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**OPPS**

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*VENETIAN CASINO RESORT, LLC and*

*LAS VEGAS SANDS, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOYCE SEKERA, an Individual;

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

Hearing Date: June 1, 2021

Hearing Time: 9:00 am

ALL RELATED CLAIMS.

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

COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL & MILES LLP, and hereby files this OPPOSITION TO PLAINTIFF'S MOTION TO PLACE ON CALENDAR.

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

4 I.

5 **NATURE OF OPPOSITION**

6 Plaintiff is once again rehashing all of the same arguments related to why she needs unredacted  
7 prior incident reports without any NRCP 26(c) protection. What remains missing from Plaintiff's  
8 presentation is anything of substance supporting her claim that she cannot fairly prosecute her case  
9 without having the personal, private information of Venetian guests involved in prior incidents along  
10 with the unfettered right to share it with whomever she pleases, however she pleases, as frequently as  
11 she pleases. What is the relevancy of providing Plaintiff with the private personal information of  
12 persons wholly unrelated to the subject incident? It still is not clear. How is obtaining this  
13 information proportional to the needs of this simple slip and fall case? It is likewise not clear.

14 In fact, Plaintiff has all the information she needs to present her claims of constructive notice,  
15 to the extent the Court allows it in light of *Eldorado Club, Inv. v. Graff*, 78 Nev. 507, 377 P.2d 174  
16 (Nev. 1962). She can reference prior similar incidents in the Grand Lux rotunda dome area to make  
17 her notice arguments. Indeed, Plaintiff has everything she needs to do that. How does Plaintiff's need  
18 to contact persons with no knowledge of the incident in shotgun form outweigh the right to privacy  
19 of these persons? Plaintiff has not reasonably specified. As explained further herein, the Discovery  
20 Commissioner correctly determined that there is "good cause" to grant Venetian's motion for  
21 protection under NRCP 26(c).

22 For context, Plaintiff worked at the Venetian property for nearly a year prior to the subject  
23 incident and safely walked through the Grand Lux rotunda dome area to use the casino level women's  
24 restroom thousands of times. She never witnessed nor was she privy to any spills on a Venetian floor  
25 nor did she ever become aware of persons injured from a fall during the hundreds of days she worked

1 at a kiosk at the Grand Canal Shops within the Venetian property.<sup>1</sup> Plaintiff is unlike any other person  
2 involved in any prior incidents on the Venetian property identified in this matter. She is uniquely  
3 qualified by her prior experience to demonstrate the high quality of floor maintenance provided by  
4 Venetian. Since Plaintiff's own daily experience does not support her claims, Plaintiff seeks another  
5 avenue to build her case - consisting of obtaining private personal information of Venetian guests  
6 involved in prior slip and fall incidents on Venetian property to have them potentially testify in support  
7 of her here - regardless of where, how and when their incident occurred.  
8

9 **A. Venetian Has "Good Cause"**

10 Venetian previously presented "good cause" before the Discovery Commissioner to support  
11 its motion for protection under NRCP 26(c). The information Plaintiff so desperately wants to both  
12 obtain and freely share with whomever and however she pleases "implicates a nontrivial privacy  
13 interest" related to Venetian guests involved in prior incidents. *See Venetian Casino Resort, LLC v.*  
14 *Eighth Judicial Dist. Court*, 467 P.3d 1, 7 (citing *Clark Cty. Office of the Coroner v. Las Vegas*  
15 *Review-Journal*, 458 P.3d 1048, 1058-59). Plaintiff, in fact, did not address that important fact raised  
16 by the Nevada Court of Appeals. Plaintiff claims that the private information of Venetian guests is  
17 synonymous with information found in the "phone book", which badly misses the mark.  
18

19 **B. Plaintiff's Request Does Not Meet The Requirements Of NRCP 26(b)(1)**

20 The information Plaintiff seeks is not relevant nor is it proportional to the needs of her case  
21 under NRCP 26(b)(1). Plaintiff has had multiple opportunities to explain how obtaining the private  
22 information of persons involved in prior incidents is relevant to the facts of her case while appearing  
23 twice before the Discovery Commissioner, District Court, and the Appellate Court. This, in fact, is  
24 Plaintiff's seventh such opportunity. Yet, all she has ever offered are vague arguments and theories  
25 (*i.e.* to rebut Venetian's assertion that Plaintiff may have some comparative fault) to camouflage what  
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28 <sup>1</sup>The Grand Canal Shops is a landlocked mall located solely within the Venetian property.

1 is clearly a fishing expedition. Plaintiff fails to explain with reasonable specificity exactly how  
2 Venetian guests involved in unrelated accidents would offer anything remotely relevant to the facts  
3 of her case. Plaintiff also fails to address why it is that she needs to have the unbridled ability to share  
4 the private information of Venetian guests to persons outside this litigation - as she has previously  
5 done with impunity (even as Venetian's original motion for protection was pending before the  
6 Discovery Commissioner). In fact, Plaintiff does not even mention that alleged right in her latest  
7 motion.<sup>2</sup>  
8

9 C. **Plaintiff Relies On Evidence Already Deemed Irrelevant By This Honorable Court**

10 Finally, in an apparent effort to inflame and mislead, Plaintiff has attached copies of all prior  
11 incident reports provided by Venetian in this matter, **completely ignoring the order of this**  
12 **Honorable Court, filed on March 13, 2020**, in which it limited evidence of prior incident reports to  
13 the Grand Lux rotunda dome area where Plaintiff fell. Thus, Plaintiff not only argues without  
14 precision, but she has also flooded the Court with imprecise, unnecessary and wholly irrelevant  
15 evidence to support her argument. This act by Plaintiff subjects Venetian to unfair prejudice with  
16 respect to the subject of this motion. It is also illustrative of how Plaintiff will seek to use this same  
17 information at trial.  
18

19 **II.**

20 **RESPONSE TO PLAINTIFF'S STATEMENT OF FACTS**

21 Although the Court is well aware of the facts, Venetian will present a summary of evidence  
22 pertinent to the present matter, and to clarify the facts presented by Plaintiff in the pending motion.  
23

24 This action arises out of an alleged incident involving a floor located within a common area  
25 of the Venetian casino on November 4, 2016 at approximately 12:37 pm, when Plaintiff slipped and  
26 fell on a **dry** marble floor as she walked across the Grand Lux rotunda dome area with a cup of coffee  
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28 <sup>2</sup>It appears Plaintiff has at least conceded the point that she does not have a right to share  
personal private information of Venetian guests as she once claimed.

1 in her left hand. The incident report does not provide evidence of a foreign substance on the floor  
2 causing Plaintiff to fall other than the following: “She [Plaintiff] stated she was walking through the  
3 area when she slipped in what she believed was water on the floor.” (See Exhibit A, *Venetian Security*  
4 *Narrative Report* (IR 1611V-0680), November 4, 2016, VEN 008-09.) Plaintiff herself admits that  
5 she never saw any foreign substance on the floor at any time on the date of the subject incident. (See  
6 Exhibit B, *Transcript of Joyce Sekera Deposition* (taken 03.14.19), at 19, ln 23-25; 20, ln 1-25; 21,  
7 ln 1-21.)

8  
9 The area where Plaintiff slipped as depicted on the surveillance footage is identified at  
10 **12:36:50**. (See Exhibit C, *Surveillance Footage*, VEN 019; see also Exhibit D, marked Venetian  
11 security scene photo (VEN 043), for demonstrative purposes.) Surveillance footage of the subject  
12 incident, attached hereto as Exhibit C, depicts more than a thousand patrons walking through the  
13 Grand Lux rotunda dome area from 12:06:49 to 12:36:49. There is a reason Plaintiff does not address  
14 the video footage in the pending motion - because she wants to address everything but the surveillance  
15 footage. Why? Because other than depicting Plaintiff’s fall, it does not demonstrate the existence of  
16 any foreign substance on the floor. This is a critical issue when it comes to Plaintiff’s ongoing request  
17 for prior factually similar events.

18  
19 At **12:33:53** of the surveillance footage attached as Exhibit C, less than three minutes  
20 preceding the subject incident, former Venetian Public Area Department (“PAD”) employee Maria  
21 Cruz is depicted walking through the area of Plaintiff’s fall with a dust pan and broom as a male guest  
22 walks through the area to her immediate right. (See Exhibit E, *Surveillance Stills* (12:33:53, 12.36.50,  
23 12.38.50, 12.39.57), depicting the slip area with witnesses on scene walking through it before/after  
24 Plaintiff’s fall.) Ms. Cruz identified herself from this footage during her April 17, 2019 deposition and  
25 testified that this depicts her patrolling the area, walking right through the alleged spill area without  
26 identifying anything on the floor. (See Exhibit F, *Transcript of Maria Cruz Deposition* (taken  
27 04.17.19) at 33, ln 8-17; 34, ln 20-22; 39, ln 21-25; 40, ln 1-9; 41, ln 11-17; 42, ln 10-25.)  
28

1 At 12:39:57 of the surveillance footage, former Venetian PAD employee David Martinez  
2 arrives at the slip area with a mop and bucket, stepping directly into the slip area with his right foot,  
3 and begins mopping an area two to three feet away, towards the column, while continuing to stand in  
4 the slip area. Mr. Martinez testified that he did not see any foreign substance on the floor where  
5 Plaintiff slipped as depicted on surveillance video. (See Exhibit G, *Transcript of David Martinez*  
6 *Deposition* (taken July 26, 2019) at 11:5-25; 12:1-25; 13:1-9. See also Exhibit E, still at 12.39.57.)  
7

8 Another fact omitted by Plaintiff in the pending motion is that she was very familiar with the  
9 Grand Lux rotunda dome area where the subject incident occurred, having worked as an employee for  
10 Brand Vegas, LLC, selling show tickets from a kiosk in the Grand Canal Shops located within the  
11 Venetian property for nearly a year preceding the subject incident.<sup>3</sup> Plaintiff testified in deposition  
12 that she walked across the Grand Lux rotunda area daily to use the restroom where she was headed  
13 at the time of the subject area. (See Exhibit B, *Transcript of Joyce Sekera Deposition* (taken March  
14 14, 2019) at 84:21-25; 85:1-9, 15-25; 86:1-25; 87:1-5; 88:7-14; 109:5-13.) Plaintiff was working five  
15 (5) to seven (7) days per week at her kiosk job from 9:00 am to 7:00 pm, sometimes as much as eighty  
16 (80) hours. (See *id.* at 57:5-20; 59:17-24; 75:5-25; 76:1-17.) Plaintiff would therefore have worked  
17 more than 200 days on property between December 28, 2015 and November 4, 2016, walking through  
18 the Grand Lux rotunda dome area several hundred - even thousands of times prior to the subject  
19 incident. During the entire time Plaintiff worked for Brand Vegas, LLC, at the Venetian property, she  
20 did not observe a foreign substance on the Venetian floor, she did not observe anyone slip and fall, nor  
21 did she become aware of a slip and fall occurring on the Venetian property through information  
22 provided by another person prior to her incident. (See *id.* at 77-79.)  
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28 <sup>3</sup>The Grand Canal Shops mall is a landlocked property located completely within the Venetian.

