

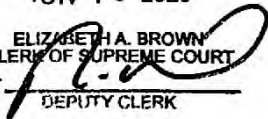
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND LAS VEGAS SANDS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,  
Petitioners,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,  
Respondents,  
and  
JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

Electronically Filed  
Oct 11 2021 11:59 a.m.  
No. 20-22940  
Elizabeth A. Brown  
Clerk of Supreme Court

**FILED**

JUN 19 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DENYING REHEARING*

Rehearing denied. NRAP 40(c).

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

cc: Hon. Kathleen E. Delaney, District Judge  
Royal & Miles, LLP  
The Galliher Law Firm  
Eighth District Court Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A  
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Respondents,

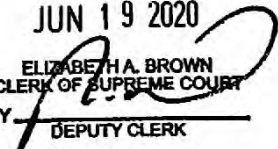
and

JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

No. 80816-COA

**FILED**

JUN 19 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER GRANTING PETITION FOR WRIT OF MANDAMUS*

This is an original petition for a writ of mandamus or prohibition challenging a district court order requiring petitioners to produce unredacted prior incident reports in discovery and refusing to impose requested protections related to those reports.<sup>1</sup>

This current petition arises from the same litigation that we previously considered in *Venetian Casino Resort, LLC v. Sekera*, 136 Nev., Adv. Op. 26, \_\_\_ P.3d \_\_\_ (Ct. App. 2020). Real party in interest, Joyce Sekera, allegedly slipped and fell at the Venetian Resort in Las Vegas. During discovery, Sekera requested unredacted incident reports of slip and

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<sup>1</sup>The Honorable Bonnie A. Bulla, Judge, voluntarily recused herself from participation in the decision of this matter.

fall accidents from November 2013 to November 2016 that contained the personal information of the Venetian's guests. The Venetian sought a protective order that would allow it to either redact the personal information and/or limit Sekera's ability to show the reports to nonparties. The district court denied its request. The Venetian filed an original petition for a writ of mandamus challenging that ruling, which this court granted due to the district court's failure to consider proportionality, as required by the current version of NRCP 26(b)(1), and for failing to conduct a good cause analysis under NRCP 26(c)(1). *See Venetian*, 136 Nev., Adv. Op. 26, \_\_\_ P.3d at \_\_\_.

While the prior case was pending before this court, Sekera sought discovery pertaining to additional incident reports. The district court issued another order requiring the Venetian to provide unredacted slip and fall incident reports from November 2011 to November 2016 that occurred in the Grand Lux Rotunda area of the Venetian property.<sup>2</sup> The Venetian requested a stay from the district court, which was denied. The Venetian then filed this petition for a writ of mandamus or prohibition due to the district court's failure to consider proportionality and issue a protective order. The Venetian also sought a stay of the district court's discovery order, which we granted in March 2020.<sup>3</sup>

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<sup>2</sup>We note that the district court's March 13, 2020 order involved multiple discovery issues. The Venetian only challenges the order as it pertains to the incident reports. Thus, our order only addresses that issue.

<sup>3</sup>*Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, Docket No. 80816-COA (Order Directing Answer and Granting Stay, Ct. App., March 27, 2020).

In our prior opinion, we specifically required the district court to consider proportionality and to conduct a good cause analysis with the framework provided therein for the issuance of a protective order. *Venetian*, 136 Nev., Adv. Op. 26, \_\_\_ P.3d at \_\_\_. Here, regarding the incident reports, the district court did not consider proportionality and did not conduct a good cause analysis as part of its discovery hearing and subsequent order. We conclude writ relief is appropriate and grant the writ of mandamus.<sup>4</sup> *Humphries v. Eighth Judicial Dist. Court*, 129 Nev. 788, 791, 312 P.3d 484, 486 (2013). The district court must consider the proportionality of the discovery request and apply the framework found in *Venetian Casino Resort, LLC v. Sekera*, 136 Nev., Adv. Op. 26, \_\_\_ P.3d \_\_\_ (Ct. App. 2020), to determine if a protective order is warranted.<sup>5</sup> Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the

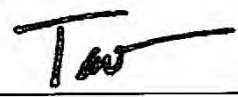
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<sup>4</sup>We recognize that writs of prohibition are typically more appropriate for the prevention of improper discovery. See, e.g., *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228 n.6, 276 P.3d 246, 249 n.6 (2012). A writ of prohibition is the “proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction.” *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); see also NRS 34.320. Here, we are not concluding that the district court’s discovery order was outside its jurisdiction and thus improper. Instead, we are compelling the district court to perform the analysis that the law requires and controlling an arbitrary exercise of discretion. Thus, mandamus relief is more appropriate, and we deny the *Venetian*’s alternative request for a writ of prohibition.

<sup>5</sup>Writ relief is discretionary, and in light of our disposition, we decline to address the other issues argued by both parties in this original proceeding. See *Smith*, 107 Nev. at 677, 818 P.2d at 851 (“[T]he issuance of a writ of mandamus or prohibition is purely discretionary with [appellate] court[s].”).

district court to vacate the order compelling discovery only as it pertains to the production of the incident reports and conduct proceedings consistent with this order.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

cc: Chief Judge, Eighth Judicial District Court  
Hon. Kathleen E. Delaney, District Judge  
Royal & Miles, LLP  
Claggett & Sykes Law Firm  
The Galliher Law Firm  
Eighth District Court Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND LAS VEGAS SANDS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,

Respondents,

and

JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

No. 80816-COA

FILED

JUN 30 2020

ELIZABETH A. STONE  
CLERK OF DISTRICT COURT  
BY *[Signature]*  
RECEIVED

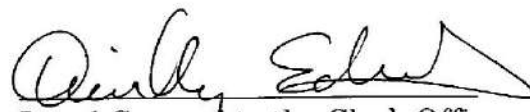
WRIT OF MANDAMUS

TO: The Honorable Kathleen E. Delaney, Judge of the Eighth  
Judicial District Court:

WHEREAS, this Court having made and filed its written decision  
that a writ of mandamus issue,


NOW, THEREFORE, you are instructed to vacate the order  
compelling discovery only as it pertains to the production of the incident  
reports and conduct proceedings consistent with this order, in the case  
entitled Joyce Sekera, an Individual, vs. 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, case no. A772761.

WITNESS The Honorable Michael Gibbons, Chief Judge, and  
Jerome Tao, Associate Judge of the Court of Appeals of the State of Nevada,  
and attested by my hand and seal this 19th day of June, 2020.

  
Legal Counsel to the Clerk Office



COURT OF APPEALS  
OF  
NEVADA

(O) 1947B 



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

vs.

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,

and

JOYCE SEKERA, an individual,  
Real Party in Interest.

Supreme Court No. 80816-COA

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

**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 24 day of June 2020, I served true and  
correct copy of the foregoing **WRIT OF MANDAMUS** by delivering the same  
via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.  
THE GALLIHER LAW FIRM  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, NV 89104

And

Sean K. Claggett, Esq.  
William T. Sykes, Esq.  
Geordan G. Logan, Esq.  
CLAGGETT & SYKES LAW FIRM  
4101 Meadows Lane, Suite 100  
Las Vegas, NV 89104

Attorneys for Real Party in Interest

JUN 26 2020  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK



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

  
An employee of Royal & Miles LLP

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

VENETIAN CASINO RESORT, LLC;  
LAS VEGAS SANDS, LLC,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN DELANEY, DISTRICT  
JUDGE,

Respondents,

and

JOYCE SEKERA,

Real Party in Interest.

Case No. 79689

Electronically Filed  
Aug 04 2020 11:21 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**REAL PARTY IN INTEREST'S PETITION FOR REVIEW**

Sean K. Claggett, Esq.  
Nevada Bar No. 8407  
William T. Sykes, Esq.  
Nevada Bar No. 9916  
Micah S. Echols, Esq.  
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*Attorneys for Real Party in Interest, Joyce Sekera*

## **NRAP 26.1 DISCLOSURE**

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

1. Joyce Sekera (“Plaintiff”) is an individual.
2. Claggett & Sykes Law Firm and the Galliher Law Firm have appeared on behalf of Joyce Sekera in this matter.

DATED this 4th day of August, 2020.

CLAGGETT & SYKES LAW FIRM

By /s/ Micah S. Echols  
Sean K. Claggett, Esq.  
Nevada Bar No. 8407  
William T. Sykes, Esq.  
Nevada Bar No. 9916  
Micah S. Echols, Esq.  
Nevada Bar No. 8437  
4101 Meadows Lane, Suite 100  
Las Vegas, Nevada 89107  
*Attorneys for Real Party in Interest,  
Joyce Sekera*

## **I. QUESTIONS PRESENTED FOR REVIEW**

- A. WHETHER THE COURT OF APPEALS ERRED BY CONCLUDING THAT NRCP 26(b)(1) ALLOWS DEFENDANTS TO UNILATERALLY WITHHOLD REQUESTED DISCOVERY BASED UPON AN ARGUMENT THAT THE REQUESTED DISCOVERY IS NOT “PROPORTIONAL.”**
- B. WHETHER THE COURT OF APPEALS FURTHER ERRED BY CONCLUDING THAT NRCP 26(c) ALLOWS DEFENDANTS TO UNILATERALLY WITHHOLD REQUESTED DISCOVERY BASED UPON A BLANKET PRIVILEGE WITHOUT ACTUALLY ARTICULATING A PRIVILEGE ACCORDING TO NRCP 26(b)(5).**

## **II. REASONS FOR REVIEW**

This petition for review asks this Court to grant review under NRAP 40B to vacate the Court of Appeals’ opinion issued in this case.<sup>1</sup> Petitioners, Venetian Casino Resort, LLC and Las Vegas Sands, LLC (collectively “Venetian”), presented arguments in its District Court motion for protective order and subsequent writ petition to the Court of Appeals that were designed to maintain the information advantage that it has against Plaintiff/Real Party in Interest, Joyce Sekera (“Sekera”) and similarly-situated plaintiffs.

When the Court of Appeals embraced a non-proportionality argument in resolving the Venetian’s writ petition, the Court of Appeals reached an unreasonable

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<sup>1</sup> The Court of Appeals’ Opinion (filed on May 14, 2020) is attached as **Exhibit 1**.

interpretation of NRCP 26(b)(1) by allowing the Venetian to unilaterally withhold discovery. Ultimately, this Court has the final authority to interpret the Nevada Rules of Civil Procedure to “manage litigation and finally resolve cases.” *Berkson v. Lepome*, 126 Nev. 492, 499, 245 P.3d 560, 565 (2010). Thus, Sekera urges this Court to grant this petition for review on this initial basis.

Additionally, the Court of Appeals allowed the Venetian to withhold discovery from Sekera on the notion that requested incident reports are “privileged” under a blanket interpretation of NRCP 26(c). Yet, the Court of Appeals failed to consider NRCP 26(b)(5), which requires a party making a claim of privilege to “expressly make the claim.” NRCP 26(b)(5)(A)(i). On this secondary basis, and according to *Berkson*, Sekera likewise urges this Court to grant this petition for review.

### **III. STANDARDS OF REVIEW**

According to NRAP 40(B)(a), this Court will exercise its discretion to consider the merits of a petition for review when: (1) the question presented is one of first impression of general statewide significance; (2) the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; or (3) the case involves fundamental issues of statewide public importance.

#### IV. LEGAL ARGUMENT

##### A. **THE COURT OF APPEALS ERRED BY CONCLUDING THAT NRCP 26(b)(1) ALLOWS DEFENDANTS TO UNILATERALLY WITHHOLD REQUESTED DISCOVERY BASED UPON AN ARGUMENT THAT THE REQUESTED DISCOVERY IS NOT “PROPORTIONAL.”**

In its opinion, the Court of Appeals construed NRCP 26(b)(1) regarding how district courts should analyze proportionality when they exercise their discretion. However, the Court of Appeals interpreted the 2019 amendments to NRCP 26 to include a separate mandate that this analysis be expressly completed, and findings documented in every discovery dispute. Op. at 5–9. That mandate was not intended by the 2019 amendments. The full intention of Nevada’s amendments appears in the history of the 2015 FRCP amendments upon which Nevada’s 2019 amendments were patterned.

The Court of Appeals based its novel mandate upon the 2019 Advisory Committee Note for NRCP 26(b)(1) which states that adding “proportional needs of the case [to the scope of discovery] . . . allows the district court to eliminate redundant or disproportionate discovery and reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry.” See ADKT 522, Exhibit A at 135–136 [https://nvcourts.gov/AOC/Committees\\_and\\_Commissions/NRCP/Adopted\\_Rules\\_and\\_Redlines/](https://nvcourts.gov/AOC/Committees_and_Commissions/NRCP/Adopted_Rules_and_Redlines/).

Yet, the same authority was conveyed by the former version of NRCP

26(b)(2)(iii) prior to the amendments:

The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that . . . (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c) of this rule.

[https://nvcourts.gov/AOC/Committees\\_and\\_Commissions/NRCP/Final\\_Documents/ADKT\\_522\\_Redline\\_NRCP/](https://nvcourts.gov/AOC/Committees_and_Commissions/NRCP/Final_Documents/ADKT_522_Redline_NRCP/). Nevada's decision to move the authority for limiting non-proportional discovery was made to redefine "the scope of allowable discovery consistent with the proportionate discovery provision in FRCP 26(b)." Advisory Committee Note—2019 Amendment, Section (b). Nevada's intent in conforming NRCP 26(b) to the cognate Federal Rule included this Court's cited change (NRCP 26(b)(1)), as well as a corresponding change to NRCP 26(b)(2)(C)(iii). The Nevada 2019 Advisory Committee Note did not directly address the change to NRCP 26(b)(2)(C)(iii) or how that change should affect procedure in discovery. However, when the change that Nevada's amendment is based on was made to FRCP 26(b), both the Federal Advisory Committee and United States Supreme Court Chief Justice John Roberts offered appropriate guidance under which Nevada's change should be interpreted.



In 2015, FRCP 26(b), on which the Nevada's recent 2019 amendment is based, changed the same two sections of FRCP 26(b) as Nevada. The FRCP amendment deleted the authority for limiting non-proportional discovery from FRCP 26(b)(2)(C)(iii) and placed it in FRCP 26(b)(1). While making that change, the Federal Advisory Committee and the Chief Justice of the U.S. Supreme Court gave guidance to how this change should affect the exchange of discovery. Nevada's 2019 amendment to NRCP 26(b) clearly and expressly intended to conform to the Federal Rule's corresponding amendment from 2015, and the 2019 Advisory Committee did not express a need to stray from the intention of FRCP 26(b). Therefore, since Nevada has chosen to follow the guidance of the FRCP, this Court should articulate the policy behind that departure by granting this petition for review, as Nevada courts will need guidance. *See Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) ("We have previously recognized that federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules.").

The FRCP adopted the proposed change upon which Nevada's NRCP 26 amendment is based. FRCP 26 contains Advisory Committees Notes on that change which state, in pertinent part:

The present amendment restores the proportionality factors to their original place in defining the scope of discovery. This change reinforces the Rule 26(g) obligation of the parties to consider these

factors in making discovery requests, responses, or objections. Restoring the proportionality calculation to Rule 26(b)(1) 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. ***Nor is the change intended to permit the opposing party to refuse discovery simply by making a boilerplate objection that it is not proportional.*** The parties and the court have a collective responsibility to consider the proportionality of all discovery and consider it in resolving discovery disputes.

FRCP 26 Notes of Advisory Committee on 2015 Amendments (emphasis added).

The only actual change in the focus on proportionality was the adding of the phrase, “the parties’ relative access to relevant information” as a factor bearing on a proportionality consideration. *Id.* In making this change, the Advisory Committee noted that in cases with “information asymmetry,” it is proper for the burden of discovery to be heavier on the party with more information. FRCP 26 Notes of Advisory Committee on 2015 Amendments. Therefore, the phrase was added to protect against proportionality being used to shut down discovery against parties with less access to information, such as Sekera in the instant case.

In April 2014, the Advisory Committee on Civil Procedural Rules held a conference and considered arguments on all sides of proposed revisions to the Federal Rules of Civil Procedure. Advisory Committee on Civil Rules Report, May 2, 2014 at 1. The Committee advanced several recommended changes, as well as substantial explanation for those changes. *Id.* at 1–2. Among the changes

considered at the conference included the “the proposal to transfer the operative provisions of present Rule 26(b)(2)(C)(iii) to Rule 26(b)(1).” *Id.* at 4. The report proposed “that the factors already prescribed by Rule 26(b)(2)(C)(iii), which courts now are to consider in limiting ‘the frequency or extent of discovery,’ be relocated to Rule 26(b)(1) and included in the scope of discovery.” *Id.* at 5. The Committee further noted that “[a]ll discovery is currently subject to those factors by virtue of a cross-reference in Rule 26(b)(1).” *Id.* The Committee recommended keeping the factors of proportionality in the transfer from 26(b)(2)(C)(iii) because they are “understandable and work well.” *Id.*

A principal conclusion of the Advisory Committee’s April 2014 conference was that discovery in civil litigation would more often achieve the goal of Rule 1—the just, speedy, and inexpensive determination of every action—through an increased emphasis on proportionality. *Id.* “The purpose of moving these factors explicitly into Rule 26(b)(1) is to make them more prominent, encouraging parties and courts alike to remember them and take them into account in pursuing discovery and resolving discovery disputes.” *Id.* at 7–8. Therefore, Sekera urges this Court to grant this petition for review since the Court of Appeals interpreted Rule 26 in a way that contravenes the carefully crafted procedure that this Court intended to establish.

**B. THE COURT OF APPEALS FURTHER ERRED BY CONCLUDING THAT NRCP 26(c) ALLOWS DEFENDANTS TO UNILATERALLY WITHHOLD REQUESTED DISCOVERY BASED UPON A BLANKET PRIVILEGE WITHOUT ACTUALLY ARTICULATING A PRIVILEGE ACCORDING TO NRCP 26(b)(5).**

According to NRCP 26(b)(5)(A)(i), “[w]hen a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must “expressly make the claim.” Likewise, “no person has a privilege to . . . [r]efuse to disclose any matter . . . [or] produce any object or writing” except as provided by the U.S. Constitution or Nevada law. NRS 49.015(1)(b). As such, the Venetian had no right to refuse to disclose the information in its incident reports unless it could identify a legal basis to do so. “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning” are not sufficient to support a protective order. *Beckman Indus. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). “The party must make a particular request and a specific demonstration of facts in support of the request as opposed to conclusory or speculative statements about the need for a protective order and the harm which would be suffered without one.” *Brittain v. Stroh Brewery Co.*, 136 F.R.D. 408, 412 (M.D.N.C. 1991). Yet, the Venetian did not identify a legitimate legal basis for refusing to disclose the information in its incident reports. As the moving party, the Venetian bore the burden of presenting the Discovery

Commissioner and the District Court with a legitimate legal basis for a protective order. *See* NRCP 26(b)(5)(A)(i); NRS 49.015(1)(b).

Despite the Venetian's failure to articulate any privilege for withholding the requested discovery, the Court of Appeals placed the burden on the District Court to analyze an unknown privilege or consider ordering redacted documents for unknown privileges. Op. at 9–13. Indeed, the Court of Appeals opinion does not identify any privilege that was actually raised but instead presumes that there was some privileged information. The Court of Appeals, thus, erroneously interpreted NRCP 26(c) by failing to consider NRCP 26(b)(5), NRS 49.015(1)(b), and the commenting case law to create an unfair situation in its opinion where the Venetian does not actually have to identify a privilege but instead shifts the burden for Sekera to disprove an unknown privilege. On this this secondary basis, Sekera urges the Court to grant review.

## **V. CONCLUSION**

In summary, Sekera petitions this Court to grant review under NRAP 40B and vacate the Court of Appeals opinion due to an erroneous interpretation of NRCP 26(b)(1), which allows defendants, such as the Venetian, to unilaterally withhold requested discovery based upon an unreasonable proportionality argument.

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///

Likewise, the Court of Appeals erroneously interpreted NRCP 26(c) to allow defendants, such as the Venetian, to withhold requested discovery without actually articulating a privilege, as required by NRCP 26(b)(5).

Dated this 4th day of August, 2020.

CLAGGETT & SYKES LAW FIRM

By /s/ Micah S. Echols  
Sean K. Claggett, Esq.  
Nevada Bar No. 8407  
William T. Sykes, Esq.  
Nevada Bar No. 9916  
Micah S. Echols, Esq.  
Nevada Bar No. 8437  
4101 Meadows Lane, Suite 100  
Las Vegas, Nevada 89107  
*Attorneys for Real Party in Interest,*  
*Joyce Sekera*

## **CERTIFICATE OF COMPLIANCE**

1. 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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

2. 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:

☐ proportionally spaced, has a typeface of 14 points or more and contains \_\_\_\_\_ words; or

☒ does not exceed 10 pages.

3. Finally, I hereby certify that I have read this brief, 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.

Dated this 4th day of August, 2020.

CLAGGETT & SYKES LAW FIRM

By /s/ Micah S. Echols  
Sean K. Claggett, Esq.  
Nevada Bar No. 8407  
William T. Sykes, Esq.  
Nevada Bar No. 9916  
Micah S. Echols, Esq.  
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4101 Meadows Lane, Suite 100  
Las Vegas, Nevada 89107  
*Attorneys for Real Party in Interest,*  
*Joyce Sekera*

## **CERTIFICATE OF SERVICE**

I certify that I am an employee of Claggett & Sykes Law Firm and that on the 4th day August, 2020, I submitted the foregoing **PETITION FOR REVIEW** for filing via the Court's e-Flex electronic filing system which will send electronic notification to the following:

Michael A. Royal, Esq.  
Gregory A. Miles, Esq.  
**Royal & Miles LLP**  
1522 West Warm Springs Road  
Henderson, Nevada 89014  
*Attorneys for Petitioner*

/s/ Anna Gresl  
Anna Gresl, an employee of  
Claggett & Sykes Law Firm

# **Exhibit 1**

# **Exhibit 1**

# **Exhibit 1**

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND LAS VEGAS SANDS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,

Respondents,

and

JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

No. 79689-COA

FILED

MAY 14 2020

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

Original petition for a writ of mandamus or prohibition challenging a district court order requiring petitioners to produce unredacted prior incident reports in discovery and refusing to impose requested protections related to those reports.

*Petition granted.*

Royal & Miles LLP and Gregory A. Miles and Michael A. Royal, Henderson,  
for Petitioners.

The Galliher Law Firm and Keith E. Galliher, Jr., Las Vegas,  
for Real Party in Interest.

BEFORE GIBBONS, C.J., and TAO, J.<sup>1</sup>

*OPINION*

By the Court, GIBBONS, C.J.:

The Nevada Rules of Civil Procedure were recently amended, including significant portions of NRCP 26—the seminal rule governing discovery. These amendments have changed the analysis that district courts must conduct. In this writ proceeding, we discuss the proper process courts must use when determining the scope of discovery under NRCP 26(b)(1). We also provide a framework for courts to apply when determining whether a protective order should be issued for good cause under NRCP 26(c)(1). Because respondents did not engage in this process or use the framework we are providing, we grant the petition and direct further proceedings.

*FACTS AND PROCEDURAL HISTORY*

Real party in interest, Joyce Sekera, allegedly slipped and fell on the Venetian Casino Resort's marble flooring and was seriously injured. During discovery, Sekera requested that the Venetian produce incident reports relating to slip and falls on the marble flooring for the three years preceding her injury to the date of the request. In response, the Venetian provided 64 incident reports that disclosed the date, time, and circumstances of the various incidents. However, the Venetian redacted the

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<sup>1</sup>The Honorable Bonnie A. Bulla, Judge, voluntarily recused herself from participation in the decision of this matter. In her place, the Honorable Michael L. Douglas, Senior Justice, was appointed to participate in the decision of this matter under an order of assignment entered on February 13, 2020. Nev. Const. art. 6, § 19(1)(c); SCR 10. Subsequently, that order was withdrawn.

personal information of injured parties from the reports, including names, addresses, phone numbers, medical information, and any social security numbers collected. Sekera insisted on receiving the unredacted reports in order to gather information to prove that it was foreseeable that future patrons could slip and fall on the marble flooring and that the Venetian was on notice of a dangerous condition.<sup>2</sup> Further, Sekera wanted to contact potential witnesses to gather information to show that she was not comparatively negligent, as the Venetian asserted. Sekera's counsel disseminated all 64 redacted reports to other plaintiffs' counsel in different cases, who also were engaged in litigation against the Venetian for slip and fall injuries.

Unable to resolve their differences regarding redaction, the Venetian moved for a protective order, which Sekera opposed. The discovery commissioner found that there was a legitimate privacy issue and recommended that the court grant the protective order, such that the reports remain redacted, and prevented Sekera from sharing the reports outside of the current litigation. The commissioner further recommended, however, that after Sekera reviewed the 64 redacted reports and identified substantially similar accidents that occurred in the same location as her fall, the parties could have a dispute resolution conference pursuant to EDCR 2.34. At that conference, the parties would have the opportunity to reach an agreement to allow disclosure of the persons involved in the previous similar accidents. If the parties failed to reach an agreement, Sekera could file an appropriate motion.

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<sup>2</sup>Sekera agreed that any social security numbers should remain redacted.

Sekera objected to the discovery commissioner's recommendation. The district court agreed with the objection and rejected the discovery commissioner's recommendation in its entirety, thereby denying the motion for a protective order. The district court concluded (1) there was no legal basis to preclude Sekera from knowing the identity of the persons involved in the prior incidents, as this information was relevant discovery material, and (2) there was no legal basis to prevent the disclosure of the unredacted reports to third parties not involved in the Sekera litigation. Nevertheless, the court strongly cautioned Sekera to be careful with how she shared and used the information.

The Venetian filed the instant petition for writ relief, which was transferred to this court pursuant to NRAP 17. We subsequently granted a stay of the district court's order pending resolution of this petition.

#### *DISCUSSION*

*Writ consideration is appropriate*

This court has original jurisdiction to issue writs of mandamus. Nev. Const. art. 6, § 4(1). But “[t]he decision to entertain a writ petition lies solely within the discretion of” the appellate courts. *Quinn v. Eighth Judicial Dist. Court*, 134 Nev. 25, 28, 410 P.3d 984, 987 (2018). “A writ of mandamus is available to compel the performance of an act that the law requires . . . or to control an arbitrary or capricious exercise of discretion.” *Humphries v. Eighth Judicial Dist. Court*, 129 Nev. 788, 791, 312 P.3d 484, 486 (2013). Writ relief is not appropriate where a “plain, speedy, and adequate remedy” at law exists. *Id.* “A writ of mandamus may be issued to compel the district court to vacate or modify a discovery order.”<sup>3</sup> *Valley*

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<sup>3</sup>We recognize that writs of prohibition are typically more appropriate for the prevention of improper discovery. See, e.g., *Club Vista Fin. Servs. v.*



*Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 171, 252 P.3d 676, 678 (2011).

Here, if the discovery order by the district court remained in effect, a later appeal would not effectively remedy any improper disclosure of the Venetian's guests' private information. Because we conclude that the Venetian has no plain, speedy, and adequate remedy at law, we exercise our discretion to entertain the merits of this petition. NRS 34.170.

*The district court should have considered proportionality under NRCP 26(b)(1)*

The Venetian argues that the district court abused its discretion when it did not consider and apply proportionality under NRCP 26(b)(1) prior to allowing the discovery.<sup>4</sup> Sekera argues that other courts

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*Eighth Judicial Dist. Court*, 128 Nev. 224, 228 n.6, 276 P.3d 246, 249 n.6 (2012). A writ of prohibition is the "proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction." *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); *see also* NRS 34.320. Here, we are not concluding that the district court's discovery order was outside its jurisdiction. Instead, we are (1) compelling the district court to perform the analysis that the law requires and (2) controlling an arbitrary exercise of discretion. Thus, mandamus relief is more appropriate, and we deny the Venetian's alternative request for a writ of prohibition.

<sup>4</sup>The Nevada Rules of Civil Procedure were amended effective March 1, 2019. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018) ("[T]his amendment to the [NRCP] shall be effective prospectively on March 1, 2019, as to all pending cases and cases initiated after that date."). Thus, we cite and apply the current version of Rule 26 because the motions and hearings before the district court judge, and the resulting orders at issue in this writ petition, all occurred after March 1, 2019.

have found the information at stake here to be discoverable under rules similar to NRCP 26(b)(1).<sup>5</sup> We agree with the Venetian.

Generally, “[d]iscovery matters are within the district court’s sound discretion, and we will not disturb a district court’s ruling regarding discovery unless the court has clearly abused its discretion.” *Club Vista*, 128 Nev. at 228, 276 P.3d at 249. NRCP 26(b)(1) defines and places limitations on the scope of discovery:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claims or defenses and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

NRCP 26(b)(1). Further, “[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable.” *Id.*

Here, the district court identified only relevance at the hearing and in its order as the legal basis to deny the protective order. Specifically, the court stated at the hearing that the information was relevant to show

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<sup>5</sup>The authority cited by Sekera is unpersuasive, as the cases do not consider proportionality as required by the newly adopted amendments to NRCP 26(b)(1). However, we emphasize that our opinion does not stand for the proposition that the information at stake here is not proportional to the needs of the case and thus not discoverable. Rather, we hold that the district court must conduct the proper analysis under the current version of NRCP 26(b)(1) and consider both relevance *and* proportionality together as the plain language of the rule requires.

notice and foreseeability.<sup>6</sup> Problematically, the district court did not undertake any analysis of proportionality as required by the new rule. The rule amendments added a consideration of proportionality to

redefine[] the scope of allowable discovery consistent with the proportionate discovery provision in FRCP 26(b). As amended, [NRCP] 26(b)(1) requires that discovery seek information “relevant to any party’s claims or defenses and proportional needs of the case,” departing from the past scope of “relevant to the subject matter involved in the pending action.” This change allows the district court to eliminate redundant or disproportionate discovery and reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry.

NRCP 26 advisory committee’s note to 2019 amendment; *see also* FRCP 26 advisory committee’s note to 2015 amendment (“The objective is to guard against redundant or disproportionate discovery by giving the court authority to reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry.”). When FRCP 26(b)(1) was amended, federal district courts noted that relevance was no longer enough for allowing discovery. *In re Bard IVC Filters Prod. Liab. Litig.*, 317 F.R.D. 562, 564 (D. Ariz. 2016) (“Relevancy alone is no longer sufficient—discovery must also be proportional to the needs of the case.”); *Samsung Elecs. Am.*,

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<sup>6</sup>The Venetian cites *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962), to demonstrate prior incidents are not relevant to establish notice when it relates to a temporary condition “unless . . . the conditions surrounding the prior occurrences have continued and persisted.” Sekera appears to have abandoned the notice and foreseeability arguments proffered in the district court and now only argues in her answering brief that the unredacted reports are relevant to show a lack of comparative negligence.

*Inc. v. Yang Kun Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017) (“[D]iscoverable matter must be both relevant and proportional to the needs of the case—which are related but distinct requirements.”).<sup>7</sup>

As noted above, NRCP 26(b)(1) outlines several factors for district courts to consider regarding proportionality:

[(1)] the importance of the issues at stake in the action; [(2)] the amount in controversy; [(3)] the parties’ relative access to relevant information; [(4)] the parties’ resources; [(5)] the importance of the discovery in resolving the issues; and [(6)] whether the burden or expense of the proposed discovery outweighs its likely benefit.<sup>8</sup>

See also *In re Bard*, 317 F.R.D. at 563. Upon consideration of these factors, “a court can—and must—limit proposed discovery that it determines is not proportional to the needs of the case . . . .” *Vallejo v. Amgen, Inc.*, 903 F.3d 733, 742 (8th Cir. 2018) (quoting *Carr v. State Farm Mut. Auto. Ins., Co.*, 312 F.R.D. 459, 468 (N.D. Tex. 2015)).

