm just going to show this. I'm
2 not going to run it at 12:43:17.
3 Okay. You mentioned something about beer,
4 sodas and so forth. What are you making reference to?
5 A Right there at the corner, people leave beer
6 cans, soda cans, so we have to clean it.
7 Q I meant in what we're looking at at
8 12:43:17. Do you see any beer cans or soda cans
9 there?
10 A No, no. No, but this is the least busy
11 time.
12 Q Okay. All right. I just want to focus on
13 this time. So I'm clear with my question, do you
14 remember completing the task of cleaning up this area
15 or working with David Martinez after the woman got up
16 and left?
17 A Well, yes. It was cleaned. We had to clean
18 because she spilled coffee.
19 Q Okay. Other than her -- the woman spilling
20 coffee, did you see anything else on the floor when
21 you were cleaning after she fell?
22 A No, but we have to check everything anyway.
23 Q Okay. Now, earlier when you're talking
24 about equipment, I heard you say you have cleaners,
25 towels, broom and dust pans.

1 A Yes.
2 Q Okay. Because I made a note here that I was
3 confused whether you had a dust pan or dust mop.
4 A Dust pan.
5 Q So when I showed that video of you earlier
6 walking around the area when you were carrying some
7 things, can you tell us what you had in your hands?
8 A Dust pan and a broom.
9 Q Okay. You were also asked about the tower.
10 Does that area have, like, the bridge? Does that have
11 a bridge that goes over the Las Vegas Boulevard?
12 A No.
13 Q I wasn't clear what you meant by "tower." I
14 know there's a bell tower or a clock tower.
15 A I was talking about the small tower where
16 there was sun coming in.
17 Q Oh, I see what you mean. I see. I was
18 confused.
19 A And now they have Bouchon Bakery around it,
20 but the restaurant is at the small tower.
21 Q Okay. All right. You were asked earlier
22 about when mops and a bucket would come to an area.
23 And in this particular case, what we just saw in the
24 video was a mop and a bucket came to the area.
25 A David is the one who brought it to see if

1 there was a big spill.
2 Q Was there a big spill?
3 A No, no, there was not. I had just walked by
4 that area.
5 Q Was there a little spill?
6 A No, no.
7 Q Were there pieces of ice that you found on
8 the floor?
9 A No, no.
10 Q You testified about drunk people that you
11 have seen in the past fall.
12 A Yes.
13 Q For any of those people, do you recall
14 inquiring as to why they fell?
15 A No. What for? They drink and then they
16 fall and then between each other, they pick up each
17 other. They usually are not alone.
18 Q Okay. And I want to make sure I understand.
19 When you were asked about falls and you said the lady
20 that fell with coffee, is that the lady that we saw in
21 the video that I showed you that's been marked as
22 VEN019?
23 A Yes. I remember the lady falling.
24 Q And that's the lady you were making
25 reference to?

1 A Yes. It's the most recent. She's the one
2 that I remember.
3 MR. ROYAL: Thanks. I'll pass.
4
5 FURTHER EXAMINATION
6 BY MR. GALLIHER:
7 Q I heard you remark during your testimony in
8 response to Mr. Royal's question, some people, they
9 fall to get something. What did you mean by that?
10 A Sometimes they look like they fall.
11 Q And is that what you saw in the video,
12 someone who looked like they fell?
13 A I don't know. I don't know her intentions,
14 but there was no water there.
15 Q Did she look like she fell or not?
16 A Yes, she slips, but it must have been her
17 shoe. It wasn't water.
18 Q And you mentioned also that the area where
19 the fall happened had been heavily waxed. What did
20 you mean by that?
21 A I wasn't talking about that area in
22 particular. Those floors are cleaned every night.
23 Q Are they waxed every night?
24 A No, no. They clean them with a machine.
25 Q And that's every night?

1 A No. I don't recall.
2 Q Do you know one way or the other?
3 A Yes, they do it.
4 Q So as I understand what you are saying, you
5 never saw anything liquid on the floor where the fall
6 happened at any time that day; is that right?
7 MR. ROYAL: I object. Misstates testimony.
8 THE WITNESS: No, no, that is correct.
9 BY MR. GALLIHER:
10 Q All right. So you didn't see any water on
11 the floor, you didn't see any coffee on the floor, you
12 didn't see anything wet on the floor; is that right?
13 A No -- yes, that is correct.
14 Q So the only fluid you saw in connection with
15 this fall on that day was a dry floor?
16 A Yes. I think what you see is that she
17 slipped, but it was her shoe.
18 Q All right. So your testimony is that she
19 didn't slip because she hit anything wet, she slipped
20 because of her shoe?
21 A Because of her shoe.
22 Q All right. So the answer to my question is
23 yes?
24 A Yes.
25 Q Thank you. Nothing further.

MARIA CONSUELO CRUZ 4/17/2019

Page 43

1 THE WITNESS: Is that it?

2 MR. ROYAL: Yes. Nothing for me.

3 MR. GALLIHER: Okay, we're done. Thank you.
4 (The deposition concluded at 3:09 p.m.)

13 (Page 43)

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VEN 2451

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, MARIA CONSUELO CRUZ, commencing on Wednesday, April 17, 2019 at the hour of 2:00 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.

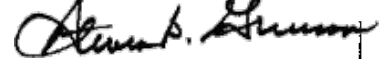
Dated at Las Vegas, Nevada this _____ day of _____, 2019.

Pauline C. May, CCR 286, RPR

Surveillance Video

EXHIBIT “F”

EXHIBIT “G”



1 **OBJ**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

4 Gregory A. Miles, Esq.

5 Nevada Bar No. 4336

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12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

18 Plaintiff,

19 v.

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

27 Defendants.

Hearing Requested

28 **DEFENDANTS' LIMITED OBJECTION TO DISCOVERY COMMISSIONER'S REPORT
AND RECOMMENDATIONS DATED DECEMBER 2, 2019**

29 Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC
30 (hereinafter collectively "*Venetian*"), by and through their counsel of record, Michael A. Royal, Esq.,
31 of ROYAL & MILES LLP, hereby files DEFENDANTS' OBJECTION TO DISCOVERY
32 COMMISSIONER'S REPORT AND RECOMMENDATION DATED DECEMBER 2, 2019.

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

1 This Objection is based upon the Points and Authorities below, the papers and pleadings filed
2 herein, and any oral argument allowed at the hearing on this matter.

3 DATED this 16 day of December, 2019.

4 **ROYAL & MILES LLP**

5
6 By 

7 Michael A. Royal, Esq.
8 Nevada Bar No. 4370
9 1522 W. Warm Springs Rd.
10 Henderson, NV 89014
11 Attorney for Defendants
12 *VENETIAN CASINO RESORT, LLC and*
13 *LAS VEGAS SANDS, LLC*

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I.**

16 **NATURE OF OBJECTION**

17 Defendants' limited objection relates to the scope of the Discovery Commissioner's ruling on
18 the production of incident reports. First, Defendants object to the Discovery Commissioner's ruling
19 that Defendants must produce reports of all incidents occurring on the casino floor level of the
20 Venetian property, when the subject incident occurred in the Grand Lux rotunda area which Plaintiff
21 claims to be especially dangerous because there is a food court and other establishments nearby.
22 Defendants contend that other areas of the property outside the Grand Lux rotunda area where the
23 subject incident occurred are not reasonably relevant to any issues in the case. This is especially
24 significant where Plaintiff's own expert has demonstrated that the subject flooring tests differently in
25 different areas of the property. Second, Defendants object to the Discovery Commissioner's ruling that
26 Defendants must not only produce five (5) years of prior incident reports, but also subsequent incident
27 reports from the date of the subject incident to the date of production (more than three years).
28 Moreover, all of these documents, per the Discovery Commissioner, are to be produced in unredacted

1 form without any NRCP 26(c) protection whatsoever. The sole basis for ordering the production of
2 subsequent incident reports as related by the Discovery Commissioner is the fact that Plaintiff has a
3 claim for punitive damages.

4 Defendants previously provided Plaintiff with sixty-eight (68) prior incident reports from
5 November 4, 2013 to November 4, 2016. Defendants do not object to providing an additional two (2)
6 years of prior incident reports (from November 4, 2011 to November 4, 2013) in the Grand Lux
7 rotunda area where the subject incident occurred; however, Defendants respectfully submit that the
8 proper scope of discovery related to other incident reports in this matter would be to limit further
9 production to the Grand Lux area for the five (5) years preceding the subject incident. Moreover, there
10 is no good, legal basis for the Court to order the production of subsequent incident reports in a
11 negligence case based on a slip/fall from a foreign substance. As to the Discovery Commissioner's
12 order that any further reports be provided in unredacted form, there is a pending stay as to that
13 particular issue granted by the Nevada Court of Appeals.
14
15

16 **II.**

17 **DECLARATION OF MICHAEL A. ROYAL**

18 STATE OF NEVADA)
19) ss.
20 COUNTY OF CLARK)

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

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

26 ///

27 ///

28

2. I declare that the exhibits identified herein below are true and correct copies of documents produced in or otherwise related to this matter, and move the Court to take judicial notice of the following cases attached hereto.

EXHIBIT	TITLE
A	Discovery Commissioner's Report and Recommendation, filed December 2, 2019
B	Transcript of Proceedings Before Discovery Commissioner (September 18, 2019)
C	Transcript of Joyce Sekera Deposition (taken March 14, 2019), selected pages
D	Thomas Jennings Report (dated May 30, 2019)
E	Transcript of Thomas Jennings Deposition (taken July 2, 2019), selected pages
F	Thomas Jennings Report (dated December 28, 2018)
G	Findings of Fact, Conclusions of Law and Order Granting Defendants' Motion for Partial Summary Judgment on Mode of Operation Theory of Liability (filed July 23, 2019)
H	First Amended Complaint (filed June 28, 2019)
I	<i>Boucher v. Venetian Casino Resort, LLC</i> , Case No. A-18-773651-C, Order Regarding Plaintiff's Limited Objection to the Discovery Commissioner's Report and Recommendation on Plaintiff's Motion to Compel Production of Documents (filed October 29, 2019)
J	Petitioners' Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(a)(6) and 27(e) (filed 09.27.19)
K	Petitioners' Reply Brief, Appellate Court No. 79689-COA (filed 10.28.19)

DATED this 16 day of December, 2019.

MICHAEL A. ROYAL

III.

PERTINENT FACTS AND EVIDENCE

Plaintiff has generally requested that Defendants produce information from 1999 to the present related to an assortment of materials. (See Exhibit A, *Discovery Commissioner's Report and Recommendation* (filed December 2, 2019) at 3:17-27; 4-6.) Defendants filed a motion for protective

1 order and Plaintiff filed a motion to compel. (*See id.* at 7:9-26.) The Discovery Commissioner ruled
2 as follows in pertinent part:

3 1. Defendants be ordered to produce “unredacted records
4 related to other incidents involving guests slipping and falling on the
5 **Venetian common area marble floor on the casino level of the**
6 **Venetian property** due to the existence of a foreign substance from
November 4, 2013 to the present (only as of the date of production).”
(*See id.* at 8:16-19. Emphasis added.)

7 2. Defendants produce records related to any coefficient of
8 friction testing accomplished in the **Grand Lux area** of the Venetian
9 property from November 4, 2011 to November 4, 2016, where such
10 information was disclosed by Venetian pursuant to NRCP 16.1 or which
is not otherwise protected in accordance with nRCP 26. (*See id.* at
8:25-28; 9:1-3. Emphasis added.)

11 3. Defendants produce records related to the removal of
12 carpeting “limited to the **Grand Lux area of the Venetian property**”
13 from November 4, 2011 to November 4, 2016. (*See id.* at 9:4-9.
Emphasis added.)

14 The subject incident occurred in the Grand Lux rotunda area of the Venetian. (*See* Exhibit B,
15 *Transcript of Proceedings Before Discovery Commissioner* (September 18, 2019) at 8:1-3.) The
16 Discovery Commissioner limited Plaintiff’s request for any coefficient of friction testing the Grand
17 Lux area for the five (5) years preceding the subject incident. (*See id.* at 20:19-25; 21:1; *see also*
18 *id.* 21:2-9, “Anything that was done in that [the Grand Lux rotunda] area”.) The Commissioner further
19 limited Plaintiff’s inquiry about changes to the Venetian flooring (*i.e.* carpet to marble) to the Grand
20 Lux rotunda area. (*See id.* at 21:2-25; 22:1-2.) The Commissioner initially ruled that the production
21 of other incident reports would likewise be limited to the Grand Lux rotunda area. (*See id.* at 22:24-25;
22 23:1-13.) Then, after further discussion, the Commissioner expanded the scope of other incident
23 reports to the entire casino level of the Venetian property “five years prior to the present, and pursuant
24 to Judge Delaney’s ruling, unredacted.” (*See id.* at 27:1-8. Emphasis added.)
25

26 The Commissioner acknowledged that Plaintiff’s claims arise from a temporary transient
27 condition. (*See id.* at 30:17-25; 31:1-8.) However, the Commissioner ruled that Defendants must
28

1 produce subsequent incident reports based on the fact that Plaintiff has an existing punitive damages
2 claim. (See *id.* at 27:14-25; 28:1; 32:19-25; 41:3-19.) The Commissioner did not otherwise set forth
3 any legal basis for ruling that Defendants must now provide Plaintiff with unredacted subsequent
4 incident reports in a case involving a slip and fall from an alleged foreign substance, simply because
5 Plaintiff has a claim for punitive damages. There was no analysis of NRCP 26(b)(1) or review of
6 Nevada case law on the subject. Indeed, Plaintiff did not present any Nevada law and no legal known
7 legal precedent was relied upon by the Court on the issue of producing subsequent incident reports.
8

9 As discussed further herein below, Defendants contend that the following rulings by the
10 Discovery Commissioner are in error:

11 1. That Defendants be ordered to provide copies of other incident reports
12 in any areas outside the Grand Lux rotunda area of the property where Plaintiff's fall
13 occurred; and
14

15 2. That Defendants be ordered to provide subsequent incident reports from
16 November 4, 2015 to the present in a case based upon a slip and fall from a foreign
17 substance based solely on an existing claim for punitive damages.

18 III.

19 DISCUSSION

20 A. Standard of Review

21 Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:
22

23 *Unless otherwise limited by order of the court in accordance with these rules, the scope*
24 *of discovery is as follows: Parties may obtain discovery regarding any nonprivileged*
25 *matter that is relevant to any party's claims or defenses and proportional to the needs*
26 *of the case, considering the importance of the issues at stake in the action, the*
27 *amount in controversy, the parties' relative access to relevant information, the*
28 *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.)

1 Plaintiff must therefore demonstrate that the desired discovery is **relevant** to her claims here
2 and that it is **proportional** to the needs of the case with five factors: 1) importance of issues at stake;
3 2) amount in controversy; 3) parties' relative access to relevant information; 4) parties' resources; the
4 importance of the discovery in resolving contested issues; and 5) the burden of proposed discovery vs.
5 the likely benefit.

6
7 1. **Relevancy**

8 Under the first prong of this test, for information to be discoverable, it must be "relevant to any
9 party's claim or defense." (*Id.*) The phrase "reasonably calculated to lead to the discovery of
10 admissible evidence" has been omitted from the previous rule. The word "relevant" has been provided
11 as one of the driving factors in weighing discovery issues.

12 Recall that Plaintiff was not a normal guest/patron of the Venetian property at the time of the
13 incident, but was instead a pseudo employee, someone assigned a Venetian employee parking pass and
14 ID badge to gain special access to the property. She worked on property for nearly a year prior to the
15 incident and, as discussed further herein, Plaintiff walked the Grand Lux rotunda area many hundreds
16 of times without incident until November 4, 2016 - the only difference being the alleged existence of
17 a foreign substance reportedly causing her to fall.

18
19 What is "relevant" about incidents occurring anywhere other than the Grand Lux rotunda area
20 where Plaintiff fell? It is an area of which Plaintiff was extremely familiar in the course of her
21 employment. There is no evidence that Plaintiff routinely ventured into any other areas of the Venetian
22 property - to the contrary, it was her daily routine to traverse the Grand Lux rotunda area. What may
23 have occurred in areas outside the Grand Lux rotunda area or on occasions following the subject
24 incident is simply not "relevant".

25
26 As also discussed further herein below, Plaintiff has claimed to have reports of 196 prior
27 incidents occurring in the Grand Lux rotunda area; therefore, Defendants respectfully submit that
28

1 Plaintiff is in possession of more than sufficient "relevant" information she needs to make her case for
2 constructive notice and/or dangerous condition, with that information reportedly confined to the Grand
3 Lux rotunda area.