1 III.

2 **RESPONSE TO PROCEDURAL HISTORY**

3 Venetian first brought this issue before the Discovery Commissioner by filing a Motion for  
4 Protective Order on February 1, 2019, having previously provided Plaintiff's counsel with redacted  
5 copies of prior incident reports as a courtesy. While the motion was pending, Plaintiff's counsel  
6 distributed the redacted prior incident reports to counsel involved in other cases against Venetian  
7 (unrelated to the subject litigation), including Peter Goldstein, Esq., who then filed all of the prior  
8 incident reports with the court in the matter of *Carol Smith v. Venetian Casino Resort, LLC*, case no.  
9 A-17-753362-C, on March 12, 2019 - one day prior to the scheduled hearing before the Discovery  
10 Commissioner. (See Exhibit H, *Smith v. Venetian Casino Resort, LLC*, case No. A-17-753362-C,  
11 Reply filed 03.12.19, *Declaration of Peter Goldstein*.) The Nevada Court of Appeals noted the  
12 following: **"The discovery commissioner found that there was a legitimate privacy issue and**  
13 **recommended that the court grant the protective order, such that the reports remain redacted, and**  
14 **prevented Sekera from sharing the reports outside of the current litigation."** *See Venetian Casino*  
15 *Resort, supra*, 467 P.3d at 3 (emphasis added). Yet, as noted above, Plaintiff's counsel had already  
16 shared the information and did not so advise the Court on March 13, 2019. It is therefore rather ironic  
17 that Plaintiff describes Venetian as having "improperly concealed and redacted responsive incident  
18 reports" in her pending motion when the Nevada Court of Appeals noted from the record that "good  
19 cause" was recognized by the Discovery Commissioner. (See *Plaintiff's Motion* at 10:6-7.) The only  
20 "improper" action procedurally here was Plaintiff's sharing of information Venetian deemed to be  
21 protected while a motion was pending, knowing it would be filed with the court in an unrelated case,  
22 and then failing to advise the Court of that fact during the March 13, 2019 hearing once the Discovery  
23 Commissioner ruled in Venetian's favor.  
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1 The Nevada Court of Appeals further noted the following:

2 *The commissioner further recommended, however, that after Sekera reviewed the 64*  
3 *redacted reports and identified substantively similar accidents that occurred in the*  
4 *same location as her fall, the parties could have a dispute resolution conference*  
5 *pursuant to EDCR 2.34. At that conference the parties would have the opportunity to*  
6 *reach an agreement to allow disclosure of the persons involved in the previous similar*  
7 *accidents. If the parties failed to reach an agreement, Sekera could file an appropriate*  
8 *motion. (Id.)*

9 It is noteworthy that Plaintiff has never made the slightest effort to identify a single prior incident  
10 report she deems to be factually similar to the subject incident.

11 Also omitted from Plaintiff's procedural history is this Honorable Court's order of March 13,  
12 2020 in which it narrowed the scope of prior incidents to which Plaintiff is entitled in this matter,  
13 stating the following: "Venetian must produce prior incident reports **limited to the Grand Lux**  
14 **rotunda dome area from November 4, 2011 to November 4, 2016. Plaintiff's request for**  
15 **documents outside this given scope is hereby DENIED.**" (See Exhibit I, *Order on Objections to*  
16 *the Discovery Commissioner's Report and Recommendation Dated December 2, 2019* (filed March  
17 13, 2020) at 3:19-21, emphasis added.) Yet, in an apparent effort to skew the facts further here,  
18 Plaintiff has attached within **Exhibit 4** of the pending motion approximately 700 pages of a purported  
19 seventy-three (73) prior incident reports - the vast majority of which are outside the Grand Lux rotunda  
20 dome. Plaintiff has not made the slightest effort to take the Court's latest order into account. Instead,  
21 she is either attempting to relitigate the issue of scope previously determined by this Court or is simply  
22 misleading the Court.

23 It should be further noted that Plaintiff petitioned the Nevada Supreme Court to review the  
24 Nevada Court of Appeals' decision in *Venetian Casino Resort, LLC, supra*, which entered an Order  
25 Denying Petition for Review on October 23, 2020. Finally, Plaintiff's claim that Venetian failed to  
26 argue the issue of privacy before this Honorable Court is completely untrue. (See Exhibit J,  
27 *Defendants' Limited Objection to Discovery Commissioner's Report and Recommendation Dated*  
28 *December 2, 2019* (filed December 16, 2019) (without exhibits) at 14:25-28; 15:1-11.)



1 IV.

2 DISCUSSION

3 A. Standard of Review

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

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

14 Plaintiff must therefore demonstrate that the desired discovery is **relevant** to her claims here  
15 and that it is **proportional** to the needs of the case with five factors: 1) importance of issues at stake;  
16 2) amount in controversy; 3) parties' relative access to relevant information; 4) parties' resources; the  
17 importance of the discovery in resolving contested issues; and 5) the burden of proposed discovery  
18 vs. the likely benefit. As discussed further below, Plaintiff has not met the requirements of relevance  
19 or proportionality required by NRCP 26(b)(1).<sup>4</sup>

20 Rule 26(c)(1), Nevada Rules of Civil Procedure, provides as follows in pertinent part:

21 *A party or any person from whom discovery is sought may move for a protective order*  
22 *in the court where the action is pending. . . . The motion must include a certification*  
23 *that the movant has in good faith conferred or attempted to confer with other affected*  
24 *parties in an effort to resolve the dispute without court action. **The court may, for***  
25 ***good cause, issue an order to protect a party** or person from annoyance,*  
26 *embarrassment, oppression, or undue burden or expense, including one or more of the*  
27 *following:*

- 28 (A) *forbidding the disclosure or discovery;*  
(B) *specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;*  
(C) *prescribing a discovery method other than the one selected by the party seeking discovery;*

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29 <sup>4</sup>Plaintiff appears to have wholly abandoned her claim that she is entitled to obtain private  
30 personal information of Venetian guests unrelated to this matter and share it freely with anyone outside  
31 the litigation she desires , however and whenever she so desires.

- 1 (D) *forbidding inquiry into certain matters, or limiting the scope of disclosure or*  
2 *discovery to certain matters;*  
3 (E) *designating the persons who may be present while the discovery is conducted;*  
4 (F) *requiring that a deposition be sealed and opened only on court order;*  
5 (G) *requiring that a trade secret or other confidential research, development, or*  
6 *commercial information not be revealed or be revealed only in a specified way;*  
7 *and*  
8 (H) *requiring that the parties simultaneously file specified documents or*  
9 *information in sealed envelopes, to be opened as the court directs.*

10 B. **Venetian Demonstrated “Good Cause” Required by NRCP 26(c)(1)**

11 The Discovery Commissioner determined that Venetian established “good cause” and therefore  
12 recommended that the motion for protective order be granted. (*See Exhibit K, Discovery*  
13 *Commissioner’s Report and Recommendation*, filed April 4, 2019.) The Discovery Commissioner  
14 wrote: **“this presents a privacy issue as it pertains to the identify of prior Venetian guests and**  
15 **includes protected HIPAA related information.”** (*Id.* at 3:7-9, emphasis added.) The Nevada Court  
16 of Appeals wrote the following regarding the subsequent proceeding as follows: “The district court  
17 determined that there was no legal basis for a protective order. We disagree . . . .” *See Venetian*  
18 *Casino Resort, LLC, supra*, at 467 P.3d at 8.<sup>5</sup> While the higher court did not make a specific holding  
19 on the “good cause” issue, it provided the District Court with some guidance, approving the framework  
20 of *In re Roman Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 424 (9<sup>th</sup> Cir. 2011), and  
21 *Glenmede Trust Co. V. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995), discussed further below.

22 In addition, the higher court noted the following: “Importantly, the **Nevada Supreme Court**  
23 **recently stated that disclosing medical information implicates a nontrivial privacy interest** in the  
24 context of public records requests.” *See Venetian Casino Resort, LLC, supra*, 467 P.3d at 12, note 12  
25 (citing *Clark Cty. Office of the Coroner vs. Las Vegas Review-Journal*, 136 Nev. Adv. Op. 5, 458 P.3d  
26 1048, 1058-59 (“explaining that juvenile autopsy reports implicate ‘nontrivial privacy interests’ due

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27 <sup>5</sup>The Nevada Court of Appeals added: “Sekera argues that the district court did not abuse its  
28 discretion by determining the Venetian did not show good cause. We are not convinced.” *See*  
*Venetian Casino Resort, LLC, supra*, at 12, note 11.

1 to the social and medical information they reveal, which may require redaction before their release”)  
2 (emphasis added).

3 Although the appellate court made specific reference to *Clark Cty. Office of the Coroner*,  
4 supra, in its opinion, Plaintiff completely ignored it in the pending motion. Accordingly, Venetian  
5 provides a review here as it seems most pertinent. In that case, the Clark County Coroner’s Office  
6 denied a newspaper’s public records request for juvenile autopsy reports from January 2012 through  
7 April 2017 on the basis of NRS 432B.407(6), a confidentiality provision that applies to the child death  
8 review team as a whole. Accordingly, the district court ordered the production of unredacted juvenile  
9 autopsy reports, and the Nevada Supreme Court reversed the lower court’s decision. The Clark  
10 County Coroner’s Office argued, with approval of the Nevada Supreme Court, that **although the**  
11 **HIPAA definitions of “providers of health care” does not specifically include coroners or**  
12 **forensic pathologists, there was nevertheless a privacy interest worthy of protection.** The court  
13 used a previously adopted two-part test in *Cameranesi v. United States Department of Defense*, 856  
14 F.3d 626, 637 (9th Cir. 2017). Although this applies to disclosures by governmental entities, it is  
15 pertinent here by analogy.

16 The *Cameranesi* test first “requires the government to establish that disclosure implicates a  
17 personal privacy interest that is nontrivial or more than de minimis.” *See Clark Cty. Office of the*  
18 *Coroner, supra*, 458 P.3d at 1057. If that burden is met, “the requester must then show that **the public**  
19 **interest sought to be advanced is a significant one and the information sought is likely to advance**  
20 **that interest.** If the second prong is not met, the information should be redacted.” *Id.* (Emphasis  
21 added.) The court explained: “This balancing test approach ‘ensures that the district courts are  
22 adequately weighing the competing interests of privacy and government accountability.’” *Id.* (citations  
23 omitted). The *Clark Cty. Office of the Coroner* court held that “the Coroner’s Office has demonstrated  
24 that a nontrivial privacy interest is at stake in the potential disclosure of juvenile autopsy reports”  
25 based on the sensitive medical information found within the requested reports. The court held that  
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1 “the authorities the Coroner’s Office invokes to withhold the autopsy reports reflect a clear public  
2 policy favoring the protection of private medical and health-related information.” *Id.* at 1058.

3 The Venetian security report involving Plaintiff has been identified herein as VEN 005-017.  
4 (See Exhibit A.) The *Case MO* provides that the report contains *Protected Health Information*.  
5 (See *id.* at VEN 006.) The *Narrative Report* and *Acknowledgment of First Aid Assistance & Advice*  
6 *to Seek Medical Care* have information related to the examination of responding security EMT, Joseph  
7 Larson. (See *id.* at VEN 008-09, VEN 017.) Officer Larson testified in his October 11, 2019  
8 deposition that *PHI* in the *MO* report stands for *Protected Health Information*. (See Exhibit L,  
9 *Transcript of Joseph Larson Deposition*, taken October 11, 2019, at 51, ln 1-11.)