The district court abused its discretion when it failed to analyze proportionality in light of the revisions to NRCP 26(b)(1) and make findings related to proportionality. Because discovery decisions are “highly fact-

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<sup>7</sup> “[F]ederal decisions involving the Federal Rules of Civil Procedure provide persuasive authority” for Nevada appellate courts considering the Nevada Rules of Civil Procedure. *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005). Furthermore, the current version of the NRCP is modeled after the federal rules. NRCP Preface, advisory committee’s notes to 2019 amendment.

<sup>8</sup> Per the amendments to the Federal Rules of Civil Procedure, these factors specifically apply to proportionality. See FRCP 26 advisory committee’s note to 2015 amendment (“The present amendment restores the *proportionality factors* to their original place in defining the scope of discovery.” (emphasis added)).



intensive,” *In re Anonymous Online Speakers*, 661 F.3d 1168, 1176 (9th Cir. 2011), and this court is not positioned to make factual determinations in the first instance, we decline to do so; instead, we direct the district court to engage in this analysis.<sup>9</sup> See *Ryan’s Express Transp. Servs., Inc. v. Amador Stage Lines*, 128 Nev. 289, 299, 279 P.3d 166, 172-73 (2012).

*The district court should have determined whether the Venetian demonstrated good cause for a protective order under NRCP 26(c)(1)*

The Venetian sought a protective order under NRCP 26(c)(1), arguing that it had good cause to obtain one. The district court determined that there was no legal basis for a protective order. We disagree and conclude the district court abused its discretion when it determined that it had no legal basis to protect the Venetian’s guests’ information without first considering whether the Venetian demonstrated good cause for a protective order based on the individual circumstances before it. As stated above, discovery matters are generally reviewed for an abuse of discretion. *Club Vista*, 128 Nev. at 228, 276 P.3d at 249. A district court abuses its discretion when it “ma[kes] neither factual findings nor legal arguments” to support its decision regarding a protective order. *In re Nat’l Prescription Opiate Litig.*, 927 F.3d 919, 929 (6th Cir. 2019) (quoting *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 (1981)).

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<sup>9</sup>While the district court abused its discretion by not considering proportionality whatsoever in its order or at the hearing, the parties are also responsible for determining if their discovery requests are proportional. “[T]he proportionality calculation to [FRCP] 26(b)(1)” is the responsibility of the court and the parties, and “does not place on the party seeking discovery the burden of addressing all proportionality considerations.” FRCP 26, advisory committee’s notes to 2015 amendment.

NRCP 26(c)(1) articulates the standard for protective orders, stating that “[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . .”<sup>10</sup> The United States Supreme Court has interpreted the similar language of FRCP 26(c) as conferring “broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984). The Court continued by noting that the “trial court is in the best position to weigh fairly the competing needs and interests of the parties affected by discovery.” *Id.* “The unique character of the discovery process requires that the trial court have substantial latitude to fashion protective orders.” *Id.*

The United States Court of Appeals for the Ninth Circuit has articulated a three-part test for conducting a good-cause analysis under FRCP 26(c). *In re Roman Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 424 (9th Cir. 2011). First, the district court must determine if particularized harm would occur due to public disclosure of the information. *Id.* at 424. (“As we have explained, ‘[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not

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<sup>10</sup>Although NRCP 26(c), like its federal counterpart, applies to all forms of discovery (including written discovery), the Nevada Supreme Court has defined what constitutes good cause under the rule only in the context of depositions. See *Okada v. Eighth Judicial Dist. Court*, 131 Nev. 834, 842-43, 359 P.3d 1106, 1112 (2015) (articulating factors for courts to consider when determining good cause for a protective order designating the time and place of a deposition). Therefore, Nevada courts do not have firm guidelines to assist their determination of good cause when it comes to written discovery.

satisfy the Rule 26(c) test.” (quoting *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992))).

Second, if the district court concludes that particularized harm would result, then it must “balance the public and private interests to decide whether . . . a protective order is necessary.” *Id.* (internal quotation marks and citation omitted). The Ninth Circuit has directed federal district courts to utilize the factors set forth in a Third Circuit Court of Appeals case, *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995), to help them balance the private and public interests. *Roman Catholic*, 661 F.3d at 424; see also *Phillips v. Gen. Motors*, 307 F.3d 1206, 1212 (9th Cir. 2002). *Glenmede* sets forth the following nonmandatory and nonexhaustive list of factors for courts to consider when determining if good cause exists:

(1) whether disclosure will violate any privacy interests; (2) whether the information is being sought for a legitimate purpose or for an improper purpose; (3) whether disclosure of the information will cause a party embarrassment; (4) whether confidentiality is being sought over information important to public health and safety; (5) whether the sharing of information among litigants will promote fairness and efficiency; (6) whether a party benefiting from the order of confidentiality is a public entity or official; and (7) whether the case involves issues important to the public.

56 F.3d at 483. The *Glenmede* court further recognized that the district court is in the best position to determine what factors are relevant to balancing the private and public interests in a given dispute. *Id.*

Third, even if the factors balance in favor of protecting the discovery material, “a court must still consider whether redacting portions of the discovery material will nevertheless allow disclosure.” *Roman Catholic*, 661 F.3d at 425.



The Venetian sought a protective order pursuant to NRCP 26(c)(1), but the district court summarily concluded that there was no legal basis for issuing the protective order. It did so without analyzing whether the Venetian had shown good cause pursuant to NRCP 26(c)(1).<sup>11</sup> The district court's outright conclusion that there was no legal basis for a protective order and failure to conduct a good-cause analysis resulted in an arbitrary exercise of discretion. NRCP 26(c)(1) grants the district court authority to craft a protective order that meets the factual demands of each case if a litigant demonstrates good cause. Thus, since the court did have the legal authority to enter a protective order if the Venetian had shown good cause under NRCP 26(c)(1), it should have determined whether good cause existed based on the facts before it.

To determine good cause, we now approve of the framework established by the Ninth Circuit in *Roman Catholic* and the factors listed by the Third Circuit in *Glenmede*. District courts should use that framework and applicable factors, and any other relevant factors, to consider whether parties have shown good cause under NRCP 26(c)(1).<sup>12</sup> If

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<sup>11</sup>Sekera argues that the district court did not abuse its discretion by determining the Venetian did not show good cause. We are not convinced. The fact that the district court failed to mention good cause, either in its order or at the hearing, undermines Sekera's argument.

<sup>12</sup>Writ relief is discretionary, and in light of our disposition, we decline to address the other issues argued by the parties in this original proceeding. However, we note that *Glenmede* factors one, three, and five authorize the district court to consider the ramifications of information being disseminated to third parties (i.e., "whether disclosure will violate any privacy interests," "whether disclosure of the information will cause a party embarrassment," and "whether the sharing of information among litigants will promote fairness and efficiency"). 56 F.3d at 483. Importantly, the Nevada Supreme Court has recently stated that disclosing medical

the party seeking the protective order has shown good cause, a district court may issue a remedial protective order as circumstances require. *See* NRCP 26(c)(1). However, we do not determine whether the Venetian has established good cause for a protective order; instead, we conclude that is a matter for the district court to decide in the first instance. *See Ryan's Express*, 128 Nev. at 299, 279 P.3d at 172.

### CONCLUSION

In denying the Venetian's motion for a protective order, the district court abused its discretion in two ways. First, it focused solely on relevancy and did not consider proportionality as required under the amendments to NRCP 26(b)(1). Second, it did not conduct a good-cause analysis as required by NRCP 26(c)(1). Because the district court failed to conduct a full analysis, its decision was arbitrarily rendered.

Thus, we grant the Venetian's petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order denying the Venetian's motion for a protective order. The district court shall conduct further proceedings consistent with this opinion to determine whether disclosure of the unredacted reports is relevant and proportional under NRCP 26(b)(1). If disclosure is proper, the district court must conduct a good-cause analysis under NRCP 26(c)(1), applying the framework provided herein to determine whether the Venetian has shown good cause for a protective order. If the Venetian demonstrates good cause,

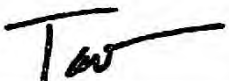
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information implicates a nontrivial privacy interest in the context of public records requests. *Cf. Clark Cty. Coroner v. Las Vegas Review-Journal*, 136 Nev., Adv. Op. 5, 458 P.3d 1048, 1058-59 (2020) (explaining that juvenile autopsy reports implicate "nontrivial privacy interest[s]" due to the social and medical information they reveal, which may require redaction before their release).

the district court may issue a protective order as dictated by the circumstances of this case.

  
\_\_\_\_\_, C.J.  
Gibbons

I concur:

  
\_\_\_\_\_, J.  
Tao

IN THE SUPREME COURT OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND LAS VEGAS SANDS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,

Respondents,

and

JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

No. 80816

**FILED**

SEP 11 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER DIRECTING ANSWER TO  
PETITION FOR REVIEW*

Real Part in Interest has petitioned this court for review of the Order Granting the Petition for Writ of Mandamus entered by the Court of Appeals on June 19, 2020. Having reviewed the petition, it appears that an answer will assist the court in resolving the issues presented. Accordingly, petitioner shall have 14 days from the date of this order within which to file and serve an answer to the petition. See NRAP 40B. We stay issuance of the remittitur in this matter pending resolution of the petition for review.

It is so ORDERED.

Pickering, C.J.  
Pickering

cc: Royal & Miles, LLP  
Claggett & Sykes Law Firm  
The Galliher Law Firm

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Electronically Filed  
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Clerk of Supreme Court

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

v.

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

**ANSWER TO REAL PARTY IN INTEREST'S PETITION FOR REVIEW**

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and Las Vegas Sands, LLC*

**NRAP 26.1 DISCLOSURE**

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

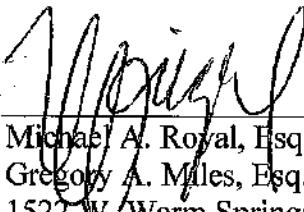
VENETIAN CASINO RESORT, LLC, Nevada limited liability company licensed to do business in the State of Nevada, active since 1997, doing business as the Venetian Resort Hotel Casino.

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

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

DATED this 9<sup>th</sup> day of October, 2020.

ROYAL & MILES LLP

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**I. RESPONSES TO QUESTIONS PRESENTED FOR REVIEW**

- A. THE COURT OF APPEALS PROPERLY HELD THAT THE DISTRICT COURT FAILED TO CONSIDER PROPORTIONALITY (AS REQUIRED BY NRCP 26(b)(1)) WHEN IT DENIED DEFENDANTS' MOTION FOR PROTECTIVE RELIEF UNDER NRCP 26(c)**
- B. THE ISSUE OF NRCP 26(b)(5) AND "BLANKET PRIVILEGE" RAISED BY SEKERA IN THE PETITION IS A NOVEL ARGUMENT NOT PRESENTED TO THE DISTRICT COURT OR THE NEVADA COURT OF APPEALS PRIOR TO ISSUANCE OF ITS OPINION IN THIS MATTER**

**II. RESPONSE TO SEKERA'S STATED "REASONS FOR REVIEW"**

Sekera has moved this Honorable Court to review Nevada Court of Appeals Case Nos. 79789 and 80816 related to her demanded entitlement to private contact information of Venetian guests identified in prior incident reports to not only use in this litigation, but to share the same with the world at large.<sup>1</sup> Venetian filed a motion in the District Court to protect its guests from the indiscriminate dissemination of their private personal information. The information in question is unnecessary to this litigation. Venetian's action to protect the privacy of its guests is not some kind of ruse "to maintain the information advantage"<sup>2</sup> as wrongfully portrayed by Sekera.

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<sup>1</sup> Sekera filed two identical Petitions in Case Nos. 79789 and 80816 and requested the matters to be consolidated. Venetian does not believe the matters have been consolidated. So, identical Answers to Sekera's Petitions are being filed in each case.

<sup>2</sup> See *Real Party in Interest's Petition for Review* ("Sekera Petition"), case no. 79689, at 1.

The Court of Appeals decision at issue suggests this case involves a question of first impression; namely, the proper interpretation of the proportionality requirement in NRCP 26(b)(1). Interestingly, Sekera takes a position that undermines her claim that this is a question of first impression properly subject to review pursuant to NRAP 40B(a). Specifically, Sekera inaccurately argues that the 2019 amendments to NRCP 26 were meaningless scrivener changes. The Court of Appeals properly held these amendments were significant and, in concert with relevant prior authority, found that the District Court failed to consider the proportionality of Sekera's request to obtain private information of other Venetian guests.

Sekera's claim that the Nevada Court of Appeals "failed to consider NRCP 26(b)(5)" in its opinion is not surprising, since Sekera failed to raise that issue before either the District Court below or the Nevada Court of Appeals prior to issuance of its opinion.<sup>3</sup> In fact, as discussed further below, it was Sekera's original position that NRCP 26(b)(1) was not at all relevant to Venetian's motion for protection. Sekera is now moving the proverbial goal posts.

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<sup>3</sup> See Venetian Casino Resort, LLC et al v. Eighth Judicial District Court, 136 Nev. Adv. Opinion 26 (May 14, 2020) (attached as Exhibit B to *Real Party In Interest's Petition for Review*) (hereinafter "May 14, 2020 Opinion Case No. 79689-COA")

Venetian also notes Sekera's assertions that "the Venetian [] unilaterally [withheld] discovery" from her<sup>4</sup> is grossly misleading. Venetian will review the procedural history with this Honorable Court so the facts surrounding the issues presented are clear.

### **III. RELEVANT PROCEDURAL HISTORY**

In its presentation of the procedural history, the Nevada Court of Appeals did not specifically address some facts Venetian deems relevant to the pending petition for review, which it will highlight herein below for this Honorable Court's consideration.<sup>5</sup>

On December 17, 2018, Venetian sent email correspondence to Sekera in response to a previous request from Sekera for three years of prior incident reports, wherein Venetian advised that it had documents ready to produce subject to a stipulation and order for protection under NRCP 26(c).<sup>6</sup> After discussions over the next five weeks failed, with Venetian having produced redacted copies of the incident reports as a good faith gesture, the parties agreed that Venetian would file a motion for protective order.<sup>7</sup>

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> *See id.* at 2-4.

<sup>6</sup> *See Appendix to Petitioners' Emergency Petition For Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(b)(6) and 27(c) and Emergency Motion Under NRAP Staying Execution of Order Directing Petitioners to Disclose Private, Protected Information of Guests Not Involved In Underlying Suite* ("Venetian Appendix"), Vol. 1, Tab 9, VEN 074-77.

<sup>7</sup> *See id.*, Vol. 1, Tab 9, VEN 079-83.

Venetian filed Defendants' Motion For Protective Order under NRCP 26(c) on February 1, 2019.<sup>8</sup> Venetian thereafter discovered that on February 7, 2019, six days after the motion for protection was filed, Sekera, unilaterally and without advising either Venetian or the District Court below, produced the documents at issue to Las Vegas attorney Peter Goldstein, Esq., who was prosecuting a separate case against Venetian styled Smith v. Venetian, case no. A-17-753362-C.<sup>9</sup> At the March 13, 2019 hearing before the Discovery Commissioner on Venetian's motion for protective order under NRCP 26(c), Sekera also failed to advise either Venetian or the court that the same documents she "unilaterally" provided to Mr. Goldstein at issue in the motion for protective order were filed with the District Court on March 12, 2019, and had therefore become part of the public record.<sup>10</sup>

The Discovery Commissioner ruled in Venetian's favor, finding that it demonstrated good cause for protection under NRCP 26(c) based on a legitimate privacy interest.<sup>11</sup> Sekera filed an objection to the Discovery Commissioner's Report and Recommendation of April 4, 2019, which was adjudicated by the District Court on May 14, 2019.<sup>12</sup>

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<sup>8</sup> See id., Vol. 1, Tab 9, VEN 054-66.

<sup>9</sup> See id., Vol. 1, Tab 10, VEN 084-85. See also id., Vol. 1, Tab 11, VEN 086-97.

<sup>10</sup> See id., Vol 1, Tab 12, VEN 140-48; Tab 13, VEN 186-200.

<sup>11</sup> See id., Vol. 1, Tab 14, VEN 201-06.

<sup>12</sup> See id., Vol. 1, Tab 15, VEN 207-66.

From the time Sekera improperly provided Mr. Goldstein with the prior incident reports on February 7, 2019 until May 14, 2019 (or at any time thereafter), Sekera took no known steps to prevent the disclosure of the prior incident reports which were the subject of Venetian's motion for protection on February 1, 2019. Further, Sekera did not raise the issue of "privilege" until after the Nevada Court of Appeals issued its decision on May 14, 2020.

#### **IV. LEGAL ARGUMENT**

**A. THE COURT OF APPEALS PROPERLY HELD THAT THE DISTRICT COURT FAILED TO CONSIDER PROPORTIONALITY (AS REQUIRED BY NRCP 26(b)(1)) WHEN IT DENIED DEFENDANTS' MOTION FOR PROTECTIVE RELIEF UNDER NRCP 26(c)**

**1. THE COURT OF APPEALS PROPERLY HELD THAT THE DISTRICT COURT NEEDS TO CONSIDER THE PROPORTIONALITY REQUIREMENTS OF NRCP 26(b)(1) WHEN RULING ON VENETIAN'S MOTION FOR PROTECTIVE ORDER**

In her petition, Sekera's silence concedes, as she must, that the District Court failed to consider proportionality in ruling on Venetian's NRCP 26(c) motion for protective order. Instead, Sekera inaccurately argues that under the prior version of the Nevada Rules of Civil Procedure she was not required to show proportionality and that the 2019 amendments to NRCP 26(b) made no substantive changes to prior law. The Court of Appeals properly held that while proportionality was required by prior law, the 2019 amendments to NRCP 26(b) were meant to emphasize its importance and required the District Court to consider proportionality when ruling on Venetian's motion.

The Court of Appeals analyzed the present discovery dispute in terms of the provisions of NRCP 26(b)(1) as amended effective March 1, 2019.<sup>13</sup> The amendment is significant in that it modified the permissible scope of discovery:

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

This change to NRCP 26(b)(1) was modeled after and followed a similar amendment to FRCP 26(b)(1) made in 2015. Citing the advisory committee's notes to the 2019 amendment, the advisory committee's notes to the 2015 federal amendment, and federal case law interpreting the 2015 amendment, the Court of Appeals properly found that a court must consider proportionality when determining whether a particular discovery request is within the scope of permissible discovery.<sup>14</sup>

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<sup>13</sup> May 14, 2020 Opinion Case No. 79689-COA fn. 4.

<sup>14</sup> May 14, 2020 Opinion Case No. 79689-COA Pgs. 7-8; see also NRCP 26 advisory committee notes to 2019 amendment, FRCP 26 advisory committee notes to 2015 amendment, In re Bard IVC Filters Prod. Liab. Litig., 317 F.R.D. 562, 564 (D. Ariz. 2016); Samsung Elecs. Am., Inc. v. Yang Kun Chung, 321 F.R.D. 250, 279 (N.D. Tex. 2017).



The Court of Appeals found that the District Court in this matter, when ruling on Venetian's NRCP 26(c) motion for protective order, failed to give any consideration to the proportionality of the information sought by Sekera. Accordingly, the Court of Appeals properly granted Venetian's petition and ordered the matter remanded to the District Court to reconsider Venetian's motion by giving the required due consideration to the proportional needs of the case.

Sekera argues that, contrary to the authority relied upon by the Court of Appeals, she is not required to show that the private information of individuals wholly uninvolved with her personal injury action is in anyway proportional to her needs in this case. In so doing, Sekera engages in a tortured recitation of the FRCP 26 advisory committee notes to 2015 amendment to argue that moving the proportionality requirement from FRCP 26(b)(2)(C)(iii) to FRCP 26(b)(1) was a simple scrivener's change with no substantive effect. However, the authority cited by Sekera does not support her position, considering the following advisory committee note:

The purpose of moving these factors explicitly to Rule 26(b)(1) is to make them more prominent, encouraging parties and **courts alike to remember them and take them into account in pursuing discovery and resolving discovery disputes.**<sup>15</sup>

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<sup>15</sup> Advisory Committee on Civil Rules Report, May 2, 2014, at 7-8; *Sekera Petition* at 7. (Emphasis added.)

As noted in the federal case authority cited by the Court of Appeals, addressing these proportionality requirements is precisely what is now required by a party seeking to obtain discovery and a court considering a dispute on whether certain discovery is properly within the scope of discovery.

When FRCP 26(b)(1) was amended, federal district courts noted that relevance was no longer enough for allowing discovery. *In re Bard IVC Filters Prod. Liab. Litig.*, 317 F.R.D. 562, 564 (D. Ariz. 2016) (“Relevancy alone is no longer sufficient – discovery must also be proportional to the needs of the case”); *Samsung Elecs. Am., Inc. v. Yank Kun Chang*, 321 F.R.D. 250, 279 (N.D. Tex. 2017) (“[D]iscoverable matter must be both relevant and proportional to the needs of the case – which are related but distinct requirements.”)<sup>16</sup>

Sekera has presented no authority in her petition that contradicts the holding of the Court of Appeals remanding this matter to the District Court with instructions that the District Court consider the proportionality requirements of NRCP 26(b)(1) in ruling on Venetian’s motion for protective order.

2. SEKERA’S INFORMATION ASYMMETRY ARGUMENT IS INACCURATE AND AN ISSUE MORE PROPERLY CONSIDERED BY THE DISTRICT COURT ON REMAND

In her petition, Sekera claims that Venetian “unilaterally” withheld the information at issue in the underlying discovery motion. As discussed more fully below, this claim is inaccurate. Moreover, the argument does not provide a basis for overturning the holding of the Court of Appeals. In fact, it provides further

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<sup>16</sup> May 14, 2020 Opinion Case No. 79689-COA at 7-8.

support for the Court of Appeals' holding requiring the District Court to consider proportionality issues in connection with Venetian's motion for protective order. Sekera is free to, and should, advance any claim of "information asymmetry" in opposition to Venetian's motion before the District Court.

To the extent this Honorable Court is inclined to consider these arguments, Venetian contends that Sekera has misrepresented the record in this matter. Sekera's claim that Venetian has "unilaterally" withheld discovery from her is simply unfounded. She is not a victim as portrayed in the petition. Of note, Sekera does not present this Honorable Court with facts supporting her assertion. She has simply made the unsupported, accusatory statement followed by a legal analysis. However, Venetian respectfully submits that these omitted facts matter, as Sekera has provided an unfairly distorted factual premise supporting her pending petition for review of the order issued by the Nevada Court of Appeals on May 14, 2020.

Sekera's assertion that "Venetian did not identify a legitimate legal basis for refusing to disclose the information in its incident reports" or that it failed to present evidence before the Discovery Commissioner demonstrating "a legitimate legal basis for a protective order" is without merit.<sup>17</sup> This statement ignores the Discovery Commissioner's Report and Recommendation of April 4, 2019, which recognized a right of privacy associated with the prior incident reports and granted

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<sup>17</sup> See *Sekera Petition* at 8-9.

Venetian's motion for protection under NRCP 26(c).<sup>18</sup> The Discovery

Commissioner stated the following during the March 13, 2019 hearing:

The motion for protective order is granted in part as follows -- The Venetian may continue to provide redacted reports as previously done. ... With regard to the reports that are produced, they are to be redacted for the names and the contact information for all witnesses and individuals who reported incidents.<sup>19</sup>

The Discovery Commissioner added: "**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."<sup>20</sup> In ordering that the private information remain in redacted form as previously produced to Sekera by Venetian, the Discovery Commissioner concluded: "I am going to issue a protective order that **the reports that are disclosed in this case are not circulated outside of this case** and for use only in this case."<sup>21</sup> However, as noted above, by that time Sekera had already violated the recommended order and failed to advise either Venetian or the Discovery Commissioner of that important fact. Regardless, it is clear from the record below that Venetian presented the Discovery Commissioner with sufficient "good cause" under NRCP 26(c) to support its motion for protection. In fact, the record demonstrates that the only "unilateral" action taken by either of the parties below was Sekera's

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<sup>18</sup> See *Venetian Appendix*, Vol. 1, Tab 15, VEN 201-06.

<sup>19</sup> See *id.* at Vol. 1, Tab 13, VEN 197.

<sup>20</sup> See *id.* at Vol. 1, Tab 13, VEN 198 (emphasis added).

<sup>21</sup> *Id.* (Emphasis added.)

surreptitious distribution of the prior incident reports, produced to her in good faith by Venetian in redacted form, while the motion for protection was pending.

**B. THE ISSUE OF NRCP 26(b)(5) AND “BLANKET PRIVILEGE” RAISED BY SEKERA IN THE PETITION IS A NOVEL ARGUMENT NOT PRESENTED TO THE DISTRICT COURT OR THE NEVADA COURT OF APPEALS PRIOR TO ISSUANCE OF ITS OPINION IN THIS MATTER**

Sekera did not raise the issue of “privilege” under NRCP 26(b)(5) or NRS 49.015(1)(b) in Plaintiff’s Opposition to Defendant’s Motion for Protective Order, filed February 13, 2019 (six days after Sekera had already produced the subject prior incident reports to Mr. Goldstein).<sup>22</sup> Given a second opportunity to raise the issue of “privilege” in Plaintiff’s Objection to Discovery Commissioner’s Report and Recommendations Dated April 2, 2019, filed April 16, 2019, Sekera again failed to do so.<sup>23</sup> Given a third opportunity to raise the issue of “privilege” under 26(b)(5) in Joyce Sekera’s Answering Brief before the Nevada Court of Appeals in case no. 79689-COA, filed October 11, 2019, Sekera once again did not raise the issue of “privilege”. Given a fourth opportunity to raise the issue of “privilege” under NRCP 26(b)(5) in Sekera’s Answer to Petition for Writ of Mandamus or Prohibition filed before the Court of Appeals in case no. 80816-COA on April 24, 2020, Sekera also failed to do so.

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<sup>22</sup> See *Appendix to Joyce Sekera’s Responding Brief* (filed October 8, 2019), Vol. 1, Tab 10, APP140-51.

<sup>23</sup> See *id.* at Vol. 1, Tab 12, APP152-63.

In fact, Sekera took the position before the Nevada Court of Appeals that Venetian's arguments in reliance on NRCP 26(b)(1) were "irrelevant" and "should be disregarded," having nothing to do with the pending issue presented in Venetian's emergency writ.<sup>24</sup> However, after the Nevada Court of Appeals rendered its order of May 14, 2020, Sekera's focus shifted and she thereafter raised the issue of "privilege" under NRCP 26(b)(5) for the first time.<sup>25</sup>

Rule 40(c)(1), Nevada Rules of Appellate Procedure, provides as follows: "Matters presented in the briefs and oral arguments may not be reargued in the petition for rehearing, **and no point may be raised for the first time on rehearing.**" (Emphasis added.) NRAP 40(c)(2) provides the following exceptions:

- (A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case; or
- (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

As Sekera did not raise the issue of NRCP 26(b)(5) prior to filing a petition for rehearing before the Court of Appeals, she is precluded from doing so now in this

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<sup>24</sup> See *Joyce Sekera's Answering Brief*, case no. 79689-COA, at 20 see also *Answer to Petition for Writ of Mandamus or Prohibition*, case no. 80816-COA, filed April 24, 2020) at 14 (providing that the Court of Appeals "does not need to consider [Venetian's] argument because it did not allege that the District Court's order was issued without regard to relevance").

<sup>25</sup> See *Petition for Rehearing*, case no. 79689-COA, filed June 15, 2020 at 11 (Sekera arguing for the first time that "Venetian did not identify a legitimate legal basis for refusing to disclose the information in its incident reports").

petition for review without having met the given exceptions presented in NRAP 40(c)(2). Sekera has not attempted to meet any exceptions because she failed to advise this Honorable Court that she is raising a novel argument for the first time in the petition for rehearing.

Rule 26(b)(5), Nevada Rules of Civil Procedure, presents as follows in pertinent part:

(A) Information Withheld. When a party withholds information otherwise discoverable by claiming that it is **privileged or subject to protection** as trial preparation material, the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed -- and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) Information Produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. **After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified;** and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved. (Emphasis added.)

Venetian did not present a claim of “privilege” below under NRCP 26(b)(5), but asserted that its guests involved in prior incident reports have a Constitutional right to privacy related to their personal information which must be

protected under NRCP 26(c). To the extent this Honorable Court considers Sekera's NRCP 26(b)(5) argument, Venetian respectfully notes that the record below demonstrates the following:

1. Venetian sent correspondence to Sekera on December 18, 2018 advising that prior incident reports were prepared for disclosure to Sekera subject to NRCP 26(c) protection;<sup>26</sup>
2. Venetian filed a motion for protective order upon agreement with Sekera that the issue of protection needed to be presented to the court for adjudication, which was fully brief and considered by the Discovery Commissioner;<sup>27</sup> and
3. The Discovery Commissioner agreed with Venetian that the private guest information within prior incident reports is worthy of protection under NRCP 26(c) and granted the motion.<sup>28</sup>

Sekera did not previously assert that Venetian failed to comply with NRCP 26(b)(5)(i) because she knew such a claim would be frivolous. In fact, Venetian provided Sekera with the contested prior incident reports in redacted form prior to filing a motion with the good faith understanding that Sekera would

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<sup>26</sup> *Venetian Appendix*, Vol. 1, Tab 9 at VEN 073-77.

<sup>27</sup> *Id.*, Vol. 1, Tab 9 at VEN 079-83; *see also id.* at VEN 054-65; *Appendix to Joyce Sekera's Responding Brief* (filed October 8, 2019), Vol. 1, Tab 10 at APP140-145; *Venetian Appendix*, Vol. 1, Tab 11, at VEN 086-97; *id.*, Tab 13 at VEN 186-200.

<sup>28</sup> *Venetian Appendix*, Vol. 1, Tab 14 at VEN 201-06.



accept and respect Venetian's assertion of guest privacy and the need for protection while the motion was pending before the Discovery Commissioner. However, as noted, Sekera shared them with others outside the litigation before the matter could be heard in direct violation of NRCP 26(b)(5)(B).

The Nevada Court of Appeals properly set forth Venetian's argument that that the District Court, in later reversing the Discovery Commissioner's Report and Recommendation of April 4, 2019, "abused its discretion when it did not consider and apply proportionality under NRCP 26(b)(1) prior to allowing the discovery."<sup>29</sup> The Court of Appeals rightly recognized that the District Court only considered relevance without weighing the proportionality factors presented in NRCP 26(b)(1).<sup>30</sup> Without question, the reason the Court of Appeals did not address NRCP 26(b)(5)(i) is because it was never presented by Sekera as an issue.<sup>31</sup> Now, Sekera seeks a second bite of the apple with a novel argument.

Venetian's petition for writ of mandamus was founded on the premise that the District Court did not properly evaluate the circumstances under NRCP 26(b)(1). In fact, the District Court simply determined that the guest information Venetian sought to protect was wholly unworthy of any protection

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<sup>29</sup> See May 14, 2020 Opinion Case No. 79689-COA at 5.

<sup>30</sup> Id. at 6.