4 2. **Proportionality**

5 Even if the Court deems the information "relevant", that alone is insufficient. Under the second
6 part of the NRCP 26(b)(1) test, to be discoverable, information must be "proportional to the needs of
7 the case." The rule provides six factors to consider: 1) "the importance of the issues at stake in action";
8 2) "the amount in controversy"; 3) "the parties' relative access to relevant information"; 4) "the parties'
9 resources; 5) the importance of the discovery in resolving the issues" and 6) "whether the burden or
10 expense of the proposed discovery outweighs its likely benefit." Defendants have previously produced
11 a total of sixty-eight (68) prior incident reports and Plaintiff claims to have a total of 196.¹ Requiring
12 Defendants to produce additional prior incident reports beyond the Grand Lux rotunda area and beyond
13 the date of the subject incident serves no good purpose other than to burden and harass Defendants.
14

15 Defendants note that NRCP 26(b)(2)(C) further limits discovery. It requires the Court to limit
16 the frequency or extent of discovery if the Court determines that the discovery sought is (1)
17 "unreasonably cumulative or duplicative, or can be obtained from some other source that is more
18 convenient, less burdensome, or less expensive"; (2) "the party seeking discovery has had ample
19 opportunity to obtain the information by discovery in the action;" or (3) "the proposed discovery is
20 outside the scope permitted by Rule 26(b)(1)." Courts, thus, have a "duty to pare down overbroad
21 discovery requests under Rule 26(b)(2)." (*See Rowlin v. Alabama Dep't. of Pub. Safety*, 200 F.R.D.
22 459, 461 (M.D. Ala. 2001) (referencing application of FRCP 26(b)(2)).) Rule 26 provides the Court
23

24
25
26
27
28 ¹Pursuant to the DCRR, Plaintiff is to produce all of the other incident information she has
collected to Defendants. (*See Exhibit A at 9:26-28.*)

1 with broad discretion to "tailor discovery narrowly" (*See Crawford-El v. Britton*, 523 U.S. 574, 599,
2 118 S. Ct. 1584, 140 L. Ed. 2d 759 (1998).)

3 B. **Defendants Object to Producing Records of Other Incidents in Areas Outside the Grand**
4 **Lux Rotunda Where the Subject Incident Occurred**

5 Defendants do not object to the Commissioner's ruling to produce prior incident reports from
6 November 4, 2011 to November 4, 2016; however, Defendants take issue with the ruling that
7 production is not limited to the Grand Lux rotunda area, but expands to all areas of the Venetian
8 property on the casino level.

9
10 As Defendants previously noted, the Commissioner expressly limited Plaintiff's request for any
11 coefficient of friction testing to the Grand Lux rotunda area. The Commissioner further limited
12 Plaintiff's request for floor remodeling (*i.e.* changing carpeting to stone flooring) to the Grand Lux
13 rotunda area. The ruling should likewise be limited to the Grand Lux area when it comes to the
14 production of prior incident reports.

15 Plaintiff testified in deposition that she walked across the Grand Lux rotunda area daily to use
16 the restroom where she was headed at the time of the subject area. (*See Exhibit C, Transcript of Joyce*
17 *Sekera Deposition* (taken March 14, 2019) at 84:21-25; 85:1-9, 15-25; 86:1-25; 87:1-5; 88:7-14; 109:5-
18 13.) Plaintiff testified that she was working five (5) to seven (7) days per week at her kiosk job from
19 9:00 am to 7:00 pm, sometimes as much as eighty (80) hours. (*See id.* at 57:5-20; 59:17-24; 75:5-25;
20 76:1-17.) Plaintiff would therefore have worked more than 200 days on property between December
21 28, 2015 and November 4, 2016, walking through the Grand Lux rotunda area several hundred times
22 prior to the subject incident. There is no evidence that Plaintiff routinely walked through other areas
23 of the Venetian property.

24
25 Plaintiff expert Thomas Jennings related in a report dated May 30, 2019 that he was aware of
26 196 slip and fall events between January 1, 2012 to August 5, 2016 occurring on Venetian property,
27 "the majority of those occurring on the marble flooring within the same approximate area as Plaintiff's
28

1 slip and fall.” (See Exhibit D, *Report of Thomas Jennings*, dated May 30, 2019) at 3.) When asked
2 about this in his deposition of July 2, 2019, Mr. Jennings testified of his understanding that the alleged
3 196 prior incidents occurred in the “Grand Lux area.” (See Exhibit E, *Transcript of Thomas Jennings*
4 *Deposition* (taken July 2, 2019) at 84:7-25; 85:1-3; 86:12-19; 87:6-25; 88:1-3.)

5
6 Accordingly, Plaintiff provided her expert, Thomas Jennings, with a report purporting to
7 document 196 prior incidents in the Grand Lux rotunda area, where Plaintiff’s fall occurred, and Mr.
8 Jennings presented opinions based on that information. Mr. Jennings also acknowledged that
9 coefficient of friction testing on marble flooring throughout the property may vary depending on a
10 variety of factors, explaining why his findings in the matter of *Smith v. Venetian* were so different.
11 (See *id.* at 70:10-19; 71:11-25; 72:1-22; 73:1-9.)² Mr. Jennings further commented on the Grand Lux
12 rotunda area as being unique in that there are food and beverage establishments available to patrons.
13 (*Id.* at 63:22-25; 64:1-10; see also Exhibit F, *Report of Thomas Jennings*, dated December 28, 2018
14 at 3, “Within the general area of plaintiff’s slip and fall incident are food courts, cafes, coffee bars and
15 other operations that dispense beverages.”)

16
17 The Court will recall that Plaintiff has asserted that the area of her fall is unique within the
18 Venetian property due to the fact that it is located near a variety of food and beverage establishments,
19 thereby triggering the self-serve mode of operation doctrine. (See Exhibit G, *Findings of Fact,*
20 *Conclusions of Law and Order Granting Defendants’ Motion for Partial Summary Judgment on Mode*
21 *of Operation Theory of Liability* (July 23, 2019).) Those same dynamics are not found in other areas
22 of the property.
23

24 Plaintiff claims to have evidence of more than 100 prior incidents in the Grand Lux rotunda
25 area where she fell. It is an area of which Plaintiff, by virtue of her employment, is very familiar,
26

27
28 ²Mr. Jennings tested the marble flooring in the *Smith* litigation as .90 COF dry; .40 COF wet. He tested the flooring in the *Sekera* litigation as .70 COF dry and .33 COF wet.

1 having walked through it many hundreds of times prior to the incident. There is no reasonable basis
2 for Plaintiff to have incident reports for any areas outside the Grand Lux area. The Discovery
3 Commissioner limited Plaintiff's other requests to the Grand Lux rotunda area, but then expanded it
4 throughout the property as to other incidents, which is overly broad and unnecessary. This is especially
5 true in light of Eldorado Club, Inc. v. Graff, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962) ("it is error
6 to receive 'notice evidence' of the type here [prior incident reports] for the purpose of establishing
7 the defendant's duty"). Accordingly, Defendants respectfully submit that the Discovery
8 Commissioner's Report and Recommendation that Venetian be ordered to produce other incident
9 reports for events occurring beyond the Grand Lux rotunda area should be reversed, with the Court
10 limiting disclosure to the area where Plaintiff fell, which is surrounded by the food and beverage areas
11 Plaintiff has so often highlighted.

12
13
14 **C. Defendants Object to Producing Records of Subsequent Incident Reports**

15 Defendants further respectfully disagree with the Commissioner's recommendation that they
16 be ordered by the Court to produce unredacted subsequent incident reports for the entire casino level
17 of the Venetian property, effectively order that Defendants produce more than eight (8) years of
18 records. Defendants' objection is based on the fact that this is a negligence case arising from a slip and
19 fall where Plaintiff claims to have encountered a temporary transitory condition - which Plaintiff
20 claimed to have transferred to her pants and shirt after landing on the floor. (See Exhibit C at 90:13-
21 23; 93:10-24. See also Exhibit H, *First Amended Complaint* at 3:4-22.)

22
23 The Discovery Commissioner agreed that she would not order the production of subsequent
24 incident reports in a negligence case based on a temporary transitory condition such as liquid on a
25 walkway. (See Exhibit A, at 41:3-19; see also Exhibit I, *Boucher v. Venetian Casino Resort, LLC*,
26 Case No. A-18-773651-C, *Order Regarding Plaintiff's Limited Objection to the Discovery*
27 *Commissioner's Report and Recommendation on Plaintiff's Motion to Compel Production of*
28

1 Documents (filed October 29, 2019) at 2:9-10 "Subsequent incident reports do not need to be provided,
2 because liquid on a walkway is a transient condition.")

3 Plaintiff's argument on this issue before the Discovery Commissioner below was that Plaintiff
4 fell due to a permanent condition, referring to cases such as *Ginnis v. Mapes Hotel Corp.*, 470 P.2d
5 135 (Nev. 1970) (strict product liability action based on a defective door). However, by Plaintiff's own
6 admission, she walked successfully through the Grand Lux rotunda area hundreds of times without
7 incident until allegedly encountering a liquid substance on November 4, 2016. Plaintiff's own expert,
8 Mr. Jennings, testified that the floor in the Grand Lux rotunda area where Plaintiff fell is safe when
9 dry. (See Exhibit E at 94:25; 95:1-3.) Plaintiff knew that from her own personal experience. The
10 Discovery Commissioner did not agree with Plaintiff's argument that the subject flooring where
11 Plaintiff fell constituted a permanent condition and, accordingly, not order the production of
12 subsequent incidents on that basis. However, Defendants' insist that the Commissioner erred in
13 ordering the production of subsequent incidents based on the fact that Plaintiff has an existing punitive
14 damages claim.

17 As previously noted, *Eldorado Club, Inc.*, stands for the proposition that prior incident reports
18 in a case like this one are not admissible to establish a defendant's duty. In *Reingold v. Wet 'n Wild*
19 *Nev., Inc.*, 113 Nev. 967, 969-70, 944 P.2d 800, 802 (Nev. 1997), the court held that while evidence
20 of subsequent incidents may be admissible to show a dangerous defective condition (citing *Ginnis*,
21 *supra*), "evidence of subsequent accidents may not be admitted to demonstrate a defendant's
22 knowledge of the condition prior to the instant accident." However, that is exactly why Plaintiff is
23 seeking this subsequent incident information.

25 Plaintiff cited in her briefing with the Discovery Commissioner cases outside the jurisdiction
26 of Nevada allowing for evidence of subsequent incidents; however, these all related to strict products
27 liability (*Hilliard v. A. H. Robins Co.*, 148 Cal. App. 3d 374, 196 Cal. Rptr. 117 (Ct. App. 1983); *GM*
28

1 *Corp. v. Mosely*, 213 Ga. App. 875 (Ga. Ct. App. 1994); *Coale v. Dow Chem. Co.*, 701 P.2d 885 (Colo.
2 App. 1985); *Palmer v. A.H. Robins Co.*, 684 P.2d 187 (Colo. 1984); *Hoppe v. G.D. Searle & Co.*, 779
3 F. Supp. 1413 (SD NY 1991)); fraud (*Schaffer v. Edward D. Jones & Co.*, 552 N.W.2d 801 (S.D.
4 1996)), invasion of privacy (*Roth v. Farner-Bocken Co.*, 667 N.W.2d 651 (S.D. 2003)), workers
5 compensation (*Boshears v. Saint-Gobain Calmar, Inc.*, 272 S.W.3d 215 (Mo. App. 2008)); post
6 incident writings of an event containing admissions of the event (*Bergeson v. Dilworth*, 959 F.2d 245
7 (10th Cir. 1992)); concealment of evidence regarding an incident (*Wolfe v. McNeil-PPC, Inc.*, 773 F.
8 Supp. 2d 561 (ED Pa. 2011). Plaintiff also referred to a case where admission of prior incident reports
9 was properly excluded under FRE 403 (*Hill v. United States Truck, Inc.*, 2007 U.S. Dist. LEXIS 39197,
10 2007 WL 1574545). Yet, there are numerous cases in California and Nevada which hold otherwise.³

11
12 Missing from Plaintiff's legal discussion before the Discovery Commissioner below is any
13 Nevada law supporting her contention that a punitive damages claim allowed to go forward in a
14 negligence slip and fall case arising from an alleged foreign substance on the floor entitles her to
15 evidence of subsequent incident reports. Using NRCP 26(b)(1) as a measuring stick, what possible
16 relevance is there of prior incident reports in a negligence case? Further, how does production of this
17 information meet the proportionality requirement of NRCP 26(b)(1)? Plaintiff did not say, and the
18
19

20
21 ³In *Rackliffe v. Rocha*, U.S. Dist. LEXIS 57394, *5 (E.D. CA April 24, 2012), the United States
22 District Court for the Eastern District of California denied the plaintiff's motion to compel the
23 production of subsequent incident reports, the plaintiff failing "to demonstrate how evidence regarding
24 incidents that happened after the alleged incident against Plaintiff would demonstrate any motive or
25 intent by Defendant." Also, there are numerous cases in the United States District Court, District of
26 Nevada, where discovery regarding other incident reports has been denied in slip and fall accidents
27 caused by a foreign substance or other temporary condition. (*See, e.g., Caballero v. Bodega Latina*
28 *Corp.*, 2017 U.S. Dist. LEXIS 116869, 2017 WL 3174931 (D.Nev. July 25, 2017) (plaintiff slipped
on a wet substance in produce department of supermarket); *Smith v. Wal-Mart Stores, Inc.*, 2014 U.S.
Dist. LEXIS 83005, 2014 WL 2770691 (D.Nev. June 17, 2014) (plaintiff slipped on a piece of wet
produce near the checkout registers); *Winfield v. Wal-Mart Stores*, 2017 U.S. Dist. LEXIS 127639,
2017 WL 3476243, *4 (D. Nev. Aug. 10, 2017) (plaintiff was not permitted to introduce evidence of
prior accidents allegedly caused by wet substances on the floor; the court earlier having denied
discovery regarding other prior incidents); and *Smith v. Wal-Mart Stores, Inc.*, Case. No.
2:11-cv-1520-MMD-RJJ, Order (ECF No. 39) (plaintiff slipped on a liquid substance on floor).

1 Discovery Commissioner did not ask. She simply ordered the production of unredacted subsequent
2 incident reports throughout the casino level of the Venetian property based solely on the fact that there
3 is an existing punitive damages claim.

4 Plaintiff is creating a template for all future litigants in this litigation in slip and fall claims -
5 file for leave to add a claim of punitive damages, then if/when granted, demand production of
6 unredacted subsequent incident reports to be shared with the entire legal community (both local and
7 abroad).

8
9 Plaintiff, according to her expert, Mr. Jennings, purportedly has evidence of 196 prior incident
10 reports in the Grand Lux rotunda. While Defendants dispute that wild assertion, Plaintiff presently has
11 sufficient evidence to support her claim for punitive damages. If, however, the Court is inclined to
12 uphold the Discovery Commissioner's ruling as to the production of subsequent incidents, Defendants
13 would then move to limit the scope to the Grand Lux rotunda area where the subject incident occurred.
14 Again, Plaintiff walked through this same area safely hundreds of times prior to the subject incident.
15 The only difference on November 4, 2016 was that she allegedly encountered a foreign substance.
16 There is no evidence that Plaintiff typically went to other areas of the Venetian property on a daily
17 basis. Further, Mr. Jennings himself testified that the coefficient of friction in other areas of the
18 property will vary depending on a variety of factors.

19
20 As there is no Nevada law supporting the Discovery Commissioner's order that Defendants
21 produce subsequent incident reports under the circumstances, Defendants respectfully object to that
22 portion of the Report and Recommendation, and hereby move this Honorable Court to strike that
23 portion of the December 2, 2019 DCRR.

24
25 **D. Defendants Renew Objection on Privacy Grounds**

26 As the Court is aware, Defendants have petitioned the Appellate Court to review the issue of
27 privacy related to the disclosure of private guest information found in prior incident reports, which is
28

1 presently pending. Defendants hereby reference the Court to the pleadings on file therein, and attach
2 a copy of their initial petition and reply brief to address this issue. (See Exhibit J, *Petitioners'*
3 *Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(a)(6) and*
4 *27(e)* (filed 09.27.19); Exhibit K, *Petitioners' Reply Brief*, Appellate Court No. 79689-COA (filed
5 10.28.19). The present recommendation by the Discovery Commissioner would provide Plaintiff with
6 unredacted subsequent incident reports to ostensibly search for witnesses which, because they could
7 be freely shared beyond this litigation, could be used by others to search for clients. While Defendants
8 contend there is no legal, reasonable or rational basis to produce subsequent incident reports based on
9 Plaintiff's punitive damages claim, if the Court adopts that portion of the DCRR, at a minimum, they
10 should be produced in redacted form.

11
12
13 V.

14 **CONCLUSION**

15 Based on the foregoing, Defendants respectfully submit that the Discovery Commissioner was
16 in error by not limiting the scope of prior incidents from November 4, 2011 to November 16, 2011 to
17 the Grand Lux rotunda area where the subject incident occurred (as she did with respect to other
18 discovery requests regarding coefficient of friction testing and floor remodeling), and further as to the
19 production of subsequent incident reports in this negligence action. Defendants therefore move this
20 Honorable Court to revise the pending discovery order accordingly.