11 Venetian further has an interest in protecting the privacy of non-medical personal information  
12 of its guests involved in prior incidents. The Nevada Supreme Court has found that relief is  
13 appropriate when a District Court’s ruling exceeds the scope of NRCp 26(b)(1) and requires the  
14 production of private information. *Schlatter v. Eighth Judicial Dist. Court In and For Clark County*,  
15 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977). The United States District Court for the District of  
16 Nevada has dealt with this particular issue and found in favor of protecting the privacy rights of third  
17 parties by redacting personal information.

19 Plaintiff’s assertion that “Defendants cannot cite to a Nevada case which supports their  
20 contention that this information can be protected because no case exists” is rather odd, as the Nevada  
21 Court of Appeals suggested otherwise in *Venetian Casino Resort, LLC*, *supra* - even going so far as  
22 to cite to the *Clark Cty Office of the Coroner*, *supra*, case as an example. (See *Plaintiff’s Motion to*  
23 *Place on Calendar* at 23:6-9.) Indeed, Plaintiff presented the same string of cases in support of this  
24 argument to the Nevada Court of Appeals and this authority was rejected. (See *id.* at 23:11-23; 24:1-2;  
25 *compare Venetian Casino Resort, LLC*, *supra*, 467 P.3d at 4, note 5 (“The authority cited by Sekera  
26 is unpersuasive, as the cases do not consider proportionality as required by the newly adopted  
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1 amendments to NRCP 26(b)(1)”.) Contrary to Plaintiff’s assertion here, Venetian can cite to pertinent  
2 case law.

3 In *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694, the plaintiff,  
4 who slipped and fell on a clear liquid within a Las Vegas Wal Mart store on May 18, 2013, filed a  
5 motion to compel the defendant to produce evidence of prior claims and incidents for the three (3)  
6 years preceding the subject incident. The court evaluated the claim under the federal equivalent of  
7 NRCP 26(b)(1) and Nevada law as set forth *Eldorado Club, Inv. v. Graff*, 78 Nev. 507, 377 P.2d 174  
8 (Nev. 1962). In *Izzo*, the defense had previously produced a list of prior reported slip and falls. The  
9 plaintiff sought the incident reports including personal information of the other Wal Mart customers.  
10 The federal district court found that the burden on defendant and the privacy interests of the non-  
11 litigants outweighed the tangential relevance of the information to the issues in the lawsuit. (*Id.* at 4,  
12 2016 U.S. Dist LEXIS at \*11.) Similarly, in the instant matter, Plaintiff has failed to present a  
13 compelling reason under NRCP 26(b)(1) for the production of non-litigant individual's private  
14 information. The *Izzo* holding alone demonstrates “good cause” under NRCP 26(c).  
15

16 In *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502, the federal  
17 district court applying the federal equivalent of NRCP 26(b)(1) found that third parties have a  
18 protected privacy interest in their identities, phone numbers and addresses. In *Rowland*, Plaintiff sued  
19 the defendant for injuries after slipping and falling on a recently polished tile floor. The plaintiff  
20 sought to compel the defendant to identify by name (with phone numbers and addresses) any person  
21 who had previously complained about the subject flooring. The court not only found the request to  
22 be overly broad, but also determined that it violated the privacy rights of the persons involved. It  
23 explained as follows:  
24  
25

26 Further, the Court finds that **requiring disclosure of the addresses and telephone**  
27 **numbers of prior hotel guests would violate the privacy rights of third parties.**  
28 "Federal courts ordinarily recognize a constitutionally-based right of privacy that can  
be raised in response to discovery requests." *Zuniga v. Western Apartments*, 2014 U.S.  
Dist. LEXIS 83135, at \*8 (C.D. Cal. Mar. 25, 2014) (citing *A. Farber & Partners, Inc.*

1 v. *Garber*, 234 F.R.D. 186, 191 (C.D. Cal. 2006)). However, this right is not absolute;  
2 rather, it is subject to a balancing test. *Stallworth v. Brollini*, 288 F.R.D. 439, 444  
3 (N.D. Cal. 2012). **"When the constitutional right of privacy is involved, 'the party  
4 seeking discovery must demonstrate a compelling need for discovery, and that  
5 compelling need must be so strong as to outweigh the privacy right** when these two  
6 competing interests are carefully balanced." *Artis v. Deere & Co.*, 276 F.R.D. 348,  
352 (N.D. Cal. 2011) (quoting *Wiegele v. Fedex Ground Package Sys.*, 2007 U.S. Dist.  
LEXIS 9444, at \*2 (S.D. Cal. Feb. 8, 2007)). "Compelled discovery within the realm  
of the right of privacy 'cannot be justified solely on the ground that it may lead to  
relevant information.'" *Id.*

7 *Id.* at \*7 (emphasis added).

8 Here, Plaintiff has not addressed these privacy concerns, much less demonstrated that her need  
9 for the information outweighs the third party privacy interests. To the contrary, Plaintiff has dismissed  
10 them with multiple references comparing it to information anyone can find within the "phone book".  
11 (See *Plaintiff's Motion to Place on Calendar* at 8:1; 23:5-6; 25:4-5.) The *Izzo* or *Rowland* courts  
12 disagree. See also, *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620-21, 2007 U.S. Dist. LEXIS 80017  
13 at \*16-17 ("the rights of third parties can be adequately protected by permitting defendant to redact  
14 the guest's complaints and staff incident reports to protect the guest's name and personal information,  
15 such as address, date of birth, telephone number, and the like"); *Dowell v Griffin*, 275 F.R.D. 613, 620  
16 (S.D. Cal. 2011) (ruling that the plaintiff was not entitled to identity, phone number, address, date of  
17 birth, social security number, or credit card number of unrelated third parties); *Shaw v. Experian Info.*  
18 *Sols., Inc.*, 306 F.R.D. 293, 299 (S.D. Cal. 2015) (redaction is appropriate to protect private  
19 information).

22 The Nevada Legislature has demonstrated a desire to protect the personal data in the possession  
23 of business entities in NRS § 603A.010, *et seq.*, which relates to the Venetian's duty to securely  
24 maintain and protect the information collected from its guests and customers. By disclosing personal  
25 information of potentially hundreds of guests, Venetian may be required under NRS § 603A.220 to  
26 contact each non-employee identified within every prior incident report to advise of the disclosure.  
27 The information contained within the incident reports at issue includes names, phone numbers,  
28

1 addresses, dates of birth, Social Security numbers, health information (*i.e.* handwritten notes from  
2 EMT evaluations, and typewritten summaries of alleged injuries, prior health related conditions, etc.)  
3 The mass dissemination of Venetian's guests' private information is the equivalent to a data breach,  
4 thereby exposing Venetian to additional third-party claims arising from the leaking of this information.  
5 There is simply no good reason to provide this information to Plaintiff, much less to allow her to  
6 provide it to anyone else she desires outside the litigation.  
7

8 Finally, Venetian has demonstrated a desire to protect the privacy of its guests by virtue of its  
9 privacy policy. (See Exhibit M, *Privacy Policy, The Venetian Resort Las Vegas* (July 7, 2019),  
10 <https://www.venetian.com/policy.html> at VEN 486-87 (emphasis added). The **Venetian's Data**  
11 **Privacy Policy** ("Privacy Policy") states in relevant part, as follows:

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

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

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

21 *This Privacy Policy applies to all personal data in any format or*  
22 *medium, relating to all guests, prospective guests, patrons, employees,*  
*suppliers and others who do business with the Company.*

23 *Id.* at VEN 486-87 (emphasis added).

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

26 *We only collect personal data that you provide to us, or that we are authorized to*  
27 *obtain by you or by law. For example, we obtain credit information to evaluate*  
28 *applications for credit, and we obtain background check information for employment*  
*applications. The type of personal data we collect from you will depend on how you*

1 are interacting with us using our website, products, or services. For example, we may  
2 collect different information from you when you make reservations, purchase gift  
3 certificates or merchandise, participate in a contest, or contact us with requests,  
4 feedback, or suggestions. The information we collect may include your name, title,  
5 email address, mailing information, phone number, fax number, credit card  
6 information, travel details (flight number and details, points of origin and destination),  
7 room preferences, and other information you voluntarily provide.

8 *Id.* at VEN 488.

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

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

18 *Id.* at VEN 492.

19 Petitioners' guests are promised and expect that the Venetian will take steps to protect their  
20 confidential information. The Plaintiff's request would require Venetian to entirely disregard this  
21 promise to protect guest's confidential information. The wide dissemination of this information  
22 intended by Plaintiff may very well result in claims by those guests for the disclosure of this  
23 information without their consent or notice.

24 Venetian contends that if the privacy rights of the innocent individuals are not protected, then  
25 Venetian may face further claims from aggrieved guests. Moreover, it will cause irreparable damage  
26 to Venetian's relations with its guests and prospective guests.

## 27 **1. Application of Adopted Factors**

28 To analyze "good cause", the Nevada Court of Appeals adopted factors set forth in *In re*  
*Roman Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 424 (9th Cir. 2011). *See Venetian*  
*Casino Resort, LLC*, *supra*, 467 P.3d at 9-10. The first consideration is to "determine if



1 **particularized harm** would occur due to public disclosure of the information.” *Id.* at 10 (emphasis  
2 added). Venetian has carefully set forth a “particularized harm” herein above on the issue of privacy.  
3 Certainly, the “particularized harm” is personal to each individual subjected to Plaintiff’s whims  
4 surrounding her desire to obtain, use and share their personal, private information, and the damage to  
5 both the individual Venetian guests and Venetian’s relationship therewith. Once a “particularized  
6 harm” is identified, the court “must ‘balance the public and private interests to decide whether ... a  
7 protective order is necessary.’” *Id.* (Citation omitted.) There is also a “particularized harm” to  
8 Venetian based on the immeasurable injury to its guest relations.  
9

10 How does Plaintiff’s interest in obtaining the private contact information of Venetian guests  
11 involved in prior incident reports outweigh this right to privacy? Plaintiff provides only general  
12 arguments. In fact, Plaintiff has information regarding prior incidents (both those previously deemed  
13 potentially relevant and irrelevant by the Court, yet has made no effort to separate the two in the  
14 pending motion) to make her case on the issue of notice (to the extent such evidence is allowed at  
15 trial). Plaintiff asserts that her right to identify and contact persons involved in prior incidents, which  
16 are not remotely factually similar, where the people do not know Plaintiff and are wholly unaware of  
17 her incident circumstances outweighs their right to privacy. However, she offers only platitudes in  
18 support of her position.  
19

20 For example, Plaintiff claims that those involved in prior incidents are necessary to rebut any  
21 claim of comparative fault argued by Venetian. (*See, e.g., Plaintiff’s Motion to Place On Calendar*  
22 *at 16:10-19.*) How will this actually work in light of the unique facts at issue here? Plaintiff does not  
23 explain. The *Venetian Casino Resort, LLC*, court noted that “discovery decision are ‘highly fact-  
24 intensive’”. *Venetian Casino Resort, LLC, supra*, 467 P.3d at 8 (citation omitted). Likewise, prior  
25 incident reports must be carefully scrutinized as they are likewise “highly fact-intensive”. Yet,  
26 Plaintiff has merely dumped hundreds of pages pertaining to wholly unrelated prior incidents despite  
27 this Court’s March 13, 2020 order - apparently for effect. While the size of Plaintiff’s exhibits when  
28

1 printed out appears impressive, it misses the mark and is the kind of generalized argument Plaintiff  
2 wrongly claims Venetian is engaging in here.