<sup>31</sup> It should be further noted that Sekera also failed to raise the issue of NRS 49.015(1)(b) in the court below prior to the Nevada Court of Appeals' ruling in May 14, 2020 Opinion Case No. 79689-COA.

whatsoever; the judge therefore granted Sekera *carte blanche* authority to produce the private, personal information of Venetian guests to anyone at any time in any form for any purpose.<sup>32</sup> Venetian found that result untenable. It filed a writ of prohibition and mandamus which was accepted, as Venetian had no other available remedy with damages that would be immediate and irreparable. Venetian's request for a stay was granted. That stay remains in effect today. Thus, Venetian has not "unilaterally" done anything to harm Sekera as she has asserted.

Sekera's representation in the pending petition for review that "Venetian did not identify a legitimate basis for refusing to disclose the information in its incident reports" is not accurate.<sup>33</sup> Certainly, the Discovery Commissioner felt otherwise. Moreover, Sekera ignores this Honorable Court's ruling in Clark County Coroner v. Las Vegas Review-Journal, 136 Nev. Adv. Op. 5, 458 3d 1048, 1058-59 (2020), cited by the Nevada Court of Appeals in footnote 12 of the *Venetian* order which references "nontrivial privacy interest[s]" in juvenile autopsy reports "due to the social and medical information they reveal, which may require redaction before their release."<sup>34</sup>

In Nelson v. Heer, 121 Nev. 832, 834, 122 P.3d 1253 (2005), cited by Sekera in the present petition, this court noted it has "previously recognized that

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<sup>32</sup> See *Venetian Appendix*, Vol. 2, Tab 15 at VEN 253:3-25; 254:1-23; *id.* Tab 16 at VEN 267-70.

<sup>33</sup> See *Sekera Petition* at 8.

<sup>34</sup> May 14, 2020 Opinion Case No. 79689-COA at 12-13, note 12.

federal decision involving the Federal Rules of Civil Procedure provide persuasive authority when examining its rules.”<sup>35</sup> Venetian provided the Nevada Court of Appeals with numerous cases from the United States District Court for the District of Nevada in support of its position.

In Caballero v. Bodega Latina Corp., U.S. Dist. LEXIS 115072 (D. Nev. July 21, 2017), the court considered a motion to compel discovery brought by the plaintiff in a slip and fall accident occurring at Bodega’s El Super grocery store in North Las Vegas. There, the plaintiff sought production of prior guest incident reports. In that decision, the federal court reviewed the December 2015 changes to FRCP 26(b)(1) and carefully chronicled them, some of which are addressed by Sekera in the pending petition, including the required prongs of relevance and proportionality.<sup>36</sup> Regarding the proportionality prong, the court noted that “the amendment imposes a collective burden on ‘[t]he parties and the court . . . to consider the proportionality of all discovery and consider it in resolving discovery disputes.’”<sup>37</sup>

In Caballero, the plaintiff sought five years of prior incident reports, which the defendant refused to produce pursuant to Eldorado Club v. Graff, 78 Nev. 507,

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<sup>35</sup> See Sekera’s Petition at 5.

<sup>36</sup> See id. at \*3-\*8.

<sup>37</sup> Id. at \*6 (quoting FRCP 26 Advisory Committee Notes for 2015 Amendments).

377 P.2d 174 (1962).<sup>38</sup> In applying the FRCP 26(b)(1) analysis, the federal court denied the plaintiff's motion to compel by finding that the request for prior incident reports was not relevant, based on application of Nevada law.<sup>39</sup> Of note, nowhere in the federal court's analysis in Caballero is there any reference to FRCP 26(b)(5) or NRS 49.015(1)(b) (as cited by Sekera in the pending petition).

Venetian previously cited to other federal cases applying FRCP 26(b)(1) to similar facts associated with the privacy issues asserted here, all of which supported its position that the information of Venetian guests involved in prior incidents are worthy of protection under NRCP 26(c).<sup>40</sup>

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<sup>38</sup> Id. at \*9-\*12.

<sup>39</sup> Id. at \*10-\*23 (the court did not reach the proportionality prong of the analysis after finding prior slip/fall incident reports to be irrelevant to the case under Nevada law).

<sup>40</sup> See Izzo v. Wal-Mart Stores, Inc., 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694 (burden on the defendant to produce prior incident reports together with privacy interests of non-litigants outweighed tangential relevance to plaintiff's case); Rowland v. Paris Las Vegas, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502 (recognizing a Constitutional right to privacy pertaining to the information of guests in prior incident reports); Bible v. Rio Props., Inc., 246 F.R.D. 614, 620-21 (C.D. Cal. 2007); 2007 U.S. Dist. LEXIS 80017 at \*16-17 ("the rights of third parties can be adequately protected by permitting defendant to redact the guest's complaints and staff incident reports to protect the guest's name and personal information, such as address, date of birth, telephone number, and the like"); Dowell v Griffin, 275 F.R.D. 613, 620 (S.D. Cal. 2011) (ruling that the plaintiff was not entitled to identity, phone number, address, date of birth, social security number, or credit card number of unrelated third parties); Shaw v. Experian Info. Sols., Inc., 306 F.R.D. 293, 299 (S.D. Cal. 2015) (redaction is appropriate to protect private information); Gonzales v. Google, Inc., 234 FRD 674, 684 (N.D. Cal. 2006) (disclosing client information "may have an appreciable

## V. CONCLUSION

Venetian respectfully submits that the Court of Appeals' orders and opinions in case numbers 79689 and 80816 finding that the District Court failed to properly consider the proportionality requirements of NRCP 26(b)(1) and remanding this matter to the District Court with instructions to do so is proper and supported by the applicable authority. Sekera's suggestion that the Court of Appeals' order and opinion allows Venetian and like defendants "to unilaterally withhold requested discovery based upon an unreasonable proportionality argument" is without basis.

Venetian disputed the production of prior incident reports to protect a right of privacy associated with personal guest information, appropriately attempted to resolve the dispute with Sekera, then produced redacted reports pending a motion for protection in a good faith effort to move the case along. Sekera was aware of the basis upon which Venetian asserted protection under NRCP 26(c), which was set out in correspondence preceding the motion for protection and thereafter in its pleadings, and then "unilaterally" shared it.

The issue of "privilege" under NRCP 26(b)(5) and NRS 49.015(1)(b) is frankly a red herring. It was not raised until Sekera sought rehearing and review. Even if this Court considers it now, although Venetian does not concede NRCP 26(b)(5) applies under the given circumstances, it complied to the extent it made

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impact on the way which [the company] is perceived, and consequently the frequency with which customers use [the company]").

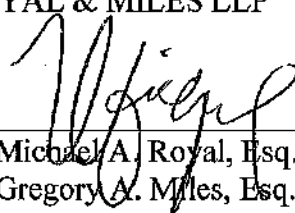
Sekera aware of what information was redacted in the prior incident reports and the purpose thereof. The only “unilateral” action taken below was Sekera’s intentional dissemination of the prior incident reports, allowing them to become part of the public record in another case without advising either Venetian or the District Court below.

Respectfully, the Court of Appeals has provided Nevada courts with sound direction of how to address this dispute and similar reoccurring issues. It did not err and the opinion provided should be affirmed by this Honorable Court. Sekera’s petition for rehearing should be denied and this case remanded to the District Court to fully consider this dispute pursuant to the guidelines provided by the Nevada Court of Appeals in its well drafted opinion.

DATED this 9<sup>th</sup> day of October, 2020.

ROYAL & MILES LLP

By

  
\_\_\_\_\_  
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**CERTIFICATE OF COMPLIANCE**

STATE OF NEVADA     }  
COUNTY OF CLARK    } ss:

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

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

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

☒ 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:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains **4,061 words** in compliance with NRAP 32(a)(7)(A)(ii) (having a word count of less than 14,000 words); or

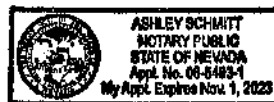
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4. Finally, I hereby certify that I have read this Writ, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules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

Further affiant sayeth naught.

  
MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before  
me by Michael A. Royal, Esq., on this  
9th day of October, 2020.



  
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 9<sup>th</sup> day of October, 2020, I served true and correct copy of the foregoing ANSWER TO REAL PARTY IN INTEREST'S PETITION FOR REVIEW for filing via the Court's e-Flex electronic filing system which will send electronic notification to the following:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No. 80816  
District Court Case No. A-18-772761-C

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Clerk of Supreme Court

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

v.

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

**ANSWER TO REAL PARTY IN INTEREST'S PETITION FOR REVIEW**

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**NRAP 26.1 DISCLOSURE**

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

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

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

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

DATED this 9<sup>th</sup> day of October, 2020.

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**I. RESPONSES TO QUESTIONS PRESENTED FOR REVIEW**

- A. THE COURT OF APPEALS PROPERLY HELD THAT THE DISTRICT COURT FAILED TO CONSIDER PROPORTIONALITY (AS REQUIRED BY NRCP 26(b)(1)) WHEN IT DENIED DEFENDANTS' MOTION FOR PROTECTIVE RELIEF UNDER NRCP 26(c)**
- B. THE ISSUE OF NRCP 26(b)(5) AND "BLANKET PRIVILEGE" RAISED BY SEKERA IN THE PETITION IS A NOVEL ARGUMENT NOT PRESENTED TO THE DISTRICT COURT OR THE NEVADA COURT OF APPEALS PRIOR TO ISSUANCE OF ITS OPINION IN THIS MATTER**

**II. RESPONSE TO SEKERA'S STATED "REASONS FOR REVIEW"**

Sekera has moved this Honorable Court to review Nevada Court of Appeals Case Nos. 79789 and 80816 related to her demanded entitlement to private contact information of Venetian guests identified in prior incident reports to not only use in this litigation, but to share the same with the world at large.<sup>1</sup> Venetian filed a motion in the District Court to protect its guests from the indiscriminate dissemination of their private personal information. The information in question is unnecessary to this litigation. Venetian's action to protect the privacy of its guests is not some kind of ruse "to maintain the information advantage"<sup>2</sup> as wrongfully portrayed by Sekera.

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<sup>1</sup> Sekera filed two identical Petitions in Case Nos. 79789 and 80816 and requested the matters to be consolidated. Venetian does not believe the matters have been consolidated. So, identical Answers to Sekera's Petitions are being filed in each case.

<sup>2</sup> See *Real Party in Interest's Petition for Review* ("Sekera Petition"), case no. 80816, at 1.

The Court of Appeals decision at issue suggests this case involves a question of first impression; namely, the proper interpretation of the proportionality requirement in NRCP 26(b)(1). Interestingly, Sekera takes a position that undermines her claim that this is a question of first impression properly subject to review pursuant to NRAP 40B(a). Specifically, Sekera inaccurately argues that the 2019 amendments to NRCP 26 were meaningless scrivener changes. The Court of Appeals properly held these amendments were significant and, in concert with relevant prior authority, found that the District Court failed to consider the proportionality of Sekera's request to obtain private information of other Venetian guests.

Sekera's claim that the Nevada Court of Appeals "failed to consider NRCP 26(b)(5)" in its opinion is not surprising, since Sekera failed to raise that issue before either the District Court below or the Nevada Court of Appeals prior to issuance of its opinion.<sup>3</sup> In fact, as discussed further below, it was Sekera's original position that NRCP 26(b)(1) was not at all relevant to Venetian's motion for protection. Sekera is now moving the proverbial goal posts.

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<sup>3</sup> See *Venetian Casino Resort, LLC et al v. Eighth Judicial District Court*, 136 Nev. Adv. Opinion 26 (May 14, 2020) (attached as Exhibit B to *Real Party In Interest's Petition for Review*) (hereinafter "May 14, 2020 Opinion Case No. 79689-COA")



Venetian also notes Sekera's assertions that "the Venetian [] unilaterally [withheld] discovery" from her<sup>4</sup> is grossly misleading. Venetian will review the procedural history with this Honorable Court so the facts surrounding the issues presented are clear.

### **III. RELEVANT PROCEDURAL HISTORY**

In its presentation of the procedural history, the Nevada Court of Appeals did not specifically address some facts Venetian deems relevant to the pending petition for review, which it will highlight herein below for this Honorable Court's consideration.<sup>5</sup>

On December 17, 2018, Venetian sent email correspondence to Sekera in response to a previous request from Sekera for three years of prior incident reports, wherein Venetian advised that it had documents ready to produce subject to a stipulation and order for protection under NRCP 26(c).<sup>6</sup> After discussions over the next five weeks failed, with Venetian having produced redacted copies of the incident reports as a good faith gesture, the parties agreed that Venetian would file a motion for protective order.<sup>7</sup>

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> *See id.* at 2-4.

<sup>6</sup> *See Appendix to Petitioners' Emergency Petition For Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(b)(6) and 27(c) and Emergency Motion Under NRAP Staying Execution of Order Directing Petitioners to Disclose Private, Protected Information of Guests Not Involved In Underlying Suite* ("Venetian Appendix"), Vol. 1, Tab 9, VEN 074-77.

<sup>7</sup> *See id.*, Vol. 1, Tab 9, VEN 079-83.

Venetian filed Defendants' Motion For Protective Order under NRCP 26(c) on February 1, 2019.<sup>8</sup> Venetian thereafter discovered that on February 7, 2019, six days after the motion for protection was filed, Sekera, unilaterally and without advising either Venetian or the District Court below, produced the documents at issue to Las Vegas attorney Peter Goldstein, Esq., who was prosecuting a separate case against Venetian styled Smith v. Venetian, case no. A-17-753362-C.<sup>9</sup> At the March 13, 2019 hearing before the Discovery Commissioner on Venetian's motion for protective order under NRCP 26(c), Sekera also failed to advise either Venetian or the court that the same documents she "unilaterally" provided to Mr. Goldstein at issue in the motion for protective order were filed with the District Court on March 12, 2019, and had therefore become part of the public record.<sup>10</sup>

The Discovery Commissioner ruled in Venetian's favor, finding that it demonstrated good cause for protection under NRCP 26(c) based on a legitimate privacy interest.<sup>11</sup> Sekera filed an objection to the Discovery Commissioner's Report and Recommendation of April 4, 2019, which was adjudicated by the District Court on May 14, 2019.<sup>12</sup>

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<sup>8</sup> See id., Vol. 1, Tab 9, VEN 054-66.

<sup>9</sup> See id., Vol. 1, Tab 10, VEN 084-85. See also id., Vol. 1, Tab 11, VEN 086-97.

<sup>10</sup> See id., Vol 1, Tab 12, VEN 140-48; Tab 13, VEN 186-200.

<sup>11</sup> See id., Vol. 1, Tab 14, VEN 201-06.

<sup>12</sup> See id., Vol. 1, Tab 15, VEN 207-66.

From the time Sekera improperly provided Mr. Goldstein with the prior incident reports on February 7, 2019 until May 14, 2019 (or at any time thereafter), Sekera took no known steps to prevent the disclosure of the prior incident reports which were the subject of Venetian's motion for protection on February 1, 2019. Further, Sekera did not raise the issue of "privilege" until after the Nevada Court of Appeals issued its decision on May 14, 2020.

#### **IV. LEGAL ARGUMENT**

**A. THE COURT OF APPEALS PROPERLY HELD THAT THE DISTRICT COURT FAILED TO CONSIDER PROPORTIONALITY (AS REQUIRED BY NRCP 26(b)(1)) WHEN IT DENIED DEFENDANTS' MOTION FOR PROTECTIVE RELIEF UNDER NRCP 26(c)**

**1. THE COURT OF APPEALS PROPERLY HELD THAT THE DISTRICT COURT NEEDS TO CONSIDER THE PROPORTIONALITY REQUIREMENTS OF NRCP 26(b)(1) WHEN RULING ON VENETIAN'S MOTION FOR PROTECTIVE ORDER**

In her petition, Sekera's silence concedes, as she must, that the District Court failed to consider proportionality in ruling on Venetian's NRCP 26(c) motion for protective order. Instead, Sekera inaccurately argues that under the prior version of the Nevada Rules of Civil Procedure she was not required to show proportionality and that the 2019 amendments to NRCP 26(b) made no substantive changes to prior law. The Court of Appeals properly held that while proportionality was required by prior law, the 2019 amendments to NRCP 26(b) were meant to emphasize its importance and required the District Court to consider proportionality when ruling on Venetian's motion.

The Court of Appeals analyzed the present discovery dispute in terms of the provisions of NRCP 26(b)(1) as amended effective March 1, 2019.<sup>13</sup> The amendment is significant in that it modified the permissible scope of discovery:

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

This change to NRCP 26(b)(1) was modeled after and followed a similar amendment to FRCP 26(b)(1) made in 2015. Citing the advisory committee's notes to the 2019 amendment, the advisory committee's notes to the 2015 federal amendment, and federal case law interpreting the 2015 amendment, the Court of Appeals properly found that a court must consider proportionality when determining whether a particular discovery request is within the scope of permissible discovery.<sup>14</sup>

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<sup>13</sup> May 14, 2020 Opinion Case No. 79689-COA fn. 4.

<sup>14</sup> May 14, 2020 Opinion Case No. 79689-COA Pgs. 7-8; see also NRCP 26 advisory committee notes to 2019 amendment, FRCP 26 advisory committee notes to 2015 amendment, In re Bard IVC Filters Prod. Liab. Litig., 317 F.R.D. 562, 564 (D. Ariz. 2016); Samsung Elecs. Am., Inc. v. Yang Kun Chung, 321 F.R.D. 250, 279 (N.D. Tex. 2017).

The Court of Appeals found that the District Court in this matter, when ruling on Venetian's NRCP 26(c) motion for protective order, failed to give any consideration to the proportionality of the information sought by Sekera. Accordingly, the Court of Appeals properly granted Venetian's petition and ordered the matter remanded to the District Court to reconsider Venetian's motion by giving the required due consideration to the proportional needs of the case.

Sekera argues that, contrary to the authority relied upon by the Court of Appeals, she is not required to show that the private information of individuals wholly uninvolved with her personal injury action is in anyway proportional to her needs in this case. In so doing, Sekera engages in a tortured recitation of the FRCP 26 advisory committee notes to 2015 amendment to argue that moving the proportionality requirement from FRCP 26(b)(2)(C)(iii) to FRCP 26(b)(1) was a simple scrivener's change with no substantive effect. However, the authority cited by Sekera does not support her position, considering the following advisory committee note:

The purpose of moving these factors explicitly to Rule 26(b)(1) is to make them more prominent, encouraging parties and **courts alike to remember them and take them into account in pursuing discovery and resolving discovery disputes.**<sup>15</sup>

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<sup>15</sup> Advisory Committee on Civil Rules Report, May 2, 2014, at 7-8; *Sekera Petition* at 7. (Emphasis added.)

As noted in the federal case authority cited by the Court of Appeals, addressing these proportionality requirements is precisely what is now required by a party seeking to obtain discovery and a court considering a dispute on whether certain discovery is properly within the scope of discovery.

When FRCP 26(b)(1) was amended, federal district courts noted that relevance was no longer enough for allowing discovery. *In re Bard IVC Filters Prod. Liab. Litig.*, 317 F.R.D. 562, 564 (D. Ariz. 2016) (“Relevancy alone is no longer sufficient – discovery must also be proportional to the needs of the case”); *Samsung Elecs. Am., Inc. v. Yank Kun Chang*, 321 F.R.D. 250, 279 (N.D. Tex. 2017) (“[D]iscoverable matter must be both relevant and proportional to the needs of the case – which are related but distinct requirements.”)<sup>16</sup>

Sekera has presented no authority in her petition that contradicts the holding of the Court of Appeals remanding this matter to the District Court with instructions that the District Court consider the proportionality requirements of NRCP 26(b)(1) in ruling on Venetian’s motion for protective order.

2. SEKERA’S INFORMATION ASYMMETRY ARGUMENT IS INACCURATE AND AN ISSUE MORE PROPERLY CONSIDERED BY THE DISTRICT COURT ON REMAND

In her petition, Sekera claims that Venetian “unilaterally” withheld the information at issue in the underlying discovery motion. As discussed more fully below, this claim is inaccurate. Moreover, the argument does not provide a basis for overturning the holding of the Court of Appeals. In fact, it provides further

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<sup>16</sup> May 14, 2020 Opinion Case No. 79689-COA at 7-8.

support for the Court of Appeals' holding requiring the District Court to consider proportionality issues in connection with Venetian's motion for protective order. Sekera is free to, and should, advance any claim of "information asymmetry" in opposition to Venetian's motion before the District Court.

To the extent this Honorable Court is inclined to consider these arguments, Venetian contends that Sekera has misrepresented the record in this matter. Sekera's claim that Venetian has "unilaterally" withheld discovery from her is simply unfounded. She is not a victim as portrayed in the petition. Of note, Sekera does not present this Honorable Court with facts supporting her assertion. She has simply made the unsupported, accusatory statement followed by a legal analysis. However, Venetian respectfully submits that these omitted facts matter, as Sekera has provided an unfairly distorted factual premise supporting her pending petition for review of the order issued by the Nevada Court of Appeals on May 14, 2020.

Sekera's assertion that "Venetian did not identify a legitimate legal basis for refusing to disclose the information in its incident reports" or that it failed to present evidence before the Discovery Commissioner demonstrating "a legitimate legal basis for a protective order" is without merit.<sup>17</sup> This statement ignores the Discovery Commissioner's Report and Recommendation of April 4, 2019, which recognized a right of privacy associated with the prior incident reports and granted

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<sup>17</sup> See *Sekera Petition* at 8-9.

Venetian's motion for protection under NRCP 26(c).<sup>18</sup> The Discovery

Commissioner stated the following during the March 13, 2019 hearing:

The motion for protective order is granted in part as follows -- The Venetian may continue to provide redacted reports as previously done. ... With regard to the reports that are produced, they are to be redacted for the names and the contact information for all witnesses and individuals who reported incidents.<sup>19</sup>

The Discovery Commissioner added: "**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."<sup>20</sup> In ordering that the private information remain in redacted form as previously produced to Sekera by Venetian, the Discovery Commissioner concluded: "I am going to issue a protective order that **the reports that are disclosed in this case are not circulated outside of this case** and for use only in this case."<sup>21</sup> However, as noted above, by that time Sekera had already violated the recommended order and failed to advise either Venetian or the Discovery Commissioner of that important fact. Regardless, it is clear from the record below that Venetian presented the Discovery Commissioner with sufficient "good cause" under NRCP 26(c) to support its motion for protection. In fact, the record demonstrates that the only "unilateral" action taken by either of the parties below was Sekera's

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<sup>18</sup> See *Venetian Appendix*, Vol. 1, Tab 15, VEN 201-06.

<sup>19</sup> See *id.* at Vol. 1, Tab 13, VEN 197.

<sup>20</sup> See *id.* at Vol. 1, Tab 13, VEN 198 (emphasis added).

<sup>21</sup> *Id.* (Emphasis added.)



surreptitious distribution of the prior incident reports, produced to her in good faith by Venetian in redacted form, while the motion for protection was pending.

**B. THE ISSUE OF NRCP 26(b)(5) AND “BLANKET PRIVILEGE” RAISED BY SEKERA IN THE PETITION IS A NOVEL ARGUMENT NOT PRESENTED TO THE DISTRICT COURT OR THE NEVADA COURT OF APPEALS PRIOR TO ISSUANCE OF ITS OPINION IN THIS MATTER**

Sekera did not raise the issue of “privilege” under NRCP 26(b)(5) or NRS 49.015(1)(b) in Plaintiff’s Opposition to Defendant’s Motion for Protective Order, filed February 13, 2019 (six days after Sekera had already produced the subject prior incident reports to Mr. Goldstein).<sup>22</sup> Given a second opportunity to raise the issue of “privilege” in Plaintiff’s Objection to Discovery Commissioner’s Report and Recommendations Dated April 2, 2019, filed April 16, 2019, Sekera again failed to do so.<sup>23</sup> Given a third opportunity to raise the issue of “privilege” under 26(b)(5) in Joyce Sekera’s Answering Brief before the Nevada Court of Appeals in case no. 79689-COA, filed October 11, 2019, Sekera once again did not raise the issue of “privilege”. Given a fourth opportunity to raise the issue of “privilege” under NRCP 26(b)(5) in Sekera’s Answer to Petition for Writ of Mandamus or Prohibition filed before the Court of Appeals in case no. 80816-COA on April 24, 2020, Sekera also failed to do so.

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<sup>22</sup> See *Appendix to Joyce Sekera’s Responding Brief* (filed October 8, 2019), Vol. 1, Tab 10, APP140-51.

<sup>23</sup> See *id.* at Vol. 1, Tab 12, APP152-63.

In fact, Sekera took the position before the Nevada Court of Appeals that Venetian's arguments in reliance on NRCP 26(b)(1) were "irrelevant" and "should be disregarded," having nothing to do with the pending issue presented in Venetian's emergency writ.<sup>24</sup> However, after the Nevada Court of Appeals rendered its order of May 14, 2020, Sekera's focus shifted and she thereafter raised the issue of "privilege" under NRCP 26(b)(5) for the first time.<sup>25</sup>

Rule 40(c)(1), Nevada Rules of Appellate Procedure, provides as follows: "Matters presented in the briefs and oral arguments may not be reargued in the petition for rehearing, **and no point may be raised for the first time on rehearing.**" (Emphasis added.) NRAP 40(c)(2) provides the following exceptions:

- (A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case; or
- (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

As Sekera did not raise the issue of NRCP 26(b)(5) prior to filing a petition for rehearing before the Court of Appeals, she is precluded from doing so now in this

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<sup>24</sup> See *Joyce Sekera's Answering Brief*, case no. 79689-COA, at 20 see also *Answer to Petition for Writ of Mandamus or Prohibition*, case no. 80816-COA, filed April 24, 2020) at 14 (providing that the Court of Appeals "does not need to consider [Venetian's] argument because it did not allege that the District Court's order was issued without regard to relevance").

<sup>25</sup> See *Petition for Rehearing*, case no. 79689-COA, filed June 15, 2020 at 11 (Sekera arguing for the first time that "Venetian did not identify a legitimate legal basis for refusing to disclose the information in its incident reports").

petition for review without having met the given exceptions presented in NRAP 40(c)(2). Sekera has not attempted to meet any exceptions because she failed to advise this Honorable Court that she is raising a novel argument for the first time in the petition for rehearing.

Rule 26(b)(5), Nevada Rules of Civil Procedure, presents as follows in pertinent part:

(A) Information Withheld. When a party withholds information otherwise discoverable by claiming that it is **privileged or subject to protection** as trial preparation material, the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed -- and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) Information Produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. **After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified;** and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved. (Emphasis added.)

Venetian did not present a claim of “privilege” below under NRCP 26(b)(5), but asserted that its guests involved in prior incident reports have a Constitutional right to privacy related to their personal information which must be

protected under NRCP 26(c). To the extent this Honorable Court considers Sekera's NRCP 26(b)(5) argument, Venetian respectfully notes that the record below demonstrates the following:

1. Venetian sent correspondence to Sekera on December 18, 2018 advising that prior incident reports were prepared for disclosure to Sekera subject to NRCP 26(c) protection;<sup>26</sup>
2. Venetian filed a motion for protective order upon agreement with Sekera that the issue of protection needed to be presented to the court for adjudication, which was fully brief and considered by the Discovery Commissioner;<sup>27</sup> and
3. The Discovery Commissioner agreed with Venetian that the private guest information within prior incident reports is worthy of protection under NRCP 26(c) and granted the motion.<sup>28</sup>

Sekera did not previously assert that Venetian failed to comply with NRCP 26(b)(5)(i) because she knew such a claim would be frivolous. In fact, Venetian provided Sekera with the contested prior incident reports in redacted form prior to filing a motion with the good faith understanding that Sekera would

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<sup>26</sup> *Venetian Appendix*, Vol. 1, Tab 9 at VEN 073-77.

<sup>27</sup> *Id.*, Vol. 1, Tab 9 at VEN 079-83; *see also id.* at VEN 054-65; *Appendix to Joyce Sekera's Responding Brief* (filed October 8, 2019), Vol. 1, Tab 10 at APP140-145; *Venetian Appendix*, Vol. 1, Tab 11, at VEN 086-97; *id.*, Tab 13 at VEN 186-200.

<sup>28</sup> *Venetian Appendix*, Vol. 1, Tab 14 at VEN 201-06.

accept and respect Venetian's assertion of guest privacy and the need for protection while the motion was pending before the Discovery Commissioner. However, as noted, Sekera shared them with others outside the litigation before the matter could be heard in direct violation of NRCP 26(b)(5)(B).

The Nevada Court of Appeals properly set forth Venetian's argument that that the District Court, in later reversing the Discovery Commissioner's Report and Recommendation of April 4, 2019, "abused its discretion when it did not consider and apply proportionality under NRCP 26(b)(1) prior to allowing the discovery."<sup>29</sup> The Court of Appeals rightly recognized that the District Court only considered relevance without weighing the proportionality factors presented in NRCP 26(b)(1).<sup>30</sup> Without question, the reason the Court of Appeals did not address NRCP 26(b)(5)(i) is because it was never presented by Sekera as an issue.<sup>31</sup> Now, Sekera seeks a second bite of the apple with a novel argument.

Venetian's petition for writ of mandamus was founded on the premise that the District Court did not properly evaluate the circumstances under NRCP 26(b)(1). In fact, the District Court simply determined that the guest information Venetian sought to protect was wholly unworthy of any protection

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<sup>29</sup> See May 14, 2020 Opinion Case No. 79689-COA at 5.

<sup>30</sup> *Id.* at 6.

<sup>31</sup> It should be further noted that Sekera also failed to raise the issue of NRS 49.015(1)(b) in the court below prior to the Nevada Court of Appeals' ruling in May 14, 2020 Opinion Case No. 79689-COA.

whatsoever; the judge therefore granted Sekera *carte blanche* authority to produce the private, personal information of Venetian guests to anyone at any time in any form for any purpose.<sup>32</sup> Venetian found that result untenable. It filed a writ of prohibition and mandamus which was accepted, as Venetian had no other available remedy with damages that would be immediate and irreparable. Venetian's request for a stay was granted. That stay remains in effect today. Thus, Venetian has not "unilaterally" done anything to harm Sekera as she has asserted.

Sekera's representation in the pending petition for review that "Venetian did not identify a legitimate basis for refusing to disclose the information in its incident reports" is not accurate.<sup>33</sup> Certainly, the Discovery Commissioner felt otherwise. Moreover, Sekera ignores this Honorable Court's ruling in Clark County Coroner v. Las Vegas Review-Journal, 136 Nev. Adv. Op. 5, 458 3d 1048, 1058-59 (2020), cited by the Nevada Court of Appeals in footnote 12 of the *Venetian* order which references "nontrivial privacy interest[s]" in juvenile autopsy reports "due to the social and medical information they reveal, which may require redaction before their release."<sup>34</sup>

In Nelson v. Heer, 121 Nev. 832, 834, 122 P.3d 1253 (2005), cited by Sekera in the present petition, this court noted it has "previously recognized that

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<sup>32</sup> See *Venetian Appendix*, Vol. 2, Tab 15 at VEN 253:3-25; 254:1-23; *id.* Tab 16 at VEN 267-70.

<sup>33</sup> See *Sekera Petition* at 8.

<sup>34</sup> May 14, 2020 Opinion Case No. 79689-COA at 12-13, note 12.

federal decision involving the Federal Rules of Civil Procedure provide persuasive authority when examining its rules.”<sup>35</sup> Venetian provided the Nevada Court of Appeals with numerous cases from the United States District Court for the District of Nevada in support of its position.