21 DATED this 16 day of December, 2019.

22
23 **ROYAL & MILES LLP**

24 By 

25 Michael A. Royal, Esq.
26 Nevada Bar No. 4370
27 Gregory A. Miles, Esq.
28 Nevada Bar No. 4336
1522 W. Warm Springs Rd.
Henderson, NV 89014
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of December, 2019, and pursuant to NRCP 5(b),

I caused a true and correct copy of the foregoing **DEFENDANTS' LIMITED OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS DATED DECEMBER 2, 2019** to be served as follows:

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

_____ to be served via facsimile; and/or

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

_____ to be hand delivered;

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

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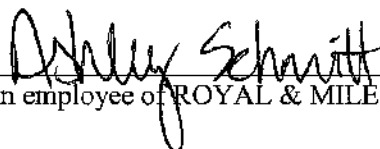

An employee of ROYAL & MILES LLP

EXHIBIT “B”

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA,

Plaintiff(s),

VS.

VENETIAN CASINO RESORT
LLC,

Defendant(s).

Case No. A-18-772761-C

DEPT. XXV

BEFORE THE HONORABLE ERIN TRUMAN,
DISCOVERY COMMISSIONER

WEDNESDAY, SEPTEMBER 18, 2019

***TRANSCRIPT OF PROCEEDINGS RE:
ALL PENDING MOTIONS***

APPEARANCES:

For the Plaintiff(s): KEITH E. GALLIHER, JR., ESQ.

For the Defendant(s): MICHAEL A. ROYAL, ESQ.

RECORDED BY: TRISHA GARCIA, COURT RECORDER

1 **LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 18, 2019**

2 [Proceeding commenced at 10:32 a.m.]

3
4 DISCOVERY COMMISSIONER: Sekera versus Venetian.

5 MR. GALLIHER: Good morning, Commissioner. Keith
6 Galliher on behalf of the plaintiff.

7 DISCOVERY COMMISSIONER: Good morning.

8 MR. ROYAL: Mike Royal on behalf of Defendants, Your
9 Honor.

10 DISCOVERY COMMISSIONER: All right. We have
11 Plaintiffs' Motion to Compel Testimony and Documents. The
12 Countermotion to Strike False Accusations levied by Plaintiff is off
13 calendar, as it does not relate to the motion under EDCR 2.20(f). So
14 I'm not going to consider the countermotion today.

15 So we've got Plaintiffs' Motion to Compel Testimony and
16 Defendants' Motion for Protective Order. Where do you guys want
17 to start?

18 MR. ROYAL: I'd like to start with the protective order,
19 since we filed it first.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. ROYAL: I mean, I --

22 MR. GALLIHER: Actually, I don't care. If he wants to start,
23 it's fine with me.

24 DISCOVERY COMMISSIONER: All right.

25 MR. ROYAL: We're both going to, you know, get our --

1 DISCOVERY COMMISSIONER: We're going to get to all of
2 it, so --

3 MR. GALLIHER: We'll do what we do.

4 DISCOVERY COMMISSIONER: Yeah, so -- and maybe it
5 would be helpful for me to start by saying Judge Delaney has
6 already made specific rulings in this case that I intend to follow.
7 Obviously, they were inconsistent with the rulings that I made. But
8 is -- as she is the trial judge, her rulings are, for now, the law of the
9 case, and so we're going to comply with what she said.

10 So with regard to Defendants' Motion for Protective
11 Order, as to Plaintiffs' Request for Production, I don't -- of the
12 incident reports from May 1999 to the present, I am -- with that said,
13 that we're going to follow what she's instructed, I will
14 provide 2.34(e) relief if requested by Defendant to -- that you don't
15 have to produce anything until it becomes an order of the Court,
16 this Motion for Protective Order.

17 So with that said, why don't I give you a chance to
18 proceed.

19 MR. ROYAL: Okay. Thank you, Your Honor.

20 You've -- first of all, by -- you've indicated that we're being
21 asked to produce documents from May 1999 to the present. This is
22 a slip-and-fall. It's a very typical slip-and-fall case. It's very simple
23 negligence case. The plaintiff worked in the Venetian premises for
24 almost a year. Prior to the incident, she walked across this area
25 safely hundreds of times according to her own testimony. She

1 never had any issues until November 4, 2016, when, according to
2 her and according to her counsel, she came into contact with a
3 foreign substance on the floor, which caused her to slip and fall.

4 So this is a case that is -- that relates -- that arises from a
5 temporary transitory condition. She -- according to their own
6 experts, the floor is safe when it's dry. Their only issue is
7 something gets introduced to it, then it becomes a slip hazard, and
8 that's why they claim the plaintiff slipped and fell.

9 To this point, we've produced -- we have produced 68 -- to
10 my count, 66 to 68, I've -- of prior incident reports going back three
11 years. Which, by the way, we produced, which are outside the area
12 of the incident. This incident occurred in the Grand Lux area, and
13 according to their expert, Tom Jennings, he is in possession of 196
14 prior incidents occurring, according to his trial -- or deposition
15 testimony, occurring strictly within the Grand Lux area.

16 DISCOVERY COMMISSIONER: All that 196 are in the
17 Grand Lux area?

18 MR. ROYAL: That was his testimony. That was his
19 testimony.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. ROYAL: Okay. Now, he didn't produce any of the
22 documents that he said that he looked at to come to that conclusion
23 and to put that down in his May 30, 2019, report.

24 DISCOVERY COMMISSIONER: Because I thought the 196
25 was a spreadsheet that you provided.

1 MR. ROYAL: No.
2 DISCOVERY COMMISSIONER: No? Okay.
3 MR. ROYAL: That's not correct.
4 DISCOVERY COMMISSIONER: All right.
5 MR. ROYAL: The --
6 MR. GALLIHER: We -- just let me interrupt for a minute.
7 We provided the spreadsheet to Mr. Jennings.
8 DISCOVERY COMMISSIONER: Okay.
9 MR. GALLIHER: He testified at deposition that reviewed
10 the spreadsheet.
11 MR. ROYAL: Well, he testified that he got something from
12 Mr. Galliher's office that he reviewed -- that he reviewed it, that he
13 didn't save it, and he didn't bring it with him to his deposition. I
14 didn't have an opportunity to review it with him, because he wasn't
15 clear on everything other than he said they all occurred in this area,
16 in this Grand Lux area.
17 Now, I subsequently got the spreadsheet from
18 Mr. Galliher, looked at those 196, if you take out -- there's a whole
19 bunch of duplicates and so forth from things we had already
20 produced and with some -- they're not in addition to the 68, for
21 example. But I could only come up with eight that say Grand Lux --
22 that say Grand Lux.
23 So I don't know where Mr. -- I don't know if he looked at a
24 different list. I don't know what information that they have. All I'm
25 saying is we have produced let's say 68 prior incident reports going

1 back three years preceding the incident, which are not limited to the
2 Grand Lux area. They are -- they go to the Grand Hall or to areas --
3 other areas on the casino level.

4 They -- what they want, what they're asking for,
5 essentially, is any kind of a slip-and-fall involving the marble floors
6 in common areas anywhere within the property. And we think
7 that's -- we just think that's -- it's asking too much, especially when
8 you're going back to 1999.

9 If you --

10 DISCOVERY COMMISSIONER: Well, I'm going to limit -- if
11 it'll -- I mean, I'm going to tell you this now. I'm going to limit it to
12 five years before the incident at issue.

13 MR. ROYAL: That would be --

14 DISCOVERY COMMISSIONER: Well, let me let
15 Mr. Galliher speak to that, because he looks like he's about to burst.
16 So --

17 MR. GALLIHER: I'm not -- no, I'm not ready to burst.

18 DISCOVERY COMMISSIONER: Okay.

19 MR. GALLIHER: I am far too old to burst.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. GALLIHER: Yeah, well, obviously, we're going to
22 have a problem with that order.

23 DISCOVERY COMMISSIONER: Okay.

24 MR. GALLIHER: Because as we pointed out in our points
25 and authorities, there's testimony from a casino executive at

1 Venetian, that approximately one year after the Palazzo opened,
2 which would be about 2009, the Venetian actually tore up carpet on
3 the floors in their casino and replaced the carpet with marble.

4 So, quite obviously, if there are a number of falls before
5 this happened, and we believe there are a large number of falls that
6 occurred on marble floors that are wet -- and by the way, that's the
7 issue here. This is not a transient condition. This has already been
8 established in the case. And what bothers me about the argument
9 is Mr. Royal's rearguing things that have already been argued
10 before the district judge, who has -- sustained, first of all, our
11 Motion to Amend, to include the claim for punitive damages, and
12 twice now, that decision has been attacked by Venetian. Both times
13 Judge Delaney had upheld her initial decision. So we now have a
14 viable claim for punitive damages, and she said that discovery will
15 continue on the punitive damage claim. Which is what we're trying
16 to do.

17 DISCOVERY COMMISSIONER: Okay.

18 MR. GALLIHER: So if we can establish that the Venetian,
19 when it was built in 1999, when they installed these marble floors,
20 and we have a history of a large number of falls on these marble
21 floors -- and by the way, the marble floors are all uniform. There's
22 no difference between the marble in the lobby versus the marble in
23 the front of the Grand Lux Cafe, versus the marble in the casino.
24 The marble is the same color, the same consistency, it's the same
25 floor.

1 DISCOVERY COMMISSIONER: Did this incident occur in
2 the area in front of the Grand Lux Cafe?

3 MR. GALLIHER: Yes.

4 DISCOVERY COMMISSIONER: Okay.

5 MR. GALLIHER: And that is a marble floor.

6 DISCOVERY COMMISSIONER: Okay.

7 MR. GALLIHER: And, of course, our position is that
8 marble is marble, and there's no difference in the flooring. So all
9 falls that occur on these marble floors when people come into
10 contact with wet substances, are relevant to the issue of punitive
11 damages. So if we are able to establish, for example, if there
12 are 100, 200, 300 falls on these marble floors between 1999, when
13 the hotel was built, and 2009, when the Venetian made a conscious
14 decision to tear up the carpet and replace it with marble, don't you
15 think that provides a predicate for punitive damages? It shows
16 conscious disregard for the safety of its customers.

17 Therefore, it's not only relevant, it's clearly discoverable.
18 Because we are -- we have a punitive damage claim. The Venetian
19 keeps wanting to limit us in terms of our discovery, but as we
20 pointed out in our briefing punitive damage claim opens up the
21 whole group of possibilities for us to try to prove our punitive
22 damages, and that includes going back to the time the hotel was
23 built and these floors were installed in the first place.

24 But the other thing that's bothering me is that we -- the
25 unredacted incident reports for the three years prior were ordered

1 by Judge Delaney back in May. We still don't have them. And
2 we've had motion practice after motion practice, Motion to Rehear,
3 Motion for Leave for -- to Rehear. And Judge Delaney had
4 remained consistent and she has said, Venetian, you need to
5 produce the unredacted incident reports.

6 The only thing that she said that should not be in the
7 report is a date of birth and a Social Security number, and that
8 information's not in the report anyway. So we're entitled to that
9 information. It's now a filed order from Judge Delaney. There's no
10 other way for the Venetian to attack it. So that's why it's a shame
11 that we have to file a Motion to Compel after we've had a decision
12 from the district judge several times now giving us the right to the
13 unredacted reports.

14 And the other issue, of course, is -- that we've raised, is
15 that we want to do a 30(b)(6) deposition. And we want to find out
16 what the Venetian knew about the safety of its floors and when they
17 knew it. And that is relevant to the punitive damage claim.

18 Just as the subsequent incident reports are relevant to the
19 punitive damage claim. We've given the Court a lot of case
20 authority to support our position. I haven't seen anything that does
21 not support our position. We've even given you a Nevada Supreme
22 Court case that says subsequent incidents are relevant, not only to
23 the question of notice, but certainly relevant in connection with the
24 punitive damage claim.

25 So I don't know, tell you the truth, I'm not sure why we're

1 here other than the fact that we keep, you know, requesting,
2 requesting, requesting, and we keep getting No, we're not giving it
3 to you. No, we're not giving it to you. File a motion, file a motion.
4 So we're here.

5 DISCOVERY COMMISSIONER: Well, to the extent that you
6 already had an order from Judge Delaney, rather than a Motion to
7 Compel before me, I would recommend that it be refiled as -- I
8 mean, you can file an order to show cause -- a Motion for an Order
9 to Show Cause before the judge. I mean, I'm not going to reverse
10 Judge Delaney on matters she's already determined in this case.

11 MR. GALLIHER: Well, I'm not asking you to do that. What
12 I'm asking is --

13 DISCOVERY COMMISSIONER: I know you're not.

14 MR. GALLIHER: No.

15 DISCOVERY COMMISSIONER: But I'm just telling you I'm
16 not going to.

17 MR. GALLIHER: No.

18 DISCOVERY COMMISSIONER: She's the judge in the
19 case.

20 MR. GALLIHER: Right.

21 DISCOVERY COMMISSIONER: And so if she's already
22 overruled my recommendation, I'm going to follow what she's
23 done. And so if you -- rather than moving --

24 MR. GALLIHER: But you can set a deadline.

25 DISCOVERY COMMISSIONER: I'm sorry?

1 MR. GALLIHER: But you can set a deadline for the
2 production of the reports, which is what I'm asking you to do.
3 DISCOVERY COMMISSIONER: Oh, that wasn't already
4 done initially?
5 MR. GALLIHER: No.
6 DISCOVERY COMMISSIONER: Okay.
7 MR. GALLIHER: No. And so I'm asking you to set a
8 deadline. And certainly they produced the redacted report, so they
9 have them.
10 DISCOVERY COMMISSIONER: Okay.
11 MR. GALLIHER: So all we're asking for is the unredacted
12 reports, and I'm asking you to set a deadline, say two weeks from
13 now, when these reports --
14 DISCOVERY COMMISSIONER: Okay. Well, now we're
15 getting into the Motion to Compel.
16 MR. GALLIHER: Okay.
17 DISCOVERY COMMISSIONER: I haven't given counsel an
18 opportunity --
19 MR. GALLIHER: Understood.
20 DISCOVERY COMMISSIONER: -- to finish his Motion for
21 Protection. So.
22 MR. GALLIHER: I'll sit down and shut up.
23 MR. ROYAL: We were in front of Judge Delaney on
24 May 14th. She did not -- the order related to that -- his objection
25 was not filed by the Court until July 31st.

1 DISCOVERY COMMISSIONER: Well, there's still an order
2 that it hasn't been filed, isn't it? From the Motion for
3 Reconsideration.

4 MR. ROYAL: Well, there was -- well, I filed a Motion for
5 Reconsideration on OSC. Mr. Galliher, she set on a date -- or he --
6 they were in trial and he asked that we continue it. So we
7 continued it out for, it turned out, about 30 days. We just had that
8 hearing yesterday in front of the Court.

9 And during that particular discussion or hearing, she did
10 not grant leave for the consideration. But we did -- she did suggest
11 that we file a writ, which is what we are in the process of doing at
12 this point.

13 DISCOVERY COMMISSIONER: Okay.

14 MR. ROYAL: And so it's not as though we're -- it's not as
15 though we're just defiant, you know, with respect to the district
16 judge. This was in front of the district judge yesterday. And so
17 Mr. Galliher certainly could have brought this up and had this
18 discussion and asked the judge to provide a deadline yesterday.

19 I would like to say, you know, something about --
20 something about these motions that have been in front of the judge
21 with respect to punitive damages. I mean, she's just -- she has just
22 ruled that they were allowed to amend the complaint to add
23 punitive damages claim. She never said, has never said that this --
24 or established that this is anything other than a transient -- a
25 temporary transient condition.

1 And so to the extent that counsel is suggesting that to the
2 Court today, that's not correct. She's just simply said -- Tom
3 Jennings, again, their expert has said, I've got 196 incident reports
4 that occurred within a four-and-a-half-year period in the Grand Lux
5 area. I'm not sure what it is, what more they need. But there is no
6 evidence that there was ever any carpet in the area of the Grand
7 Lux Cafe rotunda.

8 DISCOVERY COMMISSIONER: So that's not the area
9 where it was ripped out.

10 MR. ROYAL: Right.

11 DISCOVERY COMMISSIONER: Okay.

12 MR. ROYAL: That's correct.

13 And so, further, Mr. Jennings testified he's an expert on
14 another slip-and-fall case that occurred within 80 to 100 feet of this
15 particular accident, also in the Grand Lux area. He testified that his
16 findings on that particular area of the marble floor were much
17 different than they were on our floor. And when I asked him about,
18 Well, why would that be different? And he gave all kinds of reasons
19 from care of the floor to amount of traffic and so forth.

20 So what Mr. Galliher's suggesting, that the floor's the
21 same everywhere and it's going to test the same everywhere, I
22 mean, that's just not -- that's not accurate.