3 The higher court also embraced “the following nonmandatory and nonexhaustive list of factors  
4 for courts to consider when determining if good cause exists” as provided in *Glenmede Trust Co. v.*  
5 *Thompson*, 56 F.3d 476, 483 (3d Cir. 1995):

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

14 *Id.* at 10-11 (emphasis added). The Nevada Court of Appeals noted the following in footnote 12 of  
15 its decision:

16  
17 *we note that Glenmede factors one, three, and five authorize the district court to*  
18 *consider the ramifications of information being disseminated to third parties (i.e.,*  
19 *"whether disclosure will violate any privacy interests," "whether disclosure of the*  
20 *information will cause a party embarrassment," and "whether the sharing of*  
21 *information among litigants will promote fairness and efficiency").*

22 *Id.* at 12, note 12 (emphasis added).

23 Recall that this Honorable Court previously determined that there was no privacy interest.  
24 Since that time, the Nevada Supreme Court determined otherwise in *Clark Cty Office of the Coroner,*  
25 *supra*, recognizing a “nontrivial privacy interest” in the kind of information provided in prior incident  
26 reports. Therefore, the Court now has a legal basis to determine that “disclosure will violate any  
27 privacy interests” under the *Glenmede* factors. Consider as well that Plaintiff not only demanded a  
28 right to the private information of Venetian guests, but obtained it with an articulated and  
demonstrated desire to share it with persons wholly disconnected to the present litigation, which falls  
under factor no. 2: “whether the information is being sought for a legitimate purpose or for an  
improper purpose”. Venetian respectfully suggests that Plaintiff’s blatant disregard of the judicial

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1 process by sharing information which was the subject of a motion for protective order demonstrated  
2 “an improper purpose.”

3 Providing Plaintiff with personal contact information for non-parties involved in prior incidents  
4 threatens to “cause a party embarrassment” and harm under factor no. 3, undermining the business  
5 relationship between Venetian and its guests. While Plaintiff addresses factor no. 4 in her motion, it  
6 does not apply to the circumstances here. Under factor no. 5, Plaintiff does not explain how “the  
7 sharing of information among litigants will promote fairness and efficiency.” She does not provide  
8 one substantive example of how a witness completely ignorant of the subject incident and surrounding  
9 facts “will promote fairness and efficiency.” Plaintiff simply pounds the proverbial table and claims  
10 that will be the result. In so doing, Plaintiff fails to make her point.

12 There is a recognized interest in protecting the disclosure of personal client information, as  
13 unauthorized disclosure would likely damage the Petitioners' guest relationships. *See Gonzales v.*  
14 *Google, Inc.*, 234 FRD 674, 684 (N.D. CA 2006) (disclosing client information “may have an  
15 appreciable impact on the way which [the company] is perceived, and consequently the frequency  
16 with which customers use [the company]”). Guests who stay at the Venetian do so with an expectation  
17 that their personal information will not be disclosed or disseminated without their consent.

19 Based on the foregoing, Venetian respectfully submits that “good cause” exists to support an  
20 order providing that the personal, private information of Venetian’s guests contained in the incident  
21 reports remain redacted and be protected from disclosure outside the litigation pursuant to NRCP 26(c)  
22 as per the April 4, 2019 Discovery Report and Recommendation.

24 C. **The Information Sought by Plaintiff is Not Relevant or Proportional to the Needs of**  
25 **Plaintiff’s Case Under NRCP 26(b)(1)**

26 Having established “good cause” exists under NRCP 26(c), Venetian now addresses the issues  
27 of relevance and proportionality as presented by NRCP 26(b)(1).

28 ///



1 incident reports altogether, even in unredacted form, because she did “not meet her threshold burden  
2 to show the discovery she seeks to obtain is ‘relevant to any party’s claim or defense” under Rule  
3 26(b)(1); therefore, the court did not even get to the proportionality part of the balancing test under  
4 the rule. (*See id.* at \*22-23.)<sup>2</sup>

5 The incident reports at issue here contain the sensitive, and private information of individuals  
6 who are not parties to this lawsuit, and who are not believed to have any information, facts or  
7 circumstances surrounding Plaintiff’s allegations. These persons are not similarly situated to Plaintiff,  
8 who was frankly a *pseudo employee* by virtue of her employment for Brand Vegas, LLC, at its Grand  
9 Canal Shops kiosk location.

11 There is simply no legitimate discovery interest which outweighs these third party privacy  
12 concerns in light of *Eldorado Club, Inc.*, *supra*. Moreover, Plaintiff has not demonstrated a  
13 compelling need for this information. While this Honorable Court previously determined the  
14 information in prior incident reports to be relevant, Venetian respectfully seeks reconsideration in light  
15 of the analysis and framework presented by the Nevada Court of Appeals.<sup>3</sup>

17 2. **Private Information of Venetian Guests Allowing Plaintiff to Use However She**  
18 **Desires is Not Proportionate to the Needs of the Case**

19 If the Court determines that the information sought by Plaintiff is relevant pursuant to NRCP  
20 26(b)(1), it must then determine whether Plaintiff’s purported need to have and use the private  
21 information of Venetian guests disconnected with the subject incident is proportionate to the needs of  
22 her case. The factors set forth in NRCP 26(b)(1) as follows: 1) the importance of the issues at stake  
23 in the action; 2) the amount in controversy; 3) the parties’ relative access to relevant information; 4)  
24

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25 <sup>2</sup>It should be noted that the cases cited by Plaintiff at page five of the motion occurred prior to  
26 *Venetian Casino Resort, LLC*, *supra*, and *Clark Cty. Office of Coroner*, *supra*; therefore, they do not  
take into account the “nontrivial privacy interest” now recognized by the Nevada Supreme Court.

27 <sup>3</sup>The Court should ask Plaintiff why she attached to the pending motion hundreds of pages of  
28 irrelevant documents relating to incidents occurring outside the Grand Lux rotunda area where  
Plaintiff fell in light of its March 13, 2020 order.

1 the parties' resources; 5) the importance of the discovery in resolving the issues; and 6) whether the  
2 burden or expense of the proposed discovery outweighs its likely benefit. “Upon consideration of  
3 these factors, 'a court can—and must—limit proposed discovery that it determines is not proportional  
4 to the needs of the case . . . .’ *Vallejo v. Amgen, Inc.*, 903 F.3d 733, 742 (8th Cir. 2018) (quoting *Carr*  
5 *v. State Farm Mut Auto. Ins., Co.*, 312 F.R.D. 459, 468 (N.D. Tex. 2015)).” *Venetian Casino Resort,*  
6 *LLC, supra*, 467 P.3d at 7.

7  
8 a. **The Importance of the Issues at Stake in the Action**

9 Of course, Plaintiff claims that having full access to private information identifying Venetian  
10 guests entirely unrelated to the subject incident is “crucial” to the litigation; however, she never really  
11 provides a substantive response as to why that is the case. (*See Plaintiff’s Motion to Place on*  
12 *Calendar* at 17:20-21.) Plaintiff generally references “issues of notice, foreseeability, and whether the  
13 Plaintiff was comparatively negligent are vital.” (*Id.* at 17:20-23.) In making this broad, general  
14 proclamation, Plaintiff ignores Nevada law as set forth in *Eldorado Club, Inc., supra*, and to  
15 Venetian’s knowledge, Plaintiff has never provided a single example of how the unrelated event of  
16 another person at the Venetian on a separate occasion under different circumstances could have any  
17 bearing on Plaintiff’s comparative fault. It is no secret that Venetian maintains - at least in part - that  
18 Plaintiff fell on a dry marble floor because of the poorly conditioned shoes she was wearing. Has  
19 Plaintiff identified another guest involved in a prior incident who was wearing the same shoes in the  
20 same area under the same conditions? No, she has not. Instead, Plaintiff is taking a shotgun blast  
21 approach to this issue. The fact is that Plaintiff can make all of her arguments to address “issues of  
22 notice, foreseeability, and whether Plaintiff was comparatively negligent” with redacted prior incident  
23 reports protected pursuant to NRCP 26(c).

24  
25  
26 Keep in mind that the first thing Plaintiff did when she received the redacted prior incident  
27 reports was to share them with attorneys unaffiliated with this litigation. How was that “crucial” to  
28 Plaintiff in this proceeding? She used information Venetian deemed protected, and the Discovery

1 Commissioner agreed was protected, to further interests wholly unrelated to this litigation. Once that  
2 occurred, the harm to Venetian was irreparable.

3           b.       **The Amount in Controversy**

4           How does Plaintiff's given Computation of Damages outweigh the privacy rights of individuals  
5 having no knowledge of circumstances surrounding Plaintiff's incident? How does Plaintiff's stated  
6 amount in controversy bestow upon her the right to publish and disseminate the personal information  
7 of persons as she pleases? Plaintiff provides no explanation. As for the special damages Plaintiff has  
8 alleged, she has not undergone surgery and is not a surgical candidate. The most significant expenses  
9 associated with Plaintiff's care are via pain management procedures. The amount in controversy in  
10 this case does not weigh in favor of providing Plaintiff with personal information of Venetian guests.

11           c.       **The Parties Relative Access to Relevant Information**

12           This prong of the proportionality analysis does not weigh in Plaintiff's favor. Of course  
13 Venetian has access to the information - because it is deemed private and protected. As explained in  
14 detail above, Plaintiff has not demonstrated to the Court with any specificity how contacting prior  
15 Venetian guests will reasonably further Plaintiff's theory of the case.

16           d.       **The Parties' Resources**

17           This prong also weighs against Plaintiff under the circumstances. While Plaintiff suggest that  
18 the costs associated with "un-redacting the incident reports . . . would involve minimal time," she  
19 completely discounts the much greater cost to Venetian in terms of its guest relations. (*See Plaintiff's*  
20 *Motion to Place on Calendar* at 19:18-20.) Rather than focusing on the physical act of "un-redacting",  
21 the Court must examine the resources Venetian has expended to build guest relationships and the  
22 potential damage associated with disseminating private information.

23           e.       **The Importance of the Discovery in Resolving the Issues**

24           Respectfully, Venetian maintains that the information Plaintiff seeks is not admissible under  
25 *Eldorado Club, Inc., supra*. Ordering Venetian to produce private information of guests with no  
26

1 knowledge of Plaintiff or the subject incident will only serve to create issues. It will not help the Court  
2 simply the litigation to focus on the actual facts surrounding Plaintiff's incident, but will potentially  
3 open a proverbial Pandora's Box of problems.