In Caballero v. Bodega Latina Corp., U.S. Dist. LEXIS 115072 (D. Nev. July 21, 2017), the court considered a motion to compel discovery brought by the plaintiff in a slip and fall accident occurring at Bodega’s El Super grocery store in North Las Vegas. There, the plaintiff sought production of prior guest incident reports. In that decision, the federal court reviewed the December 2015 changes to FRCP 26(b)(1) and carefully chronicled them, some of which are addressed by Sekera in the pending petition, including the required prongs of relevance and proportionality.<sup>36</sup> Regarding the proportionality prong, the court noted that “the amendment imposes a collective burden on ‘[t]he parties and the court . . . to consider the proportionality of all discovery and consider it in resolving discovery disputes.”<sup>37</sup>

In Caballero, the plaintiff sought five years of prior incident reports, which the defendant refused to produce pursuant to Eldorado Club v. Graff, 78 Nev. 507,

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<sup>35</sup> See *Sekera’s Petition* at 5.

<sup>36</sup> See *id.* at \*3-\*8.

<sup>37</sup> *Id.* at \*6 (quoting FRCP 26 Advisory Committee Notes for 2015 Amendments).

377 P.2d 174 (1962).<sup>38</sup> In applying the FRCP 26(b)(1) analysis, the federal court denied the plaintiff's motion to compel by finding that the request for prior incident reports was not relevant, based on application of Nevada law.<sup>39</sup> Of note, nowhere in the federal court's analysis in Caballero is there any reference to FRCP 26(b)(5) or NRS 49.015(1)(b) (as cited by Sekera in the pending petition).

Venetian previously cited to other federal cases applying FRCP 26(b)(1) to similar facts associated with the privacy issues asserted here, all of which supported its position that the information of Venetian guests involved in prior incidents are worthy of protection under NRCP 26(c).<sup>40</sup>

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<sup>38</sup> Id. at \*9-\*12.

<sup>39</sup> Id. at \*10-\*23 (the court did not reach the proportionality prong of the analysis after finding prior slip/fall incident reports to be irrelevant to the case under Nevada law).

<sup>40</sup> See Izzo v. Wal-Mart Stores, Inc., 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694 (burden on the defendant to produce prior incident reports together with privacy interests of non-litigants outweighed tangential relevance to plaintiff's case); Rowland v. Paris Las Vegas, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502 (recognizing a Constitutional right to privacy pertaining to the information of guests in prior incident reports); Bible v. Rio Props., Inc., 246 F.R.D. 614, 620-21 (C.D. Cal. 2007); 2007 U.S. Dist. LEXIS 80017 at \*16-17 ("the rights of third parties can be adequately protected by permitting defendant to redact the guest's complaints and staff incident reports to protect the guest's name and personal information, such as address, date of birth, telephone number, and the like"); Dowell v Griffin, 275 F.R.D. 613, 620 (S.D. Cal. 2011) (ruling that the plaintiff was not entitled to identity, phone number, address, date of birth, social security number, or credit card number of unrelated third parties); Shaw v. Experian Info. Sols., Inc., 306 F.R.D. 293, 299 (S.D. Cal. 2015) (redaction is appropriate to protect private information); Gonzales v. Google, Inc., 234 FRD 674, 684 (N.D. Cal. 2006) (disclosing client information "may have an appreciable



## V. CONCLUSION

Venetian respectfully submits that the Court of Appeals' orders and opinions in case numbers 79689 and 80816 finding that the District Court failed to properly consider the proportionality requirements of NRCP 26(b)(1) and remanding this matter to the District Court with instructions to do so is proper and supported by the applicable authority. Sekera's suggestion that the Court of Appeals' order and opinion allows Venetian and like defendants "to unilaterally withhold requested discovery based upon an unreasonable proportionality argument" is without basis.

Venetian disputed the production of prior incident reports to protect a right of privacy associated with personal guest information, appropriately attempted to resolve the dispute with Sekera, then produced redacted reports pending a motion for protection in a good faith effort to move the case along. Sekera was aware of the basis upon which Venetian asserted protection under NRCP 26(c), which was set out in correspondence preceding the motion for protection and thereafter in its pleadings, and then "unilaterally" shared it.

The issue of "privilege" under NRCP 26(b)(5) and NRS 49.015(1)(b) is frankly a red herring. It was not raised until Sekera sought rehearing and review. Even if this Court considers it now, although Venetian does not concede NRCP 26(b)(5) applies under the given circumstances, it complied to the extent it made

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impact on the way which [the company] is perceived, and consequently the frequency with which customers use [the company]").

Sekera aware of what information was redacted in the prior incident reports and the purpose thereof. The only “unilateral” action taken below was Sekera’s intentional dissemination of the prior incident reports, allowing them to become part of the public record in another case without advising either Venetian or the District Court below.

Respectfully, the Court of Appeals has provided Nevada courts with sound direction of how to address this dispute and similar reoccurring issues. It did not err and the opinion provided should be affirmed by this Honorable Court. Sekera’s petition for rehearing should be denied and this case remanded to the District Court to fully consider this dispute pursuant to the guidelines provided by the Nevada Court of Appeals in its well drafted opinion.

DATED this 9<sup>th</sup> day of October, 2020.

ROYAL & MILES LLP

By 

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Gregory A. Miles, Esq. (SBN 4336)

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(702) 471-6777

Counsel for Petitioners

**CERTIFICATE OF COMPLIANCE**

STATE OF NEVADA     }  
COUNTY OF CLARK    } ss:

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

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

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

☒ 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:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains **4,061 words** in compliance with NRAP 32(a)(7)(A)(ii) (having a word count of less than 14,000 words); or

☐ Does not exceed **10** pages

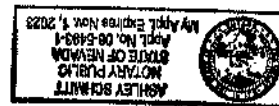
4. Finally, I hereby certify that I have read this Writ, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),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

Further affiant sayeth naught.

  
MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before  
me by Michael A. Royal, Esq., on this  
9<sup>th</sup> day of October, 2020.

  
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 9<sup>th</sup> day of October, 2020, I served true and correct copy of the foregoing ANSWER TO REAL PARTY IN INTEREST'S PETITION FOR REVIEW for filing via the Court's e-Flex electronic filing system which will send electronic notification to the following:

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

  
An employee of Royal & Miles LLP

IN THE SUPREME COURT OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND LAS VEGAS SANDS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,

Respondents,


and

JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

No. 79689

**FILED**

OCT 23 2020

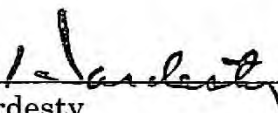
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DENYING PETITION FOR REVIEW*

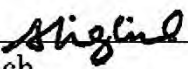
Review denied. NRAP 40B.<sup>1</sup>

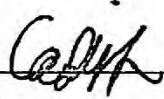
It is so ORDERED.

 C.J.  
Pickering

 J.  
Hardesty

 J.  
Parraguirre

 J.  
Stiglich

 J.  
Cadish

 J.  
Silver

<sup>1</sup>The Honorable Mark Gibbons, Justice, did not participate in the  
decision of this matter.

20-38858

cc: Hon. Kathleen E. Delaney, District Judge  
Royal & Miles, LLP  
Claggett & Sykes Law Firm  
The Galliher Law Firm  
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND LAS VEGAS SANDS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,

Respondents,

and

JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

No. 80816

**FILED**

OCT 23 2020

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

*ORDER DENYING PETITION FOR REVIEW*

Review denied. NRAP 40B.<sup>1</sup>

It is so ORDERED.

Pickering, C.J.  
Pickering

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Stiglich, J.  
Stiglich

Cadish, J.  
Cadish

Silver, J.  
Silver

<sup>1</sup>The Honorable Mark Gibbons, Justice, did not participate in the  
decision of this matter.

20-38849



cc: Hon. Kathleen E. Delaney, District Judge  
Royal & Miles, LLP  
Claggett & Sykes Law Firm  
The Galliher Law Firm  
Eighth District Court Clerk

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY COMPANY;  
AND LAS VEGAS SANDS, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,  
Petitioners,  
vs.  
THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK; AND THE  
HONORABLE KATHLEEN E. DELANEY,  
DISTRICT JUDGE,  
Respondents,  
and  
JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

**Supreme Court No. 79689**

District Court Case No. A772761

**NOTICE IN LIEU OF REMITTITUR**

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on May 14th, 2020, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: October 23, 2020

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze  
Administrative Assistant

cc: Hon. Kathleen E. Delaney, District Judge  
Eighth Judicial District Court, Chief Judge  
Royal & Miles, LLP  
The Galliher Law Firm \ Keith E. Galliher, Jr.  
Claggett & Sykes Law Firm  
Steven D. Grierson, Eighth District Court Clerk

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY COMPANY;  
AND LAS VEGAS SANDS, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,  
Petitioners,  
vs.  
THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK; AND THE  
HONORABLE KATHLEEN E. DELANEY,  
DISTRICT JUDGE,  
Respondents,  
and  
JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

**Supreme Court No. 80816**  
District Court Case No. A772761

**NOTICE IN LIEU OF REMITTITUR**

TO THE ABOVE-NAMED PARTIES:

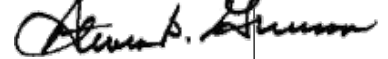
The decision and Order of the court in this matter having been entered on September 11th, 2020, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: October 23, 2020

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze  
Administrative Assistant

cc: Hon. Kathleen E. Delaney, District Judge  
Eighth Judicial District Court, Chief Judge  
Royal & Miles, LLP  
The Galliher Law Firm \ Keith E. Galliher, Jr.  
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*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOYCE SEKERA, an Individual,  
  
Plaintiff,

v.

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

Defendants.

Case No.: A-18-772761-C

Dept. No. XXV

**PLAINTIFF'S MOTION TO  
PLACE ON CALENDAR**

**HEARING REQUESTED**

1  
2 VENETIAN CASINO RESORT, LLC,  
3 d/b/a THE VENETIAN LAS VEGAS, a  
4 Nevada Limited Liability Company;  
5 LAS VEGAS SANDS, LLC d/b/a THE  
6 VENETIAN LAS VEGAS, a Nevada  
7 Limited Liability Company,

8 Third-Party Plaintiffs,

9 v.

10 BRAND VEGAS, LLC, a Nevada  
11 Limited Liability Company; DOES 1-  
12 10; ROE BUSINESS ENTITIES 1-10,  
13 inclusive,

14 Third-Party Defendants.

15 Plaintiff, JOYCE SEKERA (“Plaintiff” or “Joyce”), by and through her  
16 attorneys CLAGGETT & SYKES LAW FIRM and THE GALLIHER LAW FIRM,  
17 hereby files this Motion to Place on Calendar.

18 This Motion is based upon the records and pleadings on file herein, the  
19 points and authorities attached hereto, and any oral arguments that the Court  
20 may allow.

21 DATED this 30th day of April, 2021.

22 CLAGGETT & SYKES LAW FIRM

23 /s/ William T. Sykes

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*Attorneys for Plaintiff*

**I.**

**INTRODUCTION**

This is a personal injury case arising out of a slip and fall at the Venetian Casino Resort on November 4, 2016. On that day, Joyce slipped on the marble floor near the Grand Lux Café restrooms in the Venetian Casino Resort. When Joyce slipped, she struck her skull and elbow on a marble pillar and her left hip on the ground, resulting in serious injuries.

For years now, the parties have litigated the issue of whether Defendants must produce unredacted incident reports, including necessary witness information, such as victim's contact information and the names and titles of Venetian employees who attended the incidents. Plaintiff's position is that the information contained on those reports is both relevant and proportional to the needs of the case. Defendants, on the other hand, insist that the incident reports must be redacted as they contain individuals' private information.

1 Relevant to this issue are two previous orders from the Court: (1) the  
2 Court's July 31, 2019, Order granting Plaintiff's Objection to the Discovery  
3 Commissioner's Report and Recommendation of April 2, 2019, and ordering that  
4 Defendants produce unredacted incident reports; and (2) the Court's March 13,  
5 2020, Order denying Defendants' Objection to the Discovery Commissioner's  
6 Report and Recommendations of August 9, 2019, and adopting the Discovery  
7 Commissioner's recommendations regarding incident reports. Following the  
8 entry of these orders, Defendants filed separate petitions for writ of mandamus  
9 or prohibition challenging the Court's orders.

10 On May 14, 2020, the Nevada Court of Appeals issued its published  
11 opinion granting Defendants' petition and directing the clerk to issue a writ of  
12 mandamus instructing the Court to vacate its July 31, 2019, Order. Further, the  
13 Nevada Court of Appeals stated:

14 The district court shall conduct further proceedings consistent  
15 with this opinion to determine whether disclosure of the  
16 unredacted reports is relevant and proportional under NRCP  
17 26(b)(1). If disclosure is proper, the district court must conduct a  
18 good-cause analysis under NRCP 26(c)(1), applying the  
19 framework provided herein to determine whether the Venetian  
20 has shown good cause for a protective order. If the Venetian  
21 demonstrates good cause, the district court may issue a  
22 protective order as dictated by the circumstances of this case.

23 *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Ct.*, 467 P.3d 1, 8 (Nev.  
24 App., May 14, 2020). Thereafter, on June 19, 2020, the Nevada Court of Appeals  
issued its Order Granting Petition for Writ of Mandamus instructing the Court  
to vacate its March 13, 2020, Order and conduct proceedings consistent with its  
order and prior decision.

1 Plaintiff now seeks to place on calendar this Court's reconsideration of its  
2 vacated orders in light of the Nevada Court of Appeals' writs. Consistent with  
3 the Nevada Court of Appeals' decisions, and the framework outlined therein,  
4 the Court should deny Defendants' request for a protective order and compel  
5 Defendants to produce the entirety of their incident reports, without redactions,  
6 for the following reasons:

- 7 1. The redacted witness information is relevant to Plaintiff's claims.  
8 Relevant evidence is, "evidence having any tendency to make the  
9 existence of any fact that is of consequence to the determination of the  
10 action more or less probable than it would be without the evidence." NRS  
11 48.015. Incident reports are relevant to establish notice of a dangerous  
12 condition, foreseeability that guests could slip and fall, and lack of  
13 comparative negligence.<sup>1</sup> See, e.g., *Alcantara v. Bodega Latina Corp*, 2020  
14 U.S. Dist. LEXIS 61271, at \*8 (D. Nev. Apr. 7, 2020); *Shakespear v. Wal-*  
15 *Mart Stores*, 2012 U.S. Dist. LEXIS 205322, at \*5 (D. Nev. Nov. 5, 2012);  
16 *Humphries v. New York-New York Hotel & Casino*, 133 Nev. 607, 609-11  
17 (2017). Further, the incident reports contain information regarding  
18 witnesses who themselves are likely to have additional information  
19

---

20  
21  
22 <sup>1</sup>Not only has the Venetian claimed comparative negligence in this case, but  
23 they sued the Plaintiff's former employer, Third Party Defendant Brand Vegas,  
24 LLC, alleging that Brand Vegas must indemnify the Venetian for the Plaintiff's  
alleged comparative fault. The relative notice between the Venetian and the  
Plaintiff about potential slipping hazards on the Venetian's marble floors is  
critical in this case.



1 relevant to the claims and defenses in this case. Therefore, the  
2 information contained on the incident reports is relevant and should be  
3 disclosed by Defendants.

- 4 2. The information sought by Plaintiff is proportional to the needs of this  
5 case. NRCP 26(b)(1) provides several factors for courts to consider  
6 regarding proportionality: (1) the importance of the issues at stake in the  
7 action; (2) the amount in controversy; (3) the parties' relative access to  
8 relevant information; (4) the parties' resources; (5) the importance of the  
9 discovery in resolving the issues; and (6) whether the burden or expense  
10 of the proposed discovery outweighs its likely benefit. Here, the issues of  
11 notice and foreseeability are crucial to Plaintiff's claims, including her  
12 claim for punitive damages. With regards to the amount in controversy,  
13 to date, Plaintiff is claiming: (1) \$114,009.27 in past medical specials; (2)  
14 \$457,936.99 in future medical expenses; (3) undetermined wage loss and  
15 loss of earning capacity; (4) past and future pain, suffering, mental  
16 anguish, and loss of enjoyment of life; (5) attorney's fees and costs; and (6)  
17 punitive damages. Thus, the amount in controversy is substantial and  
18 weighs in favor of disclosure. Next, the information is solely within  
19 Defendants' control and Plaintiff has no means of accessing the  
20 information absent disclosure by Defendants. As to the parties' resources,  
21 Defendants have substantial resources relative to Plaintiff. Further, the  
22 act of removing redactions, redactions placed by Defendants in the first  
23 place, involves minimal use of time or effort. The information contained  
24

1 on the incident reports is crucial to resolving issues in this case, including  
2 issues of notice, foreseeability, lack of comparative negligence, and  
3 Plaintiff's claim for punitive damages. Finally, the burden on Defendants  
4 would be minimal while the benefit is potentially substantial given the  
5 number of similar incidents and the likely wealth of information  
6 witnesses to those incidents possess. Thus, based on these factors, the  
7 information requested by Plaintiff is proportional to the needs of the case  
8 and thus, disclosure is appropriate.

- 9 3. Defendants have not demonstrated good cause for a protective order to  
10 issue. In order to determine whether Defendants have demonstrated good  
11 cause, the Court should: (1) evaluate whether particularized harm would  
12 occur due to public disclosure of the information; (2) balance the public  
13 and private interests to determine whether a protective order is  
14 necessary; and (3) consider whether redacting portions of the requested  
15 materials will allow disclosure. *Venetian Casino Resort, LLC v. Eighth*  
16 *Judicial Dist. Ct.*, 467 P.3d 1, 9-11 (Nev. App., May 14, 2020). Here,  
17 Defendants are unable to articulate any particularized harm that would  
18 occur in the event they disclose the information contained on the incident  
19 reports. Instead, Defendants broadly cite to 'privacy concerns' without  
20 any specificity. *See Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470,  
21 476 (9th Cir. 1992) ("Broad allegations of harm, unsubstantiated by  
22 specific examples or articulated reasoning, do not satisfy the Rule 26(c)  
23 test"). That is because the information sought is no different than that  
24

1 contained in the phone book, i.e., names, addresses, and telephone  
2 numbers. To the extent the incident reports contain any individual's  
3 social security number, Plaintiff is fine with that information remaining  
4 redacted. Plaintiff simply seeks to be able to contact witnesses with  
5 relevant information. Next, the public and private interests weigh in  
6 favor of disclosure as: (1) no privacy interests will be violated; (2) the  
7 information is being sought for a legitimate purpose; (3) disclosure will  
8 not cause embarrassment to any party; (4) the information is vital to  
9 public health and safety as it is relevant to Plaintiff's claim that  
10 Defendants knew its floors were dangerous and yet failed to take any  
11 appropriate precautions to prevent injury to Plaintiff and others; (5)  
12 disclosure will certainly promote fairness and efficiency and Plaintiff has  
13 no other means of obtaining this information; and (6) the case involves  
14 issues of public importance, namely, the health and safety of guests at  
15 Defendants' property. Finally, apart from social security numbers,  
16 redacting the names and contact information of witnesses would prevent  
17 full disclosure of the relevant and proportional incident reports.  
18 Accordingly, Defendants' request for a protective order should be denied  
19 and Plaintiff respectfully requests that the Court order Defendants to  
20 produce unredacted incident reports with the necessary witness contact  
21 information.

1 II.

2 RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

3 This is a personal injury case arising out of a slip and fall at the Venetian  
4 Casino Resort on November 4, 2016. *See* Amended Complaint attached hereto  
5 as Exhibit 1 at pgs. 2-4. On that day, Joyce slipped on the marble floor near the  
6 Grand Lux Café restrooms in the Venetian Casino Resort. *See* Incident Report  
7 attached hereto as Exhibit 2 at VEN 008.

8 On June 28, 2019, Plaintiff amended her complaint to include a claim for  
9 punitive damages, alleging that Defendants “knew that its marble floors caused  
10 unreasonable amount of injury slip and falls and thus were dangerous to  
11 pedestrians.” *Id.* at pg. 3. Plaintiff also alleged that despite Defendants’ notice of  
12 the dangerous condition, its “marble floors were significantly more slippery than  
13 is safe for pedestrians [and] Defendant failed to take any appropriate  
14 precautions to prevent injury.” *Id.* at pg. 4.

15 When Plaintiff slipped, she struck her skull and elbow on a marble pillar  
16 and her left hip on the ground sustaining serious injuries. Plaintiff contends  
17 that the highly-polished marble floors are an unsafe condition which continually  
18 and repeatedly injures people.

19 On August 15, 2018, Plaintiff requested, “True and correct copies of any  
20 and all claim forms, legal actions, civil complaints, statements, security reports,  
21 computer generated lists, investigative documents or other memoranda which  
22 have, as its subject matter, slip and fall cases occurring on marble floors within  
23 the subject VENETIAN CASINO RESORT within three years prior to the  
24

1 incident described in Plaintiff's Complaint, to the present." *See* Plaintiff's  
2 Request for Production of Documents and Materials to Defendant attached  
3 hereto as Exhibit 3 at pg. 3. Defendants ultimately responded by producing 64  
4 redacted incident reports that only spanned 2013 – 2016. *See* Incident Reports  
5 from November 04, 2013 – November 4, 2016, attached hereto as Exhibit 4  
6 (VEN 269 – 928). Defendants improperly concealed and redacted responsive  
7 incident reports which should have been produced in full. *Id.* Defendants did not  
8 produce a privilege log or contemporaneously explain the redactions in any way.  
9 The redactions appear to include necessary witness information, such as  
10 victim's contact information and the names and titles of Venetian employees  
11 who attended the incidents.

12 When Plaintiff pressed Defendant for complete disclosure, Defendants  
13 responded by moving for a protective order. Defendants argued that the policy  
14 interests of protecting confidential personal information outweigh the need for  
15 discovery in the case. The Discovery Commissioner recommended that a  
16 protective order be issued, citing generalized privacy concerns and HIPAA-  
17 related information. *See* Discovery Commissioner's Report and  
18 Recommendations Dated April 2, 2019, attached hereto as Exhibit 5 at pg. 3.  
19 Plaintiff objected to the Discovery Commissioner's Report and  
20 Recommendations and on July 31, 2019, the Court rejected Defendants'  
21 argument and reversed the Discovery Commissioner's recommendation holding  
22 "there is no legal basis to preclude Plaintiff from knowing the identity of the  
23 individuals contained in the incident reports as this information is relevant  
24

1 discovery.” *See* July 31, 2019, Order attached hereto as Exhibit 6 at pg. 3. On  
2 September 26, 2019, Defendants filed their first writ petition challenging the  
3 Court’s July 31, 2019, Order.

4 When Defendants failed to produce the unredacted documents following  
5 the hearing before the Court, Plaintiff filed a motion to compel Defendants to  
6 produce the unredacted documents, as well as the previously requested  
7 subsequent incident reports. On July 12, 2019, Defendants opposed Plaintiff’s  
8 motion to compel and filed a counter-motion for a protective order, arguing that  
9 the incident reports outside of what Defendants had already produced were  
10 irrelevant and burdensome. Notably, Defendants did not argue that the  
11 information was private.

12 The Discovery Commissioner heard arguments regarding Plaintiff’s  
13 motion to compel and recommended that Defendant produce unredacted  
14 incident reports from November 2013 through the date of production. *See*  
15 Discovery Commissioner’s Report and Recommendations Dated December 2,  
16 2019 attached hereto as Exhibit 7 at pg. 8. Thereafter, the Court heard  
17 Defendants’ objections to the Discovery Commissioner’s Report and  
18 Recommendations and Ordered that Defendants produce unredacted incident  
19 reports from November 2013 through the date of the subject incident, but  
20 reversed the commendation that subsequent incident reports be produced. *See*  
21 March 13, 2020, Order attached hereto as Exhibit 8. On March 17, 2020,  
22 Defendants filed their second writ petition.

On May 14, 2020, the Nevada Court of Appeals issued its published opinion granting Defendants' first petition. *See* Nevada Court of Appeals Opinion, dated May 14, 2020, attached hereto as Exhibit 9. Further, the Nevada Court of Appeals stated:

The district court shall conduct further proceedings consistent with this opinion to determine whether disclosure of the unredacted reports is relevant and proportional under NRCP 26(b)(1). If disclosure is proper, the district court must conduct a good-cause analysis under NRCP 26(c)(1), applying the framework provided herein to determine whether the Venetian has shown good cause for a protective order. If the Venetian demonstrates good cause, the district court may issue a protective order as dictated by the circumstances of this case.

*Id.* at pgs. 13-14. Subsequently, the Clerk issued a Writ of Mandamus instructing the Court to, "vacate your order denying the Venetian's motion for a protective order and to conduct further proceedings consistent with the court's opinion[.]" *See* Writ of Mandamus, dated May 21, 2020, attached hereto as Exhibit 10.

Then, on June 19, 2020, the Nevada Court of Appeals issued its Order Granting Petition for Writ of Mandamus instructing the Court to vacate its March 13, 2020, Order and conduct proceedings consistent with its order and prior decision. *See* Nevada Court of Appeals Order, dated June 19, 2020, attached hereto as Exhibit 11. Thereafter, the Clerk issued a Writ of Mandamus. *See* Writ of Mandamus, dated June 30, 2020, attached hereto as Exhibit 12.

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## III.

## LEGAL STANDARD

Relevant evidence is, “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” NRS 48.015.

Consistent with the statutory rules of evidence, Nev. R. Civ. P. 26(b)(1) states:

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

Nev. R. Civ. 26(b)(1) (emphasis added).

Discovery sought must be both relevant and proportionate to the requesting party’s needs. *See Venetian Casino Resort, LLC v. Eighth Judicial Dist. Ct.*, 467 P.3d 1, 5 (Nev. App., May 14, 2020) (citing *In re Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 564 (D. Ari. 2016) (“Relevancy alone is no longer sufficient – discovery must also be proportional to the needs of the case”); *Samsung Elecs. Am., Inc. v. Yang Kun Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017) (“[D]iscoverable matter must be both relevant and proportional to the needs of the case – which are related but distinct requirements.”)). NRCP 26(b)(1) provides several factors for courts to consider regarding proportionality:



(1) the importance of the issues at stake in the action; (2) the amount in controversy; (3) the parties' relative access to relevant information; (4) the parties' resources; (5) the importance of the discovery in resolving the issues; and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit.

#### IV.

#### LEGAL ARGUMENT

##### A. The Incident Reports are Relevant to Plaintiff's Claims.

Relevant evidence is, "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015. The Nevada Supreme Court has held that evidence of "similar accidents involving the same condition may be relevant on the issues of causation and whether there is a defective and dangerous condition. *Reingold v. Wet 'n Wild Nev., Inc.*, 113 Nev. 967, 969, 944 P.2d 800, 802 (1997) *overruled in part by Bass-Davis v. Davis*, 122 Nev. 442, 134 P.2d 103 (2006) (citing *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 415, 470 P.2d 135, 139 (1970)). Incident reports are relevant to establish notice of a dangerous condition, as well as foreseeability that guests may be injured as a result of the dangerous condition. *See, e.g., Alcantara v. Bodega Latina Corp.*, 2020 U.S. Dist. LEXIS 61271, at \*8 (D. Nev. Apr. 7, 2020); *Shakespear v. Wal-Mart Stores*, 2012 U.S. Dist. LEXIS 205322, at \*5 (D. Nev. Nov. 5, 2012); *Humphries v. New York-New York Hotel & Casino*, 133 Nev. 607, 609-11 (2017).

1 Here, Defendants' incident reports, as well as the redacted information  
2 therein, are relevant to Plaintiff's claims in multiple ways. First, the incident  
3 reports are relevant to show Defendants had notice of the unsafe and dangerous  
4 condition of their walkway, as well as to show that it was foreseeable that  
5 guests, such as Plaintiff, could be injured by the dangerous flooring. As Plaintiff  
6 alleges in her Amended Complaint, "Defendant knew that its marble floors  
7 caused unreasonable amount of injury slip and falls and thus were dangerous to  
8 pedestrians, and in the existence of ordinary care, would have had the  
9 opportunity to remedy the situation prior to Plaintiff's fall." *See* Am. Compl.,  
10 Ex. 1 at pg. 3. Further, Plaintiff alleges that "[i]n the three years prior to  
11 Plaintiff's fall there were at least 73 injury slip and falls on the marble floors in  
12 Venetian. In spite of Defendant's actual, constructive, and/or continuous notice  
13 their marble floors were significantly more slippery than is safe for pedestrians,  
14 the Defendant failed to take any appropriate precautions to prevent injury to  
15 Plaintiff and other guests." *Id.* at pg. 4. The incident reports tend to prove that  
16 Defendants knew the flooring was unsafe, that it posed a safety risk to guests,  
17 and that Defendants failed to make necessary changes to protect Plaintiff, and  
18 others, from serious bodily injury.

19 Similarly, the incident reports are relevant to Plaintiff's claim for  
20 punitive damages. "A plaintiff may recover punitive damages when evidence  
21 demonstrates that the defendant has acted with 'malice, express or implied.'"  
22 *Wyeth v. Rowatt*, 126 Nev. Adv. Rep. 44, 244 P.3d 765, 783 (2010) (quoting NRS  
23 42.005(1)). "Malice, express or implied,' means conduct which is intended to  
24

1 injure a person or despicable conduct which is engaged in with a conscious  
2 disregard of the rights or safety of others.” *Id.* (quoting NRS 42.001(3))  
3 (emphasis added). “A defendant has a ‘conscious disregard’ of a person’s rights  
4 and safety when he or she knows of ‘the probable harmful consequences of a  
5 wrongful act and a willful and deliberate failure to act to avoid those  
6 consequences.” *Id.* (quoting NRS 42.001(1)). Defendants’ incident reports  
7 demonstrate that Defendants knew the unsafe marble flooring posed a threat to  
8 its guests and, yet, despite that knowledge, willfully failed to act to avoid future  
9 injuries, all in conscious disregard of their guests’ health and safety.

10 Finally, as to the redacted contact information for injured guests, that  
11 information is relevant and necessary, as well. Plaintiff needs the names and  
12 contact information on the incident reports because those individuals are  
13 potential witnesses. The identity of the individuals who fell at Defendants’  
14 property and were injured are important because they will enable Plaintiff’s  
15 counsel to locate these witnesses and present them to counter Defendants’  
16 expected claims that Plaintiff was comparatively negligent in some way. These  
17 other witnesses have relevant information regarding: (1) the facts and  
18 circumstances surrounding their slip and fall; and (2) the condition of  
19 Defendants’ flooring at the time and location of their slip and fall.

20 Simply, Defendants should not be permitted to shield witness  
21 information that is high relevant to the claims and defenses in this case.

**B. The Information Sought by Plaintiff is Proportional to the Needs of the Case.**

Discovery sought must be both relevant and proportionate to the requesting party's needs. *See Venetian Casino Resort, LLC v. Eighth Judicial Dist. Ct.*, 467 P.3d 1, 5 (Nev. App., May 14, 2020) (citing *In re Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 564 (D. Ari. 2016) ("Relevancy alone is no longer sufficient – discovery must also be proportional to the needs of the case"); *Samsung Elecs. Am., Inc. v. Yang Kun Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017) ("[D]iscoverable matter must be both relevant and proportional to the needs of the case – which are related but distinct requirements.")). NRCP 26(b)(1) provides several factors for courts to consider regarding proportionality: (1) the importance of the issues at stake in the action; (2) the amount in controversy; (3) the parties' relative access to relevant information; (4) the parties' resources; (5) the importance of the discovery in resolving the issues; and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit.