23 What we're really looking for from the Court is some
24 direction, some relief, so that we can go -- for example, we had
25 this 30(b)(6) -- they set this 30(b)(6) deposition with 18 topics that

1 I've gone through with the Court.

2 DISCOVERY COMMISSIONER: Okay.

3 MR. ROYAL: Topics 6 to 18 all relate to management of
4 the computer system going back to 1999. What kind of -- who
5 manages the system internally, externally, consultants and so forth,
6 employees, who's involved with all this. It's extremely broad.

7 They -- and one of the things that I expect counsel will say
8 is that, Well, we can't trust them. We can't trust the Venetian,
9 because they've withheld report, they've withheld information from
10 us. And the Court will recall that previously when they brought a
11 motion, they very inaccurately represented to the Court that we did
12 not disclose 65 reports over the same period of time of those 66
13 and 68 reports that we previously produced. And then they had to
14 come and say -- and advise the Court, okay, we're sorry, that's not
15 accurate.

16 So they're not here today saying that they have any
17 evidence that we're not producing documents, that we're doing
18 something improper. We have produced 68 prior incident reports
19 that are outside -- that are within and outside the Grand Lux area.
20 What we're asking the Court is just limit the scope in the area where
21 this occurred, limit it to five years, and we're fine. And we have no
22 problem with that.

23 Now, is -- with respect to some of these other things, the
24 carpeting, I mean, they're asking for --

25 DISCOVERY COMMISSIONER: Well, let's go through the

1 issues and I'll give you my recommendation and if you want to both
2 discuss it, we can.

3 But with regard to Plaintiffs' Demand for Information
4 Related to Incidents from May 1999 to the Present, I am going to
5 protect that as written, but I think it's appropriate for -- given Judge
6 Delaney's rulings, for Defendant to provide, from
7 November 4th, 2011, to the present. Counsel in his affidavit stated
8 that there was no water at the scene. And so I think that that -- with
9 a permanent condition, which I think is, you know, if there's no
10 water, it's not a transient condition, it's a permanent condition, that
11 I think they're entitled to prior and subsequent. So I think for five
12 years --

13 MR. ROYAL: But, Your Honor, that's --

14 DISCOVERY COMMISSIONER: -- prior to the present time.

15 MR. ROYAL: -- that's not their claim. Their claim is that
16 there was water there. They have a witness who says there was
17 water there. Just -- by the mere fact that we dispute their report
18 doesn't mean -- I mean, the complaint itself says that there was a
19 liquid substance. That doesn't -- just because we dispute their facts
20 doesn't turn it into a permanent condition. They have a witness,
21 Gary Schulman, who they -- who says, I saw it there.

22 And the plaintiff, in her own deposition testimony, I
23 slipped. Not only did she slip, but her pants were wet. So it's not
24 their contention that there was nothing there. The fact that we
25 dispute it doesn't turn it into a permanent condition and certainly

1 shouldn't burden my client from having -- from now he has to
2 produce subsequent incident reports.

3 DISCOVERY COMMISSIONER: Mr. Galliher?

4 MR. GALLIHER: My goodness, the law's so clear. We
5 have a punitive damage claim. It needs to be recognized by
6 Venetian. It's a punitive damage claim that's going to survive up
7 until the time of trial. Now, whether it survives trial, I don't know,
8 because we haven't discovered it yet. But the case law makes it
9 very clear. Subsequent incident reports are discoverable and even
10 admissible when you have a punitive damage claim. So that
11 should be the end of the argument.

12 MR. ROYAL: That --

13 DISCOVERY COMMISSIONER: Okay. I'm going to -- my
14 recommendation is going to be from November 4th, 2011, to the
15 present, the reports. And because Judge Delaney had -- her ruling
16 has been that they be unredacted, so that's what it will be.

17 With regard to number 2, Electronic Computer Data
18 Information Related to Communications Pertaining to the Subject
19 Floor with Consultants Other Than Experts Disclosed, Pursuant
20 to 16.1. I think that that is too vague. I'm going to protect that as
21 written. If there's some kind of alternative -- so I'm going to grant
22 the motion as to that request.

23 If there's some alternative relief we can craft, I'm willing to
24 entertain that, Mr. Galliher. But I think -- I'm not even sure what
25 you're asking for there. Consulting experts, I'm not giving you that

1 information.

2 MR. GALLIHER: Understood. And I -- we don't want
3 consulting experts.

4 DISCOVERY COMMISSIONER: So what -- well, because
5 you said with consultants other than experts disclosed pursuant to
6 NRCP 16.1.

7 MR. GALLIHER: Here's what --

8 DISCOVERY COMMISSIONER: It sounds like you're
9 asking for consulting experts.

10 MR. GALLIHER: Yeah. Here's what we don't know. I
11 mean, we've got --

12 DISCOVERY COMMISSIONER: What do you want? And
13 let's see if we can craft it --

14 MR. GALLIHER: What I want --

15 DISCOVERY COMMISSIONER: Yes.

16 MR. GALLIHER: -- is this. The Venetian, we're talking
17 about what a great burden it is for the Venetian to produce this
18 information. They have a computerized system. My recall, it's
19 called Alliance.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. GALLIHER: It's been identified by a PMK in a
22 deposition of the Venetian. And according to the PMK, every single
23 bit of information regarding what we're looking for is contained on
24 that computer system. And it can be accessed with the push of a
25 button.

1 So if that is true, we'd be --

2 DISCOVERY COMMISSIONER: That seems a little
3 oversimplified in my experience. But in any event, I'm listening.

4 MR. GALLIHER: All right. Again, I'm not a computer whiz.
5 All I know is that it was -- according to this PMK person, it can be
6 accessed very quickly.

7 DISCOVERY COMMISSIONER: Okay.

8 MR. GALLIHER: And if that's the case, I'll be more than
9 happy with that information from the computer system. And again,
10 we're going to quarrel --

11 DISCOVERY COMMISSIONER: Regarding what? What
12 information in the computer system? Because you've asked for
13 electronic computer data information related to communications
14 pertaining to the subject flooring with consultants other than
15 experts disclosed pursuant to NRCP 16.1.

16 MR. GALLIHER: Well, first of all, I don't know -- when we
17 talk about consultants, I do not know whether the Venetian has had
18 someone examine their floors and say, Look, there's a problem with
19 these floors. I have recommendations to make concerning how we
20 can make them safer. I don't know whether that's happened,
21 because that information has not been disclosed. We've requested
22 it.

23 So when we talk about -- I'm not talking about consulting
24 experts; I'm talking about the Venetian hiring somebody that knows
25 floors to come in, look at the floors, and say, Okay, what can we do

1 improve these floors and make them safer for our customers and
2 guests? And if they haven't hired somebody to do that, very simple
3 response: We haven't hired anybody.

4 If they have, that's not consulting expert stuff; that is
5 simply business situation where they hired someone to look at their
6 floors, and I'm entitled to find out whether that person that was
7 hired came to the Venetian management and said, These marble
8 floors are a problem. I recommend either, A, they be taken out and
9 replaced with something safer, or, B, there are some substances out
10 there that we can use to coat the floors to make them safer.

11 I don't know whether any of that's happened, because
12 that's why we've made that request.

13 DISCOVERY COMMISSIONER: Okay. Mr. Royal?

14 MR. ROYAL: We already went through something like this
15 with Mr. Elliott. And the Court will recall that they made these kind
16 of allegations that Mr. Elliott was going to provide this kind of
17 testimony. The very kind of testimony. Then we got his deposition
18 and found out that he didn't -- that that wasn't the case at all, that
19 he thought the Venetian -- and this was in 2009, and he thought the
20 Venetian floors were fine, were -- in fact, they were exemplary.
21 That was his testimony in that particular deposition.

22 I don't know what it is, necessarily, that he's asking for
23 and I agree that it's vague. I'm not aware -- I can't -- I don't know
24 who to bring to put on and present.

25 DISCOVERY COMMISSIONER: I'm going to protect this as

1 written. I think it's overly vague. If you want to depose someone,
2 any -- I mean, if you want to craft something that says, like, any
3 person who has knowledge that an expert told you to do X, Y, or Z
4 to your floors, put -- it needs to be tailored to -- because as it's
5 written, I think it's overly broad and vague, and I'm going to protect
6 Number 2 as written.

7 MR. GALLIHER: We'll try to fine tune it.

8 DISCOVERY COMMISSIONER: Okay. So fine tune it, try
9 to work together on it.

10 Number 3, Information Related to the Testing, Replacing
11 Flooring that is Not Within the Grand Lux Rotunda Area Where the
12 Incident Occurred, all right. If testing occurred in the Grand Lux
13 area anytime between 2011 to the present, I'm going to allow it.
14 But not if it's in an area that's not at issue in this litigation.

15 MR. GALLIHER: So that would include all the remaining
16 marble floors at the Venetian?

17 DISCOVERY COMMISSIONER: Yes.

18 MR. GALLIHER: Okay.

19 DISCOVERY COMMISSIONER: I think any testing that was
20 done in the Grand Lux area for -- be prepared to testify regarding
21 any testing that was done in the Grand Lux area from 2011 -- I'm
22 sorry, till 2016.

23 MR. ROYAL: Okay. Testing done from November 4, 2011
24 to --

25 DISCOVERY COMMISSIONER: To the date of the incident

1 at issue.

2 MR. ROYAL: And -- okay. And I want to make sure I'm
3 clear on the record, it's the Grand Lux area?

4 DISCOVERY COMMISSIONER: Well, what are -- where --
5 the incident area, is that the --

6 MR. ROYAL: That's the -- it's called the Grand Lux
7 rotunda.

8 DISCOVERY COMMISSIONER: Okay. The Grand Lux
9 rotunda. Anything that was done in that area. Okay?

10 Information About Casino Flooring Changes on or
11 About 2008 Which Did Not -- okay. And Defendant's position is that
12 this did not impact the subject area. If there were not -- if there
13 were not changes made -- were there any changes made to the area
14 where the impact -- or where the incident occurred?

15 MR. GALLIHER: We don't know that yet, because we
16 haven't been able to depose the person to find out exactly where
17 the carpet was taken up and the marble was replaced.

18 MR. ROYAL: There's no testimony whatsoever that there
19 was ever any carpeting in the Grand Lux rotunda. It's always been
20 marble. The testimony he's referring to is testimony by someone
21 who worked in the casino area. This is not the casino area. This is
22 the Grand Lux rotunda.

23 DISCOVERY COMMISSIONER: Okay. I think that that's
24 better. I'm going to protect that. I think that a better way to get at
25 that discovery would be to ask questions regarding whether the

1 area at issue had ever been remodeled or had ever previously had
2 carpet in it. So I'm going to protect 4.

3 Number 5, there is no -- I'm going to allow -- because
4 discovery has already included reports -- so this is dealing with an
5 order limiting the scope of Plaintiffs' discovery to the Grand Lux
6 rotunda area where the subject incident occurred. I am going to
7 allow any prior or subsequent reports that deal with slips and falls
8 on the marble flooring.

9 MR. ROYAL: Within the Grand Lux area?

10 DISCOVERY COMMISSIONER: Within -- I'm going to let
11 Mr. Galliher speak to that.

12 MR. GALLIHER: Well, as I --

13 DISCOVERY COMMISSIONER: They've already been
14 produced. I mean, the documents have already been produced --

15 MR. GALLIHER: Yes.

16 DISCOVERY COMMISSIONER: -- to my understanding.

17 MR. GALLIHER: Some of them have. And we -- we're not
18 sure how many more exist. But, certainly, we have requested all of
19 the others, however many there may be. And the documents that
20 have been produced already include slips and falls on marble
21 flooring.

22 DISCOVERY COMMISSIONER: Okay.

23 MR. GALLIHER: And that's exactly what we're looking for.

24 DISCOVERY COMMISSIONER: And that's what the prior
25 ruling was in this case. So I am going to allow it to be any incident

1 reports -- limited to the five years prior, going backwards, any
2 incident -- prior incident reports five years prior to the present time
3 for slips and falls on marble flooring at the Venetian.

4 MR. ROYAL: Well, Your Honor, I want to make sure I'm
5 clear. I thought your initial order was that it was limited to the
6 Grand Lux area. And this -- what you just said is all encompassing
7 of the entire property.

8 DISCOVERY COMMISSIONER: Okay. Yeah. To the
9 Grand -- I'm sorry, to the Grand Lux rotunda.

10 MR. GALLIHER: So you're not going to give us the reports
11 regarding all of the other marble flooring?

12 DISCOVERY COMMISSIONER: Just to the area, to this
13 Grand Lux marble flooring. I think that that's -- but you've
14 already -- my understanding is you've already were produced the
15 reports --

16 MR. ROYAL: We --

17 DISCOVERY COMMISSIONER: -- for all the marble
18 flooring.

19 MR. GALLIHER: They have. Well --

20 MR. ROYAL: Well --

21 MR. GALLIHER: -- we don't know what they produced, but
22 they produced floor falls --

23 DISCOVERY COMMISSIONER: Well, that was --

24 MR. GALLIHER: -- in other areas of the hotel on marble
25 flooring.

1 MR. ROYAL: Okay. Your Honor, they're asking for --
2 again, they claim to have 106 -- 90 -- 196 prior incident reports over
3 a five-year period for just the Grand Lux. Okay. So we're saying
4 okay, that's fine. We'll go through and we'll find whatever we can,
5 going back five years for the Grand Lux area.

6 The fact is that when we initially -- when we initially did
7 this, we limited it to the casino level. And -- but, Your Honor,
8 we've -- since then -- since then, Mr. Jennings has testified that his
9 testing outside the Grand Lux area was way different than what we
10 found in the Grand Lux area. And so we're just asking the Court to
11 limit it. To limit it to five years within the Grand Lux area, the
12 marble flooring there, and just --

13 DISCOVERY COMMISSIONER: So Jennings has already --
14 their expert has already said that the testing is different in the
15 Grand Lux area than the other areas of the marble flooring casinos?

16 MR. ROYAL: Than in other area of the marble floor, that's
17 correct.

18 MR. GALLIHER: Yeah. We're not in agreement with that.
19 And unless -- it's interesting how this continues to be discussed.
20 But Mr. Jennings made it very clear that he reviewed summaries of
21 reports. And it was his understanding that the summary reports
22 had to do with the Grand Lux area; they don't. He is now in the
23 possession of the reports that have been produced, so he actually
24 sees the actual reports, but he made it very clear. I reviewed his
25 summary.

1 DISCOVERY COMMISSIONER: All right.
2 MR. GALLIHER: And he's going to clarify that.
3 DISCOVERY COMMISSIONER: The original
4 recommendation was that -- the one that was objected to, and then
5 Judge Delaney changed it to be unredacted, didn't that include all
6 slips and falls on all marble flooring on the casino level?
7 MR. GALLIHER: It did.
8 MR. ROYAL: No, it did not, Your Honor.
9 MR. GALLIHER: Oh, it did too.
10 MR. ROYAL: Your Honor, I'd have to -- you know, I'd --
11 DISCOVERY COMMISSIONER: All right. I'm going to pull
12 it up. Just a second. Because I'm not reversing what we've already
13 decided.
14 MR. GALLIHER: Well, we wanted the reports -- we wanted
15 the unredacted reports that were produced to us redacted, and
16 those included falls on the casino floor.
17 DISCOVERY COMMISSIONER: Because I'm not changing
18 from -- we're not rehashing what's already been decided in this
19 case.
20 MR. ROYAL: Well, Your Honor, I'm not asking you to do
21 that. Because what he's asking for now is in addition to what we
22 previously produced. And we previously produced three years'
23 worth of documents to counsel. They were redacted.
24 DISCOVERY COMMISSIONER: Which now need to be
25 unredacted --

1 MR. ROYAL: That's correct.

2 DISCOVERY COMMISSIONER: -- pursuant to what Judge
3 Delaney has ordered.

4 MR. ROYAL: That's correct. But now he's asking for
5 something in addition. He's asking for another two years' of
6 documents and we're asking the Court to limit that. That's a new
7 ruling that has not been ruled on by this -- by the discovery
8 commissioner or considered by the district court. So we're asking
9 that -- and now, Your Honor, you're also ordering that we produce
10 not just two years before, but then everything up to the present.
11 And so that's new.

12 And so we're asking you to limit it to the Grand Lux area.
13 And that would not be in any way -- it shouldn't have any impact on
14 what you ordered previously as it relates to that three-year period.

15 MR. GALLIHER: And, of course, we respectfully disagree,
16 because it should be -- we should have the order include all the
17 marble flooring at the ground level at the Venetian, which is what
18 was produced in the first place by the defense.

19 MR. ROYAL: And, by the way, they've never requested
20 that. They've never had that specific request.

21 MR. GALLIHER: Actually, we have.

22 MR. ROYAL: We provided that --

23 MR. GALLIHER: Many times.

24 MR. ROYAL: -- as a courtesy. What they asked for was
25 everything within the property.

1 DISCOVERY COMMISSIONER: Okay. All right. I'm going
2 to limit it to the casino floor. That's -- the Grand Lux is on the
3 casino floor, correct?