4 f. **Whether the Burden or Expense of the Proposed Discovery Outweighs its**  
5 **Likely Benefit**

6 Here again, Plaintiff has not demonstrated that her right to the personal contact information of  
7 Venetian guests outweighs their right to privacy and Venetian's desire to protect that information. In  
8 all of Plaintiff's lengthy motion, nowhere does she present the Court with a reasonable explanation  
9 of the "likely benefit" associated with the dissemination of this information to the litigation.  
10 Furthermore, the burden to Venetian is far beyond the expense of "un-redacting" prior incident reports.  
11 Its guests have a reasonable expectation that Venetian will protect their privacy, and this presents the  
12 kind of "nontrivial privacy right" contemplated by the Nevada Supreme Court in *Clark Cty Office of*  
13 *the Coroner, supra*. Courts, thus, have a "duty to pare down overbroad discovery requests under Rule  
14 26(b)(2)." (*See Rowlin v. Alabama Dep't. of Pub. Safety*, 200 F.R.D. 459, 461 (M.D. Ala. 2001)  
15 (referencing application of FRCP 26(b)(2)).) Rule 26 provides the Court with broad discretion to  
16 "tailor discovery narrowly" (*See Crawford-El v. Britton*, 523 U.S. 574, 599, 118 S. Ct. 1584, 140 L.  
17 Ed. 2d 759 (1998).)

18  
19  
20 Plaintiff was not a typical Venetian guest. She entered the Venetian property on hundreds of  
21 occasions prior to the incident, having safely walked through the Grand Lux rotunda area thousands  
22 of times prior to her fall. There is no objective evidence of a foreign substance on the floor from a  
23 reasonable review of the surveillance footage within the thirty (30) minutes preceding the subject  
24 incident. Plaintiff's own expert has acknowledged that the floor is safe when dry. (*See Exhibit N,*  
25 *Transcript of Thomas Jennings Deposition* (taken July 2, 2019) at 80:8-11: "Q: . . . If a jury were to  
26 determine that the area where the plaintiff slipped and fell was dry, your opinion . . . would be what?  
27 A. That the floor was slip resistant.")  
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**IV.**

**CONCLUSION**

Based on the foregoing, Venetian respectfully submits that the ruling recommended by the Discovery Commissioner in the April 4, 2019 Report and Recommendation (attached hereto as Exhibit K) should be adopted.

DATED this 14<sup>th</sup> day of May, 2021.

**ROYAL & MILES LLP**

By \_\_\_\_\_

  
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Nevada Bar No. 4370

Gregory A. Miles, Esq.  
Nevada Bar No. 4336

1522 W. Warm Springs Rd.  
Henderson, NV 89014

*Attorney for Defendants*

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14<sup>th</sup> day of May, 2021, I served the following document:

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

X **BY MAIL:** by placing the document(s) listed above in a sealed envelope, postage prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as set forth below  
**\*EXHIBIT C - SURVEILLANCE VIDEO ONLY\***

X **BY ELECTRONIC SERVICE:** by submitting the document(s) listed above to the above-entitled Court for electronic filing and/or service upon the Court's Service List.

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*Attorneys for Third-Party Defendant BRAND  
VEGAS, LLC*

  
An employee of ROYAL & MILES LLP

# EXHIBIT “A”

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  <div style="display: flex; justify-content: space-between;"> <span><b>CR-1</b></span> <span><i>RC 00008621</i></span> </div>	CASE# <b>1611V-0680</b>  PAGE <b>1</b>
OFFENSE(S) <b>Protected Health Information</b>		
DATE, TIME AND DAY OF OCCURRENCE <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 OCCURRENCE <b>Outside Grand Lux Cafe Restrooms</b>		MORE CHARGES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
ESTIMATED LOSS VALUE <b>\$ 0.00</b>		TYPE OF LOCATION BEAT SECTOR
<b>PERSONS</b>		
Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other		
CODE <b>C</b> 1 of 1	NAME - LAST, FIRST, MIDDLE, SUFFIX <b>Sekera, Joyce</b>	HOME <b>7840 Nesting Pine Place, Las Vegas, NV 89143</b>
OCCUPATION <b>Las Vegas Tours Employee</b>	RACE <b>W</b> SEX <b>F</b> AGE <b>60</b> DOB <b>03/22/1956</b>	CELLULAR <b>(702) 467-5457</b>
DL STATE SS# INJURIES	ADDRESS 2 ADDRESS 3	PHONE 2 PHONE 3
CODE <b>TM</b> 1 of 1	NAME - LAST, FIRST, MIDDLE, SUFFIX <b>Chavez, Rafael</b>	ADDRESS 1 ADDRESS 2 ADDRESS 3
OCCUPATION <b>Facilities</b>	RACE <b>M</b> SEX <b>M</b> AGE DOB	PHONE 1 PHONE 2 PHONE 3
DL STATE SS# INJURIES	ADDRESS 1 ADDRESS 2 ADDRESS 3	PHONE 1 PHONE 2 PHONE 3
<b>CASE SUMMARY / VEHICLE INFORMATION</b>		
SUMMARY <b>Protected Health Information - Grand Canal Shoppes Employee - Sekera, Joyce</b>		
VEHICLE USED IN CRIME YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> OF		
LICENSE (NO AND STATE) YEAR MAKE MODEL BODY TYPE COLOR VIN		
TOW REPORT GARAGE NAME AND PHONE REGISTERED OWNER R/O ADDRESS		
YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
<b>SUSPECT(S)/ ARRESTEE(S)</b>		
Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim		
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1 ADDRESS 2 ADDRESS 3
RACE SEX HT WT HAIR EYE AGE DOB	OCCUPATION	PHONE 1 PHONE 2 PHONE 3
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>	AKA's	ARRESTEE DISPOSITION RELEASE LOCATION ARREST DATE / TIME
DL STATE ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING # WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>	CITATION # SS# C#
CHARGES		
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1 ADDRESS 2 ADDRESS 3
RACE SEX HT WT HAIR EYE AGE DOB	OCCUPATION	PHONE 1 PHONE 2 PHONE 3
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>	AKA's	ARRESTEE DISPOSITION RELEASE LOCATION ARREST DATE / TIME
DL STATE ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING # WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>	CITATION # SS# C#
CHARGES		
<b>ADMINISTRATION</b>		
VICTIM DESIRES PROSECUTION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
COPIES TO <input type="checkbox"/> PAT <input type="checkbox"/> DET <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> VWAP <input type="checkbox"/> OTHER:		
BY OFFICER <b>J. Larson 000025821</b>	DATE/TIME <b>11/04/16 15:30</b>	APPROVED BY <b>Michael Dean 000041303</b>
OFFICER	UNIT/SHIFT	DATE APPROVED <b>11/05/16</b> CASE STATUS <b>Closed</b>

255-1133

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>Case MO</b>		PAGE 1 OF 1
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>MO DATA</b>		
<u><b>Incident Information</b></u> Area Checked Associate Medical Photos Taken PHI - Outside Vendor Slip & Fall Video Tape of Incident Available	<u><b>Lighting Conditions</b></u> Room Lights	<u><b>Security Stats (Click One Box)</b></u> Protected Health Information <u><b>Surface Conditions</b></u> Dry Marble Flat
<b>ADMINISTRATION</b>		
FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	COPIES TO: <input type="checkbox"/> PAT <input type="checkbox"/> DET <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> VWAP <input type="checkbox"/> OTHER	
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>

CR-1 Larson/025821 Entered by: Joseph Larson

APDC (Rev. 06/16/06) Print Date: 11/18/2016

 VEN 006  
 VEN 3321



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  <b>Person Profile</b>	CASE # <b>1611V-0680</b>  PAGE 1 OF 1			
OFFENSE(S) <b>Protected Health Information</b>					
DATE, TIME AND DAY OF OCCURRENCE <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 OCCURRENCE <b>Outside Grand Lux Cafe Restrooms</b>					
TYPE OF LOCATION <b>BEAT</b> <b>SECTOR</b>					
<b>PERSONS</b> Codes: V = Victim W = Witness S = Suspect A = Arrestee D = Detainee C = Complainant R = Party O = Other					
MORE NAMES YES <input type="checkbox"/> NO <input type="checkbox"/>					
CODE	1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX <b>Sekera, Joyce</b> DOB <b>03/22/1956</b> This report contains Person Profile information only Please refer to the primary report(s) for additional information.			
<b>MO INFORMATION</b>					
<table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> <b>Build</b> Medium  <b>Complexion</b> Medium  <b>Demeanor</b> Polite Nervous  <b>Eyes</b> Normal  <b>Glasses</b> None  <b>Hair Length</b> Long  <b>Hair Style</b> Straight           </td> <td style="width: 33%; vertical-align: top;"> <b>Medical Supplies</b>            Trauma Scissors            Soft Roller Bandage            Tape            Triangular Bandage            Rigid Splint (Upper Extremity)            Disposable Gloves  <b>Odor of Intoxicants</b> None  <b>Patient Assessment</b>            Patient is Alert            Airway Status Open            Breathing Adequate            Circulation Present            Patient has a Trauma/Injury            Abrasions            Tenderness         </td> <td style="width: 33%; vertical-align: top;"> <b>Speech</b> Normal           </td> </tr> </table>			<b>Build</b> Medium <b>Complexion</b> Medium <b>Demeanor</b> Polite Nervous <b>Eyes</b> Normal <b>Glasses</b> None <b>Hair Length</b> Long <b>Hair Style</b> Straight	<b>Medical Supplies</b> Trauma Scissors Soft Roller Bandage Tape Triangular Bandage Rigid Splint (Upper Extremity) Disposable Gloves <b>Odor of Intoxicants</b> None <b>Patient Assessment</b> Patient is Alert Airway Status Open Breathing Adequate Circulation Present Patient has a Trauma/Injury Abrasions Tenderness	<b>Speech</b> Normal
<b>Build</b> Medium <b>Complexion</b> Medium <b>Demeanor</b> Polite Nervous <b>Eyes</b> Normal <b>Glasses</b> None <b>Hair Length</b> Long <b>Hair Style</b> Straight	<b>Medical Supplies</b> Trauma Scissors Soft Roller Bandage Tape Triangular Bandage Rigid Splint (Upper Extremity) Disposable Gloves <b>Odor of Intoxicants</b> None <b>Patient Assessment</b> Patient is Alert Airway Status Open Breathing Adequate Circulation Present Patient has a Trauma/Injury Abrasions Tenderness	<b>Speech</b> Normal			
<b>CLOTHING</b>					
CODE	1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX <b>Chavez, Rafael</b> DOB This report contains Person Profile information only Please refer to the primary report(s) for additional information.			
<b>CLOTHING</b>					
<b>ADMINISTRATION</b>					
BY OFFICER	DATE/TIME	APPROVED BY			
<b>J. Larson 000025821</b>	<b>11/04/16 15:30</b>	<b>Michael Dean 000041303</b>			
OFFICER	UNIT/SHIFT	ASSIGNED TO			
		<b>Closed</b>			

CR-1 Larso/025821 Entered by: Joseph Larson

APDC (Rev. 01/22/13) Print Date: 11/18/2016

 VEN 007  
 VEN 3322

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 <b>Outside Grand Lux Cafe Restrooms</b>	TYPE OF LOCATION <b>Outside Grand Lux Cafe Restrooms</b>	BEAT <b></b>
SECTOR <b></b>		
NARRATIVE <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 <b></b>	UNIT/SHIFT <b></b>	DATE APPROVED <b>11/05/16</b>
ASSIGNED TO <b></b>		CASE STATUS <b>Closed</b>