Here, the information sought by Plaintiff is proportional to the needs of the case.

**1. The Importance of the Issues at Stake in the Action**

The issues at stake in this action are crucial, as they go to the question of whether Defendants knowingly maintained unsafe flooring at the peril of their guests, including Plaintiff. Specifically, issues of notice, foreseeability, and whether Plaintiff was comparatively negligent are vital to Plaintiff's claims and

1 Defendants' defenses. As discussed in greater detail above, the incident reports,  
2 including the redacted witness contact information, are relevant to these issues  
3 and it is proportional to the needs of the case for Plaintiff to be able to contact  
4 the fact witnesses identified on those incident reports. Accordingly, this factor  
5 weighs in favor of disclosure.

## 6           **2.       The Amount in Controversy**

7           To date, Plaintiff is claiming: (1) \$114,009.27 in past medical specials; (2)  
8 \$457,936.99 in future medical expenses; (3) undetermined wage loss and loss of  
9 earning capacity; (4) past and future pain, suffering, mental anguish, and loss of  
10 enjoyment of life; (5) attorney's fees and costs; and (6) punitive damages. *See*  
11 Plaintiff's Eighteenth Supplemental Disclosure attached hereto as Exhibit 13 at  
12 pgs. 18-19. Thus, the amount in controversy is substantial and weighs in favor  
13 of disclosure. *See, e.g., Guerrero v. Wharton*, 2017 U.S. Dist. LEXIS 225185, at  
14 \*10 – \*11 (D. Nev. Mar. 30, 2017) ("Plaintiff's claim is not limited to past  
15 medical expenses, and she is instead suing to recover for past medical expenses,  
16 future medical expenses, lost wages, pain and suffering, and emotional distress,  
17 as well as punitive damages.... Not including emotional damages and punitive  
18 damages, Plaintiff estimates these damages at approximately \$242,675.94....  
19 Including the possibility of a jury award of emotional damages and punitive  
20 damages, the amount in controversy would be much higher than that amount.  
21 Especially given the limited burden on Defendant in complying with these  
22 discovery requests, the amount in controversy tilts in favor of discoverability,  
23 not against it"); *Schultz v. Sentinel Ins. Co.*, 2016 U.S. Dist. LEXIS 72542, at  
24

1 \*19 - \*20 (D.S.D. June 3, 2016) (“The court applies the proportionality  
2 requirement built into Rule 26, but rejects Sentinel’s characterization of the  
3 value of Ms. Schultz’s case as a \$17,000 case that benefits her alone.... If  
4 punitive damages are awarded, Ms. Schultz has the potential to affect Sentinel’s  
5 alleged business practices and to remedy the situation for many insureds, not  
6 just herself”).

### 7 **3. The Parties’ Relative Access to Relevant Information**

8 The information sought is solely in Defendants’ control. Plaintiff has no  
9 other means of obtaining the information contained on the incident reports,  
10 including witness contact information. This factor weighs in favor of disclosure.  
11 *See, e.g., Labrier v. State Farm Fire & Cas. Co.*, 314 F.R.D. 637, 643 (W.D. Mo.  
12 May 9, 2016) (“LaBrier does not have access to the information she seeks, other  
13 than through the discovery, as it is in State Farm’s own database and the  
14 database of its vendor, Xactware. In terms of resources, LaBrier is an  
15 individual, while State Farm is a corporation with a national presence, with  
16 sophisticated access to data”).

### 17 **4. The Parties’ Resources**

18 Defendants have substantial resources. Further, the act of un-redacting  
19 the incident reports (redactions that were placed on the incident reports by  
20 Defendants in the first place) would involve minimal time, effort, or resources.  
21 The records were electronically redacted, and can easily be electronically  
22 unredacted. Therefore, this factor weighs in favor of disclosure, as well.  
23  
24

1           **5.     The Importance of the Discovery in Resolving the Issues**

2           The discovery sought by Plaintiff is more than tangentially related to the  
3 claims and defenses in this case. Indeed, the incident reports and the related  
4 witnesses are directly relevant to issues of notice, foreseeability, whether  
5 Plaintiff is comparatively at-fault, and Plaintiff's claim for punitive damages.  
6 Plaintiff should be permitted to know the identities of witnesses to prior  
7 incidents and to contact them regarding the same. Defendants are yet to proffer  
8 any reason for why this information is irrelevant or unimportant to the issues in  
9 this case. This factor weighs in favor of disclosure.

10           **6.     Whether the Burden or Expense of the Proposed Discovery**  
11           **Outweighs its Likely Benefit**

12           As discussed above, the burden on Defendants in producing the requested  
13 materials is minimal, particularly because Defendants are the ones who  
14 redacted the information in the first place. Accordingly, Defendants cannot  
15 show that the burden or expense of producing the unredacted incident reports  
16 outweigh their likely benefit. Instead, the likely benefit far outweighs any  
17 purported burden given: (1) the information's relevance to the claims and  
18 defenses in this case; (2) the substantial amount in controversy, particularly  
19 when Plaintiff's claim for punitive damages is taken into account; and (3) the  
20 fact that Defendants are in sole possession of the requested information and  
21 Plaintiff has no alternative means of acquiring the same. Based on the  
22 foregoing, this factor weighs heavily in favor of disclosure.

1     **C.     Defendants Have Not Demonstrated Good Cause for a Protective**  
2     **Order to Issue.**

3             NRCp 26(c)(1) provides the standard for protective orders, stating that,  
4     “[t]he court may, for good cause, issue an order to protect a party or person from  
5     annoyance, embarrassment, oppression, or undue burden or expense....” In  
6     *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Ct.*, 467 P.3d 1 (Nev. App.,  
7     May 14, 2020), the Nevada Court of Appeals adopted a three-part test for  
8     conducting a good cause analysis under NRCp 26(c)(1).

9             “First, the district court must determine if particularized harm would  
10     occur due to public disclosure of the information.” *Venetian Casino Resort, LLC*  
11     *v. Eighth Judicial Dist. Ct.*, 467 P.3d 1, 10 (Nev. App., May 14, 2020) (citing *In*  
12     *re Roman Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 424 (9th Cir.  
13     2011) (“As we have explained, ‘[b]road allegations of harm, unsubstantiated by  
14     specific examples or articulated reasoning, do not satisfy the Rule 26(c) test”).

15             “Second, if the district court concludes that particularized harm would  
16     result, then it must ‘balance the public and private interests to decide whether  
17     ... a protective order is necessary.” *Id.* (citing *Roman Catholic*, 661 F.3d at 424).  
18     In order to balance private and public interests, the Nevada Court of Appeals  
19     directed courts to the following list of factors set forth in *Glenmede Trust Co. v.*  
20     *Thompson*, 56 F.3d 476, 483 (3d Cir. 1995):

21             (1) whether disclosure will violate any privacy interests; (2)  
22             whether the information is being sought for a legitimate purpose  
23             or for an improper purpose; (3) whether disclosure of the  
24             information will cause a party embarrassment; (4) whether  
              confidentiality is being sought over information important to  
              public health or safety; (5) whether the sharing of information



1 among litigants will promote fairness and efficiency; (6) whether  
2 a party benefitting from the order of confidentiality is a public  
3 entity or official; and (7) whether the case involves issues  
4 important to the public.

5 *Id.* at 10-11 (quoting *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir.  
6 1995)).

7 “Third, even if the factors balance in favor of protecting the discovery  
8 material, ‘a court must still consider whether redacting portions of the discovery  
9 material will nevertheless allow disclosure.’” *Id.* at 11 (quoting *Roman Catholic*,  
10 661 F.3d at 425).

11 Here, Defendants have not, and cannot, show that good cause exists for  
12 their requested protective order as Defendants failed to demonstrate that  
13 particularized harm would occur should they disclose the full, un-redacted  
14 incident reports and, also, the balance of public and private interests weigh in  
15 favor of disclosure. Therefore, Defendants’ request for a protective order should  
16 be denied, in its entirety.

17 **1. Defendants Have Not Demonstrated That Particularized  
18 Harm Would Occur Due to Disclosure of the Requested  
19 Information**

20 In order for the Court to issue a protective order, Defendants must first  
21 satisfy their burden of demonstrating that particularized harm would occur due  
22 to disclosure of the requested information. *See Venetian Casino Resort, LLC v.*  
23 *Eighth Judicial Dist. Ct.*, 467 P.3d 1, 10 (Nev. App., May 14, 2020) (citing *In re*  
24 *Roman Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 424 (9th Cir.  
2011) (“As we have explained, ‘[b]road allegations of harm, unsubstantiated by

specific examples or articulated reasoning, do not satisfy the Rule 26(c) test”). However, to date, Defendants have been unable to do so, instead relying on vague, generalized claims that full disclosure of the incident reports would violate the privacy interests of the non-party witnesses.

The witness information sought here is akin to that found in the phone book, i.e., name, address, and phone number, plus dates of birth. This information is not protectable under NRCP 26(b) and Defendants cannot cite to a Nevada case which supports their contention that this information can be protected because no such case exists. More importantly, the names, addresses, and phone numbers are forms of publicly available information and, therefore, Defendants cannot establish a protectable interest in the same. *See, e.g., Khalilpour v. CELLCO P’ship*, 2010 WL 1267749, at \*2 (N.D. Cal. 2010) (requiring disclosure of names, addresses and phone numbers because they do not involve revelation of personal secrets, intimate activities, or similar private information); *Busse v. Motorola, Inc.*, 351 Ill. App. 3d 67, 72, 813 N.E.2d 1013, 1018 (2004) (“Matters of public record – name, address, date of birth and fact of marriage – have been held not to be private facts”); *Keel v. Quality Med. Sys., Inc.*, 515 So. 2d 337 (Fla. Dist. Ct. App. 1987) (information commonly known in the industry and not unique to allegedly injured party not “confidential” and thus not entitled to protection); *Brignola v. Home Properties, L.P.*, 2013 WL 1795336, at \*12 (E.D. Pa. Apr. 26, 2013) (“name, address, phone number, etc. These are not private facts...”); *Mount Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly*, 2013 WL 3200713, at \*4 (D.N.J. June 24, 2013) (defendant

1 must disclose contact information for potential witnesses of the plaintiff;  
2 defendant's concerns about privacy "are overblown"). When the prior slip and  
3 fall victims added their information to Defendants' incident reports, they did so  
4 voluntarily, to a private third-party business, and for Defendants' benefit.  
5 Defendants cannot turn around now and claim that the information is somehow  
6 private or privileged.

7 Therefore, because Defendants cannot demonstrate that particularized  
8 harm would occur due to disclosure of the unredacted incident reports, a  
9 protective order should not issue.

10 **2. Even Assuming, Arguendo, that Defendants Could Show**  
11 **That Particularized Harm Would Occur, the Balance of**  
12 **Public and Private Interests Weigh in Favor of Disclosure**

13 Next, even assuming, arguendo, that Defendants could show that  
14 particularized harm would occur, the balance of public and private interests  
15 weigh in favor of disclosure. In order to balance private and public interests, the  
16 Nevada Court of Appeals directed courts to the following list of factors set forth  
17 in *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995):

18 (1) whether disclosure will violate any privacy interests; (2)  
19 whether the information is being sought for a legitimate purpose  
20 or for an improper purpose; (3) whether disclosure of the  
21 information will cause a party embarrassment; (4) whether  
22 confidentiality is being sought over information important to  
23 public health or safety; (5) whether the sharing of information  
24 among litigants will promote fairness and efficiency; (6) whether  
a party benefitting from the order of confidentiality is a public  
entity or official; and (7) whether the case involves issues  
important to the public.

1 *Id.* at 10-11 (quoting *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir.  
2 1995)). These factors weigh heavily in favor of full disclosure.

3 First, as discussed above in greater detail, disclosure of the witness  
4 contact information on the incident reports will not violate any privacy interests  
5 as the information is essentially that which is contained in the phone book and,  
6 thus, not protected by any applicable privilege or privacy right. Moreover, these  
7 third-party witnesses voluntarily provided Defendants with their contact  
8 information. Defendants should not be permitted to maintain and possess the  
9 information for its own use and benefit while denying Plaintiff the opportunity  
10 to examine it.

11 Furthermore, the information is being sought for legitimate purposes as  
12 the incident reports and contact information are relevant to issues of notice,  
13 foreseeability, whether Plaintiff was comparatively negligent, and Plaintiff's  
14 claim for punitive damages. Also, disclosure of the information will not cause  
15 anyone embarrassment, as it is merely contact information, including names,  
16 addresses, and phone numbers.

17 Defendants are seeking confidentiality over information that is important  
18 to public safety and health. These witnesses are crucial to Plaintiff's punitive  
19 damages claim, through which she seeks to hold Defendants responsible for the  
20 dangerous walkway and flooring they have maintained for years in conscious  
21 disregard of the threat it posed to its guests' health and safety. Additionally, the  
22 sharing of the information will promote fairness and efficiencies as Defendants  
23  
24

1 are currently in sole possession of the requested information and Plaintiff has  
2 no means of obtaining the same information in other ways.

3 Finally, the case involves issues of public importance as it involves the  
4 health and safety of every single one of Defendants' guests who are made to  
5 walk across unsafe flooring due to Defendants' knowing inaction. Therefore, the  
6 balance of public and private interests weighs in favor of disclosure.

7 **3. Defendants' Redactions of Witness Contact Information**  
8 **Prevents Full and Complete Disclosure**

9 The final step is to evaluate whether partial redactions will still permit  
10 disclosure. *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Ct.*, 467 P.3d 1,  
11 11 (Nev. App., May 14, 2020) (quoting *Roman Catholic*, 661 F.3d at 425). Here,  
12 it is Defendants unilateral, legally unsupported redactions that are at issue in  
13 this dispute. Defendants' redactions have prevented Plaintiff from being able to  
14 contact, interview, and depose witnesses to Defendants' unsafe conditions and  
15 conscious disregard of the same. Therefore, Plaintiff respectfully requests that  
16 Defendants be ordered to produce the incident reports in their entirety, without  
17 redactions, such that Plaintiff may identify all relevant fact witnesses and  
18 proceed with discovery in this matter.

19 ///

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23 ///

V.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court grant Plaintiff's Motion to Place on Calendar and order that Defendants produce the incident reports without redactions.

DATED this 30<sup>th</sup> day of April, 2021.

CLAGGETT & SYKES LAW FIRM

/s/ William T. Sykes

Sean K. Claggett, Esq.  
Nevada Bar No. 008407

William T. Sykes, Esq.  
Nevada Bar No. 009916

Geordan G. Logan, Esq.  
Nevada Bar No. 013910  
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Jeffrey L. Galliher, Esq.  
Nevada Bar No. 8078  
Kathleen H. Gallagher, Esq.  
Nevada Bar No. 15043  
THE GALLIHER LAW FIRM  
1850 East Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
(702) 735-0049 – Telephone  
(702) 735-0204 – Facsimile  
*Attorneys for Plaintiff*


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of April, 2021, I caused to be served a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO PLACE ON CALENDAR** on the following person(s) by the following method(s) pursuant to NRCP 5(b) and NEFCR 9:

<b>Via E-Service</b> Michael A. Royal, Esq. Gregory A. Miles, Esq. Royal & Miles LLP 1522 W. Warm Springs Road Henderson, Nevada 89104 <i>Attorneys for Defendants/Third-Party Plaintiffs</i>	<b>Via E-Service</b> Sami Randolph, Esq. Hooks Meng & Clement 2820 W. Charleston Blvd., Suite C-23 Las Vegas, Nevada 89102 <i>Attorneys for Third-Party Defendant</i>
---	--

/s/ Maria Alvarez

\_\_\_\_\_  
An Employee of CLAGGETT & SYKES LAW FIRM



1 **EXHS**

2 Sean K. Claggett, Esq.  
3 Nevada Bar No. 008407  
4 William T. Sykes, Esq.  
5 Nevada Bar No. 009916  
6 Geordan G. Logan, Esq.  
7 Nevada Bar No. 013910  
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13 Keith E. Galliher, Jr., Esq.  
14 Nevada Bar No. 220  
15 Jeffrey L. Galliher, Esq.  
16 Nevada Bar No. 8078  
17 Kathleen H. Gallagher, Esq.  
18 Nevada Bar No. 15043  
19 **THE GALLIHER LAW FIRM**  
20 1850 East Sahara Avenue, Suite 107  
21 Las Vegas, Nevada 89104  
22 (702) 735-0049 – Telephone  
23 (702) 735-0204 – Facsimile  
24 *Attorneys for Plaintiff*

**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

**EXHIBITS PART I TO  
PLAINTIFF'S MOTION TO  
PLACE ON CALENDAR**



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,

Third-Party Plaintiffs,

v.

BRAND VEGAS, LLC, a Nevada  
Limited Liability Company; DOES 1-  
10; ROE BUSINESS ENTITIES 1-10,  
inclusive,

Third-Party Defendants.

Plaintiff, JOYCE SEKERA (“Plaintiff” or “Joyce”), by and through her  
attorneys CLAGGETT & SYKES LAW FIRM and THE GALLIHER LAW FIRM,  
hereby submits Exhibits Part I to Plaintiff’s Motion to Place on Calendar.

DATED this 30th day of April, 2021.

CLAGGETT & SYKES LAW FIRM

/s/ William T. Sykes

Sean K. Claggett, Esq.  
Nevada Bar No. 008407  
William T. Sykes, Esq.  
Nevada Bar No. 009916  
Geordan G. Logan, Esq.  
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4101 Meadows Lane, Ste. 100  
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Keith E. Galliher, Jr., Esq.  
Nevada Bar No. 220  
Jeffrey L. Galliher, Esq.

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Nevada Bar No. 8078  
Kathleen H. Gallagher, Esq.  
Nevada Bar No. 15043  
THE GALLIHER LAW FIRM  
1850 East Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
(702) 735-0049 – Telephone  
(702) 735-0204 – Facsimile  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

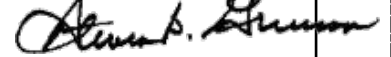
I HEREBY CERTIFY that on the 30<sup>th</sup> day of April, 2021, I caused to be served a true and correct copy of the foregoing **EXHIBITS PART I TO PLAINTIFF'S MOTION TO PLACE ON CALENDAR** on the following person(s) by the following method(s) pursuant to NRCP 5(b) and NEFCR 9:

<b>Via E-Service</b> Michael A. Royal, Esq. Gregory A. Miles, Esq. Royal & Miles LLP 1522 W. Warm Springs Road Henderson, Nevada 89104 <i>Attorneys for Defendants/Third-Party Plaintiffs</i>	<b>Via E-Service</b> Sami Randolph, Esq. Hooks Meng & Clement 2820 W. Charleston Blvd., Suite C-23 Las Vegas, Nevada 89102 <i>Attorneys for Third-Party Defendant</i>
---	--

/s/ Maria Alvarez

\_\_\_\_\_  
An Employee of CLAGGETT & SYKES LAW FIRM

# EXHIBIT 1



1 THE GALLIHER LAW FIRM  
2 Keith E. Galliher, Jr., Esq.  
3 Nevada Bar No. 220  
4 Jeffrey L. Galliher, Esq.  
5 Nevada Bar No. 8078  
6 George J. Kunz, Esq.  
7 Nevada Bar No. 12245  
8 Kathleen H. Gallagher, Esq.  
9 Nevada Bar Number 15043  
10 1850 East Sahara Avenue, Suite 107  
11 Las Vegas, Nevada 89104  
12 Telephone: (702) 735-0049  
13 Facsimile: (702) 735-0204  
14 [kgalliher@galliherlawfirm.com](mailto:kgalliher@galliherlawfirm.com)  
15 [jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)  
16 [gkunz@lvlawguy.com](mailto:gkunz@lvlawguy.com)  
17 [kgallagher@galliherlawfirm.com](mailto:kgallagher@galliherlawfirm.com)  
18 Attorneys for Plaintiff

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,  
Plaintiff,

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

v.

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

**FIRST AMENDED COMPLAINT**

Defendants.

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

**GENERAL ALLEGATIONS**

**I**

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

**II**

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

**III**

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

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

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

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

3  
4 **IV**

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

10 **V**

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

15 **VI**

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

21 **VII**

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

**VIII**

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

**FIRST CLAIM FOR RELIEF**

**(Negligence)**

**I**

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

**II**

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

**III**

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



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IV

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

V

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

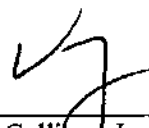
**WHEREFORE**, Plaintiff prays for judgment in her favor and against Defendant as follows:

**FIRST CLAIM FOR RELIEF**

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

DATED this 27th day of June, 2019

THE GALLIHER LAW FIRM

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

# EXHIBIT 2

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	<b>Venetian Security</b> 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109	CASE # <b>1611V-0680</b>
<b>Narrative Report</b>		Page 1 of 2
OFFENSE(S) <b>Protected Health Information</b>		OFFENSE(S) cont'd
DATE, TIME AND DAY OF OCCURENCE <b>11/04/16 12:39 Friday</b> TO <b>11/04/16 13:31 Friday</b>		DATE AND TIME REPORTED <b>11/04/16 12:39</b>
LOCATION OF OCCURENCE	LOCATION NAME <b>Outside Grand Lux Cafe Restrooms</b>	TYPE OF LOCATION BEAT SECTOR
<b>NARRATIVE</b> <p>On November 4th, 2016 at 12:39pm, I was dispatched to the area outside of the restrooms adjacent to the Grand Lux Cafe for report of a slip and fall incident. I arrived on scene and met with Las Vegas Tours (business located in Grand Canal Shoppes) employee Sekera, Joyce who was seated on the marble flooring. I noted that a Public Areas Department team member was on scene and mopping the flooring in the area. Sekera apologized for falling and did not appear to be in any immediate distress. I did not observe an obvious injuries to threats to life at that time.</p> <p>Sekera was alert and oriented to person, place, time, and events, had a patent airway, and was breathing adequately. She stated she was walking through the area when she slipped in what she believed was water on the floor. She reported that she fell backwards and put her right hand behind her head to protect it. She landed on the marble flooring and her left elbow struck the base of a pillar next to her. She denied striking her head during the fall and denied losing consciousness prior to, or after, falling. She denied any head pain, neck pain, back pain, weakness, dizziness, or nausea at that time. I noted that she was guarding her left elbow and reported she was only experiencing pain there at that time. She stated she was embarrassed to which I offered to assist her to a more private area. She agreed and was assisted to a standing position. I asked if she felt any new pain, weakness, dizziness, or nausea to which she denied at that time. She agreed to be assessed in the Medical Room and refused wheelchair assistance. She was able to ambulate on her own to the Medical Room and was able to sit without assistance.</p> <p>Sekera's left elbow was exposed which presented with an abrasion. I did not observe any other injuries or deformities to the area. Palpation of the area showed an increase in tenderness with no obvious signs of instability or crepitation. Distal circulation, motor function, and sensory function were found intact in the left arm. Grip strength was found to be equal bilaterally in the upper extremities. She rated her pain at approximately 7 on a 1-10 severity scale. She had a limited range of motion in the left elbow due to increasing pain on movement. She stated that she was starting to feel a tingling sensation in left phalanges II and III (index and middle finger). A SAM splint was formed on the right arm and applied to the left arm. The splint covered the left elbow and wrist and was secured using four-inch Kerlix gauze and tape. Distal circulation, motor function, and sensory function were rechecked and found to be intact with no changes. The splinted left arm was placed into a</p>		
<b>ADMINISTRATION</b>		
BY OFFICER <b>J. Larson 000025821</b>	DATE/TIME <b>11/04/2016 15:30</b>	APPROVED BY <b>Michael Dean 000041303</b>
OFFICER	UNIT/SHIFT	ASSIGNED TO
		DATE APPROVED <b>11/05/16</b>
		CASE STATUS <b>Closed</b>

# EXHIBIT 3

THE GALLIHER LAW FIRM  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
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1 THE GALLIHER LAW FIRM  
2 Keith E. Galliher, Jr., Esq.  
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4 Jeffrey L. Galliher, Esq.  
5 Nevada Bar No. 8078  
6 George J. Kunz, Esq.  
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13 [jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)  
14 [gakunz@lvlawguy.com](mailto:gakunz@lvlawguy.com)  
15 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

12 JOYCE SEKERA, an Individual, ) CASE NO.: A-18-772761-C  
13 ) DEPT. NO.: 25  
14 Plaintiff, )  
15 v. )  
16 VENETIAN CASINO RESORT, LLC, )  
17 d/b/a THE VENETIAN LAS VEGAS, a )  
18 Nevada Limited Liability Company; )  
19 LAS 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. )

**PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS AND MATERIALS TO**

**DEFENDANT**

24 TO: VENETIAN CASINO RESORT, LLC., Defendant; and

25 TO: MICHAEL A. ROYAL, ESQ. with ROYAL & MILES LLP., attorney for Defendant

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

1 THE GALLIHER LAW FIRM  
2 Keith E. Galliher, Jr., Esq.  
3 Nevada Bar No. 220  
4 Jeffrey L. Galliher, Esq.  
5 Nevada Bar No. 8078  
6 George J. Kunz, Esq.  
7 Nevada Bar No. 12245  
8 1850 East Sahara Avenue, Suite 107  
9 Las Vegas, Nevada 89104  
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11 Facsimile: (702) 735-0204  
12 [kgalliher@galliherlawfirm.com](mailto:kgalliher@galliherlawfirm.com)  
13 [jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)  
14 [gkunz@lvlawguy.com](mailto:gkunz@lvlawguy.com)  
15 Attorneys for Plaintiffs

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 JOYCE SEKERA, an Individual, ) CASE NO.: A-18-772761-C  
19 ) DEPT. NO.: 25  
20 Plaintiff, )  
21 )  
22 v. )  
23 )  
24 VENETIAN CASINO RESORT, LLC, )  
25 d/b/a THE VENETIAN LAS VEGAS, a )  
26 Nevada Limited Liability Company; )  
27 LAS VEGAS SANDS, LLC d/b/a THE )  
28 VENETIAN LAS VEGAS, a Nevada )  
Limited Liability Company; YET )  
UNKNOWN EMPLOYEE; DOES I )  
through X, inclusive, )  
Defendants. )

**PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS AND MATERIALS TO**

**DEFENDANT**

TO: VENETIAN CASINO RESORT, LLC., Defendant; and

TO: MICHAEL A. ROYAL, ESQ. with ROYAL & MILES LLP., attorney for Defendant

1 Plaintiff, JOYCE SEKERA, by and through her attorneys, THE GALLIHER LAW FIRM,  
2 hereby makes the following Request for Production of Documents upon Defendant:

3 REQUEST NO. 1:

4 All written, oral, or recorded statements made by any party, witness, or any other person or  
5 persons with knowledge of the incident described in Plaintiff's Complaint.  
6

7 REQUEST NO. 2:

8 Any and all accident and investigative reports, films, video tapes, charts, plats, drawings,  
9 maps or pictures and/or photographs of any kind which has, as its subject matter, the incident  
10 described in Plaintiff's Complaint.

11 REQUEST NO. 3:

12 A complete copy of the Defendants insurance carriers and/or risk management pre-litigation  
13 claim file.  
14

15 REQUEST NO. 4:

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

18 REQUEST NO. 5:

19 Any and all sweep sheets, sweep logs, or other similar documentation which reflects the  
20 maintenance and/or cleaning of the flooring located within the VENETIAN CASINO RESORT  
21 described in Plaintiff's Complaint for the day before, day of, and day after the incident described  
22 therein.  
23

24 REQUEST NO. 6:

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

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

3 REQUEST NO. 7:

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

9 REQUEST NO. 8:

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

12 REQUEST NO. 9:

13 Any surveillance video showing the Plaintiff's fall at the VENETIAN CASINO RESORT  
14 from any other angle, other than the one shown in the video surveillance produced by the  
15 Defendants thus far.

16 REQUEST NO. 10:

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

18 DATED this 15<sup>TH</sup> day of August, 2018

19 THE GALLIHER LAW FIRM

20 

21 Keith E. Galliher, Jr., Esq.  
22 Nevada Bar Number 220  
23 1850 E. Sahara Avenue, Suite 107  
24 Las Vegas, Nevada 89104  
25 Attorney for Plaintiff



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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT** was served on the 16<sup>th</sup> day of August, 2018, to the following addressed parties by:

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

\_\_\_\_\_ Facsimile, pursuant to EDCR 7.26 (as amended)

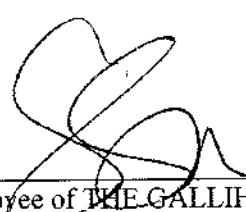
☒ Electronic Mail/Electronic Transmission

\_\_\_\_\_ Hand Delivered to the addressee(s) indicated

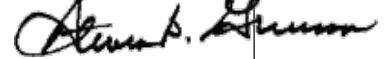
\_\_\_\_\_ Receipt of Copy on this \_\_\_\_\_ day of \_\_\_\_\_, 2018,

acknowledged by, \_\_\_\_\_

Michael A. Royal, Esq.  
Gregory A. Miles, Esq.  
ROYAL & MILES LLP  
1522 W. Warm Springs Road  
Henderson, Nevada 89014  
*Attorneys for Defendants*

  
\_\_\_\_\_  
An employee of THE GALLIHER LAW FIRM

# **EXHIBIT 4, PART 1**



1 **EXHS**

2 Sean K. Claggett, Esq.  
3 Nevada Bar No. 008407  
4 William T. Sykes, Esq.  
5 Nevada Bar No. 009916  
6 Geordan G. Logan, Esq.  
7 Nevada Bar No. 013910  
8 **CLAGGETT & SYKES LAW FIRM**  
9 4101 Meadows Lane, Suite 100  
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23 (702) 735-0204 – Facsimile  
24 *Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

16 **JOYCE SEKERA, an Individual,**  
17 **Plaintiff,**

18 **v.**

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

**Defendants.**

**Case No.: A-18-772761-C**

**Dept. No. XXV**

**EXHIBITS PART II TO**  
**PLAINTIFF'S MOTION TO**  
**PLACE ON CALENDAR**

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,

Third-Party Plaintiffs,

v.

BRAND VEGAS, LLC, a Nevada  
Limited Liability Company; DOES 1-  
10; ROE BUSINESS ENTITIES 1-10,  
inclusive,

Third-Party Defendants.

Plaintiff, JOYCE SEKERA (“Plaintiff” or “Joyce”), by and through her  
attorneys CLAGGETT & SYKES LAW FIRM and THE GALLIHER LAW FIRM,  
hereby submits Exhibits Part II to Plaintiff’s Motion to Place on Calendar.

DATED this 30th day of April, 2021.

CLAGGETT & SYKES LAW FIRM

/s/ William T. Sykes

Sean K. Claggett, Esq.  
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Nevada Bar No. 220  
Jeffrey L. Galliher, Esq.