4 MR. GALLIHER: Yes.

5 DISCOVERY COMMISSIONER: Okay. I'm going to limit it
6 to any slip-and-falls on the marble flooring on the casino level, five
7 years prior to the present, and pursuant to Judge Delaney's ruling,
8 unredacted. Okay.

9 MR. ROYAL: Just -- Your Honor, can I just ask for
10 clarification --

11 Can I?

12 MR. GALLIHER: You -- go ahead.

13 MR. ROYAL: Okay. Thank you.

14 For clarification, the subsequent incidents that are being
15 ordered that -- to be produced, is that based upon their punitive
16 damages claim or is it based upon the Court's determination that
17 it's --

18 DISCOVERY COMMISSIONER: The punitive damages
19 claim.

20 MR. ROYAL: Okay. All right.

21 DISCOVERY COMMISSIONER: Which is still pending. Is it
22 still active -- an active claim?

23 MR. GALLIHER: Yes. It survived two challenges from the
24 Venetian. The claim is still alive for sure.

25 MR. ROYAL: Okay. It's a punitive damages claim based

1 on a negligence action of a temporary transient condition. I just
2 want to make sure that's clear in front of the Court. This is not a
3 products case, this is not a permanent condition-type case, this is a
4 temporary transitory condition. So I just want to make sure that's
5 clear.

6 DISCOVERY COMMISSIONER: Well, I think it's unclear.
7 Because you're saying that the slip-and-fall was on the flooring,
8 you're saying with no water, they're saying there is water. I mean,
9 you've --

10 MR. ROYAL: But it's -- but, Your Honor, their complaint,
11 the complaint does not even make the allegation this is a
12 permanent condition. It is a slip-and-fall. It is a foreign substance
13 on the floor. The fact -- again, we dispute facts --

14 DISCOVERY COMMISSIONER: Which you dispute that
15 there was. So you're saying she slipped and fell on the perfectly
16 dry floor, is that you're saying.

17 MR. ROYAL: I'm saying she slipped and fell for some
18 reason other than, you know, I don't know why she slipped and fell.
19 But --

20 DISCOVERY COMMISSIONER: Well, your affidavit said
21 there was no foreign substance on the floor.

22 MR. ROYAL: Well, that's my opinion. But their experts
23 have both testified that there was a foreign substance on the floor,
24 Your Honor, both of them. And, in fact, their testimony has been --
25 Dr. Baker and Mr. Jennings both said there absolutely was

1 something on the floor. There had to be something on the floor.
2 That's their position.

3 And so for counsel -- I just want to make sure it's very
4 clear to the Court that this is an incident based upon their allegation
5 that it's a foreign substance that caused her to slip and fall. She
6 walked through that area hundreds of --

7 DISCOVERY COMMISSIONER: Well, I think it's your
8 affidavit that's conflated the issue. Because you're saying there
9 absolutely wasn't a foreign substance on the floor, which makes
10 that, then you're saying she slipped and fell on the way it is all the
11 time.

12 MR. ROYAL: I -- what I've said, Your Honor, it's -- there is
13 a disagreement, there's a dispute in the facts. They've got an
14 eyewitness. The first person who was there on the scene who said
15 there was a big puddle of water. That's his testimony. That's
16 Mr. Schulman's testimony. So we can't just pretend that that
17 doesn't exist because we dispute the facts.

18 And so this is a case based upon a foreign substance. I
19 just want to make it very clear that that is their claim, that's what
20 their experts say, that's what their star witness says, that's what the
21 plaintiff says. The fact that we dispute it doesn't transform it into a
22 permanent condition or nor should it entitle them to subsequent
23 incident reports.

24 I just want to make that clear, that's all.

25 DISCOVERY COMMISSIONER: Okay. Mr. Galliher?

1 MR. GALLIHER: Well, what's he's doing is misleading.
2 Because, the bottom line is that -- you saw Commissioner Bulla's
3 prior ruling against the Venetian, and she recognized, correctly, this
4 is a continuing hazard. This is not a transitory condition; that's
5 Mr. Royal's spin on it. The bottom line -- and --

6 DISCOVERY COMMISSIONER: Well, he's saying it's not a
7 transient condition --

8 MR. GALLIHER: Well, but -- well, he is in his affidavit --

9 DISCOVERY COMMISSIONER: -- because there was
10 nothing there.

11 MR. GALLIHER: -- but --

12 DISCOVERY COMMISSIONER: You're the one who's
13 saying it is a transient condition.

14 MR. GALLIHER: No, no.

15 DISCOVERY COMMISSIONER: It's a little confusing.
16 Usually, the defendant --

17 MR. GALLIHER: That's not what I'm saying. I'm saying
18 it's not a transient condition. It's a continuous hazard.

19 DISCOVERY COMMISSIONER: But you're saying there
20 was water present, which is a transient condition.

21 MR. GALLIHER: But he's -- well, it's not a transient
22 condition if it's on an inherently dangerous floor. That's entirely
23 different, as Commissioner Bulla recognized. That's not the same
24 thing. And, by the way, Judge Delaney --

25 DISCOVERY COMMISSIONER: Well, I disagree.

1 MR. GALLIHER: -- recognized it, as well.
2 DISCOVERY COMMISSIONER: I disagree.
3 MR. GALLIHER: Well --
4 DISCOVERY COMMISSIONER: In my mind, if there's
5 water present, it's a transient condition. If someone slips and falls
6 on a floor that you're saying is always dangerous, whether it's dry,
7 wet -- when it's dry, then that would be a different conversation
8 we're having.
9 MR. GALLIHER: But we're not saying that, and we haven't
10 said that. That's what Mr. Royal just said in his affidavit.
11 DISCOVERY COMMISSIONER: Mr. Royal's saying it.
12 MR. GALLIHER: I know.
13 DISCOVERY COMMISSIONER: Which is making this --
14 that's what's conflating the whole issue.
15 MR. GALLIHER: It -- well, that much I understand. Bottom
16 line is that he's also presented his share of Venetian employees
17 who have testified that the floor was dry. So, all right, so we have a
18 contested issue. It's a jury argument. That's what it is. It's
19 something we present at trial. But it should not affect our ability to
20 discover our case. And that's what we're doing at this juncture,
21 we're trying to discover the case, particularly our punitive damage
22 claim, and we've cited cases all over the place in our motion
23 practice that supports what we're doing here.
24 DISCOVERY COMMISSIONER: Okay. Mr. Royal?
25 MR. ROYAL: The plaintiff says it's -- it was due to a

1 foreign substance in the complaint. Even in the amended
2 complaint it says that she slipped and fell due to a foreign
3 substance. She testified she slipped and fell due to a foreign
4 substance.

5 Other witnesses at the scene, Mr. Schulman, testified he
6 saw -- he is the one person who did see it, and that's his testimony.
7 And so, you know, I have a right to dispute the facts, Your Honor,
8 but their own experts say there was water on the floor. And that's
9 what caused the fall.

10 They didn't say -- they haven't testified that this is a
11 dangerous floor that caused her to fall because it was dry; they say
12 she slipped and fell because it was wet.

13 Mr. Jennings actually testified it's a safe floor when it's
14 dry. He tested it that way. It doesn't become dangerous, in his
15 opinion, until it becomes wet. That is the --

16 DISCOVERY COMMISSIONER: Okay.

17 MR. ROYAL: And therefore, it is a temporary transitory
18 condition. That's the issue.

19 DISCOVERY COMMISSIONER: But the punitive damage
20 claims --

21 MR. GALLIHER: I'm not going to bounce up and down.

22 DISCOVERY COMMISSIONER: The punitive damage --
23 you guys can stay seated -- the punitive damage claim is still at
24 issue. And because of the punitive damage claim, I'm going to
25 allow the subsequent reports.

1 MR. ROYAL: Okay. Thank you.

2 DISCOVERY COMMISSIONER: All right. You're
3 requesting protection -- no, you're moving for an order, Defendants,
4 directing Plaintiff to produce all information of prior incidents
5 provided to Tom Jennings. Hasn't he already provided the
6 e-mailed spreadsheets -- the e-mailed spreadsheet that he
7 reviewed?

8 MR. ROYAL: The e-mails -- what I received was not what
9 Mr. Jennings described. That's all. That's not what he described.

10 DISCOVERY COMMISSIONER: Okay.

11 MR. GALLIHER: I don't agree with that.

12 MR. ROYAL: Well, you weren't at the deposition --

13 DISCOVERY COMMISSIONER: Okay. Then I'm -- Tom
14 Jennings is directed to produce all information of prior incidents
15 that were provided to him and he reviewed prior to issuing his
16 opinions.

17 MR. GALLIHER: And we have no problem with that.

18 DISCOVERY COMMISSIONER: Okay. Defendants are
19 moving for an order that Plaintiff provide copies of all prior
20 incidents reports in her possession not produced to Defendants.
21 Counsel?

22 MR. ROYAL: They've got this -- they've got these 196
23 reports, they produced those to the expert --

24 DISCOVERY COMMISSIONER: Do you have 196 reports,
25 Mr. --

1 MR. GALLIHER: No, actually, we don't.
2 DISCOVERY COMMISSIONER: -- Galliher?
3 MR. GALLIHER: We have quite a few reports we've
4 collected in the case from other counsel, as well. We don't have all
5 of those 196, because I understand from Mr. Bochanis's office that
6 he may not have been able to give those to us. So we don't have
7 all of them.
8 However, these are the Venetian's reports.
9 DISCOVERY COMMISSIONER: Okay.
10 MR. GALLIHER: So are they asking us to --
11 DISCOVERY COMMISSIONER: But if you're using them
12 for impeachment purposes, I mean, you have them. If you have
13 them, produce them to Defendants.
14 MR. GALLIHER: We'll be happy to do that.
15 DISCOVERY COMMISSIONER: Okay.
16 MR. GALLIHER: But again, that was not the -- from our
17 standpoint, Commissioner, that was not a problem. We can
18 produce what we have.
19 DISCOVERY COMMISSIONER: All right.
20 MR. GALLIHER: But we pointed out that Venetian,
21 basically, is asking us to produce the reports that they produced in
22 other litigation.
23 DISCOVERY COMMISSIONER: Well, any reports, any
24 prior incident reports in Defendant -- I'm sorry, in Plaintiffs'
25 possession must be produced to Defendants.

1 And Number 8, Defendants are -- that's on my list,
2 anyway. I don't know if it's Number 8 on yours. My -- I have
3 written down, For Leave to Retake Mr. Jennings' Deposition for One
4 Hour, With Plaintiff Bearing All Costs. That's quite an ask.

5 Mr. Royal?

6 MR. ROYAL: I only want that because he didn't have
7 that -- any of that information present. I wasn't able to
8 cross-examine him on these prior incidents.

9 DISCOVERY COMMISSIONER: Okay.

10 MR. ROYAL: Which is a big deal. I mean, he claims they
11 were all there in the Grand Lux area, 196. And I ask him -- I ask him,
12 you know, How did you receive them? What did they look like? I
13 would just like to be able to finish -- to complete my examination of
14 Mr. Jennings, which I could have done at the time had it been
15 produced.

16 MR. GALLIHER: And I have no problem with the
17 deposition. But I do have a problem with having to pay for the
18 deposition, because we didn't anything wrong.

19 DISCOVERY COMMISSIONER: Okay. I --

20 MR. GALLIHER: And of the 30(d)(2), they have not met the
21 standard.

22 DISCOVERY COMMISSIONER: I am going to allow the
23 deposition to continue. I am not going to require Plaintiffs to pay
24 for it, because if you had been able to continue, you would have
25 had to pay for the continued time. So there's really no prejudice to

1 the defendant for having you pay for the deposition to go forward.

2 Have we addressed everything now in your Motion for
3 Protective Order and Motion to Compel?

4 MR. ROYAL: Well, we have -- and I may have missed this.
5 The Topics 6 through 18 all relate to the computer data.

6 DISCOVERY COMMISSIONER: Okay. What day was that
7 filed? I have to pull it up on here. So which date was your motion
8 filed? This -- let's see.

9 MR. ROYAL: It was filed August 5th, 2019.

10 DISCOVERY COMMISSIONER: Let me just pull it up so I
11 can look at the topics. Okay. And what page is that on?

12 [Pause in proceedings.]

13 MR. ROYAL: Excuse me.

14 DISCOVERY COMMISSIONER: Or -- it's an exhibit?
15 Page 22 of the motion?

16 [Pause in proceedings.]

17 DISCOVERY COMMISSIONER: Okay. I see it. I'm here
18 now. 6 through 18.

19 MR. GALLIHER: Is that where we are, page 22?

20 DISCOVERY COMMISSIONER: All right. So --

21 MR. ROYAL: I'm there. I'm sorry.

22 DISCOVERY COMMISSIONER: The identity -- okay.

23 Page -- I'm sorry, page 22:

24 The identity of all employees who were responsible for
25 managing and maintaining Venetian's technology

1 infrastructure.

2 I think that's overly broad. The technology infrastructure
3 at the Venetian has far more components, I'm certain, than the
4 communications area of the -- like, employee communications.
5 What is it you're actually looking for? Because their technology
6 includes all of their security, all of their financial stuff, like, this
7 needs to be tailored.

8 So Topic Number 6 --

9 MR. GALLIHER: Might I suggest this --

10 DISCOVERY COMMISSIONER: Yes.

11 MR. GALLIHER: -- Commissioner, maybe to shortcut
12 things with -- what we're really interested in is the information
13 contained on the computerized Alliance system that the Venetian
14 maintains. All of this -- of the other topics here pertain to us trying
15 to verify that information. But I'm more than happy with simply an
16 order that they produce the information on their Alliance system,
17 by -- which, by the way, relates strictly to fall injury events or injury
18 events.

19 DISCOVERY COMMISSIONER: So is the Alliance system
20 their claims log system, for lack of a better word? Like how they --

21 MR. GALLIHER: That's --

22 DISCOVERY COMMISSIONER: -- how they document
23 injury incident claims in the casinos?

24 MR. GALLIHER: That's my understanding. And it contains
25 relevant information concerning those falls. It may even contain

1 copies of the reports.

2 DISCOVERY COMMISSIONER: Okay. So why don't we
3 just tailor it to be able to question the 30(b)(6) witness who has
4 knowledge regarding the documenting of injuries and claims that
5 occur in the Venetian casino property.

6 MR. GALLIHER: I'm fine with that.

7 DISCOVERY COMMISSIONER: And how those are
8 electronically stored and can be searched and obtained. Is that
9 what you're looking for?

10 MR. GALLIHER: That's what I'm looking for.

11 DISCOVERY COMMISSIONER: Okay. Does that take care
12 of all of these different -- 6 through 18, if that's the topic?

13 MR. GALLIHER: It does. It's actually a better idea than we
14 had.

15 DISCOVERY COMMISSIONER: Well, I'm here to help.

16 MR. ROYAL: Yeah, as long as we're going to --

17 DISCOVERY COMMISSIONER: If we're limiting it --

18 MR. ROYAL: Are we going to limit it --

19 DISCOVERY COMMISSIONER: We're limiting it to the
20 person -- the 30(b)(6) witness who has knowledge of how the claims
21 are reported, claims and injuries in the casino, the Venetian casino
22 property are reported, documented, stored electronically, how they
23 can be retrieved and identified. Does that cover it?

24 MR. GALLIHER: Yes. And hopefully there'll be a
25 transcript, since my note-taking isn't so good.

1 MR. ROYAL: Your Honor --

2 DISCOVERY COMMISSIONER: And that will replace
3 Topics 6 through 18.

4 MR. ROYAL: Right.

5 MR. GALLIHER: We're fine with that.

6 MR. ROYAL: Okay. And that works. Do we have a
7 specified period of time?

8 DISCOVERY COMMISSIONER: The specified period of
9 time would be five years prior to the incident to the present. Okay.

10 Does that cover everything then?

11 MR. GALLIHER: I think it does.

12 DISCOVERY COMMISSIONER: All right. Now we just
13 have one more motion, right? Or are we -- is this --

14 MR. GALLIHER: I think it --

15 DISCOVERY COMMISSIONER: We covered everything in
16 your --

17 MR. GALLIHER: I think it covered our Motion to Compel,
18 as well.

19 DISCOVERY COMMISSIONER: -- Motion to Compel?

20 MR. GALLIHER: Sure. I think it covered that as well.

21 DISCOVERY COMMISSIONER: Okay. Because -- pursuant
22 to -- this was the Motion to Compel Testimony and Documents,
23 Plaintiffs' Motion to Compel. So just so we're clear on Defendants'
24 Motion for Protective Order is granted in part, denied in part as
25 stated.

1 And with regard to Plaintiffs' Motion to Compel Testimony
2 and Documents, it's granted in part, denied in part. The judge has
3 already -- the three main issues in that motion were the prior
4 unredacted incident reports, which Judge Delaney has already
5 determined, so those will be -- will be allowed.

6 The 30(b)(6) we've handled, and the subsequent incident
7 reports we've handled. So that should take care of all of the Motion
8 to Compel.