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  <b>Narrative Report</b>	CASE # <b>161W-0680</b>  Page 2 of 2
OFFENSE(S) <b>Protected Health Information</b>		OFFENSE(S) cont'd
DATE, TIME AND DAY OF OCCURRENCE <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 OCCURRENCE	LOCATION NAME <b>Outside Grand Lux Cafe Restrooms</b>	TYPE OF LOCATION BEAT SECTOR
NARRATIVE		
<p>             sling made out of a triangle bandage to which she reported the treatment provided some relief from her pain. She added that she was beginning to feel minor pain and soreness to her left lower back and left side (localized to the axillary line).           </p> <p>             Sekera agreed to seek further medical attention, but refused ambulance transport. She stated her job did not provide Workers' Compensation and did not know where she should go. After some discussion, she opted to self-transport to Centennial Hills Hospital as it was close to her home. She refused to complete a Voluntary Statement for the incident and completed a Medical Release. She was escorted to her booth in the Grand Canal Shoppes, collected her belongings, and was escorted to her vehicle in the Team Member Garage on level 8.           </p> <p>             I checked the area of incident and noted that the marble flooring appeared to be flat, even, and dry throughout the area. I did not observe any wet or slick areas and no obstructions were observed. An Accident Scene Check was completed by Facilities Team Member Chavez, Rafael TM#9648 at 1:28pm which found no defects in the area of incident.           </p> <p>             Video coverage is available per Surveillance.           </p> <p>             Risk Management was notified.           </p> <p> <b>Attached Items</b>              1 Scan of the Medical Release              1 Scan of the Accident Scene Check              2 Photographs of Sekera's left arm              2 Photographs of Sekera's shoes (top and bottom)              5 Photographs of the area of incident           </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>





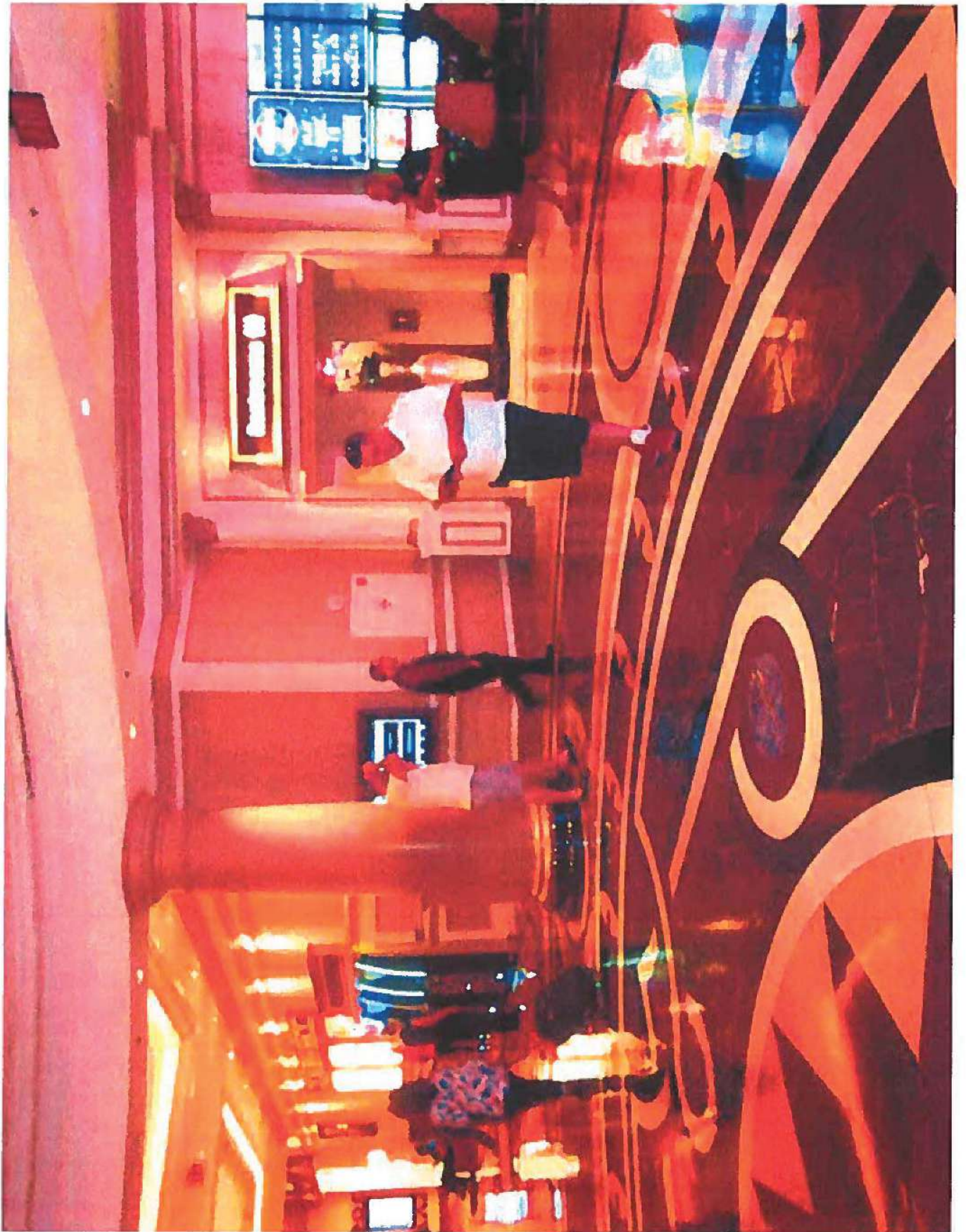
VEN 010  
VEN 3325





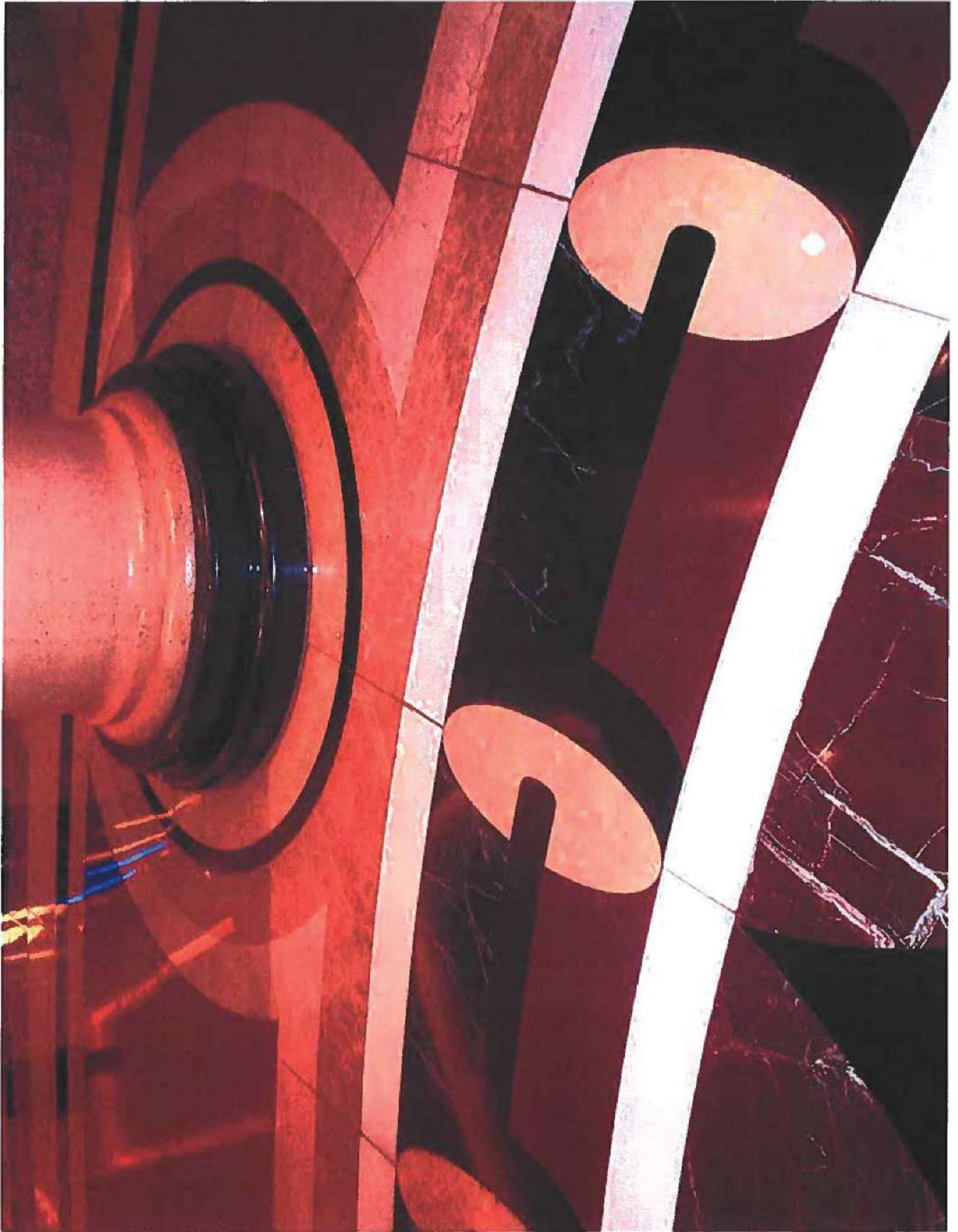
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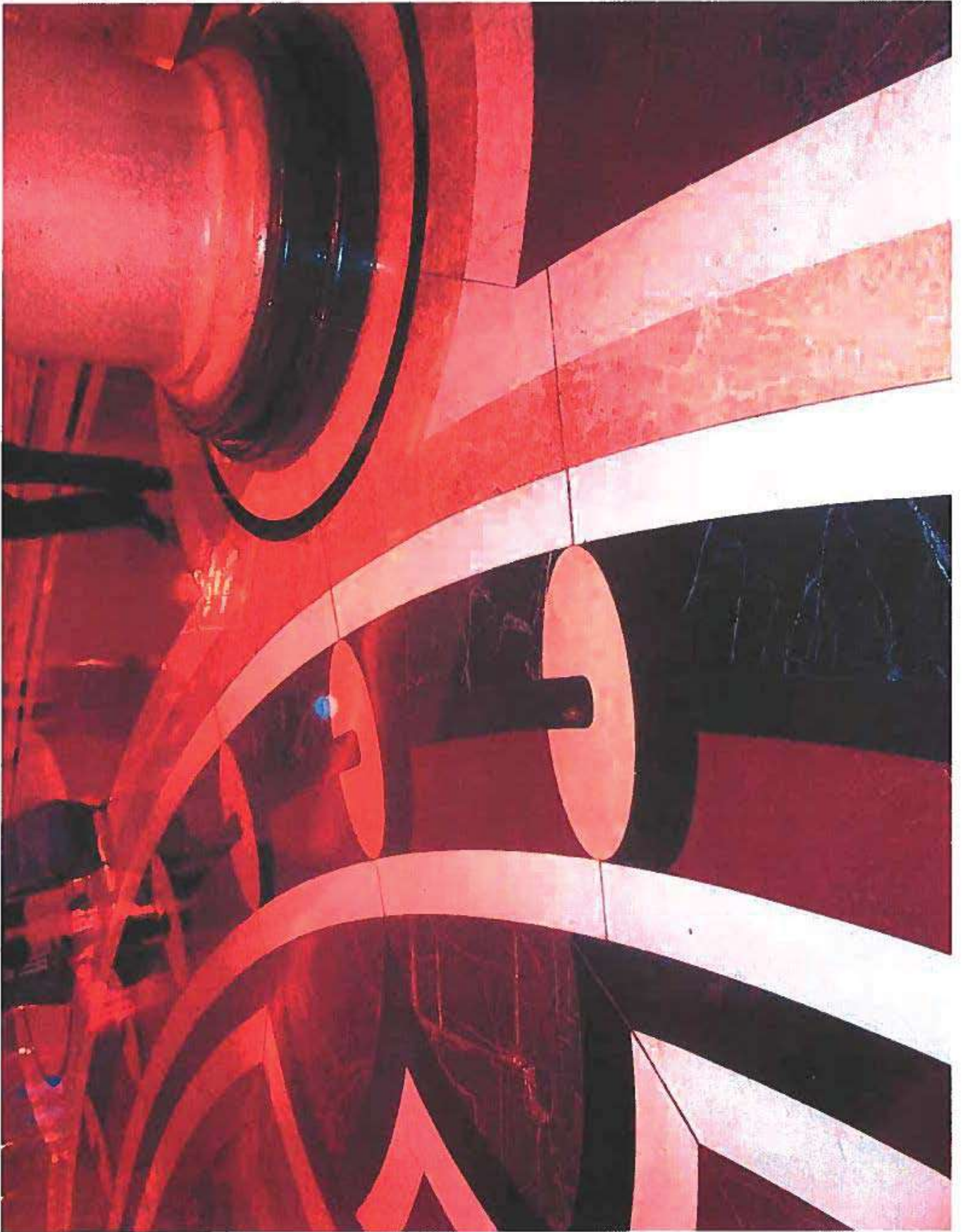