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Nevada Bar No. 8078  
Kathleen H. Gallagher, Esq.  
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THE GALLIHER LAW FIRM  
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(702) 735-0049 – Telephone  
(702) 735-0204 – Facsimile  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of April, 2021, I caused to be served a true and correct copy of the foregoing **EXHIBITS PART II TO PLAINTIFF'S MOTION TO PLACE ON CALENDAR** on the following person(s) by the following method(s) pursuant to NRCP 5(b) and NEFCR 9:

<b>Via E-Service</b> Michael A. Royal, Esq. Gregory A. Miles, Esq. Royal & Miles LLP 1522 W. Warm Springs Road Henderson, Nevada 89104 <i>Attorneys for Defendants/Third-Party Plaintiffs</i>	<b>Via E-Service</b> Sami Randolph, Esq. Hooks Meng & Clement 2820 W. Charleston Blvd., Suite C-23 Las Vegas, Nevada 89102 <i>Attorneys for Third-Party Defendant</i>
---	--

/s/ Maria Alvarez

\_\_\_\_\_  
An Employee of CLAGGETT & SYKES LAW FIRM

# **EXHIBIT 4, PART II**

# EXHIBIT 5



*Steven D. Grierson*

1 **DCRR**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

4 Gregory A. Miles, Esq.

5 Nevada Bar No. 4336

6 **ROYAL & MILES LLP**

7 1522 West Warm Springs Road

8 Henderson Nevada 89014

9 Tel: (702) 471-6777

10 Fax: (702) 531-6777

11 Email: [mroyal@royalmilesllp.com](mailto:mroyal@royalmilesllp.com)

12 *Attorneys for Defendants*

13 **VENETIAN CASINO RESORT, LLC and**

14 **LAS VEGAS SANDS, LLC**

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **JOYCE SEKERA, an Individual;**

18 **Plaintiff,**

19 **v.**

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

27 **Defendants.**

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**DISCOVERY COMMISSIONER'S**  
**REPORT AND RECOMMENDATION**

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

28 **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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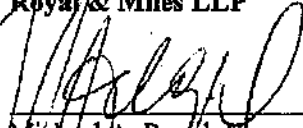
1 IT IS FURTHER RECOMMENDED that the motion is otherwise denied.

2 DATED this 2<sup>nd</sup> day of April, 2019.

3  
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  
Henderson, NV 89014  
12 Attorneys for Defendants  
VENETIAN CASINO RESORT, LLC and  
13 LAS VEGAS SANDS, LLC

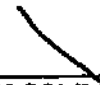
Reviewed by:

14 **THE GALLIHER LAW FIRM**

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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  
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*

6 Reviewed by:

7 **THE GALLIHER LAW FIRM**

8   
9 Keith E. Galliher, Jr., Esq.  
10 Nevada Bar No. 220  
11 1850 E. Sahara Avenue, Suite 107  
12 Las Vegas, NV 89014  
13 *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:

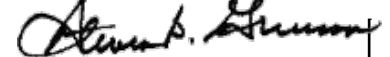
13 \_\_\_\_\_ Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_\_ day of  
14 \_\_\_\_\_ 2019:

15  
16 1 Electronically filed and served counsel on April 4, 2019, Pursuant to  
17 N.E.F.C.R. Rule 9.

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).

21  
22 By:   
23 COMMISSIONER DESIGNEE  
24  
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# EXHIBIT 6



**ORDR**

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

**ROYAL & MILES LLP**

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*Attorneys for Defendants*

*VENETIAN CASINO RESORT, LLC and*

*LAS VEGAS SANDS, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOYCE SEKERA, an Individual;

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: 2425

**ORDER**

Plaintiff Joyce Sekera's Objection to the Discovery Commissioner's Report and Recommendation on Defendant Venetian's Protective Order came before the Court for hearing at 9:00 a.m. on May 14, 2019. Keith E. Galliher, Jr., Esq., and Kathleen H. Gallagher, Esq., of the Galliher Law firm, appeared on behalf of the Plaintiff JOYCE SEKERA. Michael A. Royal, Esq., of Royal & Miles LLP appeared on behalf of Defendants VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC (hereinafter collectively *Venetian*). Also before the Court was Defendant's Countermotion to Strike Facts, Defendants' Countermotion for Order Directing Return of All

R:\Master Case Folder\383718\Pleadings\4Order.wpd

**MAY 28 2019**

Case Number: A-18-772761-C

VEN 3222

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



1 Protected Information, Defendant's Countermotion for Sanctions, and Plaintiffs Motion to Strike  
2 Defendant's Countermotions.

3 The Discovery Commissioner ordered that guest information in Venetian's prior incident  
4 reports from November 4, 2013 to November 4, 2016 remain redacted, as produced by Defendants,  
5 and that the redacted reports be subject to a protective order pursuant to NRCP 26(c). In her Objection,  
6 Plaintiff contended that the Recommendation violates NRCP 1 which states that the Nevada Rules of  
7 Civil Procedure "should be construed, administered, and employed by the court and the parties to  
8 secure the just, speedy, and inexpensive determination of every action and proceeding." Additionally,  
9 Plaintiff contends the Discovery Commissioner's ruling violates the uniform holding across the country  
10 that the risk or certainty that a party receiving discovery will share it with others alone does not  
11 constitute good cause for a protective order.  
12

13 Defendants argued that the prior incident reports contain sensitive personal, private information  
14 related to prior guests and other non-employees which should be subject to an NRCP 26(c) protective  
15 order. Defendants argued that the information includes personal contact data, dates of birth, Social  
16 Security numbers, and health related reporting obtained by responding EMTs. Defendants further  
17 argued that Plaintiff had already shared the subject information with attorneys handling litigation in  
18 other ongoing related matters involving Venetian, regardless of the pending Discovery Commissioner's  
19 Report and Recommendation, and expressed concern that unredacted reports produced to Plaintiff  
20 would likewise be freely shared in the same manner, further invading the privacy rights of Defendants'  
21 guests, which Defendants assert an obligation to protect unless Plaintiff can demonstrate that any prior  
22 incident is "substantially similar" in area and circumstances to the subject incident (*citing Schlatter v.*  
23 *Eighth Judicial Dist. Court*, 93 Nev. 189, 192 (1977); the Health Insurance Portability and  
24 Accountability Act of 1996 (HIPAA) (See 42 USCS. § 1320d et seq.; 45 C.F.R. §§160-164; and to  
25 various Nevada cases related to invasion of privacy). Defendants also sought to protect the unredacted  
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1 information based on Plaintiff's showing of relevancy to the pending action, arguing that Plaintiff is  
2 using the discovery process to mine information for distribution to other attorneys in the legal  
3 community and the world at large, asserting that the balance of Plaintiff's need for the personal  
4 information at issue does not outweigh the right of privacy by those identified individuals.

5 IT IS HEREBY ORDERED that Plaintiff's Objection is GRANTED, the Discovery  
6 Commissioner's Report and Recommendation of April 2, 2019 is REVERSED in its entirety. The  
7 Court has determined that there is no legal basis to preclude Plaintiff from knowing the identity of the  
8 individuals contained in the incident reports as this information is relevant discovery. There is also  
9 no legal basis to preclude Plaintiff from sharing the unredacted incident reports with persons not  
10 involved in this litigation. However, the Court strongly cautions Plaintiff to be careful with how she  
11 shares and uses this information.  
12

13 IT IS FURTHER ORDERED that Defendant's Countermotion for Sanctions is DENIED. The  
14 Court finds that Plaintiff did not act inappropriately by sharing the redacted reports at issue with other  
15 counsel on February 7, 2019 or by failing to advise the Discovery Commissioner at the March 13, 2019  
16 hearing that all of the redacted reports at issue were filed with the Court in their entirety by plaintiff's  
17 counsel in the matter of Carol Smith v. Venetian, case no. A-17-753362-C, on March 12, 2019.  
18 Plaintiff further did not violate the Protective Order by failing to request a stay of the ruling by the  
19 Discovery Commissioner under EDCR 2.34(f) or by failing to request back the information disclosed  
20 before the Protective Order was issued by the Discovery Commissioner.  
21

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1 IT IS FURTHER ORDERED Defendant's Countermotion to Strike Facts, Defendant's  
2 Countermotion for Order Directing Return of All Protected Information and Plaintiffs Motion to Strike  
3 Defendant's Countermotions are DENIED.

4 DATED this 30<sup>th</sup> day of Jul, 2019

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6   
DISTRICT COURT JUDGE

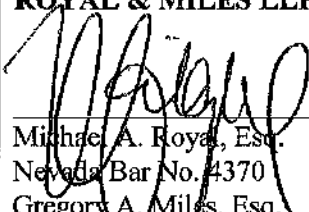
7 Submitted by:

Reviewed by:

8 **ROYAL & MILES LLP**

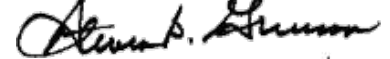
9 **THE GALLIHER LAW FIRM**

10 [Reviewed but would not sign]

11   
Michael A. Royal, Esq.  
12 Nevada Bar No. 4370  
Gregory A. Miles, Esq.  
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14 *Attorneys for Defendants*

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*Attorneys for Plaintiff*

# EXHIBIT 7



1 **DCRR**

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4 Gregory A. Miles, Esq.

5 Nevada Bar No. 4336

6 **ROYAL & MILES LLP**

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12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

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.

28 **DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATION**

Date of Hearing: September 18, 2019

Time of Hearing: 9:00 a.m.

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.**

**PROCEDURAL HISTORY**

1. Venetian filed DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S SUBPOENA DUCES TECUM IMPROPERLY SERVED PURSUANT TO NRCP 45(A)(4)(A) AND MOTION FOR PROTECTIVE ORDER UNDER NRCP 26(c) RELATED TO PLAINTIFF'S DEMAND DEPOSITION AND DOCUMENTS FROM DEFENDANTS UNDER NRCP NRCP 30(B)6) AND NRCP 34 AND MOTION TO COMPEL PLAINTIFF TO PRODUCE ALL EVIDENCE OF PRIOR INCIDENTS AT VENETIAN NOT RECEIVED FROM DEFENDANTS IN THIS LITIGATION on August 5, 2019.

2. Plaintiff filed PLAINTIFF'S MOTION TO COMPEL TESTIMONY AND DOCUMENTS on August 5, 2019.

3. Venetian and Plaintiff filed oppositions which included countermotions for sanctions; the Discovery Commissioner refused to consider the countermotions pursuant to EDCR 2.20(f) as being insufficiently related to the subject matter of the pending motions.

**II.**

**FINDINGS**

1. Plaintiff claims to have fallen on Venetian premises on November 4, 2016 due to a temporary transitory condition which caused her to slip.

2. On January 4, 2019, Venetian produced to Plaintiff copies of sixty-four (64) prior incident reports from November 4, 2013 to November 4, 2016, redacted by Venetian to protect the identification of non-employees, responsive to Plaintiff's Production Request No. 7 requesting other incident reports on the Venetian property from November 4, 2011 to the present. (Venetian objected to producing incident reports occurring subsequent to the November 4, 2016 incident.)

1           3.     On February 1, 2019, Venetian filed a motion for protective order as to the redacted  
2 prior incident reports produced on January 4, 2019, which was granted by the Discovery  
3 Commissioner in a Report and Recommendation filed April 4, 2019, with reports to remain  
4 redacted and to be protected under NRCP 26(c).

5           4.     The District Court entered an order reversing the Discovery Commissioner's Report  
6 and Recommendation of April 4, 2019 in an order filed July 31, 2019, directing Venetian to  
7 provide Plaintiff with unredacted copies of all prior incident reports, with no protections requested  
8 by Venetian under NRCP 26(c). Venetian filed a motion for reconsideration, heard on September  
9 17, 2019, which Judge Delaney denied.

11          5.     The District Court's ruling related to Venetian's request for protection under NRCP  
12 26(c) is the law of the case; therefore, no relief requested related to the protection of Venetian prior  
13 incident reports can be further considered by the Discovery Commissioner in this matter.

14          6.     Plaintiff was granted leave by the District Court to file a First Amended Complaint  
15 to add a claim of punitive damages, which was filed on June 28, 2019.

16          7.     Venetian filed a motion for protective order and Plaintiff filed a motion to compel  
17 on August 5, 2019 regarding Plaintiff's request for the production of certain information and  
18 documents from May 1999 to the present.

19          8.     On May 31, 2019, Plaintiff served her sixth request for production with the  
20 following requests:

21               REQUEST NO. 23: True and correct copies of any and all reports, documents,  
22 memoranda, or other information describing or referring to slip testing performed  
23 on the marble floors at the Venetian Hotel and Casino by any Plaintiff, or the  
24 Venetian, from January 1, 2000 to date.

25               REQUEST NO. 24: Any and all communications, including correspondence,  
26 emails, internal communication, or other memoranda which refers to the safety of  
27 marble floors located within the Venetian Hotel and Casino from January 1, 2000 to  
28 date.

1 REQUEST NO. 25: Any and all transcripts, minutes, notes, emails, or  
2 correspondence which has as a subject matter, any meetings held by and between  
3 Venetian personnel, including management personnel, where the subject of the  
4 safety of the marble floors at the Venetian was discussed and evaluated from  
5 January 1, 2000 to date.

6 REQUEST NO. 26: Any and all correspondence, emails, memoranda, internal  
7 office correspondence, or other documents directed to the Venetian from a  
8 Contractor, Subcontractor, Flooring Expert, or similar entity which discusses or  
9 refers to the safety of marble floors located within the Venetian Hotel and Casino  
10 from January 1, 2000 to date.

11 REQUEST NO. 29: Any and all complaints submitted by guests or other individuals  
12 regarding safety of the marble floors.

13 REQUEST NO. 30: Any and all quotes and estimates and correspondence regarding  
14 quotes and estimates relating to the modification of the marble floors to increase  
15 their slip resistance.

16 9. On June 20, 2019, Plaintiff served Plaintiff's First Set of Interrogatories to  
17 Defendants with the following request:

18 INTERROGATORY NO. 1: Please identify by Plaintiff's name, case number and  
19 date of filing all complaints filed against the Venetian Casino Resort, LLC d/b/a  
20 The Venetian Las Vegas and/or Las Vegas Sands, LLC d/b/a The Venetian Las  
21 Vegas in the Clark County District Court for any and all slip and fall and/or trip and  
22 fall incidents occurring on marble flooring anywhere within The Venetian Casino  
23 Resort, LCC d/b/a The Venetian Las Vegas and/or Las Vegas Sands, LLC d/b/a The  
24 Venetian Las Vegas from January 1, 2000 to the present.

25 10. On July 17, 2019, Plaintiff served Plaintiff's Ninth Request for Production of  
26 Documents and Materials to Venetian. Request No. 35 sought the following production from  
27 Venetian:

28 REQUEST NO. 35: True and correct copies of any and all claim forms, legal  
actions, civil complaints, statements, security reports, computer generated lists,  
investigative documents or other memoranda which have, as its subject matter, slip  
and fall cases occurring on marble floors within the subject VENETIAN CASINO  
RESORT from the May 3, 1999 to the present.

11. On July 19, 2019, Plaintiff served Plaintiff's Tenth Request for Production of  
Documents and Materials to Defendant with the following request:



1 REQUEST NO. 36: True and correct copies of any and all entries and information  
2 contained in the Venetian's Alliance System regarding injury falls on marble  
flooring within the Venetian Las Vegas from January 1, 2000 to present.

3 12. On July 22, 2019, Plaintiff served Plaintiff's Second Set of Interrogatories to  
4 Defendants which reads as follows:

5 INTERROGATORY NO. 2: Please identify names, addresses and phone numbers of any  
6 and all individuals designated as safety engineers who perform(ed) accident checks at the  
7 Venetian from the year 2000 to the present.

8 13. On July 29, 2019, Plaintiff served Plaintiff's Eleventh Request for Production of  
9 Documents and Materials to Defendant with the following request.

10 REQUEST NO. 37: Any and all quotes, estimates, correspondence, emails,  
11 memorandums, minutes, file notes and/or other documentation related to Venetian's  
12 decision to remove and replace the carpet with marble flooring and Venetian's  
removal and replacement of carpet with marble flooring as referenced by Christina  
Tonemah in her deposition. (25: 9-26; 26; 1-6)

13 14. On July 30, 2019, Plaintiff served notice of an NRCP 30(b)(6) deposition under  
14 NRCP 45 issuance of a subpoena with eighteen (18) topics, as follows.

15 1) Total number of injury falls on marble floors located within The  
16 Venetian Las Vegas from November 4, 2013 to present.

17 2) Actions taken by The Venetian Las Vegas to change the coefficient  
18 of friction with respect to the marble floors within The Venetian Las Vegas from  
19 November 4, 2013 to present.

20 3) Measures taken to locate and produce security/incident injury fall  
21 reports by The Venetian Las Vegas as requested by Plaintiff in this Litigation.

22 4) Slip testing performed by The Venetian Las Vegas or it's  
23 representatives with respect to the marble floors within The Venetian Las Vegas  
24 from November 4, 2013 to present.  
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1           5) Any invoices or work orders with respect to the removal of carpet in  
2 pedestrian walkways and replaced with marble and/or granite flooring from  
3 November 4, 2006 to present.

4           6) The identity of all employees who were responsible for managing  
5 and maintaining Venetian's technology infrastructure.

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

11           8) The identity of all non-employee consultants, consulting firms,  
12 contractors or similar entities that were responsible for managing and maintaining  
13 Venetian's technology infrastructure.

14           9) Software used, including dates they were in use and any software  
15 modifications.

16           10) Identity of, description of and policies and procedures for the use of  
17 all internal systems for data management, complaint and report making, note  
18 keeping, minute/transcript taking and employee e-mail, messaging and other  
19 communication systems and description of all employee accounts for said systems.

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

22           12) Physical location of electronic information and hard files and  
23 description of what information is kept in electronic form and what is kept in hard  
24 files.

1 13) Description of policies and procedures for performing back-ups.  
2 14) Inventory of back-ups and when they were created.  
3 15) User permissions for accessing, modifying, and deleting data.  
4 16) Utilization of data deletion programs.  
5 17) A listing of current and former personnel who have or had access to  
6 network resources, technology assets, back-up, and other systems operations.  
7  
8 18) Electronic records management policies and procedures.  
9 15. Venetian sought relief from the scope of discovery requested by Plaintiff,  
10 contending that it was overbroad and unwarranted in a slip and fall case arising from a temporary  
11 transitory condition. Venetian further asserted that Plaintiff is not entitled to any incident reports  
12 occurring after November 4, 2016 based on the facts plead by Plaintiff in the Complaint and  
13 further as evidenced by Plaintiff's testimony, and the testimony of her experts and eyewitness at  
14 the scene, all of whom opined that Plaintiff slipped and fell due to a foreign substance on the  
15 marble floor. Therefore, Venetian moved for protection.  
16  
17 16. Venetian also moved to compel the production of all incident reports and  
18 information related to incident reports obtained by Plaintiff from any source, including but not  
19 limited to those produced to expert Thomas Jennings supporting his May 30, 2019 report, which  
20 documents were not produced to Venetian by Plaintiff prior to the time of Mr. Jennings' deposition  
21 taken July 2, 2019. Venetian further moved for an order compelling Mr. Jennings to appear again  
22 for deposition at Plaintiff's cost.  
23  
24 17. Plaintiff argued in her motion to compel that she is entitled to the broad scope of  
25 discovery requested because it is necessary to prove up her punitive damages claim allowed by the  
26 District Court and therefore moved to compel Venetian to produce the information at issue.  
27  
28

18. The parties also filed counter motions for sanctions which the Discovery Commissioner refused to hear pursuant to EDCR 2.20(f).

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

### III.

#### RECOMMENDATIONS

IT IS RECOMMENDED that the pending motions and counter motions filed by Plaintiff and Venetian (other than those not adjudicated pursuant to EDCR 2.20(f)), are GRANTED IN PART and DENIED IN PART as set forth specifically herein below.

IT IS FURTHER RECOMMENDED that, regarding Plaintiff's Production Request Nos. 7, 24, 29, 35, and 36, Interrogatory Nos. 1, 2, and NRCP 30(b)(6) Topic 1, based on Plaintiff's pending claim for punitive damages claim arising from the operative facts of a slip and fall on a liquid substance, in accordance with Judge Delaney's July 31, 2019 order, Venetian be ordered to produce to Plaintiff unredacted records related to other incidents involving guests slipping and falling on the Venetian common area marble floor on the casino level of the Venetian property due to the existence of a foreign substance from November 4, 2013 to the present (only as of the date of production).

IT IS FURTHER RECOMMENDED that, as to Plaintiff's request for documents and information from Venetian regarding actions to change the coefficient of friction of the marble flooring, Venetian's motion for protection be GRANTED as this request is vague and overly broad as written in the NRCP 30(b)(6) Topic 2 and Production Request No. 30.

IT IS FURTHER RECOMMENDED that, as to Plaintiff's request for information and documents related to the testing of Venetian marble flooring, as set forth in to NRCP 30(b)(6) Topic 4 and Production Request Nos. 23, 25, 26, Plaintiff's motion to compel be GRANTED to the extent that any testing for coefficient of friction was accomplished in the Grand Lux area of the

1 Venetian property from November 4, 2011 to November 4, 2016, where such information was  
2 disclosed by Venetian pursuant to NRCP 16.1 or which is not otherwise protected in accordance  
3 with NRCP 26.

4 IT IS FURTHER RECOMMENDED that, as to Plaintiff's request for information related  
5 to the removal of carpeting on the Venetian casino floor set forth in Production Request No. 37,  
6 and NRCP 30(b)(6) Topic 5, Venetian's motion for protection be GRANTED to the extent that the  
7 inquiry related the removal of carpeting be limited to the Grand Lux area of the Venetian property  
8 from November 4, 2011 to November 4, 2016.

10 IT IS FURTHER RECOMMENDED that, as to Production Request Nos. 35 and 36,  
11 together with NRCP 30(b)(6) Topics and 3, 6-18 regarding information related to computer data at  
12 the Venetian, the motion for protection be GRANTED, as this request is vague and overly broad;  
13 however, that Plaintiff be allowed to inquire of Venetian generally about the reporting of slip and  
14 fall claims on the casino level marble floor from November 4, 2011 to the present, how the  
15 information is collected and stored, and how it can be retrieved.

17 IT IS FURTHER RECOMMENDED that Venetian's motion to compel Plaintiff expert  
18 Thomas Jennings to produce all documents and information of prior incidents he has reviewed (as  
19 represented by Mr. Jennings in his May 30, 2019 report and in his July 2, 2019 deposition) be  
20 GRANTED.

21 IT IS FURTHER RECOMMENDED that Venetian's motion to retake the deposition of Mr.  
22 Jennings upon receipt of the prior incident information be GRANTED to the extent that Venetian  
23 is allowed to redepose Mr. Jennings; however, it is DENIED as to Venetian's request that Plaintiff  
24 pay the costs associated with the second Jennings deposition.

26 IT IS FURTHER RECOMMENDED that Venetian's motion to compel Plaintiff's  
27 production of all Venetian incident reports in her possession beyond those which have been  
28 produced by Venetian to Plaintiff in this litigation be GRANTED.

1 IT IS FURTHER RECOMMENDED that Venetian be granted relief from production of  
2 unredacted documents until fourteen days after Notice of Entry of Order related to the District  
3 Court's denial of Venetian's motion for reconsideration of the July 31, 2019 order.

4 IT IS FURTHER RECOMMENDED that Venetian be granted relief from production of  
5 documents related to the issues herein until it becomes a final order of the District Court.

6 IT IS FURTHER RECOMMENDED that all remaining issues in the pending motions are  
7 otherwise DENIED.  
8

9 DATED this 27th day of November, 2019.

10   
11 DISCOVERY COMMISSIONER


12 Submitted by:

13 **Royal & Miles LLP**

14   
15  
16 Michael A. Royal, Esq.  
17 Nevada Bar No. 4370  
18 1522 W. Warm Springs Road  
19 Henderson, NV 89014  
20 Attorneys for Defendants  
21 VENETIAN CASINO RESORT, LLC and  
22 LAS VEGAS SANDS, LLC  
23  
24  
25  
26  
27  
28

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

**Case Name:** Sekera v. Venetian Casino Resort, LLC  
**Case No.:** A-18-772761-C

**NOTICE**

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

Objection time will expire on Dec. 16 2019.

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

Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_ day of \_\_\_\_\_ 2019:

Electronically filed and served counsel on Dec. 2, 2019, Pursuant to N.E.F.C.R. Rule 9.

  
Commissioner Designee

# EXHIBIT 8



*Steven D. Grierson*

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

**ORDER**

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Gregory A. Miles, Esq.  
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,

CASE NO.: A-18-772761-C  
DEPT. NO.: 24

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,

**ORDER ON OBJECTIONS TO THE**  
**DISCOVERY COMMISSIONER'S**  
**REPORT AND RECOMMENDATION**  
**DATED DECEMBER 2, 2019**

Defendants.

Plaintiff JOYCE SEKERA by and through her counsel of record, Claggett & Sykes Law Firm and The Galliher Law Firm, filed PLAINTIFF'S OBJECTION TO THE DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS DATED DECEMBER 2, 2019 ON DECEMBER 16, 2019 on December 16, 2019, and Defendants VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC (hereinafter collectively referred to as "Venetian"), by and through their counsel of record, Royal & Miles LLP, filed DEFENDANTS' LIMITED OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS DATED DECEMBER

C:\Users\MikeR\AppData\Local\Microsoft\Windows\NetCache\Content.Outlook\2QZ69OR7\40Order (Obj DCRR 12.02.19).wpd

1 2, 2019. Both parties timely filed responses to the respective objections. This matter came before the  
2 Court for hearing at 9:00 am on January 21, 2020. William T. Sykes, Esq., and Geordan G. Logan,  
3 Esq., of the Claggett & Sykes Law Firm, appeared on behalf of the Plaintiff, and Michael A. Royal,  
4 Esq., of Royal & Miles LLP appeared on behalf of the Defendants.

5 The issues raised by the parties in the Discovery Commissioner's Report and Recommendation  
6 of December 2, 2019 go to the scope of discovery to be allowed regarding the subject incident of  
7 November 4, 2016, which occurred within the Grand Lux rotunda dome of the Venetian property.  
8 (The Discovery Commissioner's Report and Recommendation of December 2, 2019 is hereinafter  
9 referenced as "DCRR".)  
10

11 Plaintiff moved the Discovery Commissioner to order that Venetian produce documents related  
12 to prior and subsequent incident reports of slip and falls on marble flooring, along with other  
13 information related to the installation, care and coefficient of friction testing of marble flooring on the  
14 Venetian property (including the alleged removal of carpeting in the casino area and replacement with  
15 a marble flooring in 2008), from January 2000 to the present. Plaintiff further moved to expand the  
16 scope of other marble floor slip and fall incident reports beyond the casino level of the Venetian  
17 property. Plaintiff argued that this broad scope of discovery is necessary for her to establish a case  
18 for punitive damages under NRS 42.005 (more specifically to address "the reprehensibility of conduct"  
19 by Venetian).  
20

21 Venetian moved the Discovery Commissioner to limit the scope of all discovery regarding the  
22 Venetian marble flooring to the Grand Lux rotunda dome area where the subject incident occurred,  
23 and to limit the production of Grand Lux rotunda dome area marble floor guest incident reports to the  
24 preceding five years, from November 4, 2011 to November 4, 2016.  
25

26 The Discovery Commissioner recommended the following pertaining to contested issues raised  
27 herein by the parties:  
28

1. Plaintiff's request that Venetian produce evidence of coefficient of friction testing is limited to the Grand Lux rotunda dome area from November 4, 2011 to November 4, 2016 to the extent it was disclosed pursuant to NRCP 16.1 and which is not otherwise protected in accordance with NRCP 26;
2. Plaintiff's request that Venetian produce evidence of changes to the casino level flooring is limited to the Grand Lux rotunda dome area from November 4, 2011 to November 4, 2016;
3. Plaintiff's request for evidence of other incidents extends to all slip and falls on marble flooring on the Venetian casino level and limited in time from November 4, 2011 to the present; and
4. All documents produced by Venetian related to incident reports from November 4, 2011 to the present are to be produced unredacted without protections sought by Venetian under NRCP 26(c).

IT IS HEREBY ORDERED that the Objections filed by the parties are GRANTED IN PART and DENIED IN PART.

IT IS FURTHER HEREBY ORDERED that the DCRR is hereby modified and adopted as follows: Venetian must produce prior incident reports limited to the Grand Lux rotunda dome area from November 4, 2011 to November 4, 2016. Plaintiff's request for documents outside this given scope is hereby DENIED.

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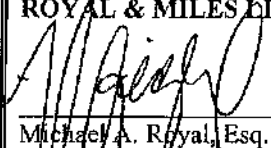
1 IT IS FURTHER HEREBY ORDERED that the DCRR is otherwise adopted by the Court,  
2 including the order requiring that Venetian produce reports of prior incidents in unredacted form  
3 without requested NRCP 26(c) protection. Venetian's motion to stay this part of the Order pending  
4 a decision by the Nevada Court of Appeals in a writ presently before it to address this issue (case no.  
5 79689-COA) is hereby DENIED.

6 DATED this 11<sup>th</sup> day of MARCH, 2020.

7  
8  
9   
DISTRICT COURT JUDGE  
10 JG

11 Submitted by:

12 **ROYAL & MILES LLP**

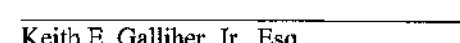
13   
14 Michael A. Royal, Esq.  
15 Nevada Bar No. 4370  
16 Gregory A. Miles, Esq.  
17 Nevada Bar No. 4336  
18 1522 W. Warm Springs Road  
19 Henderson, NV 89014  
20 Attorneys for Defendants

Reviewed by:

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28   
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Attorneys for Plaintiff

# EXHIBIT 9

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND LAS VEGAS SANDS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,

Respondents,

and

JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

No. 79689-COA

FILED

MAY 14 2020

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

Original petition for a writ of mandamus or prohibition challenging a district court order requiring petitioners to produce unredacted prior incident reports in discovery and refusing to impose requested protections related to those reports.

*Petition granted.*

Royal & Miles LLP and Gregory A. Miles and Michael A. Royal, Henderson,  
for Petitioners.

The Galliher Law Firm and Keith E. Galliher, Jr., Las Vegas,  
for Real Party in Interest.

BEFORE GIBBONS, C.J., and TAO, J.<sup>1</sup>

*OPINION*

By the Court, GIBBONS, C.J.:

The Nevada Rules of Civil Procedure were recently amended, including significant portions of NRCP 26—the seminal rule governing discovery. These amendments have changed the analysis that district courts must conduct. In this writ proceeding, we discuss the proper process courts must use when determining the scope of discovery under NRCP 26(b)(1). We also provide a framework for courts to apply when determining whether a protective order should be issued for good cause under NRCP 26(c)(1). Because respondents did not engage in this process or use the framework we are providing, we grant the petition and direct further proceedings.

*FACTS AND PROCEDURAL HISTORY*

Real party in interest, Joyce Sekera, allegedly slipped and fell on the Venetian Casino Resort's marble flooring and was seriously injured. During discovery, Sekera requested that the Venetian produce incident reports relating to slip and falls on the marble flooring for the three years preceding her injury to the date of the request. In response, the Venetian provided 64 incident reports that disclosed the date, time, and circumstances of the various incidents. However, the Venetian redacted the

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<sup>1</sup>The Honorable Bonnie A. Bulla, Judge, voluntarily recused herself from participation in the decision of this matter. In her place, the Honorable Michael L. Douglas, Senior Justice, was appointed to participate in the decision of this matter under an order of assignment entered on February 13, 2020. Nev. Const. art. 6, § 19(1)(c); SCR 10. Subsequently, that order was withdrawn.

personal information of injured parties from the reports, including names, addresses, phone numbers, medical information, and any social security numbers collected. Sekera insisted on receiving the unredacted reports in order to gather information to prove that it was foreseeable that future patrons could slip and fall on the marble flooring and that the Venetian was on notice of a dangerous condition.<sup>2</sup> Further, Sekera wanted to contact potential witnesses to gather information to show that she was not comparatively negligent, as the Venetian asserted. Sekera's counsel disseminated all 64 redacted reports to other plaintiffs' counsel in different cases, who also were engaged in litigation against the Venetian for slip and fall injuries.