9 MR. GALLIHER: Yes. The only other thing I'd ask is can
10 we still have, like, a two-week deadline to produce the unredacted
11 reports?

12 DISCOVERY COMMISSIONER: Well, I'm going to provide
13 alternative relief pursuant to EDCR 2.34(e) to Mr. Royal, because
14 he's waiting from a final -- for a final order from Judge Delaney
15 from yesterday, I believe. And so I'm going to provide him relief
16 that those do not need to be produced until it has become a final
17 order. That may be after a writ, since he intends to -- he's already
18 articulated that he intends to take it up.

19 But pursuant to 2.34, he does not need to produce it until
20 that has become a final order.

21 MR. GALLIHER: So can we have a date, then, after the
22 order is signed?

23 DISCOVERY COMMISSIONER: Two weeks after the order
24 is signed.

25 MR. GALLIHER: Okay.

1 DISCOVERY COMMISSIONER: And the writ would stay
2 that period of time.

3 MR. ROYAL: Okay. Now, this is my last clarification, I
4 want to make sure.

5 DISCOVERY COMMISSIONER: Okay.

6 MR. ROYAL: So it's five years to the present, casino level,
7 marble floors, and not limited to the Grand Lux.

8 DISCOVERY COMMISSIONER: Yes.

9 MR. ROYAL: Okay. And --

10 MR. GALLIHER: Unredacted.

11 MR. ROYAL: Right. Unredacted.

12 DISCOVERY COMMISSIONER: Unredacted.

13 MR. ROYAL: And the -- and we're going -- the subsequent
14 incidents are because even if this is a transitory -- temporary
15 transitory condition, he's got a punitive damage claim, and
16 therefore, those are to be produced.

17 DISCOVERY COMMISSIONER: The transitory, I would not
18 allow them, but because of the punitive allegations that have not --
19 that have survived now two Motions to Dismiss, I'm going to allow.

20 MR. ROYAL: I understand. Okay.

21 And to the -- is this an ongoing duty? Do we have to -- I
22 mean, when -- it says to the present, is it as of today? Is this going
23 to go on through trial? Do I have to keep supplementing this
24 response?

25 DISCOVERY COMMISSIONER: I think -- I would say

1 through today is probably -- or through the date of the production is
2 probably sufficient.

3 MR. GALLIHER: And I'll -- I'm okay with through the date
4 of production.

5 DISCOVERY COMMISSIONER: All right.

6 MR. ROYAL: Thank you.

7 MR. GALLIHER: Thank you.

8 DISCOVERY COMMISSIONER: Thank you. Have a great
9 day, both of you.

10 MR. ROYAL: So Mr. Galliher will prepare or -- did I -- I'm
11 sorry, I totally missed that. Who's --

12 DISCOVERY COMMISSIONER: You know, I didn't say.
13 You know, since his is really all part of yours, I'm going to say -- I'm
14 going to ask you, Mr. Royal, to prepare the report and
15 recommendation.

16 MR. ROYAL: Okay. Thank you.

17 ///

18 ///

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1 DISCOVERY COMMISSIONER: And please have that
2 submitted to Mr. Galliher for his review as to form and content and
3 have it submitted to me within 14 days.

4 MR. GALLIHER: Thank you.

5 DISCOVERY COMMISSIONER: I am -- thank you.

6 [Proceeding concluded at 11:18 a.m.]

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18 ATTEST: I do hereby certify that I have truly and correctly
19 transcribed the audio/video proceedings in the above-entitled case to
20 the best of my ability.

21 

22 Shawna Ortega, CET*562
23
24
25

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

v.

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. General Reply to Sekera’s Answering Brief.....	1
II. Response to Sekera’s Given Procedural History	5
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	9
IV. Nevada Favors the Protection of Private Information of Guests Identified in Other Incident Reports under NRCP 26(c).....	11
V. Sekera’s References to Irrelevant and Misleading “Facts” Should be Wholly Disregarded	23
A. Sekera’s references to other pending Venetian matters is inappropriate	23
B. Sekera’s reference to Gary Shulman's testimony is inappropriate	24
C. The District Court’s granting of leave to amend under NRCP 15 to add a punitive damages claim is irrelevant.....	27
VI. CONCLUSION.....	28

TABLE OF AUTHORITIES

Cases

<i>A. Farber & Partners, Inc. v. Garber</i> , 234 F.R.D.186 (C.D. Cal. 2006).....	15
<i>Artis v. Deere & Co.</i> , 276 F.R.D. 348 (N.D. Cal. 2011).....	15
<i>Bible v. Rio Props., Inc.</i> , 246 F.R.D. 614 (C.D. Cal. 2007).....	13, 14
<i>Brignola v. Home Props., L.P.</i> , 2013 U.S. Dist. LEXIS 60282 (E.D. Pa. April 25, 2013).....	18
<i>Busse v. Motorola, Inc.</i> , 351 Ill. App. 3d 67, 813 N.E.2d 1013 (2004).....	18
<i>Caballero v. Bodega Latina Corp.</i> , 2017 U.S. Dist. LEXIS 116869 (D. Nev. July 25, 2017)	16
<i>Davis v. Leal</i> , 43 F. Supp. 2d 1102 (E.D. Cal. 1999)	14
<i>Desert Valley Painting & Drywall, Inc. v. United States</i> , 2012 U.S. Dist. LEXIS 145771 (D.Nev. Oct. 9, 2012).....	10
<i>Eldorado Club, Inv. v. Graff</i> , 78 Nev. 507, 377 P.2d 174 (Nev. 1962)	12, 16
<i>Fosbre v. Las Vegas Sands Corp.</i> , 2016 U.S. Dist. LEXIS 1073 (D.Nev. Jan. 5, 2016).....	10
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<i>Heller v. Norcal Mut. Ins. Co.</i> , 8 Cal. 4th 30 (1994), cert. denied, 513 U.S. 1059, 115 S. Ct. 669, 130 L. Ed. 2d 602 (1994).....	14
<i>Henderson v. JPMorgan Chase Bank</i> , No. CV113428PSGPLAX, 2012 WL 12888829 (C.D. Cal. July 31, 2012). 19, 20	

<i>In re Bard IVC Filters Prods. Liab. Litig.</i> , 317 F.R.D. 562 (D.Ariz. 2016).....	9, 10
<i>Izzo v. Wal-Mart Stores, Inc.</i> , 2016 U.S. Dist. LEXIS 12210 (D. Nev. Feb. 2, 2016).....	13, 14
<i>Izzo v. Wal-Mart Stores, Inc.</i> , 2016 U.S. Dist. LEXIS 17701 (D. Nev. Feb. 11, 2016).....	10
<i>Keel v. Quality Medical System, Inc.</i> , 515 So.2d 337 (Fla. Dist. Ct. App. 1987)	18
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<i>Lologo v. Wal-Mart Stores, Inc.</i> , U.S. Dist. LEXIS 100559 (D.Nev July 29, 2016)	12
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<i>McArdle v. AT&T Mobility LLC</i> , 2010 U.S. Dist. LEXIS 47099 (N.D. Cal. April 16, 2010).....	20
<i>Mount Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly</i> , 2013 U.S. Dist. LEXIS 88239 (D.C. N.J. June 24, 2013).....	19
<i>Pioneer Elecs. v. Superior Court</i> , 40 Cal. 4th 360 (2007)	14, 20
<i>Puerto v. Superior Court</i> , 158 Ca. App. 4 th 1242 (2008)	21
<i>RKF Retail Holdings, LLC v. Tropicana Las Vegas, Inc.</i> , 2017 U.S. Dist. LEXIS 104850 (D. Nev. July 6, 2017)	9
<i>Rowland v. Paris Las Vegas</i> , 2015 U.S. Dist. LEXIS 105513 (S.D. Cal. Aug 11, 2015).....	14, 15

<i>Schlatter v. Eighth Judicial Dist. Court In and For Clark County</i> , 93 Nev. 189, 561 P.2d 1342 (1977).....	12
<i>Shaw v. Experian Info. Solutions, Inc.</i> , 306 F.R.D. 293 (SD. Cal. March 18, 2015).....	15, 16
<i>Stallworth v. Brollini</i> , 288 F.R.D. 439 (N.D. Cal.2012).....	15
<i>Tierno v. Rite Aid Corp.</i> , 2008 U.S. Dist. LEXIS 58748 (N.D. Cal. July 31, 2008)	20
<i>Wauchop v. Domino’s Pizza, Inc.</i> , 138 F.R.D. 539 (N.D. Ind. 1991).....	17
<i>Wiegele v. Fedex Ground Package Sys.</i> , 2007 U.S. Dist. LEXIS 9444 (S.D. Cal. Feb. 8, 2007).....	15
<i>Zuniga v. Western Apartments</i> , 2014 U.S.Dist. LEXIS 83135 (C.D. Cal. Mar. 25, 2014).....	15
Statutes	
NRS § 603A	22
Rules	
FRCP 26(b)(1)	13, 14
NRCP 1.....	2, 13, 17, 21
NRCP 15.....	28
NRCP 16.1.....	26
NRCP 26(b)(1)	2, 3, 9, 10, 12, 14, 16, 19, 21, 28
NRCP 26(c)	5, 9, 28
Other Authorities	
NV SB 220	22

MEMORANDUM OF POINTS AND AUTHORITIES

I. General Reply to Sekera's Answering Brief

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Response to Sekera’s Given Procedural History

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

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

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

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

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

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

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

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

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

MR. GALLIHER: Yeah. I know.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

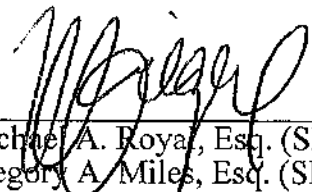
VI. CONCLUSION

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

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

DATED this 28 day of October, 2019.

ROYAL & MILES LLP

By: 
Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
1522 W. Warm Springs Rd.
Henderson, NV 89014
(702) 471-6777
Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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

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

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

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

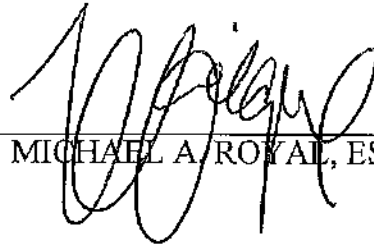
3. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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

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

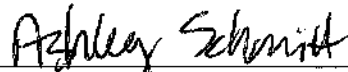
improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript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

Further affiant sayeth naught.

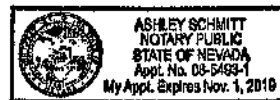


MICHAEL A. ROYAL, ESQ.

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



NOTARY PUBLIC in and for said
County and State



CERTIFICATE OF SERVICE

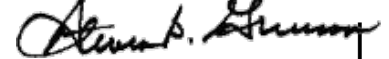
I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 28 day of October, 2019, I served true and correct copy of the foregoing PETITIONERS' REPLY BRIEF, by delivering the same via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

Keith E. Galliher, Jr., Esq.
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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 “H”



1 **OBJ**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

4 Gregory A. Miles, Esq.

5 Nevada Bar No. 4336

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12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

18 Plaintiff,

19 v.

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

27 Defendants.

Hearing Requested

28 **DEFENDANTS' OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND
RECOMMENDATIONS DATED AUGUST 9, 2019**

29 Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC
30 (hereinafter collectively "*Venetian*"), by and through their counsel of record, Michael A. Royal, Esq.,
31 of ROYAL & MILES LLP, hereby files DEFENDANTS' OBJECTION TO DISCOVERY
32 COMMISSIONER'S REPORT AND RECOMMENDATION DATED AUGUST 9, 2019.

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

1 This Objection is based upon the Points and Authorities below, the papers and pleadings filed
2 herein, and any oral argument allowed at the hearing on this matter.

3 DATED this 21 day of August, 2019.

4 **ROYAL & MILES LLP**

5
6 By 

7 Michael A. Royal, Esq.
8 Nevada Bar No. 4370
9 1522 W. Warm Springs Rd.
10 Henderson, NV 89014
11 Attorney for Defendants
12 *VENETIAN CASINO RESORT, LLC and*
13 *LAS VEGAS SANDS, LLC*

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I.**

16 **NATURE OF OBJECTION**

17 Defendants' objection relates solely to the issue of whether the communication between former
18 employee Gary Shulman and defense counsel related to the subject litigation during his employment
19 is protected by attorney/client privilege. Mr. Shulman was employed with Venetian as a Table Games
20 Supervisor for approximately eleven (11) years on November 4, 2016 when the subject incident
21 occurred.

22 Mr. Shulman responded to the incident, spoke with Plaintiff, contacted his immediate
23 supervisor, contacted other Venetian employees to respond to the area, and waited at the scene until
24 security arrived. On June 28, 2018, Mr. Shulman met with Venetian defense counsel at the Venetian
25 property during his regular work shift to discuss his recollection of events. There was some follow up
26 correspondence over the next few days, but no further communication between Mr. Shulman until
27 March 2019, when he was contacted by defense counsel about scheduling his deposition.
28 Unbeknownst initially to defense counsel, Mr. Shulman had been terminated on January 23, 2019. Mr.

1 Shulman therefore would not meet with defense counsel prior to his April 17, 2019 deposition. At the
2 April 17, 2019 deposition, Mr. Shulman revealed that he had met privately with Plaintiff's counsel
3 prior to the deposition and revealed his purported communications with defense counsel from the June
4 28, 2018 meeting. Defendants asserted privilege and instructed Mr. Shulman not to answer. Mr.
5 Shulman testified over Defendants' objection. A motion to strike Mr. Shulman as a witness was filed
6 with the Discovery Commissioner on May 17, 2019. During a hearing held on June 26, 2019, the
7 Discovery Commissioner held that the communication between Mr. Shulman and defense counsel was
8 not privileged because, in her view, Mr. Shulman was merely a percipient witness to an event which
9 did not involve his employment. Defendants disagree, and therefore file this objection with the District
10 Court.
11

12 II.

13 PERTINENT FACTS AND EVIDENCE

14 Mr. Shulman was working as a Table Games
15 Supervisor for Venetian on November 4, 2016. (See
16 Plaintiff's Opposition to Defendants' Motion to Strike,
17 Exhibit 1, *Transcript of Gary Shulman Deposition* at
18 5, ln 6-8.) Mr. Shulman was in the area of the Grand
19 Lux rotunda when Plaintiff slipped and fell. (See
20 Defendants' Motion to Strike Witness, Exhibit C at
21 12:37:00.) Mr. Shulman responded to Plaintiff in
22 order to assist her. (See Plaintiff's Opposition to
23 Defendants' Motion to Strike, Exhibit 1, *Shulman*
24 *deposition* at 8, ln 2-6.) Mr. Shulman went to alert
25 personnel from Venetian's Public Area Department
26
27
28



Mr. Shulman here at 12:37:01



Shulman at 12:37:51

1 (PAD) to respond. (*See id.* at 8, ln 11-12; 11, ln 7-17.)

2 Mr. Shulman also called Venetian Security Department
3 to advise of the incident and request assistance. (*See id.*
4 at 8, ln 12-14; 10, ln 24-25; 11, ln 1-6.) Mr. Shulman
5 also recalled contacting his manager, Chris Tonemah, to
6 advise her of the incident. (*See id.* at 11, ln 2-6.) Mr.



Shulman at 12:39:39

8 Shulman testified that it is part of his responsibility as a
9 Table Games Supervisor to contact Venetian PAD
10 personnel when he becomes aware of a spill related
11 incident. (*Id.* at 48, ln 15-16.) Mr. Shulman testified
12 that remained at the scene of Plaintiff's fall for
13 approximately ten (10) to fifteen (15) minutes. (*See id.* at



Shulman at 12:43:04

14 10, ln 21-23; 14, ln 10-12.) Mr. Shulman did not leave the scene until after both PAD and security had
15 arrived. (*See id.* at 14, ln 17-23.)

17 On June 28, 2018, defense counsel met with Mr. Shulman at his place of employment for
18 Venetian, during his work shift, to discuss his recollection of events. (*See Defendants' Motion to*
19 *Strike* at 7, ln 26-28; 8, ln 1-6.) Correspondence was sent to Mr. Shulman the following day with a
20 summary of understanding. (*See id.*) This meeting occurred approximately one (1) month prior to the
21 filing of the Joint Case Conference Report.

23 On or about March 15, 2019, defense counsel reached out to Mr. Shulman in response to a
24 request by Plaintiff's counsel to schedule his deposition. (*See id.* at 8, ln 7-14.) On March 25, 2019,
25 defense counsel learned that Mr. Shulman was no longer employed with Venetian. (*See id.* at 8, ln 15-
26 22.) Multiple efforts were made to meet with Mr. Shulman prior to his April 17, 2019 deposition,
27 without success. (*See id.* at 8, ln 23-28; 9, ln 1-3.) At the April 17, 2019 deposition of Mr. Shulman,
28

1 defense counsel learned for the first time that Mr. Shulman had met privately with Mr. Galliher and
2 told him of his alleged conversation with defense counsel on June 28, 2018. (*See id.* at 9, ln 4-17. *See*
3 *also* Plaintiff's Objection to Motion to Strike, Exhibit 1 at 21, ln 6-25; 22, ln 1-25; 23, ln 1-25; 24, ln
4 1.)