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VEN 3327





VEN 013  
VEN 3328



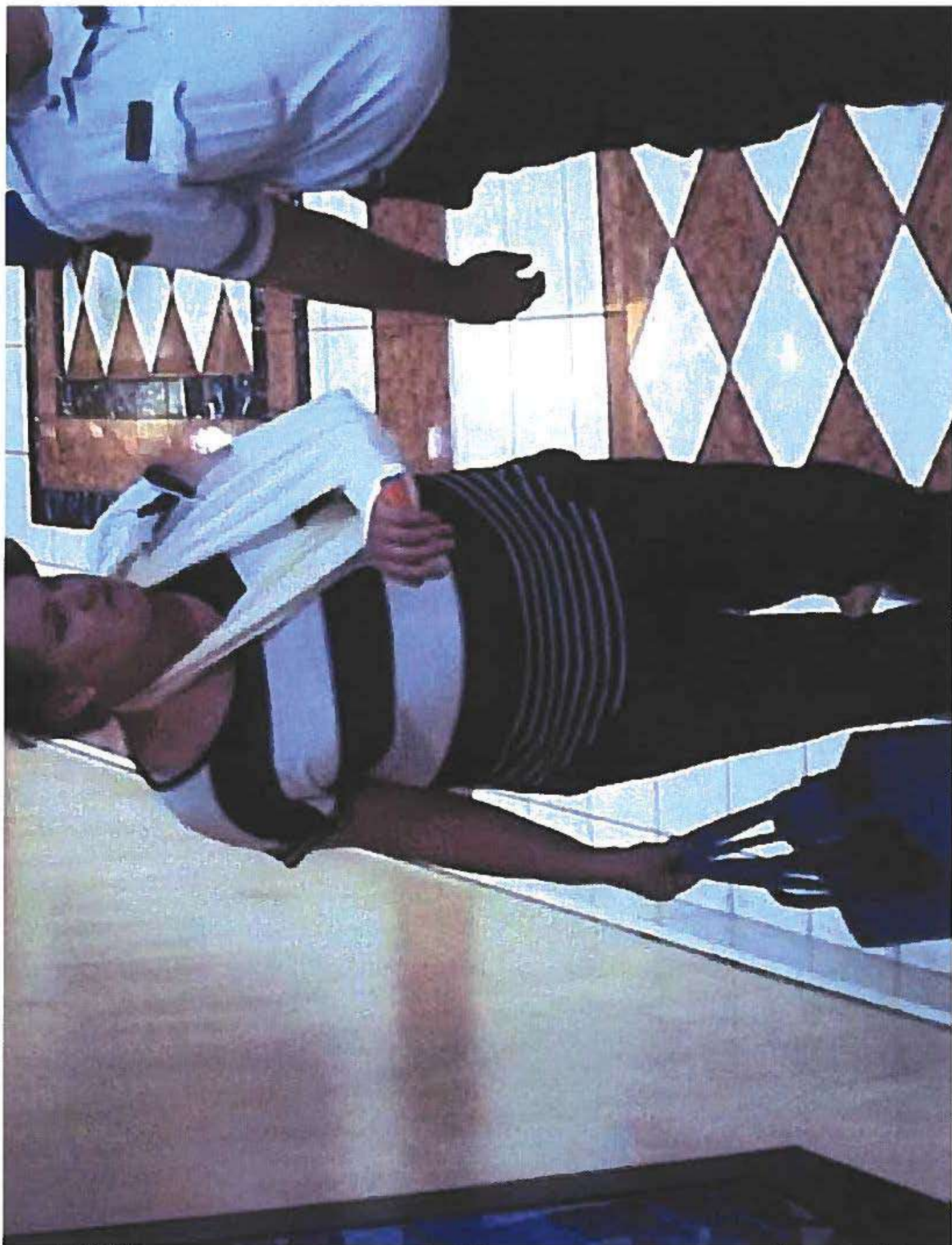
VEN 014  
VEN 3329





VEN 015  
VEN 3330





VEN 016  
VEN 3331

## Acknowledgement of First Aid Assistance & Advice to Seek Medical Care

☒ I (or my guardian) have been informed that only an initial Emergency First Aid treatment and evaluation has been rendered to me by a Venetian or Palazzo Emergency Medical Technician (EMT) who is not a medical doctor and that I (or my guardian) have been advised that I should seek the advice of a physician as soon as possible.

☐ I (or my guardian) refuse treatment by a Venetian or Palazzo Emergency Medical Technician (EMT) and have been advised that I should seek the advice of a physician as soon as possible.

Name (Print): JOYCE SEKERA WFA 5'6" 160 DPO/RED  
(LV TOUR → GUS)  
Signature: [Signature]  
Address: 7810 NESTING PINE PL, LV, NV 89143  
Date of Birth: 3/22/56 Social Security #: N/A  
Phone: (702) 467-5457  
Witness: \_\_\_\_\_  
Witness: \_\_\_\_\_  
Date: 11/4/16 Time: 1257  
Refused to Sign: \_\_\_\_\_  
Venetian/Palazzo EMT: \_\_\_\_\_ ID#: 25821

S/F, fell backwards onto base of pillar @ LOC, @ H/N/B, @ Overly

① elbow → @T, @IC

↳ Gumbel post injury dizzy

@CMS, tingling in @PII, PIII; limited ROM due to pain  
↑ 7/10

① axillary pain/soreness

① flank/lateral back pain

① intro,  
① foot splint  
30 min prior  
to fall

IX - Splint to ① elbow/FA

@CMS → @Δ P approx 12 min; @Lx



# EXHIBIT “B”

1  
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25

## DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual, )

)

Plaintiff, )

)

vs. )

CASE NO.: A-18-772761-C

DEPT NO.: XXV

VENETIAN CASINO RESORT, LLC, )

)

d/b/a, THE VENETIAN LAS )

)

VEGAS, a Nevada Limited )

)

Liability Company; LAS VEGAS )

)

SANDS, LLC d/b/a THE )

)

VENETIAN LAS VEGAS, a Nevada )

)

Limited Liability Company; )

)

YET UNKNOWN EMPLOYEE; DOES I )

)

through X, inclusive, )

)

Defendants. )

)

DEPOSITION OF JOYCE P. SEKERA

Taken on Thursday, March 14, 2019

By a Certified Court Reporter

At 1522 West Warm Springs Road

Henderson, Nevada

At 10:00 a.m.

Reported by: Blanca I. Cano, CCR No. 861, RPR

Job No.: 31775

1 27th. I'm not sure. But at any rate, in August of  
2 2018, this says you reviewed the answers to  
3 interrogatories, you verified that they were accurate,  
4 and that's your signature?

5 A. Yes.

6 Q. Okay. So having looked at these again, did it  
7 refresh your recollection?

8 A. Yes.

9 Q. Did you see any of your responses that appeared  
10 inaccurate or --

11 A. Yes.

12 Q. Let's go --

13 MR. KUNZ: You're talking about the  
14 interrogatories or the admissions?

15 MR. ROYAL: Yes, the interrogatories.

16 MR. KUNZ: So there are two different --

17 THE WITNESS: Oh.

18 BY MR. ROYAL:

19 Q. Yeah. Let's just focus on the interrogatories.

20 Did you see anything in the interrogatories you  
21 wanted to change?

22 A. No.

23 Q. Okay. Did you see something in the admissions  
24 that you wanted to change?

25 A. Yes.

1 Q. Okay. That's -- the admissions are Exhibit B,  
2 so let's just look at those.

3 Was there more than one?

4 A. Yes.

5 Q. Okay. Let's go to the first one.

6 Which one did you note that is not correct?

7 MR. KUNZ: Page 2, No. 2.

8 THE WITNESS: Thank you.

9 BY MR. ROYAL:

10 Q. I'll read it. "Admit that you did not see  
11 liquid on the floor of the subject area after your fall  
12 on November 4, 2016," and then it says, "Deny."

13 A. Yes, because I didn't see it. I was looking  
14 through the people to walk to the restroom. I felt it  
15 when I fell.

16 Q. Okay. So --

17 A. I remember my pants being wet.

18 Q. Okay. So I get it. So you would change that  
19 to "Admit"?

20 I'll read it to you again. Request No. 2 in  
21 Exhibit B, page 2, says, "Admit that you did not see  
22 liquid on the floor of the subject area after your fall  
23 on November 4, 2016."

24 You would admit that; is that correct?

25 A. I felt it.

1 Q. No. I get that you -- I understand. Look, the  
2 question is you did not see it?

3 A. Right. Correct.

4 Q. Okay. So you would admit you did not see it?

5 A. Correct.

6 Q. Okay. I understand you felt it, and we'll get  
7 into the specifics of that.

8 Was there another change?

9 MR. KUNZ: Page 7.

10 BY MR. ROYAL:

11 Q. Before we get to that one, let me look at  
12 Request No. 3 and have you look at that.

13 Request No. 3 reads, "Admit that you did not  
14 see a foreign substance on the floor potentially causing  
15 your fall on November 4, 2016, at any time."

16 Again, I know you said you felt it, but the  
17 question is did you see it?

18 A. No, I did not.

19 Q. Okay. So the answer to No. 3, would that also  
20 be "Admit" instead of "Deny"?

21 A. Correct.

22 Q. Okay. Those were kind of the same.

23 Which one are we on now?

24 MR. KUNZ: Page 7.

25 MR. ROYAL: Which number?

1 hereditary and you do have a" -- I don't know. I  
2 couldn't give you a date or a doctor.