Unable to resolve their differences regarding redaction, the Venetian moved for a protective order, which Sekera opposed. The discovery commissioner found that there was a legitimate privacy issue and recommended that the court grant the protective order, such that the reports remain redacted, and prevented Sekera from sharing the reports outside of the current litigation. The commissioner further recommended, however, that after Sekera reviewed the 64 redacted reports and identified substantially similar accidents that occurred in the same location as her fall, the parties could have a dispute resolution conference pursuant to EDCR 2.34. At that conference, the parties would have the opportunity to reach an agreement to allow disclosure of the persons involved in the previous similar accidents. If the parties failed to reach an agreement, Sekera could file an appropriate motion.

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<sup>2</sup>Sekera agreed that any social security numbers should remain redacted.



Sekera objected to the discovery commissioner's recommendation. The district court agreed with the objection and rejected the discovery commissioner's recommendation in its entirety, thereby denying the motion for a protective order. The district court concluded (1) there was no legal basis to preclude Sekera from knowing the identity of the persons involved in the prior incidents, as this information was relevant discovery material, and (2) there was no legal basis to prevent the disclosure of the unredacted reports to third parties not involved in the Sekera litigation. Nevertheless, the court strongly cautioned Sekera to be careful with how she shared and used the information.

The Venetian filed the instant petition for writ relief, which was transferred to this court pursuant to NRAP 17. We subsequently granted a stay of the district court's order pending resolution of this petition.

#### *DISCUSSION*

##### *Writ consideration is appropriate*

This court has original jurisdiction to issue writs of mandamus. Nev. Const. art. 6, § 4(1). But “[t]he decision to entertain a writ petition lies solely within the discretion of” the appellate courts. *Quinn v. Eighth Judicial Dist. Court*, 134 Nev. 25, 28, 410 P.3d 984, 987 (2018). “A writ of mandamus is available to compel the performance of an act that the law requires . . . or to control an arbitrary or capricious exercise of discretion.” *Humphries v. Eighth Judicial Dist. Court*, 129 Nev. 788, 791, 312 P.3d 484, 486 (2013). Writ relief is not appropriate where a “plain, speedy, and adequate remedy” at law exists. *Id.* “A writ of mandamus may be issued to compel the district court to vacate or modify a discovery order.”<sup>3</sup> *Valley*

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<sup>3</sup>We recognize that writs of prohibition are typically more appropriate for the prevention of improper discovery. See, e.g., *Club Vista Fin. Servs. v.*

*Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 171, 252 P.3d 676, 678 (2011).

Here, if the discovery order by the district court remained in effect, a later appeal would not effectively remedy any improper disclosure of the Venetian's guests' private information. Because we conclude that the Venetian has no plain, speedy, and adequate remedy at law, we exercise our discretion to entertain the merits of this petition. NRS 34.170.

*The district court should have considered proportionality under NRCP 26(b)(1)*

The Venetian argues that the district court abused its discretion when it did not consider and apply proportionality under NRCP 26(b)(1) prior to allowing the discovery.<sup>4</sup> Sekera argues that other courts

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*Eighth Judicial Dist. Court*, 128 Nev. 224, 228 n.6, 276 P.3d 246, 249 n.6 (2012). A writ of prohibition is the "proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction." *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); *see also* NRS 34.320. Here, we are not concluding that the district court's discovery order was outside its jurisdiction. Instead, we are (1) compelling the district court to perform the analysis that the law requires and (2) controlling an arbitrary exercise of discretion. Thus, mandamus relief is more appropriate, and we deny the Venetian's alternative request for a writ of prohibition.

<sup>4</sup>The Nevada Rules of Civil Procedure were amended effective March 1, 2019. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018) ("[T]his amendment to the [NRCP] shall be effective prospectively on March 1, 2019, as to all pending cases and cases initiated after that date."). Thus, we cite and apply the current version of Rule 26 because the motions and hearings before the district court judge, and the resulting orders at issue in this writ petition, all occurred after March 1, 2019.

have found the information at stake here to be discoverable under rules similar to NRCP 26(b)(1).<sup>5</sup> We agree with the Venetian.

Generally, “[d]iscovery matters are within the district court’s sound discretion, and we will not disturb a district court’s ruling regarding discovery unless the court has clearly abused its discretion.” *Club Vista*, 128 Nev. at 228, 276 P.3d at 249. NRCP 26(b)(1) defines and places limitations on the scope of discovery:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claims or defenses and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

NRCP 26(b)(1). Further, “[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable.” *Id.*

Here, the district court identified only relevance at the hearing and in its order as the legal basis to deny the protective order. Specifically, the court stated at the hearing that the information was relevant to show

---

<sup>5</sup>The authority cited by Sekera is unpersuasive, as the cases do not consider proportionality as required by the newly adopted amendments to NRCP 26(b)(1). However, we emphasize that our opinion does not stand for the proposition that the information at stake here is not proportional to the needs of the case and thus not discoverable. Rather, we hold that the district court must conduct the proper analysis under the current version of NRCP 26(b)(1) and consider both relevance *and* proportionality together as the plain language of the rule requires.

notice and foreseeability.<sup>6</sup> Problematically, the district court did not undertake any analysis of proportionality as required by the new rule. The rule amendments added a consideration of proportionality to

redefine[] the scope of allowable discovery consistent with the proportionate discovery provision in FRCP 26(b). As amended, [NRCP] 26(b)(1) requires that discovery seek information “relevant to any party’s claims or defenses and proportional needs of the case,” departing from the past scope of “relevant to the subject matter involved in the pending action.” This change allows the district court to eliminate redundant or disproportionate discovery and reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry.

NRCP 26 advisory committee’s note to 2019 amendment; *see also* FRCP 26 advisory committee’s note to 2015 amendment (“The objective is to guard against redundant or disproportionate discovery by giving the court authority to reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry.”). When FRCP 26(b)(1) was amended, federal district courts noted that relevance was no longer enough for allowing discovery. *In re Bard IVC Filters Prod. Liab. Litig.*, 317 F.R.D. 562, 564 (D. Ariz. 2016) (“Relevancy alone is no longer sufficient—discovery must also be proportional to the needs of the case.”); *Samsung Elecs. Am.*,

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<sup>6</sup>The Venetian cites *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962), to demonstrate prior incidents are not relevant to establish notice when it relates to a temporary condition “unless . . . the conditions surrounding the prior occurrences have continued and persisted.” Sekera appears to have abandoned the notice and foreseeability arguments proffered in the district court and now only argues in her answering brief that the unredacted reports are relevant to show a lack of comparative negligence.



*Inc. v. Yang Kun Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017) (“[D]iscoverable matter must be both relevant and proportional to the needs of the case—which are related but distinct requirements.”).<sup>7</sup>

As noted above, NRCP 26(b)(1) outlines several factors for district courts to consider regarding proportionality:

[(1)] the importance of the issues at stake in the action; [(2)] the amount in controversy; [(3)] the parties’ relative access to relevant information; [(4)] the parties’ resources; [(5)] the importance of the discovery in resolving the issues; and [(6)] whether the burden or expense of the proposed discovery outweighs its likely benefit.<sup>8</sup>

See also *In re Bard*, 317 F.R.D. at 563. Upon consideration of these factors, “a court can—and must—limit proposed discovery that it determines is not proportional to the needs of the case . . .” *Vallejo v. Amgen, Inc.*, 903 F.3d 733, 742 (8th Cir. 2018) (quoting *Carr v. State Farm Mut. Auto. Ins., Co.*, 312 F.R.D. 459, 468 (N.D. Tex. 2015)).

The district court abused its discretion when it failed to analyze proportionality in light of the revisions to NRCP 26(b)(1) and make findings related to proportionality. Because discovery decisions are “highly fact-

---

<sup>7</sup> “[F]ederal decisions involving the Federal Rules of Civil Procedure provide persuasive authority” for Nevada appellate courts considering the Nevada Rules of Civil Procedure. *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005). Furthermore, the current version of the NRCP is modeled after the federal rules. NRCP Preface, advisory committee’s notes to 2019 amendment.

<sup>8</sup> Per the amendments to the Federal Rules of Civil Procedure, these factors specifically apply to proportionality. See FRCP 26 advisory committee’s note to 2015 amendment (“The present amendment restores the *proportionality factors* to their original place in defining the scope of discovery.” (emphasis added)).

intensive,” *In re Anonymous Online Speakers*, 661 F.3d 1168, 1176 (9th Cir. 2011), and this court is not positioned to make factual determinations in the first instance, we decline to do so; instead, we direct the district court to engage in this analysis.<sup>9</sup> See *Ryan’s Express Transp. Servs., Inc. v. Amador Stage Lines*, 128 Nev. 289, 299, 279 P.3d 166, 172-73 (2012).

*The district court should have determined whether the Venetian demonstrated good cause for a protective order under NRCP 26(c)(1)*

The Venetian sought a protective order under NRCP 26(c)(1), arguing that it had good cause to obtain one. The district court determined that there was no legal basis for a protective order. We disagree and conclude the district court abused its discretion when it determined that it had no legal basis to protect the Venetian’s guests’ information without first considering whether the Venetian demonstrated good cause for a protective order based on the individual circumstances before it. As stated above, discovery matters are generally reviewed for an abuse of discretion. *Club Vista*, 128 Nev. at 228, 276 P.3d at 249. A district court abuses its discretion when it “ma[kes] neither factual findings nor legal arguments” to support its decision regarding a protective order. *In re Nat’l Prescription Opiate Litig.*, 927 F.3d 919, 929 (6th Cir. 2019) (quoting *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 (1981)).

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<sup>9</sup>While the district court abused its discretion by not considering proportionality whatsoever in its order or at the hearing, the parties are also responsible for determining if their discovery requests are proportional. “[T]he proportionality calculation to [FRCP] 26(b)(1)” is the responsibility of the court and the parties, and “does not place on the party seeking discovery the burden of addressing all proportionality considerations.” FRCP 26, advisory committee’s notes to 2015 amendment.

NRCP 26(c)(1) articulates the standard for protective orders, stating that “[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . .”<sup>10</sup> The United States Supreme Court has interpreted the similar language of FRCP 26(c) as conferring “broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984). The Court continued by noting that the “trial court is in the best position to weigh fairly the competing needs and interests of the parties affected by discovery.” *Id.* “The unique character of the discovery process requires that the trial court have substantial latitude to fashion protective orders.” *Id.*

The United States Court of Appeals for the Ninth Circuit has articulated a three-part test for conducting a good-cause analysis under FRCP 26(c). *In re Roman Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 424 (9th Cir. 2011). First, the district court must determine if particularized harm would occur due to public disclosure of the information. *Id.* at 424. (“As we have explained, ‘[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not

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<sup>10</sup>Although NRCP 26(c), like its federal counterpart, applies to all forms of discovery (including written discovery), the Nevada Supreme Court has defined what constitutes good cause under the rule only in the context of depositions. See *Okada v. Eighth Judicial Dist. Court*, 131 Nev. 834, 842-43, 359 P.3d 1106, 1112 (2015) (articulating factors for courts to consider when determining good cause for a protective order designating the time and place of a deposition). Therefore, Nevada courts do not have firm guidelines to assist their determination of good cause when it comes to written discovery.

satisfy the Rule 26(c) test.” (quoting *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992))).

Second, if the district court concludes that particularized harm would result, then it must “balance the public and private interests to decide whether . . . a protective order is necessary.” *Id.* (internal quotation marks and citation omitted). The Ninth Circuit has directed federal district courts to utilize the factors set forth in a Third Circuit Court of Appeals case, *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995), to help them balance the private and public interests. *Roman Catholic*, 661 F.3d at 424; see also *Phillips v. Gen. Motors*, 307 F.3d 1206, 1212 (9th Cir. 2002). *Glenmede* sets forth the following nonmandatory and nonexhaustive list of factors for courts to consider when determining if good cause exists:

(1) whether disclosure will violate any privacy interests; (2) whether the information is being sought for a legitimate purpose or for an improper purpose; (3) whether disclosure of the information will cause a party embarrassment; (4) whether confidentiality is being sought over information important to public health and safety; (5) whether the sharing of information among litigants will promote fairness and efficiency; (6) whether a party benefiting from the order of confidentiality is a public entity or official; and (7) whether the case involves issues important to the public.

56 F.3d at 483. The *Glenmede* court further recognized that the district court is in the best position to determine what factors are relevant to balancing the private and public interests in a given dispute. *Id.*

Third, even if the factors balance in favor of protecting the discovery material, “a court must still consider whether redacting portions of the discovery material will nevertheless allow disclosure.” *Roman Catholic*, 661 F.3d at 425.



The Venetian sought a protective order pursuant to NRCP 26(c)(1), but the district court summarily concluded that there was no legal basis for issuing the protective order. It did so without analyzing whether the Venetian had shown good cause pursuant to NRCP 26(c)(1).<sup>11</sup> The district court's outright conclusion that there was no legal basis for a protective order and failure to conduct a good-cause analysis resulted in an arbitrary exercise of discretion. NRCP 26(c)(1) grants the district court authority to craft a protective order that meets the factual demands of each case if a litigant demonstrates good cause. Thus, since the court did have the legal authority to enter a protective order if the Venetian had shown good cause under NRCP 26(c)(1), it should have determined whether good cause existed based on the facts before it.

To determine good cause, we now approve of the framework established by the Ninth Circuit in *Roman Catholic* and the factors listed by the Third Circuit in *Glenmede*. District courts should use that framework and applicable factors, and any other relevant factors, to consider whether parties have shown good cause under NRCP 26(c)(1).<sup>12</sup> If

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<sup>11</sup>Sekera argues that the district court did not abuse its discretion by determining the Venetian did not show good cause. We are not convinced. The fact that the district court failed to mention good cause, either in its order or at the hearing, undermines Sekera's argument.

<sup>12</sup>Writ relief is discretionary, and in light of our disposition, we decline to address the other issues argued by the parties in this original proceeding. However, we note that *Glenmede* factors one, three, and five authorize the district court to consider the ramifications of information being disseminated to third parties (i.e., "whether disclosure will violate any privacy interests," "whether disclosure of the information will cause a party embarrassment," and "whether the sharing of information among litigants will promote fairness and efficiency"). 56 F.3d at 483. Importantly, the Nevada Supreme Court has recently stated that disclosing medical

the party seeking the protective order has shown good cause, a district court may issue a remedial protective order as circumstances require. *See* NRCP 26(c)(1). However, we do not determine whether the Venetian has established good cause for a protective order; instead, we conclude that is a matter for the district court to decide in the first instance. *See Ryan's Express*, 128 Nev. at 299, 279 P.3d at 172.

### CONCLUSION

In denying the Venetian's motion for a protective order, the district court abused its discretion in two ways. First, it focused solely on relevancy and did not consider proportionality as required under the amendments to NRCP 26(b)(1). Second, it did not conduct a good-cause analysis as required by NRCP 26(c)(1). Because the district court failed to conduct a full analysis, its decision was arbitrarily rendered.

Thus, we grant the Venetian's petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order denying the Venetian's motion for a protective order. The district court shall conduct further proceedings consistent with this opinion to determine whether disclosure of the unredacted reports is relevant and proportional under NRCP 26(b)(1). If disclosure is proper, the district court must conduct a good-cause analysis under NRCP 26(c)(1), applying the framework provided herein to determine whether the Venetian has shown good cause for a protective order. If the Venetian demonstrates good cause,

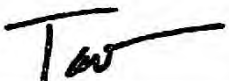
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information implicates a nontrivial privacy interest in the context of public records requests. *Cf. Clark Cty. Coroner v. Las Vegas Review-Journal*, 136 Nev., Adv. Op. 5, 458 P.3d 1048, 1058-59 (2020) (explaining that juvenile autopsy reports implicate "nontrivial privacy interest[s]" due to the social and medical information they reveal, which may require redaction before their release).

the district court may issue a protective order as dictated by the circumstances of this case.

  
\_\_\_\_\_, C.J.  
Gibbons

I concur:

  
\_\_\_\_\_, J.  
Tao

# **EXHIBIT 10**

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND LAS VEGAS SANDS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,

Respondents,

and

JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

No. 79689-COA

**FILED**

**MAY 21 2020**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

WRIT OF MANDAMUS

TO: The Honorable Kathleen E. Delaney, Judge of the Eighth  
Judicial District Court:

WHEREAS, this Court having made and filed its written decision  
that a writ of mandamus issue,

NOW, THEREFORE, you are instructed to vacate your order  
denying the Venetian's motion for a protective order and to conduct further  
proceedings consistent with the court's opinion, in the case entitled Joyce  
Sekera, an individual, vs. 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, case

no. A772761  
MAY 20 2020

COURT OF APPEALS  
OF  
NEVADA

(O) 1947B

20-19468

VEN 3259

WITNESS The Honorables Michael Gibbons, Chief Judge, and  
Jerome Tao, Associate Judge of the Court of Appeals of the State of Nevada,  
and attested by my hand and seal this 14th day of May, 2020.

*Harriet*  
*Summings*  
\_\_\_\_\_  
Chief Assistant Clerk



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

vs.

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,

and

JOYCE SEKERA, an individual,  
Real Party in Interest.

Supreme Court No. 79689-COA

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

**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 18 day of May, 2019, I served true and  
correct copy of the foregoing **WRIT OF MANDAMUS** by delivering the same  
via U.S. Mail addressed to the following:

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

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

  
An employee of Royal & Miles LLP

# **EXHIBIT 11**



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND LAS VEGAS SANDS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,

Respondents,

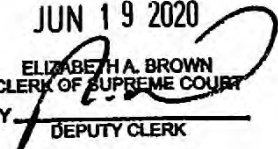
and

JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

No. 80816-COA

**FILED**

JUN 19 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER GRANTING PETITION FOR WRIT OF MANDAMUS*

This is an original petition for a writ of mandamus or prohibition challenging a district court order requiring petitioners to produce unredacted prior incident reports in discovery and refusing to impose requested protections related to those reports.<sup>1</sup>

This current petition arises from the same litigation that we previously considered in *Venetian Casino Resort, LLC v. Sekera*, 136 Nev., Adv. Op. 26, \_\_\_ P.3d \_\_\_ (Ct. App. 2020). Real party in interest, Joyce Sekera, allegedly slipped and fell at the Venetian Resort in Las Vegas. During discovery, Sekera requested unredacted incident reports of slip and

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<sup>1</sup>The Honorable Bonnie A. Bulla, Judge, voluntarily recused herself from participation in the decision of this matter.

fall accidents from November 2013 to November 2016 that contained the personal information of the Venetian's guests. The Venetian sought a protective order that would allow it to either redact the personal information and/or limit Sekera's ability to show the reports to nonparties. The district court denied its request. The Venetian filed an original petition for a writ of mandamus challenging that ruling, which this court granted due to the district court's failure to consider proportionality, as required by the current version of NRCP 26(b)(1), and for failing to conduct a good cause analysis under NRCP 26(c)(1). *See Venetian*, 136 Nev., Adv. Op. 26, \_\_\_ P.3d at \_\_\_.

While the prior case was pending before this court, Sekera sought discovery pertaining to additional incident reports. The district court issued another order requiring the Venetian to provide unredacted slip and fall incident reports from November 2011 to November 2016 that occurred in the Grand Lux Rotunda area of the Venetian property.<sup>2</sup> The Venetian requested a stay from the district court, which was denied. The Venetian then filed this petition for a writ of mandamus or prohibition due to the district court's failure to consider proportionality and issue a protective order. The Venetian also sought a stay of the district court's discovery order, which we granted in March 2020.<sup>3</sup>

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<sup>2</sup>We note that the district court's March 13, 2020 order involved multiple discovery issues. The Venetian only challenges the order as it pertains to the incident reports. Thus, our order only addresses that issue.

<sup>3</sup>*Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, Docket No. 80816-COA (Order Directing Answer and Granting Stay, Ct. App., March 27, 2020).

In our prior opinion, we specifically required the district court to consider proportionality and to conduct a good cause analysis with the framework provided therein for the issuance of a protective order. *Venetian*, 136 Nev., Adv. Op. 26, \_\_\_ P.3d at \_\_\_. Here, regarding the incident reports, the district court did not consider proportionality and did not conduct a good cause analysis as part of its discovery hearing and subsequent order. We conclude writ relief is appropriate and grant the writ of mandamus.<sup>4</sup> *Humphries v. Eighth Judicial Dist. Court*, 129 Nev. 788, 791, 312 P.3d 484, 486 (2013). The district court must consider the proportionality of the discovery request and apply the framework found in *Venetian Casino Resort, LLC v. Sekera*, 136 Nev., Adv. Op. 26, \_\_\_ P.3d \_\_\_ (Ct. App. 2020), to determine if a protective order is warranted.<sup>5</sup> Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the

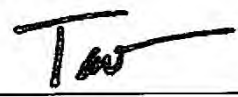
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<sup>4</sup>We recognize that writs of prohibition are typically more appropriate for the prevention of improper discovery. See, e.g., *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228 n.6, 276 P.3d 246, 249 n.6 (2012). A writ of prohibition is the “proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction.” *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); see also NRS 34.320. Here, we are not concluding that the district court’s discovery order was outside its jurisdiction and thus improper. Instead, we are compelling the district court to perform the analysis that the law requires and controlling an arbitrary exercise of discretion. Thus, mandamus relief is more appropriate, and we deny the *Venetian*’s alternative request for a writ of prohibition.

<sup>5</sup>Writ relief is discretionary, and in light of our disposition, we decline to address the other issues argued by both parties in this original proceeding. See *Smith*, 107 Nev. at 677, 818 P.2d at 851 (“[T]he issuance of a writ of mandamus or prohibition is purely discretionary with [appellate] court[s].”).

district court to vacate the order compelling discovery only as it pertains to the production of the incident reports and conduct proceedings consistent with this order.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

cc: Chief Judge, Eighth Judicial District Court  
Hon. Kathleen E. Delaney, District Judge  
Royal & Miles, LLP  
Claggett & Sykes Law Firm  
The Galliher Law Firm  
Eighth District Court Clerk

# **EXHIBIT 12**

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND LAS VEGAS SANDS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,

Respondents,

and

JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

No. 80816-COA

FILED

JUN 30 2020

ELIZABETH A. STONE  
CLERK OF DISTRICT COURT  
BY *[Signature]*  
RECEIVED

WRIT OF MANDAMUS

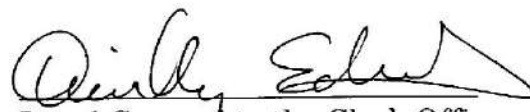
TO: The Honorable Kathleen E. Delaney, Judge of the Eighth  
Judicial District Court:

WHEREAS, this Court having made and filed its written decision  
that a writ of mandamus issue,

NOW, THEREFORE, you are instructed to vacate the order  
compelling discovery only as it pertains to the production of the incident  
reports and conduct proceedings consistent with this order, in the case  
entitled Joyce Sekera, an Individual, vs. 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, case no. A772761.



WITNESS The Honorable Michael Gibbons, Chief Judge, and  
Jerome Tao, Associate Judge of the Court of Appeals of the State of Nevada,  
and attested by my hand and seal this 19th day of June, 2020.

  
Legal Counsel to the Clerk Office



COURT OF APPEALS  
OF  
NEVADA

(O) 1947B 

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

vs.

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,

and

JOYCE SEKERA, an individual,  
Real Party in Interest.

Supreme Court No. 80816-COA

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

**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 24 day of June 2020, I served true and  
correct copy of the foregoing **WRIT OF MANDAMUS** by delivering the same  
via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.  
THE GALLIHER LAW FIRM  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, NV 89104

And  
Sean K. Claggett, Esq.  
William T. Sykes, Esq.  
Geordan G. Logan, Esq.  
CLAGGETT & SYKES LAW FIRM  
4101 Meadows Lane, Suite 100  
Las Vegas, NV 89104  
Attorneys for Real Party in Interest

JUN 26 2020  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK



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

  
An employee of Royal & Miles LLP

# **EXHIBIT 13**

ECC  
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Nevada Bar No. 008407  
William T. Sykes, Esq.  
Nevada Bar No. 009916  
Geordan G. Logan, Esq.  
Nevada Bar No. 013910  
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Keith E. Galliher, Jr., Esq.  
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Jeffrey L. Galliher, Esq.  
Nevada Bar No. 8078  
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1850 East Sahara Avenue, Suite 107  
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(702) 735-0049 – Telephone  
(702) 735-0204 – Facsimile  
*Attorneys for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,  
  
Plaintiff,

v.

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

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**PLAINTIFF'S EIGHTEENTH  
SUPPLEMENT TO INITIAL  
DISCLOSURES PURSUANT TO N.R.C.P.  
16.1**

COMES NOW, Plaintiff, JOYCE SEKERA, by and through her counsel of record,  
CLAGGETT & SYKES LAW FIRM and provides the following eighteenth supplement to Initial  
Disclosures Pursuant to N.R.C.P. 16.1 as follows:

I.

**PRODUCTION OF DOCUMENTS**

**DOCUMENTS:**

<u>EX.</u>	<u>DESCRIPTION</u>	<u>BATES NUMBERS</u>
1.	Records and billing from Centennial Hills Hospital	JS001-074
2.	Billing from Shadow Emergency Services	JS075-076
3.	Records and billing from Desert Radiologists	JS077-082
4.	Records and billing from Dr. Webber	JS083-243
5.	Records and billing from Las Vegas Radiology	JS244-262
6.	Records and billing from Dr. Hyla	JS263-303
7.	Records and billing from Dr. Shah	JS304-378
8.	Billing from PayLater Pharmacy	JS379
9.	Billing from Las Vegas Pharmacy	JS380-381
10.	Records and billing from Dr. Travnicek	JS382-475
11.	Records and billing from Valley View Surgery Center	JS476-601
12.	Records and billing from Steinberg Diagnostics	JS602-608
13.	Records and billing from Dr. Cash	JS609-658
14.	Records from Dr. Smith	JS659-661
15.	Wage loss document	JS662
16.	Records and billing from Dr. Smith	JS663-847

**CLAGGETT & SYKES LAW FIRM**

4101 Meadows Lane, Suite 100

Las Vegas, Nevada 89107

702-655-2346 • Fax 702-655-3763

1	17.	Tax returns from 2016	JS848-864
2	18.	Certificate of Custodian of Medical Records from Dr. Smith	JS865
3	19.	Records from Dr. Travnicek	JS866-868
4	20.	Records from Core Rehab	JS869-938
5	21.	Records and billing from Dr. Smith	JS939-945
6	22.	Records from Dr. Travnicek	JS946-949
8	23.	Supplemental report from Dr. Travnicek	JS950
9	24.	Supplemental report from Thomas Jennings	JS951-952
10	25.	Supplemental report from Dr. Baker	JS953-979
11	26.	Second Supplemental expert report from Dr. Baker	JS980
12	27.	Third Supplemental expert report from Dr. Baker	JS981-988
13	28.	Records from Dr. Travnicek	JS989-992
14	29.	Records from Valley View Surgery Center	JS993
15	30.	Records from Dr. Smith	JS994-995
16	31.	Report from Wilson C. "Toby" Hayes, Ph.D. regarding case	JS996-1010
17	32.	Records from Dr. Smith	JS1011-1013
18	33.	Records from Dr. Smith	JS1014-1015
19	34.	Billing from Valley View Surgery Center	JS1016-1017
20	35.	First supplemental expert rebuttal report from Dr. Anthony	JS1018-1020
21	36.	Surgical estimate from Western Regional Center for Brain & Spine	JS1021
22	37.	Billing from Dr. Garber	JS1022
23	38.	Second supplemental expert report from Thomas Jennings, P.E.	JS1023
24	39.	Third supplemental expert report from Dr. Travnicek	JS1024-1025
25	40.	Medical and Billing Records from SimonMed	SEKERA001026- SEKERA001030

41.	Medical and Billing Records from Desert Institute of Spine Care	SEKERA001031- SEKERA001082
42.	Medical Records from Desert Chiropractic & Rehab/Core Rehab	SEKERA001083- SEKERA001105
43.	Medical and Billing Records from Las Vegas Neurosurgical Institute	SEKERA001106- SEKERA001185
44.	Medical and Billing Records from Pain Institute of Nevada	SEKERA001186- SEKERA001304
45.	Medical and Billing Records from Radar Medical Group	SEKERA001305- SEKERA001500
45.	Medical and Billing Records from Radar Medical Group	SEKERA001501- SEKERA001520
46.	Pharmacy records from PayLater Pharmacy	SEKERA001521- SEKERA001527
47.	Declaration page Pain Institute of Nevada	SEKERA001528- SEKERA001531
48.	Declaration page and billing from Desert Radiologists	SEKERA001532- SEKERA001533
49.	<b>Worker's Compensation file</b>	<b>SEKERA001534- SEKERA001691</b>

Any and all documents provided by the Defendant and/or any other party to this litigation.

The Plaintiff reserves the right to supplement her production of documents as discovery is ongoing.