5
6 In her deposition of July 12, 2019, former Venetian Casino Pit Manger, Chris Tonemah,
7 testified that she supervised Gary Shulman for seventeen (17) years. (*See Objection* Exhibit A,
8 *Transcript of Chris Tonemah*, taken July 12, 2019, at 10-22; 4, ln 13-16.) Ms. Tonemah testified that
9 it was routine for her to receive calls from Venetian employees like Mr. Shulman when an incident
10 occurs. (*See id.* at 6, ln 13-24.) It was, in fact, Mr. Shulman's responsibility as a Table Games
11 Supervisor to contact her under the circumstances of November 4, 2016 involving the Plaintiff,
12 according to Ms. Tonemah:

13
14 Q. So as I understand you are telling me, if there's a fall, if there is a spill, it
15 would be the obligation of your underlings in the casino to notify you of that
16 event?

17 A. Uh-huh.

18 Q. Is that yes?

19 A. Yes.

20 Q. And then your obligation at that point in time is to notify whom?

21 A. I would notify surveillance.

22 Q. And after you notify surveillance, would you notify anyone else?

23 A. No . . .

24 (*See id.* at 7, ln 4-16. Emphasis added.)

25 Sang Han was a Venetian Assistant Director of
26 Housekeeping on November 4, 2016 when he happened to
27 come upon the incident. (*See* Defendants' Motion to
28 Strike Witness, Exhibit H, at 3, ln 14-25; 4, ln 1-2.) Mr.
Han testified that he happened upon the scene and stopped
to see what happened. (*Id.* at 8, ln 17-23.) Mr. Han was



Sang Han at 12:40:37

present at the scene for about three (3) minutes. (*See id.* at 6, ln 8-18.) During his May 6, 2019

1 deposition, Mr. Galliher conceded that Mr. Sang's communications with defense counsel were
2 privileged. (*See id.* at 5, ln 7-16.)

3 At the June 26, 2019 hearing, Mr. Galliher was asked by the Discovery Commissioner why he
4 considered Mr. Sang's communications privileged but not Mr. Shulman's communications. (*See*
5 *Objection Exhibit B, Transcript of Proceeding Before Discovery Commissioner (June 26, 2019)* at 15,
6 ln 21-25; 16, ln 1-9.) Mr. Galliher responded that Mr. Sang "*was the head of housekeeping. He was*
7 *the boss man of the department . . . that investigated the fall.*" (*See id.* at 16, ln 7-24.) However, Mr.
8 Han was neither the head of housekeeping nor did he in any way, shape or form investigate the fall.
9 Again, Mr. Han testified he was only at the scene by happenstance and stayed for about three (3)
10 minutes.
11

12 Contrary to Mr. Galliher's representation at the June 26, 2019 hearing, Mr. Han was literally
13 a bystander/percipient witness, who did nothing but observe, ask a few questions, offered assistance,
14 then departed the scene. (*See Defendants' Motion to Strike Witness Exhibit C (12:39:42 - 12:42:42);*
15 *Exhibit H at 6, ln 8-25; 7, ln 1-10; 8, ln 17-25; 9, ln 1-25; 10, ln 1-5; 11, ln 6-26; 13, ln 22-25; 14-17;*
16 *20, ln 1-25.*) Further, Mr. Sang testified as follows:
17

18 *BY MR. GALLIHER:*

19 *Q. Just a couple more. I think we established earlier that your job title as*
20 *assistant manager of housekeeping did not include any supervisory control*
21 *over the PAD employees; is that right?*

22 *A. As the assistant director of housekeeping, I do not on a daily basis have direct*
23 *control over PAD employees.*

24 *Q. So do you have any managerial control over them at any time?*

25 *A. The answer to the question would be no.*

26 (Defendants' Motion to Strike Witness, Exhibit H at 27, ln 22-25; 28, ln 1-7. Emphasis added.)

27 Further, there has never been any evidence that Mr. Sang did anything other than appear at the scene
28 for three (3) minutes, then depart without further involvement. He did not, as Mr. Galliher argued to
the Discovery Commissioner, perform an investigation of the incident.

At the June 26, 2019 hearing, the Discovery Commissioner made the following findings:

1 *DISCOVERY COMMISSIONER: I don't -- at this point, based on the case law before*
2 *me, where -- I don't think that the reason the Venetian was asking him to meet with you*
3 *was because of his corporate -- something that occurred in the course of his*
4 *employment, like his corporate duties. I believe it was something that he observed, and*
5 *it wasn't that he was the investigator. He was not the one who was responsible for*
6 *cleaning it up. He was not the person who was responsible for monitoring the area.*
7 *He happened to observe the fall or the events surrounding the fall and had knowledge*
8 *as to what happened at the time. It wasn't based on his corporate duties. It was just*
9 *based solely on his proximity to the event. And he wasn't testifying regarding his*
10 *corporate duties or binding the corporation on any of the corporate policies and*
11 *procedures. He was merely a witness as to the event, and so I don't believe, by nature*
12 *of that, the entirety of his testimony was privileged.*

13 (See Objection Exhibit B at 22, ln 6-20.)

14 In the Discovery Commissioner's Report and Recommendation, the Discovery Commissioner
15 wrote the following:

16 *It is determined that Mr. Shulman was merely a percipient witness to an event that*
17 *occurred while he was working at the Venetian in a matter that resulted in litigation*
18 *being filed against Venetian that did not involve Mr. Shulman's employment; therefore,*
19 *Mr. Shulman's communications with defense counsel are not privileged.*

20 (See Objection Exhibit C, *Discovery Commissioner's Report and Recommendation*, filed August 9,
21 2019, at 3, ln 23-25.)

22 Defendants contend that, contrary to the Discovery Commissioner's determination, Mr.
23 Shulman was much more than a percipient witness. Once he came upon the scene, Mr. Shulman was
24 obligated by his employment to contact his direct supervisor, Ms. Tonemah, alert PAD and security,
25 and to stay with Plaintiff at the scene until responders arrived and took over control of the scene.
26 Further, Defendants contend that Mr. Schulman was instructed by his superiors to meet with defense
27 counsel on June 28, 2019 in the course of his employment for the specific purpose of discussing his
28 role in the subject incident and recollection of events. In that capacity, given the totality of the
circumstances, Mr. Schulman's communication with defense counsel was privileged, and Plaintiff's
counsel should not have met privately with him prior to his April 17, 2019 deposition and elicited any

1 information related to Mr. Shulman's alleged communication with defense counsel, then have Mr.
2 Shulman repeat the same on the record.

3
4 **II.**

5 **DECLARATION OF MICHAEL A. ROYAL, ESQ. PURSUANT TO NRS 53.045**

6 STATE OF NEVADA)
7) ss.
8 COUNTY OF CLARK)

9 1. I am an attorney duly licensed to practice law in the State of Nevada and I am counsel
10 for Defendants in connection with the above-captioned matter.

11 2. I declare that the additional exhibits identified in this Objection are true and correct
12 copies of documents as purported herein.

Exhibit	Document
A	Transcript of Chris Tonemah Deposition, taken July 12, 2019
B	Transcript of Hearing Before the Discovery Commissioner, dated June 26, 2019, selected pages
C	Discovery Commissioner's Report and Recommendation, filed August 9, 2019
D	Plaintiff's Reply in Support of Her Motion For Leave to Amend the Complaint, filed May 15, 2019

17 3. I declare under penalty of perjury under the law of the State of Nevada that the
18 statements of fact as presented in this Objection are true and correct to the best of my knowledge.

19 Executed this 21 day of August, 2019.

20
21
22 
23 MICHAEL A. ROYAL, ESQ.

24 **IV.**

25 **DISCUSSION**

26 Pursuant to EDCR 2.34(f), a party is allowed to "file specific written objection to the
27 recommendations" of the Discovery Commissioner. Defendants have timely filed this objection and
28 therefore move this Honorable Court for review.

1 A. **The Discovery Commissioner Incorrectly Determined That Communication Between**
2 **Defense Counsel and Gary Shulman in the Course of His Employment Regarding the**
3 **Subject Litigation are Not Protected as Privileged**

4 It is well settled law that communications between an attorney and the client in the course of
5 a legal proceeding is privileged. That privilege extends to communications between legal counsel and
6 corporate employees related to legal matters. This is especially the case in matters of ongoing
7 litigation, and the privilege is not magically dissolved simply because an employee privy to privileged
8 communication is terminated. In such circumstances, the former employee may certainly testify about
9 facts in controversy; however, the employee is not free to reveal privileged communication.¹

10 While an attorney may claim a privilege on the client's behalf, only the client has the ability to
11 waive a privilege. (Manley v. State, 979 P.2d 703 (Nev. 1999). Corporate employees fall within the
12 definition of "representative" of the client. (See Premiere Digital Access, Inc. v. Cent. Tel. Co., 360
13 F. Supp. 2d 1168 (D. Nev. 2005) (holding that a forwarded e-mail from in-house counsel was protected
14 under Nevada law as a communication between a client's representative and a lawyer, and waiver can
15 only be made by the client); see also Las Vegas Sands Corp. v. Eighth Judicial Dist. Court of Nev., 331
16 P.3d 905 (Nev. 2014) (attorney-client privilege belongs solely to the corporation).)²

17 The Supreme Court of the United States has held that communications between counsel
18 representing a corporation in litigation and corporate employees are privileged. (See Upjohn Co. v.
19 United States, 449 U.S. 383.) There, the Court related the following on the attorney/client privilege:
20
21

22
23
24 ¹The general rule associated with attorney client privilege related to this matter are found in
25 NRS 49.075, NRS 49.095 and NRS 49.105.

26 ²In Las Vegas Sands Corp., *supra*, the Nevada Supreme Court held that former officers who
27 become adverse to the corporate entity in litigation were not allowed to access and use privileged
28 information. There, the court held to rule otherwise, "would have a perverse chilling effect on candid
communications between corporate managers and counsel." (See *id.* at 913, citing Whitehead v. Nev.
Comm'n on Judicial Discipline, 873 P.2d 946, 965 (Nev. 1994) (recognizing that the attorney-client
privilege's purpose "is to protect confidential communications between attorney and client".)

1 *Its purpose is to encourage full and frank communication between attorneys and*
2 *their clients and thereby promote broader public interests in the observance of law*
3 *and administration of justice. The privilege recognizes that sound legal advice or*
4 *advocacy serves public ends and that such advice or advocacy depends upon the*
5 *lawyer's being fully informed by the client. As we stated last Term in Trammel v.*
6 *United States, 445 U.S. 40, 51 (1980): "The lawyer-client privilege rests on the need*
7 *for the advocate and counselor to know all that relates to the client's reasons for*
8 *seeking representation if the professional mission is to be carried out." And in Fisher*
9 *v. United States, 425 U.S. 391, 403 (1976), we recognized the purpose of the privilege*
10 *to be "to encourage clients to make full disclosure to their attorneys." This rationale*
11 *for the privilege has long been recognized by the Court, see Hunt v. Blackburn, 128*
12 *U.S. 464, 470 (1888) (privilege "is founded upon the necessity, in the interest and*
13 *administration of justice, of the aid of persons having knowledge of the law and*
14 *skilled in its practice, which assistance can only be safely and readily availed of when*
15 *free from the consequences or the apprehension of disclosure"). Admittedly*
16 *complications in the application of the privilege arise when the client is a corporation,*
17 *which in theory is an artificial creature of the law, and not an individual; but this*
18 *Court has assumed that the privilege applies when the client is a corporation, United*
19 *States v. Louisville & Nashville R. Co., 236 U.S. 318, 336 (1915) . . .*

20 (*Id.* at 389-90, emphasis added.)

21 The Court in Upjohn held that the privilege applies to communications between corporate
22 counsel and a corporate employee where the communication concerns matters within the scope of the
23 employee's corporate duties and is undertaken for the purpose of enabling counsel to provide legal
24 advice to the corporation. (*See id.* at 394-95.) The same is true of a former employee of a corporation
25 who possesses information within the scope of his or her prior corporate duties that counsel needs in
26 order to advise the corporate client. (*See In re Coordinated Pretrial Proceedings*, 658 F.2d 1355, 1361
27 n.7 (9th Cir. 1981)). The key consideration in Upjohn is that the current or former employee of a
28 corporate client has information of the corporation that the corporation's counsel needs in order to
advise his or her client.

In Wardleigh v. Second Jud. Dist Ct., 891 P.2d 1180 (Nev. 1995), the Nevada Supreme Court
adopted United States Supreme Court's holding in Upjohn Co., *supra*, but rejected the "control group"
test which only applied the privilege to a select group of managerial corporate employees. (*See id.* at
891 P.2d at 1185-85, citations omitted.) Instead, the Wardleigh court focused on the nature of the

1 subject matter sought in discovery for purposes of applying the attorney-client privilege. (*Id.*) The
2 Wardleigh court held:

3 *The Court in Upjohn appropriately noted that only communications and not facts are*
4 *subject to the privilege. Thus, relevant facts known by a corporate employee of any*
5 *status in the corporation would be discoverable even if such facts were related to the*
6 *corporate attorney as part of the employee's communication with counsel. The*
7 *communication itself, however, would remain privileged. 449 U.S. at 395-96.*

8 (*See id.* at 1184. Emphasis added.)

9 Here, Mr. Shulman was directed by Venetian to meet with its defense counsel for the express
10 purpose of discussing the subject incident. Mr. Shulman was not just a percipient witness to the event,
11 but remained at the scene for approximately ten (10) minutes and did as he was required by contacting
12 various others to report the event, and to remain on scene until relief arrived. Further, Mr. Shulman
13 was not at liberty to meet with Mr. Galliher prior to the April 17, 2019 deposition and relay the
14 substance of his communications with defense counsel on and/or around June 28, 2018. The privilege
15 was not Mr. Shulman's to waive. (*See Las Vegas Sands Corp. v. Eighth Judicial Dist. Court of Nev.*,
16 331 P.3d 905 (Nev. 2014) (attorney-client privilege belongs solely to the corporation).)

17 The Ninth Circuit applies an eight-part test for the attorney client privilege:

18 *(1) Where legal advice of any kind is sought, (2) from a professional legal adviser in*
19 *his capacity as such, (3) the communications relating to that purpose, (4) made in*
20 *confidence, (5) by the client, (6) are at his instance permanently protected, (7) from*
21 *disclosure by himself or by the legal adviser, (8) unless the protection be waived.*

22 (United States v. Ruehle, 583 F.3d 600, 607 (9th Cir. 2005) (citation omitted).) Here, legal advice was
23 sought by Defendants who engaged their counsel to meet with Mr. Shulman regarding his recollection
24 of events and acts he took in the course and scope of his duty as a Table Games Supervisor on
25 November 4, 2016. Defendants argue that this communication was privileged, which privilege extends
26 to both the confidential disclosures made by a client to an attorney to obtain legal advice and the
27 attorney's advice in response to such disclosures. (United States v. Bauer, 132 F.3d 504, 507 (9th Cir.
28 1997).)

1 Where an employer requires an employee to meet with counsel in the course of employment
2 that involves litigation, the communication is privileged. In D.I. Chadbourne, Inc. v. Superior Court,
3 388 P.2d 700 (Cal. 1964), the California Supreme Court held:

4 *Where the employee's connection with the matter grows out of his employment to the*
5 *extent that his report or statement is required in the ordinary course of the*
6 *corporation's business, the employee is no longer an independent witness, and his*
7 *statement or report is that of the employer If, in the case of the employee last*
8 *mentioned, the employer requires (by standing rule or otherwise) that the employee*
9 *make a report, the privilege of that report is to be determined by the employer's*
10 *purpose in requiring the same; that is to say, if the employer directs the making of*
11 *the report for confidential transmittal to its attorney, the communication may be*
12 *privileged;*

13 (Id. at 709, emphasis added.)