## II.

### LIST OF WITNESSES

*Joyce Sekera is the Plaintiff in this matter and will testify to the allegations contained in the Complaint and any information relevant thereto; her recollection of the facts and circumstances surrounding the subject incident; her pre-and post-incident status, including medical conditions, injuries, treatments, outcomes, diagnoses, and prognoses; her employment and income history; the medical special damages she claims to have incurred as a result of the incident, including the existence of any and all liens, insurance claims and payments, and any monies received in connection therewith; any and all meetings, communications, and observations of the parties, police officers and witnesses.*

1.	Joyce Sekera c/o Claggett & Sykes Law Firm
----	---

4101 Meadows Lane, Suite 100  
Las Vegas, Nevada 89107

*The following witness are expected to testify regarding the facts and circumstances surrounding the subject incident, the allegations contained in the Complaint and any information relevant thereto and/or the Plaintiff's condition, lifestyle and activities before and after the incident.*

1.	Marissa Freeman 8929 Monte Oro Drive Las Vegas, Nevada 89131
2.	Brian Freeman 8929 Monte Oro Drive Las Vegas, Nevada 89131
3.	Carole Divito 7840 Nesting Pine Place Las Vegas, Nevada 89143

*The following witnesses are Defendants in this action and it is anticipated that they will testify their knowledge of the allegations contained in the Complaint, the Answer and Affirmative Defenses; any and all observations, meetings, communications and interactions with the parties, police officers, and witnesses; any notes, photos or memoranda created about the accident or matters alleged in the Complaint, Answer and Affirmative Defenses:*

1.	NRCP 30(b)(6) Witness(es) for VENETIAN CASINO RESORT, LLC d/b/a THE VENETIAN LAS VEGAS c/o Royal & Miles LLP 1522 West Warm Springs Road Henderson, Nevada 89014
2.	NRCP 30(b)(6) Witness(es) for LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS c/o Royal & Miles LLP 1522 West Warm Springs Road Henderson, Nevada 89014

*The following witnesses are expected to testify as to the facts surrounding the subject incident, the resulting injuries, medical treatment, symptoms, post-injury condition and/or damages in connection with the subject incident.*

1.	Louie Calleros 2557 Land Rush Drive Henderson, Nevada 89002 (702) 414-9956
2.	Rafael Chavez 5850 Sky Point Drive Las Vegas, Nevada 89130 (702) 556-9385
3.	Warren Church, Jr. Brand Las Vegas, LLC 3130 S. Rainbow Blvd., Suite 305 Las Vegas, Nevada 89146 (702) 538-9000
4.	Maria Cruz 911 Melrose Dr. Las Vegas, Nevada 89101 (702) 504-1742
5.	Milan Graovac 7660 W. Eldorado Ln. #140 Las Vegas, Nevada 89113
6.	Sang Han 3180 Molinos Dr. Las Vegas, Nevada 89141 (702) 607-2262
7.	Chris Johnson 8445 Las Vegas Blvd. So, #2106 Las Vegas, Nevada 89123 (702) 241-2302
8.	Joe Larson, EMT 3339 Horned Lark Court Las Vegas, Nevada 89117 619-961-8167
9.	David Martinez 517 North Yale St. Las Vegas, Nevada 89107 (702) 878-2504
10.	Christina Tonemah 3140 White Rose Way Henderson, Nevada 89014-3100 (702) 672-5240
11.	Kecia Powell 121 Parrish Ln. Las Vegas, Nevada 89110-4838



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4101 Meadows Lane, Suite 100

Las Vegas, Nevada 89107

702-655-2346 • Fax 702-655-3763

1		(702) 245-1792
2	12.	James Sturiale
3		5521 Kettering Pl.
4		Las Vegas, Nevada 89107-3739
5		(702) 237-9960
6	13.	Dianne Willoughby
7		1100 W. Monroe, #231
8		Las Vegas, Nevada 89106
9		(702) 578-9916
10	14.	Dawit Wadajo
11		5060 W. Hacienda Ave., Apt. 1101
12		Las Vegas, Nevada 89118-0349
13		(702) 742-7988
14	15.	Pete Krueger
15		7028 Edwin Aldrin Cir.
16		Las Vegas, Nevada 89145-6127
17	16.	Alma Coloma
18		6118 Carter Caves Ave.
19		Las Vegas, Nevada 89139
20		(702) 217-1118
21	17.	Charry Kennedy
22		c/o Royal & Miles LLP
23		1522 West Warm Springs Road
24		Henderson, Nevada 89014
25		(702) 471-6777
26	18.	Edward R. DiRocco
27		3130 S. Rainbow Blvd., Suite 305
28		Las Vegas, Nevada 89146
	19.	Gary Shulman
		10263 Jamapa Dr.
		Las Vegas, Nevada 89178-4028
		(702) 487-2207
	20.	NRCP 30(b)(6) Witness(es) for
		Brand Las Vegas, LLC
		3130 S. Rainbow Blvd. Suite 305
		Las Vegas, Nevada 89146
		(702) 538-9000
	21.	Micki Cimini
		4110 Springville Ave.
		Las Vegas, Nevada 89121-6338
		(702) 769-5983
	22.	Barry Goldberg
		c/o Royal & Miles LLP
		1522 West Warm Springs Road
		Henderson, Nevada 89014
		(702) 471-6777
	23.	Michael Conery
		c/o Royal & Miles LLP

	1522 West Warm Springs Road Henderson, Nevada 89014 (702) 471-6777
24.	Rhonda Salinas c/o Royal & Miles LLP 1522 West Warm Springs Road Henderson, Nevada 89014 (702) 471-6777
25.	Marnie Pipp c/o Royal & Miles LLP 1522 West Warm Springs Road Henderson, Nevada 89014 (702) 471-6777
26.	Anna Hersel c/o Royal & Miles LLP 1522 West Warm Springs Road Henderson, Nevada 89014 (702) 471-6777

*The following witnesses are experts in this action and it is anticipated that they will testify to their opinions in their reports and any supplements thereto. They may testify to any documents reviewed by them in reaching their opinions, and any other documents or reports that may be relevant to their opinions or defense of those opinions. They may also be called to rebut the opinions of the Defendants' experts to the extent said opinions conflict their own or to the extent said opinions fall within their specialized knowledge, skill, experience, training or education.*

1.	Francis Del Vecchio, MD and/or NRCP 30(b)(6) witness and/or Custodian of Records for Centennial Hills Hospital 6900 N. Durango Drive Las Vegas, Nevada 89149
2.	Francis Del Vecchio, MD and/or NRCP 30(b)(6) witness and/or Custodian of Records for Shadow Emergency Physicians PO Box 13917 Philadelphia, PA 19101
3.	Kaveh Kardooni, M.D. and/or NRCP 30(b)(6) witness and/or Custodian of Records for Desert Radiology 2020 Palomino Lane, Suite 100 Las Vegas, Nevada 89106
4.	Jordan B. Webber, D.C. and/or NRCP 30(b)(6) witness and/or Custodian of Records for Desert Chiropractic & Rehab/Core Rehab 10620 Southern Highlands Parkway, Suite 110-329

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Las Vegas, Nevada 89107

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	Las Vegas, Nevada 89141
5.	James D. Balodimas, M.D. and/or NRCP 30(b)(6) witness and/or Custodian of Records for Las Vegas Radiology 3201 S. Maryland Parkway, Suite 102 Las Vegas, Nevada 89109
6.	Michelle Hyla, D.O. and/or NRCP 30(b)(6) witness and/or Custodian of Records for Southern Nevada Medical Group 1485 E. Flamingo Road Las Vegas, Nevada 89119
7.	Russell J. Shah, M.D. and/or NRCP 30(b)(6) witness and/or Custodian of Records for Radar Medical Group 10624 S. Eastern Avenue, #A-425 Henderson, Nevada 89052
8.	NRCP 30(b)(6) witness and/or Custodian of Records for PayLater/Wellcare Pharmacy P.O. Box 1200 Las Vegas, Nevada 89125
9.	NRCP 30(b)(6) witness and/or Custodian of Records for Las Vegas Pharmacy 2600 W. Sahara Avenue, Suite 120 Las Vegas, Nevada 89102
10.	Katherine D. Travnicek, M.D. NRCP 30(b)(6) witness and/or Custodian of Records for Pain Institute of Nevada 7435 W. Azure Drive, Suite 190 Las Vegas, Nevada 89130
11.	Katherine D. Travnicek, M.D. NRCP 30(b)(6) witness and/or Custodian of Records for Valley View Surgery Center 1330 S. Valley View Blvd. Las Vegas, Nevada 89102
12.	Sarah Kim, M.D. NRCP 30(b)(6) witness and/or Custodian of Records for Steinberg Diagnostics P.O. Box 36900 Las Vegas, Nevada 89133
13.	Andrew Cash, M.D. NRCP 30(b)(6) witness and/or Custodian of Records for Desert Institute of Spine Care 9339 W. Sunset Road, Suite 100 Las Vegas, Nevada 89148
14.	Willian D. Smith, M.D. NRCP 30(b)(6) witness and/or Custodian of Records for Western Regional Center for Brain & Spine 3061 S. Maryland Parkway, Suite 200

	Las Vegas, Nevada 89109
15.	Jason E. Garber, M.D. NRCP 30(b)(6) witness and/or Custodian of Records for LVNI Center for Spine and Brain Surgery 3012 S. Durango Drive Las Vegas, Nevada 89117
16.	Travis Snyder, D.O. NRCP 30(b)(6) witness and/or Custodian of Records for SimonMed Imaging 7450 Oso Blanca Road, #140 Las Vegas, Nevada 89149 (866) 282-7905
17.	Thomas A. Jennings 355 W. Mesquite Blvd., D30 PMB 1-111 Mesquite, Nevada 89027
18.	John E. Baker, Ph.D., P.E. 7380 S. Eastern Avenue, Ste. 124-142 Las Vegas, Nevada 89123

*The following treating physicians are expected to testify, and may give expert opinions as non-retained treating physicians, regarding their treatment of the Plaintiff. Their testimony and opinions will consist of the necessity of the medical treatment rendered, diagnosis of the Plaintiff's injuries, prognosis, the reasonableness and necessity of future treatment to be rendered, the causation of the necessity for past and future medical treatment, their opinion as to past and future restrictions of activities, including work activities, caused by the incident. Their opinions shall include the authenticity of medical records, the cost of past medical care, future medical care, and whether those medical costs fall within ordinary and customary charges in the community, for similar medical care and treatment. Their testimony may include opinions as to whether the Plaintiff has a diminished work life expectancy as a result of the accident. They will testify in accordance with their medical chart, including records contained therein that were prepared by other healthcare providers, and any documents reviewed by the treating physician outside of his or his medical chart in the course of providing treatment or to defend that treatment. Such documents may include, but are not limited to, records from other healthcare providers, expert opinions, reports and testimony from experts retained by any party, and any other documents that may be relevant to the treating physician's treatment or defense of his or her treatment of the Plaintiff.*

1.	Francis Del Vecchio, MD and/or NRCPP 30(b)(6) witness and/or Custodian of Records for Centennial Hills Hospital 6900 N. Durango Drive Las Vegas, Nevada 89149 (702) 835-9700 The Person Most Knowledgeable is expected to testify regarding the care and treatment rendered to Plaintiff following the November 4, 2016 incident, which is the subject of this litigation, as well as any pre and post incident care and treatment of the Plaintiff. They are also expected to testify regarding medical causation of injury and the reasonableness and necessity of medical treatment and billing. They will also testify regarding future medical treatment and future medical expenses, if any. Additionally, the Custodian of Records is expected to testify as to the authenticity of the medical and billing records associated with Plaintiff's care and treatment.
2.	Francis Del Vecchio, MD and/or NRCPP 30(b)(6) witness and/or Custodian of Records for Shadow Emergency Physicians PO Box 13917 Philadelphia, PA 19101 (800) 355-2470 The Person Most Knowledgeable is expected to testify regarding the care and treatment rendered to Plaintiff following the November 4, 2016 incident, which is the subject of this litigation, as well as any pre and post incident care and treatment of the Plaintiff. They are also expected to testify regarding medical causation of injury and the reasonableness and necessity of medical treatment and billing. They will also testify regarding future medical treatment and future medical expenses, if any. Additionally, the Custodian of Records is expected to testify as to the authenticity of the medical and billing records associated with Plaintiff's care and treatment.
3.	Kaveh Kardooni, M.D. and/or NRCPP 30(b)(6) witness and/or Custodian of Records for Desert Radiology 2020 Palomino Lane, Suite 100 Las Vegas, Nevada 89106 (702) 759-8600 The Person Most Knowledgeable is expected to testify regarding the care and treatment rendered to Plaintiff following the November 4, 2016 incident, which is the subject of this litigation, as well as any pre and post incident care and treatment of the Plaintiff. They are also expected to testify regarding medical causation of injury and the reasonableness and necessity of medical treatment and billing. They will also testify regarding future medical treatment and future medical expenses, if any. Additionally, the Custodian of Records is expected to testify as to the authenticity of the medical and billing records associated with Plaintiff's care and treatment.
4.	Jordan B. Webber, D.C. and/or NRCPP 30(b)(6) witness and/or Custodian of Records for Desert Chiropractic & Rehab/Core Rehab 10620 Southern Highlands Parkway, Suite 110-329 Las Vegas, Nevada 89141

	<p>(702) 463-9508</p> <p>It is expected that Dr. Webber will testify as a non-retained expert in his capacity as medical physicians who provided medical care to Plaintiff, following the subject incident. Dr. Webber is expected to give expert opinions regarding the treatment of Plaintiff, the necessity of the treatment rendered, the causation of the necessity for past and future medical treatment, his expert opinion as to past and future restrictions of activities, including work activities, caused by the incident. His opinions shall include the cost of past and future medical care and whether those medical costs fall within the ordinary and customary charges for similar medical care and treatment. His testimony may also include expert opinions as to whether Plaintiff has a diminished work life expectancy, work capacity, and/or life expectancy as a result of the incident.</p> <p>In rendering his expert opinions he will rely upon the records of all physicians, health care providers, and experts, who have rendered opinions, medical care and treatment to Plaintiff and his respective expert opinions regarding the nature, extent and cause of Plaintiff's injuries, the reasonableness and necessity of the charges for medical treatment rendered to Plaintiff, the charges for Plaintiff's past medical care as being customary for physicians and/or health care providers in the medical community.</p> <p>He will render expert opinions that all of the past and future medical care provided to Plaintiff was reasonable and necessary, that the need for said care was caused by the subject incident, that all charges were reasonable and customary, that the Plaintiff has, and will continue to have, restrictions on her activities and ability to work, that the Plaintiff will have a diminished work life expectancy and a diminished life expectancy. The basis for Dr. Webber's opinions include, but are not limited to, his education, training, and experience, the nature of the trauma Plaintiff was subjected to because of Defendant's negligence, Plaintiff's history and symptoms, any diagnostic tests that were performed, his review of Plaintiff's medical records. In addition, Dr. Webber will testify as a rebuttal expert to any medically designated defense experts in which he is qualified.</p>
5.	<p>James D. Balodimas, M.D. and/or NRCP 30(b)(6) witness and/or Custodian of Records for Las Vegas Radiology 3201 S. Maryland Parkway, Suite 102 Las Vegas, Nevada 89109 (702) 254-5004</p> <p>The Person Most Knowledgeable is expected to testify regarding the care and treatment rendered to Plaintiff following the November 4, 2016 incident, which is the subject of this litigation, as well as any pre and post incident care and treatment of the Plaintiff. They are also expected to testify regarding medical causation of injury and the reasonableness and necessity of medical treatment and billing. They will also testify regarding future medical treatment and future medical expenses, if any. Additionally, the Custodian of Records is expected to testify as to the authenticity of the medical and billing records associated with Plaintiff's care and treatment.</p>
6.	<p>Michelle Hyla, D.O. and/or NRCP 30(b)(6) witness and/or Custodian of Records for Southern Nevada Medical Group 1485 E. Flamingo Road Las Vegas, Nevada 89119 (702) 386-0882</p>

1		It is expected that Dr. Hyla will testify as a non-retained expert in her capacity as medical
2		physicians who provided medical care to Plaintiff, following the subject incident. Dr. Hyla
3		is expected to give expert opinions regarding the treatment of Plaintiff, the necessity of the
4		treatment rendered, the causation of the necessity for past and future medical treatment, her
5		expert opinion as to past and future restrictions of activities, including work activities,
6		caused by the incident. Her opinions shall include the cost of past and future medical care
7		and whether those medical costs fall within the ordinary and customary charges for similar
8		medical care and treatment. Her testimony may also include expert opinions as to whether
9		Plaintiff has a diminished work life expectancy, work capacity, and/or life expectancy as a
10		result of the incident.
11		In rendering her expert opinions she will rely upon the records of all physicians,
12		health care providers, and experts, who have rendered opinions, medical care and treatment
13		to Plaintiff and her respective expert opinions regarding the nature, extent and cause of
14		Plaintiff's injuries, the reasonableness and necessity of the charges for medical treatment
15		rendered to Plaintiff, the charges for Plaintiff's past medical care as being customary for
16		physicians and/or health care providers in the medical community.
17		She will render expert opinions that all of the past and future medical care provided
18		to Plaintiff was reasonable and necessary, that the need for said care was caused by the
19		subject incident, that all charges were reasonable and customary, that the Plaintiff has, and
20		will continue to have, restrictions on her activities and ability to work, that the Plaintiff will
21		have a diminished work life expectancy and a diminished life expectancy. The basis for Dr.
22		Hyla's opinions include, but are not limited to, her education, training, and experience, the
23		nature of the trauma Plaintiff was subjected to because of Defendant's negligence,
24		Plaintiff's history and symptoms, any diagnostic tests that were performed, her review of
25		Plaintiff's medical records. In addition, Dr. Hyla will testify as a rebuttal expert to any
26		medically designated defense experts in which she is qualified.
27	7.	Russell J. Shah, M.D. and/or
28		NRCP 30(b)(6) witness and/or
		Custodian of Records for Radar Medical Group
		10624 S. Eastern Avenue, #A-425
		Henderson, Nevada 89052
		(702) 644-0500
		*It is expected that Dr. Shah will testify as a non-retained expert in his capacity as medical
		physicians who provided medical care to Plaintiff, following the subject incident. Dr. Shah
		is expected to give expert opinions regarding the treatment of Plaintiff, the necessity of the
		treatment rendered, the causation of the necessity for past and future medical treatment, his
		expert opinion as to past and future restrictions of activities, including work activities,
		caused by the incident. His opinions shall include the cost of past and future medical care
		and whether those medical costs fall within the ordinary and customary charges for similar
		medical care and treatment. His testimony may also include expert opinions as to whether
		Plaintiff has a diminished work life expectancy, work capacity, and/or life expectancy as a
		result of the incident.
		In rendering his expert opinions he will rely upon the records of all physicians,
		health care providers, and experts, who have rendered opinions, medical care and treatment
		to Plaintiff and his respective expert opinions regarding the nature, extent and cause of
		Plaintiff's injuries, the reasonableness and necessity of the charges for medical treatment
		rendered to Plaintiff, the charges for Plaintiff's past medical care as being customary for
		physicians and/or health care providers in the medical community.

	<p>He will render expert opinions that all of the past and future medical care provided to Plaintiff was reasonable and necessary, that the need for said care was caused by the subject incident, that all charges were reasonable and customary, that the Plaintiff has, and will continue to have, restrictions on her activities and ability to work, that the Plaintiff will have a diminished work life expectancy and a diminished life expectancy. The basis for Dr. Shah's opinions include, but are not limited to, his education, training, and experience, the nature of the trauma Plaintiff was subjected to because of Defendant's negligence, Plaintiff's history and symptoms, any diagnostic tests that were performed, his review of Plaintiff's medical records. In addition, Dr. Shah will testify as a rebuttal expert to any medically designated defense experts in which he is qualified.</p>
8.	<p>NRCP 30(b)(6) witness and/or Custodian of Records for PayLater/Wellcare Pharmacy P.O. Box 1200 Las Vegas, Nevada 89125 (702) 852-660</p> <p>*The Person Most Knowledgeable is expected to testify regarding the care and treatment rendered to Plaintiff following the November 4, 2016 incident, which is the subject of this litigation, as well as any pre and post incident care and treatment of the Plaintiff. They are also expected to testify regarding medical causation of injury and the reasonableness and necessity of medical treatment and billing. They will also testify regarding future medical treatment and future medical expenses, if any. Additionally, the Custodian of Records is expected to testify as to the authenticity of the medical and billing records associated with Plaintiff's care and treatment.</p>
9.	<p>NRCP 30(b)(6) witness and/or Custodian of Records for Las Vegas Pharmacy 2600 W. Sahara Avenue, Suite 120 Las Vegas, Nevada 89102 (702) 220-3906</p> <p>*The Person Most Knowledgeable is expected to testify regarding the care and treatment rendered to Plaintiff following the November 4, 2016 incident, which is the subject of this litigation, as well as any pre and post incident care and treatment of the Plaintiff. They are also expected to testify regarding medical causation of injury and the reasonableness and necessity of medical treatment and billing. They will also testify regarding future medical treatment and future medical expenses, if any. Additionally, the Custodian of Records is expected to testify as to the authenticity of the medical and billing records associated with Plaintiff's care and treatment.</p>
10.	<p>Katherine D. Travnicek, M.D. NRCP 30(b)(6) witness and/or Custodian of Records for Pain Institute of Nevada 7435 W. Azure Drive, Suite 190 Las Vegas, Nevada 89130 (702) 878-8252</p> <p>*It is expected that Dr. Travnicek will testify as a retained treater/expert in her capacity as medical physicians who provided medical care to Plaintiff, following the subject incident. Dr. Travnicek is expected to give expert opinions regarding the treatment of Plaintiff, the necessity of the treatment rendered, the causation of the necessity for past and future medical treatment, her expert opinion as to past and future restrictions of activities, including work activities, caused by the incident. Her opinions shall include the cost of past</p>



and future medical care and whether those medical costs fall within the ordinary and customary charges for similar medical care and treatment. Her testimony may also include expert opinions as to whether Plaintiff has a diminished work life expectancy, work capacity, and/or life expectancy as a result of the incident.

In rendering her expert opinions she will rely upon the records of all physicians, health care providers, and experts, who have rendered opinions, medical care and treatment to Plaintiff and her respective expert opinions regarding the nature, extent and cause of Plaintiff's injuries, the reasonableness and necessity of the charges for medical treatment rendered to Plaintiff, the charges for Plaintiff's past medical care as being customary for physicians and/or health care providers in the medical community.

She will render expert opinions that all of the past and future medical care provided to Plaintiff was reasonable and necessary, that the need for said care was caused by the subject incident, that all charges were reasonable and customary, that the Plaintiff has, and will continue to have, restrictions on her activities and ability to work, that the Plaintiff will have a diminished work life expectancy and a diminished life expectancy. The basis for Dr. Travnicek's opinions include, but are not limited to, her education, training, and experience, the nature of the trauma Plaintiff was subjected to because of Defendant's negligence, Plaintiff's history and symptoms, any diagnostic tests that were performed, her review of Plaintiff's medical records. In addition, Dr. Travnicek will testify as a rebuttal expert to any medically designated defense experts in which she is qualified.

11. Katherine D. Travnicek, M.D.  
NRC 30(b)(6) witness and/or  
Custodian of Records for Valley View Surgery Center  
1330 S. Valley View Blvd.  
Las Vegas, Nevada 89102  
(702) 675-4600  
\*The Person Most Knowledgeable is expected to testify regarding the care and treatment rendered to Plaintiff following the November 4, 2016 incident, which is the subject of this litigation, as well as any pre and post incident care and treatment of the Plaintiff. They are also expected to testify regarding medical causation of injury and the reasonableness and necessity of medical treatment and billing. They will also testify regarding future medical treatment and future medical expenses, if any. Additionally, the Custodian of Records is expected to testify as to the authenticity of the medical and billing records associated with Plaintiff's care and treatment.

12. Sarah Kim, M.D.  
NRC 30(b)(6) witness and/or  
Custodian of Records for Steinberg Diagnostics  
P.O. Box 36900  
Las Vegas, Nevada 89133  
(702) 732-6000  
\*The Person Most Knowledgeable is expected to testify regarding the care and treatment rendered to Plaintiff following the November 4, 2016 incident, which is the subject of this litigation, as well as any pre and post incident care and treatment of the Plaintiff. They are also expected to testify regarding medical causation of injury and the reasonableness and necessity of medical treatment and billing. They will also testify regarding future medical treatment and future medical expenses, if any. Additionally, the Custodian of Records is expected to testify as to the authenticity of the medical and billing records associated with Plaintiff's care and treatment.

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2	13. Andrew Cash, M.D.
3	NRCP 30(b)(6) witness and/or
4	Custodian of Records for Desert Institute of Spine Care
5	9339 W. Sunset Road, Suite 100
6	Las Vegas, Nevada 89148
7	(702) 630-3472
8	*It is expected that Dr. Cash will testify as a retained treater/expert in his capacity as
9	medical physicians who provided medical care to Plaintiff, following the subject incident.
10	Dr. Cash is expected to give expert opinions regarding the treatment of Plaintiff, the
11	necessity of the treatment rendered, the causation of the necessity for past and future
12	medical treatment, his expert opinion as to past and future restrictions of activities,
13	including work activities, caused by the incident. His opinions shall include the cost of past
14	and future medical care and whether those medical costs fall within the ordinary and
15	customary charges for similar medical care and treatment. His testimony may also include
16	expert opinions as to whether Plaintiff has a diminished work life expectancy, work
17	capacity, and/or life expectancy as a result of the incident.
18	In rendering his expert opinions he will rely upon the records of all physicians,
19	health care providers, and experts, who have rendered opinions, medical care and treatment
20	to Plaintiff and his respective expert opinions regarding the nature, extent and cause of
21	Plaintiff's injuries, the reasonableness and necessity of the charges for medical treatment
22	rendered to Plaintiff, the charges for Plaintiff's past medical care as being customary for
23	physicians and/or health care providers in the medical community.
24	He will render expert opinions that all of the past and future medical care provided
25	to Plaintiff was reasonable and necessary, that the need for said care was caused by the
26	subject incident, that all charges were reasonable and customary, that the Plaintiff has, and
27	will continue to have, restrictions on her activities and ability to work, that the Plaintiff will
28	have a diminished work life expectancy and a diminished life expectancy. The basis for Dr.
	Cash's opinions include, but are not limited to, his education, training, and experience, the
	nature of the trauma Plaintiff was subjected to because of Defendant's negligence,
	Plaintiff's history and symptoms, any diagnostic tests that were performed, his review of
	Plaintiff's medical records. In addition, Dr. Cash will testify as a rebuttal expert to any
	medically designated defense experts in which he is qualified.
	14. Willian D. Smith, M.D.
	NRCP 30(b)(6) witness and/or
	Custodian of Records for Western Regional Center for Brain & Spine
	3061 S. Maryland Parkway, Suite 200
	Las Vegas, Nevada 89109
	(702) 737-1948
	*It is expected that Dr. Cash will testify as a retained treater/expert in his capacity as
	medical physicians who provided medical care to Plaintiff, following the subject incident.
	Dr. Cash is expected to give expert opinions regarding the treatment of Plaintiff, the
	necessity of the treatment rendered, the causation of the necessity for past and future
	medical treatment, his expert opinion as to past and future restrictions of activities,
	including work activities, caused by the incident. His opinions shall include the cost of past
	and future medical care and whether those medical costs fall within the ordinary and
	customary charges for similar medical care and treatment. His testimony may also include

	<p>expert opinions as to whether Plaintiff has a diminished work life expectancy, work capacity, and/or life expectancy as a result of the incident.</p> <p>In rendering his expert opinions he will rely upon the records of all physicians, health care providers, and experts, who have rendered opinions, medical care and treatment to Plaintiff and his respective expert opinions regarding the nature, extent and cause of Plaintiff's injuries, the reasonableness and necessity of the charges for medical treatment rendered to Plaintiff, the charges for Plaintiff's past medical care as being customary for physicians and/or health care providers in the medical community.</p> <p>He will render expert opinions that all of the past and future medical care provided to Plaintiff was reasonable and necessary, that the need for said care was caused by the subject incident, that all charges were reasonable and customary, that the Plaintiff has, and will continue to have, restrictions on her activities and ability to work, that the Plaintiff will have a diminished work life expectancy and a diminished life expectancy. The basis for Dr. Cash's opinions include, but are not limited to, his education, training, and experience, the nature of the trauma Plaintiff was subjected to because of Defendant's negligence, Plaintiff's history and symptoms, any diagnostic tests that were performed, his review of Plaintiff's medical records. In addition, Dr. Cash will testify as a rebuttal expert to any medically designated defense experts in which he is qualified.</p>
15.	<p>Jason E. Garber, M.D. NRCP 30(b)(6) witness and/or Custodian of Records for LVNI Center for Spine and Brain Surgery 3012 S. Durango Drive Las Vegas, Nevada 89117 (702) 835-0088</p> <p>*It is expected that Dr. Garber will testify as a non-retained expert in his capacity as medical physicians who provided medical care to Plaintiff, following the subject incident. Dr. Garber is expected to give expert opinions regarding the treatment of Plaintiff, the necessity of the treatment rendered, the causation of the necessity for past and future medical treatment, his expert opinion as to past and future restrictions of activities, including work activities, caused by the incident. His opinions shall include the cost of past and future medical care and whether those medical costs fall within the ordinary and customary charges for similar medical care and treatment. His testimony may also include expert opinions as to whether Plaintiff has a diminished work life expectancy, work capacity, and/or life expectancy as a result of the incident.</p> <p>In rendering his expert opinions he will rely upon the records of all physicians, health care providers, and experts, who have rendered opinions, medical care and treatment to Plaintiff and his respective expert opinions regarding the nature, extent and cause of Plaintiff's injuries, the reasonableness and necessity of the charges for medical treatment rendered to Plaintiff, the charges for Plaintiff's past medical care as being customary for physicians and/or health care providers in the medical community.</p> <p>He will render expert opinions that all of the past and future medical care provided to Plaintiff was reasonable and necessary, that the need for said care was caused by the subject incident, that all charges were reasonable and customary, that the Plaintiff has, and will continue to have, restrictions on her activities and ability to work, that the Plaintiff will have a diminished work life expectancy and a diminished life expectancy. The basis for Dr. Garber's opinions include, but are not limited to, his education, training, and experience, the nature of the trauma Plaintiff was subjected to because of Defendant's negligence, Plaintiff's history and symptoms, any diagnostic tests that were performed, his review of</p>

	Plaintiff's medical records. In addition, Dr. Garber will testify as a rebuttal expert to any medically designated defense experts in which he is qualified.
16.	Travis Snyder, D.O. NRCP 30(b)(6) witness and/or Custodian of Records for SimonMed Imaging 7450 Oso Blanca Road, #140 Las Vegas, Nevada 89149 (866) 282-7905

Any and all witnesses listed by the Defendants and/or any other party to this litigation.

The Plaintiff reserves the right to supplement her list of witnesses as discovery is ongoing.

### III.

### DAMAGES

EX.	DOCUMENT	AMOUNT
1.	Centennial Hills Hospital	\$13,362.00
2.	Shadow Emergency Physicians	\$1,272.00
3.	Desert Radiologists	\$1,267.03
4.	Desert Chiropractic & Rehab/Core Rehab	\$10,756.00
5.	Las Vegas Radiology	\$3,000.00
6.	Southern Nevada Medical Group	\$1,975.00
7.	Radar Medical Group	\$21,210.50
8.	PayLater/Wellcare Pharmacy	\$282.33
9.	Las Vegas Pharmacy	\$1,090.93
10.	Pain Institute of Nevada	\$16,000.00
11.	Valley View Surgery Center	\$21,089.48
12.	Steinberg Diagnostics	\$1,400.00
13.	Desert Institute of Spine Care	\$1,750.00
14.	Western Regional Center for Brain & Spine	\$1,675.00
15.	LVNI Center for Spine and Brain Surgery	\$1,700.00
16.	SimonMed Imaging	\$16,179.00
	<b>Total Past Medical Specials To Date</b>	<b>\$114,009.27</b>

	<b>Future Medical Expenses</b>	<b>\$457,936.99</b>
	Past Wage Loss	To Be Determined
	Loss of Earning Capacity	To Be Determined
	Past Pain, Suffering, Mental Anguish, and Loss of Enjoyment of Life	To Be Determined
	Future Pain, Suffering, Mental Anguish, and Loss of Enjoyment of Life	To Be Determined
	Attorney's Fees and Costs	To Be Determined

DATED this 4<sup>th</sup> day of November 2020.

CLAGGETT & SYKES LAW FIRM

/s/ Geordan G. Logan

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4<sup>th</sup> day of November 2020, I caused to be served a true and correct copy of the foregoing **PLAINTIFF'S EIGHTEENTH SUPPLEMENT TO INITIAL DISCLOSURES PURSUANT TO N.R.C.P. 16.1** on the following person(s) by the following method(s) pursuant to NRCP 5(b):

***Via E-Service***

Michael A. Royal, Esq.  
Gregory A. Miles, Esq.  
Royal & Miles LLP  
1522 W. Warm Springs Road  
Henderson, Nevada 89014  
*Attorney for Defendants*

CLAGGETT & SYKES LAW FIRM

/s/ Maria Alvarez

An Employee of CLAGGETT & SYKES LAW FIRM