14 Here, Mr. Shulman was more than just an independent witness on November 4, 2016. Indeed,
15 there were other independent witnesses depicted in the footage responding who, as mere percipient
16 witnesses, were never identified. (See Defendants' Motion to Strike Witness at 12:37:00.) However,
17 Mr. Shulman, as a Venetian Table Games Supervisor, went to the scene, called his supervisor, Ms.
18 Tonemah, contacted surveillance, contacted security, and went into the nearby restroom area to
19 summon PAD personnel to respond. (See Plaintiff's Opposition to Motion to Strike Witness, Exhibit
20 1 at 8, ln 2-14; 10, ln 24-25; 11, ln 1-17; 41, ln 16-23; 45, ln 12-19.) Mr. Shulman testified: "I
21 remember instructing a PAD person to come over [to the scene]." (See id. at 46, ln 3-6. Emphasis
22 added.) Mr. Shulman also spoke with Plaintiff repeatedly and waited at the scene for approximately
23 ten (10) minutes until security arrived and spoke with Plaintiff and did not leave until both PAD and
24 security arrived. (See id. at 10, ln 21-23; 14, ln 10-23; 40, ln 15-25; 41, ln 1-5; 42, ln 7-17.) In fact,
25 Mr. Shulman acted in accordance with his duties as a Venetian Table Games Supervisor by following
26 the above procedure. (See e.g., id. at 48, ln 11-25; see also Objection Exhibit A at 6, ln 13-25; 7 ln 1-
27 16.)
28

1 On June 28, 2018, defense counsel met with Mr. Shulman at his place of employment for
2 Venetian, during his work shift, to discuss his recollection of events and his involvement in the subject
3 incident. (See Plaintiff's Objection to Motion to Strike Witness, Exhibit 1 at 21, ln 11-23; 22, ln 1-5.)
4 This meeting occurred approximately one (1) month prior to the filing of the Joint Case Conference
5 Report.

6
7 Mr. Shulman was terminated on or about January 23, 2019. At his April 17, 2019 deposition,
8 Mr. Shulman, over Defendants' objection, related that he had met privately with Plaintiff's counsel
9 prior to the deposition and related details of his alleged conversation with defense counsel on June 28,
10 2018. (See *id.* at 21, ln 6-25; 22, ln 1-25; 23, ln 1-25; 24, ln 1.)

11 Defendants assert that the communications between its counsel and Mr. Shulman during his
12 employment were and remain privileged. He was not just a percipient witness to the event, but actually
13 took required action in the course and scope of his responsibilities as a Venetian Table Games
14 Supervisor which required him to contact others for the purpose of reporting the incident, directing
15 PAD to the scene, and remaining with Plaintiff until security arrived. Defendants further assert a
16 privilege based on the fact that Mr. Shulman was directed to meet with defense counsel by Defendants
17 in the course and scope of his employment, which June 28, 2018 meeting occurred on Venetian
18 property during Mr. Shulman's shift.

19
20 By contrast, the person Plaintiff's counsel claims to have a privilege, Han Sang, was a mere
21 percipient witness who came upon the scene, spoke with some co-workers and the Plaintiff, then left
22 without taking any further action. Mr. Sang did not investigate further, contrary to Mr. Galliher's
23 representation to the Discovery Commissioner at the June 26, 2019 hearing.

24
25 In Plaintiff's Opposition to Defendants' Motion to Strike Witness, she failed to refer to Nevada
26 case law. Instead, Plaintiff ignored Nevada law and looked to cases outside the jurisdiction. For
27 example, Plaintiff cited Samaritan Found v. Goodfarb, 862 P.2d 870, 880 (Ariz. 1993), where the
28

1 Arizona Supreme Court held that statements made by hospital staff were not subject to attorney/client
2 privilege. (See Plaintiff's Opposition at 5, ln 8-9.) However, Plaintiff failed to advise the Court that
3 the Goodfarb decision was overturned by the Arizona Legislature in 1994, which addressed these
4 circumstances as follows:

5
6 *A. In a civil action an attorney shall not, without the consent of his client,
7 be examined as to any communication made by the client to him, or his advice given
8 thereon in the course of professional employment. An attorney's paralegal, assistant,
9 secretary, stenographer or clerk shall not, without the consent of his employer, be
10 examined concerning any fact the knowledge of which was acquired in such capacity.*

11 *B. For purposes of subsection A, any communication is privileged
12 between an attorney for a corporation, governmental entity, partnership, business,
13 association or other similar entity or an employer and any employee, agent or member
14 of the entity or employer regarding acts or omissions of or information obtained from
15 the employee, agent or member if the communication is either:*

16 *1. For the purpose of providing legal advice to the entity or employer or
17 to the employee, agent or member.*

18 *2. For the purpose of obtaining information in order to provide legal
19 advice to the entity or employer or to the employee, agent or member.*

20 *C. The privilege defined in this section shall not be construed to allow the
21 employee to be relieved of a duty to disclose the facts solely because they have been
22 communicated to an attorney.*

23 (See Salvation Army v. Bryson, 273 P.3d 656, 661-62 (Ariz 2012) (emphasis added) (holding that a
24 district judge abused his discretion when ordering a nonprofit corporation to disclose summaries of
25 interviews of corporation employees prepared by an investigator at the direction of legal counsel for
26 the corporation).

27 The case of Nat'l Tank Co. v. Brotherton, 851 S.W.2d 193, 197 (Tex. 1993), also cited by
28 Plaintiff in the Opposition does not apply to the present circumstances. There, a non-lawyer took
statements from four employee witnesses then later turned them over to an attorney in pre-litigation.
The issue there surrounded the company's usual practice of obtaining statements as opposed to
specifically collecting them in anticipation of litigation. The totality of the circumstances revealed the
former; hence, the court found that no privilege attached. That reasoning is not remotely applicable
here.

1 Plaintiff also cited the Court to Keefe v. Bernard, 774 N.W.2d 663 (Iowa 2009) in her
2 Opposition, representing that it stands for the following proposition: "*interview between corporate*
3 *counsel and corporate employee about events and actions witnessed not protected by attorney-client*
4 *privilege.*" (See Objection to Motion to Strike Witness at 5, ln 15-17.) In fact, the Keefe case arises
5 from a defense attorney improperly meeting with a plaintiff's treating physician without notice to the
6 other party under Iowa law in the course of the litigation which meeting was memorialized by the
7 attorney's notes. The Court held that the communications between defense counsel and the doctor
8 were protected but for anything the doctor related which were specific facts related to his recollection
9 as a witness. Any other communications with legal were protected. While the notes prepared by
10 defense were considered protected as work product, the defense was ordered to produce them for *in*
11 *camera* review by the court and a redacted version was produced as a sanction for violation of Iowa
12 law related to notice of the meeting. The case does not stand for the proposition represented by
13 Plaintiff in the Opposition.

14
15
16 Plaintiff also cited to Monah v. W. Pennsylvania Hosp., 44 Pa. D&C.3d 513 (Pa. Com. Pl.
17 1987), which relates to a written statement provided by a nurse prior to litigation, which was provided
18 to corporate counsel. (See Objection to Motion to Strike Witness at 5, ln 17-18.) This case did not
19 address the issue of whether an employee meeting with corporate counsel in the course of litigation
20 is protected communication under the Upjohn case. There, the court held that the pre-litigation written
21 factual statements and observations by the nurse were discoverable. Here, Defendants are not
22 suggesting that Mr. Shulman's testimony of facts and circumstances regarding his observations of the
23 incident is privileged, they are asserting that his alleged exchange with defense counsel on June 28,
24 2019 and around thereto is privileged.

25
26 Plaintiff also cited to Diversified Indus., Inc. V. Meredith, 572 F.2d 596 (8th Cir. 1977), for the
27 proposition that attorney/client privilege applies to "*an employee's corporate duties*" and not where
28

1 "the employee functions merely as a fortuitous witness." (See Objection to Motion to Strike Witness
2 at 5, ln 18-21.) However, the facts of that case related to certain communications between a
3 corporation and outside counsel which were not made in anticipation of litigation or in the course of
4 litigation. In fact, the page cited by Plaintiff in the Opposition, 609, does not even exist and the
5 language placed in quotes by Plaintiff likewise is not found in the case.³
6

7 **B. Defendants Assert that Plaintiff's Counsel Improperly Elicited Privileged**
8 **Communication From Gary Shulman and Agreed to Have Him Repeat It in Deposition**

9 If the Court agrees that a privilege exists, then it needs to move onto the next part of the motion
10 before the Discovery Commissioner which she did not address related to the conduct of Plaintiff's
11 counsel and impact on the litigation.

12 As noted, Mr. Galliher met with Mr. Shulman prior to the deposition and not only obtained Mr.
13 Shulman's recollection of events, but obtained details of the alleged conversation Mr. Shulman had
14 with defense counsel on June 28, 2018. Thus, Plaintiff's counsel orchestrated events to have Mr.
15 Shulman testify in his April 17, 2019 deposition of communications he knew Defendants would assert
16 to be privileged by Venetian.
17
18
19

20 ³The dissent in the Meredith case provides the following:

21 *I would adopt the Seventh Circuit approach together with modifications suggested in*
22 *2 Weinstein's Evidence P503(b) [04] (1975). I would first require the corporation to*
23 *show that the lawyer was acting as a legal adviser when the communication was*
24 *made. The mere receipt by a lawyer of a routine report would not make the*
25 *communication privileged. Second, I would require that the subject matter of the*
26 *communication be the performance by the employee of the duties of his employment.*
27 *This would remove from the scope of the privilege any communication which is within*
28 *the employee's knowledge solely because he happened to witness or observe an event.*
Third, the corporation must establish that the communication was not disseminated
beyond those with the need to know. I think it is clear that all of the requirements are
met here.

(Meredith, *supra*, at 572 F.2d at 606. (Emphasis added.).)

1 Pursuant to the Rule 4.2, Nevada Rules of Professional Conduct, Plaintiff's counsel was
2 prohibited from eliciting confidential information from Mr. Shulman regarding the June 28, 2018
3 meeting with defense counsel. Comment 3 the ABA Model Rule 4.2 provides in pertinent part:

4 *The Rule applies even though the represented person initiates or consents to the*
5 *communication. A lawyer must immediately terminate communication with a person*
6 *if, after commencing communication, the lawyer learns that the person is one with*
7 *whom communication is not permitted by this Rule.*

8 Comment 7 of ABA Model Rule 4.2 reads as follows:

9 *In the case of a represented organization, this Rule prohibits communications with a*
10 *constituent of the organization who supervises, directs or regularly consults with the*
11 *organization's lawyer concerning the matter or has authority to obligate the*
12 *organization with respect to the matter or whose act or omission in connection with the*
13 *matter may be imputed to the organization for purposes of civil or criminal liability.*
14 *Consent of the organization's lawyer is not required for communication with a former*
15 *constituent. If a constituent of the organization is represented in the matter by his or*
16 *her own counsel, the consent by that counsel to a communication will be sufficient for*
17 *purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former*
18 *constituent of an organization, a lawyer must not use methods of obtaining evidence*
19 *that violate the legal rights of the organization. See Rule 4.4.*

20 Plaintiff's counsel was free to meet with Mr. Shulman prior to his April 17, 2019 deposition.
21 However, counsel should have immediately stopped Mr. Shulman from revealing privileged
22 communication during that meeting. Most certainly, Plaintiff's counsel should not have orchestrated
23 an ambush by having Mr. Shulman testify of the same on the record. It unfairly placed Venetian in the
24 position of having to prove up Mr. Shulman's perjured testimony by crossing him with other
25 information that is otherwise deemed confidential.

26 **C. Mr. Shulman Should Be Stricken as a Witness**

27 Based on the foregoing, Venetian moves this Honorable court to strike Mr. Shulman from
28 testifying in this matter as a witness. Again, the Discovery Commissioner did not get to this portion
of Defendants' motion. Therefore, Defendants move the District Court for relief. Under the
circumstances, if Mr. Shulman testifies, Defendants will be forced to impeach him with information
that is otherwise deemed confidential. This also puts counsel for both parties in the position of

1 potentially having to testify as fact witnesses in the case. Defendants would be entitled to know what
2 details Mr. Shulman provided to Plaintiff's counsel and defense counsel would have to testify
3 regarding direct communications with Mr. Shulman to refute some of his baseless allegations.

4 At a minimum, Mr. Shulman's testimony regarding his alleged communication with defense
5 counsel should be stricken. Plaintiff's counsel has filed his testimony with the court on numerous
6 occasions. Plaintiff even used Mr. Shulman's deposition testimony regarding the June 28, 2018
7 meeting with defense counsel to support her motion for leave to amend the complaint to add a claim
8 of punitive damages. (*See* Objection Exhibit D, *Plaintiff's Reply in Support of Her Motion for Leave*
9 *to Amend the Complaint*, filed May 15, 2019, at 5, ln 3-17.) In so doing, Plaintiff knowingly made
10 false allegations that Mr. Shulman had never received a written warning in the thirteen (13) years
11 preceding his June 28, 2018 meeting with defense counsel and that he was terminated sixty (60) days
12 thereafter. (*See id.*) Plaintiff's allegations are belied by Mr. Shulman's own deposition testimony,
13 where he acknowledged on direct examination by Mr. Galliher that he began having problems,
14 including warnings for his work performance, "around March of 2018," at least three (3) months
15 before his meeting with defense counsel. (*See* Plaintiff's Objection to Motion to Strike, Exhibit 1 at
16 16, ln 10-16. *See also id.* at 51, ln 20-25; 52, ln 1-9 (Mr. Shulman later noting he received three (3)
17 warnings in May 2018, more than a month preceding his initial meeting with defense counsel in this
18 matter).) Thus, the representations of Plaintiff in her May 15, 2019 filing with the Court were wholly
19 untrue. Such salacious misrepresentations intended to place Defendants in a bad light for the purpose
20 of persuading the court are inexcusable.

21 Mr. Shulman is an agitated former employee with an ax to grind, and Plaintiff's counsel took
22 advantage of the situation. Plaintiff has exploited it even to inflame the Court to support a motion for
23 leave to assert a claim of punitive damages.

24 Plaintiff should not be rewarded for this conduct. Defendants therefore respectfully submit that
25
26
27
28

1 this Court enter an order striking Mr. Shulman as a witness as a sanction under the given
2 circumstances.

3 V.

4 **CONCLUSION**

5 Based on the foregoing, Defendants respectfully submit that the Discovery Commissioner was
6 in error by not recognizing that a privilege existed in regards to the June 28, 2018 communication
7 between Mr. Shulman and defense counsel, and that relief should have been granted by way of Mr.
8 Shulman being stricken as a witness.

9
10 DATED this 21 day of August, 2019.

11 **ROYAL & MILES LLP**

12
13 By _____

14 Michael A. Royal, Esq.
15 Nevada Bar No. 4370
16 1522 W. Warm Springs Rd.
17 Henderson, NV 89014
18 Attorneys for Defendants
19 VENETIAN CASINO RESORT, LLC and
20 LAS VEGAS SANDS, LLC
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 22 day of August, 2019, and pursuant to NRCP 5(b), I
3 caused a true and correct copy of the foregoing **DEFENDANTS' OBJECTION TO DISCOVERY**
4 **COMMISSIONER'S REPORT AND RECOMMENDATIONS DATED AUGUST 9, 2019** to be
5 served as follows:
6

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

9 ☐ to be served via facsimile; and/or

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

13 ☐ to be hand delivered;

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

15 Keith E. Galliher, Jr., Esq.
16 THE GALLIHER LAW FIRM
17 1850 E. Sahara Avenue, Suite 107
18 Las Vegas, NV 89014
19 *Attorneys for Plaintiff*

20 Facsimile: 702-735-0204

21 E-Service: kgalliher@galliherlawfirm.com
22 dmooney@galliherlawfirm.com
23 gramos@galliherlawfirm.com
24 sray@galliherlawfirm.com

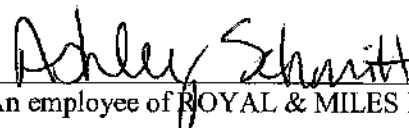
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26
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28

An employee of ROYAL & MILES LLP

EXHIBIT “I”

Deposition of:

Thomas A. Jennings

Case:

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

Date:

07/02/2019



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1 occur when coefficient of friction was above .50?

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

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

12 Q. Okay. In those cases?

13 A. In those cases.

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

16 Peter Goldstein -- or is it Goldberg?

17 A. Goldstein.

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

20 A. Yes, sir.

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

22 A. Yes, sir.

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

24 A. Yes.

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

1 A. Yes.

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

3 A. Yes, sir.

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

6 A. Would be the first, I believe.

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

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

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

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

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

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

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

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

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

1 A. Correct.

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

4 A. Correct.

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

8 A. Under controlled conditions.

9 Q. Got it. Okay.

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

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

13 The Carol Smith case versus Venetian.

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

17 Q. Yes.

18 Well, is this from the parking garage?

19 A. Yes.

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

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

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

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

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

3 A. Right.

4 Q. -- "that dispense beverages."

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

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

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

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

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

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

22 Do you remember that?

23 A. I do.

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

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

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

3 A. Approximately. That's close.

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

7 A. It's reasonable. Close.

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

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

11 Q. Right.

12 A. No.

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

16 A. Correct.

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

19 A. Correct.

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

23 A. Well --

24 MR. KUNZ: Speculation.

25 Go ahead.

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

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

10 BY MR. ROYAL:

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

14 A. Yes.

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

17 What floor applications are you talking about?

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

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

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

7 Is it or is it just about calibration?

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

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

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

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

23 Q. Okay. Which one applies here?

24 A. Static coefficient of friction.

25 Q. And explain why that is.

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

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

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

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

16 What would that relate to?

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

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

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

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

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

10 A. Yes, sir.

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

17 Did I read that correctly?

18 A. You did.

19 Q. What information are you drawing from?

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

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