3 Q. Okay. I'm going to ask you a few more  
4 questions about your job.

5 So you started with Brand Vegas on I think you  
6 said December 26, 2015, and you worked full time for  
7 that employer until the date of the incident,  
8 November 4, 2016; correct?

9 A. Correct.

10 Q. And when I say "full time," I mean 40 hours a  
11 week or more.

12 A. Yes.

13 Q. I saw -- and I'm going off memory, but I saw --  
14 what were your general work hours?

15 A. 9:00 to 7:00.

16 Q. So how many days a week?

17 A. In the beginning, seven.

18 Q. So you were working more than 40 hours;  
19 correct?

20 A. Correct.

21 Q. Did you get paid overtime?

22 A. You know, I can't remember. I can't say for  
23 sure.

24 Q. Okay. How long did you work seven days a week?  
25 Because you said in the beginning.

1 I'm not sure, so I'd rather not guess.

2 Q. No. That's okay. So you were paid an hourly  
3 rate --

4 A. Uh-huh.

5 Q. -- somewhere between let's say 7 and \$10?

6 A. Yes.

7 Q. We can verify the hourly rate. It's not a big  
8 deal. Okay?

9 You were also paid commissions. Tell me how  
10 the commissions worked.

11 A. We never knew that. They would just give us so  
12 much money.

13 Q. Well, I mean --

14 A. It was 25 cents a ticket maybe on one, 50 cents  
15 on another one. That's how it went. It depends on the  
16 show and what they were paid.

17 Q. Okay. So as I understand it, you were working  
18 at a kiosk for Brand Vegas on one of three different  
19 kiosk areas in the Grand Canal Shoppes?

20 A. Yes.

21 Q. And you would go there anywhere from five to  
22 seven days a week working 9:00 to 7:00 -- 9:00 a.m. to  
23 7:00 p.m.; correct?

24 A. Correct.

25 Q. You were paid an hourly rate, plus you got a

1 employment?

2 A. No. Only if we had a question which the guest  
3 wanted that particular seat and they couldn't have it  
4 because it was reserved for the hotel, so...

5 Q. Okay. The time that -- it sounds to me like  
6 you were spending anywhere from 40 to 60 hours a week at  
7 the Venetian.

8 A. Yes.

9 Q. Does that sound right?

10 A. Yes.

11 Q. And that would be pretty much from December 26,  
12 2015, until the date of the incident?

13 A. Yes.

14 Q. Did you take any vacations?

15 A. No, I did not. And I was always there at least  
16 an hour or two prior.

17 Q. What does that mean? Prior to what?

18 A. Prior to my shift starting.

19 Q. So if your shift started at 9:00, you would  
20 arrive at 7:00?

21 A. Yeah, because I would set up all the computers  
22 for everybody.

23 Q. And you're not paid for that time?

24 A. No.

25 Q. So you actually would have been there from,



1     like, what, 7:00 to 7:00?

2           A.     Pretty much, or at least 8:00 to 7:00.

3           Q.     Okay. I'm just doing the math in my head here.

4     That's a lot of hours. So you're talking about -- you  
5     could actually be working 80 hours a week.

6           A.     Yeah.

7           Q.     Does that sound right?

8           A.     Yes.

9           Q.     Okay.

10          A.     And that wasn't every day, but I tried to help  
11     people because -- and have it all ready for them when  
12     they walked on the shift.

13          Q.     So during the time that you work there for  
14     sounds like -- I'm going to say 50 to 70 hours a week  
15     maybe --

16                  Does that sound about fair?

17          A.     Fair.

18          Q.     -- were you ever aware of any incidents where  
19     guest or employees would slip and fall?

20          A.     No.

21          Q.     The times that you were working at this booth,  
22     you don't recall ever responding to someone who had  
23     fallen; is that correct?

24          A.     I would say yes. I don't remember helping  
25     anybody.

1 Q. Okay. When you would go to -- let's say on  
2 breaks, use the restroom and stuff, do you recall ever  
3 seeing security responding to somebody on the floor,  
4 anything like that?

5 A. No.

6 Q. Did you ever have any conversations that you  
7 can recall prior to your fall with hotel -- Venetian  
8 hotel security about incidents occurring on property?

9 A. No. I didn't really know anybody there.

10 Q. Okay. So prior to your incident of November 4,  
11 2016, is it fair to say that you were never aware of  
12 anyone slipping and falling at the Venetian property?

13 A. Yes.

14 Q. Okay. That was a correct statement; is that  
15 right?

16 A. Yes.

17 Q. So for all the time that you were at the  
18 Venetian working for Allstate Ticketing and Tours and  
19 then for Brand Vegas, the only fall that you're aware of  
20 occurring at the Venetian property was your fall?

21 A. That's correct.

22 Q. Okay. Do you recall during the time that you  
23 worked at the Venetian property -- now I'm going to  
24 expand it from any time that you're working there from  
25 1995 until 2016, I'm just going to ask you all of your

1 experience as an employee where you were working at a  
2 kiosk at the Venetian property, do you recall ever  
3 seeing foreign substances on the floor?

4 A. I have to just say this. When I worked for  
5 Allstate Ticketing, they didn't acquire the Venetian  
6 kiosk till a few years before, so earlier they weren't  
7 there. From '96 to -- I just can't remember the date.  
8 You said from '96 to...

9 Q. Okay. Thank you. But what I'm trying to do is  
10 you said you were probably at the Venetian 10 to 20  
11 times over the 15 years --

12 A. Yeah, not a lot.

13 Q. Okay. That's when you were at Allstate?

14 A. Right.

15 Q. And then you were there it sounds like almost  
16 every day for almost close to a year --

17 A. Oh, for Brand, yes.

18 Q. -- for Brand Vegas; correct?

19 A. Yes.

20 Q. All right. And during all that time,  
21 collectively, you don't recall ever seeing a substance  
22 on the floor, like somebody spilled a drink or something  
23 like that?

24 A. Oh, sure, I might have and I might have called  
25 housekeeping. See, I don't remember that. If that

1     happened, it was, like, once.

2           Q.     Okay. But I'm asking if you have a specific  
3     memory --

4           A.     No.

5           Q.     -- of something like that.

6           A.     Oh, no.

7           Q.     Okay. So that's -- that's one of those things  
8     where I don't want you to speculate. If you have a  
9     specific memory, "Oh, yeah, I remember once or twice" --

10          A.     Okay.

11          Q.     Do you have a specific memory?

12          A.     No.

13          Q.     Okay. All right. Did you -- in all your time  
14     working at the Venetian talking with people, selling  
15     tickets, people walking by, casual conversation, even  
16     people that you were working with in your kiosk with  
17     that other company, okay, do you recall speaking with  
18     anyone who made any reference to any slip-and-falls that  
19     occurred on the company?

20          A.     No.

21          Q.     This would be a good time to take a break  
22     because I'm going to move into something else.

23                 Let's go off the record.

24                         (A short recess was taken from 11:41 a.m.  
25                         to 11:48 a.m.)

1 from home?

2 A. I don't think so.

3 Q. You typically would buy something like that at  
4 the property?

5 A. Or somebody would for us, yes.

6 Q. Okay. So you had a -- you don't remember if  
7 you got it at -- I don't know. There's a place called  
8 The Coffee Bean or different --

9 A. Oh, was that upstairs in my area?

10 Q. Yes.

11 A. Yeah. Okay.

12 Q. It's kind of close to the escalator.

13 A. Yes, it is. Yes.

14 Q. So you think --

15 A. I do remember Coffee Bean.

16 Q. But did you buy coffee that morning at The  
17 Coffee Bean?

18 A. That, I don't remember.

19 Q. Okay. So you were taking a break and -- you  
20 were taking a lunch break.

21 Where were you planning on going for lunch on  
22 the day of the incident?

23 A. I couldn't tell you. I just always go to the  
24 restroom first and...

25 Q. Okay. You say you always go to the restroom.

1 A. Well, when I have to go, yes, but --

2 Q. Let me back up.

3 As I understand it, you're working at your  
4 kiosk, you're ready to take a break. You go to the  
5 escalator that's close to The Coffee Bean.

6 A. No. Right around the corner the elevator down  
7 because then you can just go right to the restroom.

8 Q. Okay. So you didn't take --

9 A. I didn't take the escalator, no.

10 Q. Is there a security guard posted there, do you  
11 know, at that level?

12 A. I do not know that.

13 Q. Okay. How close to those elevators -- strike  
14 that.

15 Where the incident happened, the elevators  
16 you're talking about, where are they located?

17 A. If I'm at that booth -- because Coffee Bean is  
18 right over there -- I go around the corner to these --  
19 it's a little corner really where the elevators sit.  
20 There's nothing else there. And I would get out of the  
21 elevator, turn left, and go straight to the restroom.

22 Q. Get out of the elevator, turn left?

23 A. Yes, because it's, like, an L-shaped --

24 Q. Let me ask you this: Do you know where the  
25 Grand Cafe --

1 A. Oh, yes, yes.

2 Q. Okay. Where is the elevator in relation to the  
3 Grand Cafe?

4 A. Well, you have the Grand Cafe, it's right  
5 across, because the elevator is here. It's in a little  
6 nook. Then to the right is that and then the restrooms.

7 Q. Okay. I think I got it now. It's coming into  
8 my head here because there's the elevator lobby with all  
9 the guests. We're not talking about that.

10 A. Oh, no, no, no.

11 Q. This is a different elevator?

12 A. (Nods head.)

13 Q. So you come down the elevator. I understand  
14 where the nook is. And now I get it when you say you  
15 turn to your left and it's a straight shot --

16 A. Exactly, yes.

17 Q. -- to the bathrooms; right?

18 A. Yes.

19 Q. Okay. So you're walking to the bathroom on  
20 your break and -- is that the bathroom that you would  
21 typically use during breaks?

22 A. Yes.

23 Q. And more than once a day?

24 A. Could be.

25 Q. But at least once a day?

1 A. At least, yes.

2 Q. And so that would be from the time that you  
3 started at the -- on December 26, 2015, until the  
4 incident; correct?

5 A. Yes.

6 Q. So you're used to this path. You always take  
7 the elevator and you kind of --

8 A. Yes, uh-huh.

9 Q. Okay. You always --

10 A. Oh, sorry.

11 Why are you laughing at me?

12 Q. No, no. We're laughing just because you're  
13 interrupting. She knows --

14 A. Sorry.

15 Q. That's okay. In normal conversation, this is  
16 how it goes. But when we're on the record, we have to  
17 be a little more patient. We both have been doing it.

18 Let me start over. I can't remember where I  
19 was.

20 MR. KUNZ: It was a path you normally take.

21 BY MR. ROYAL:

22 Q. Yeah, okay.

23 You took the elevator every day. You didn't go  
24 all the way around to the escalator?

25 A. Yes.



1 Q. Is that correct?

2 A. Uh-huh.

3 Q. Yes?

4 A. Well, it depended if I went to get a salad or  
5 something and then go to the restroom. Every day I  
6 can't tell you or every moment exactly.

7 Q. And I understand that, and I'm just trying to  
8 get your routine. Okay?

9 But let's say --

10 A. But that bathroom was most convenient.

11 Q. So every day you would take a break and you  
12 would use the bathroom that you were headed to the day  
13 of the incident?

14 A. Yes.

15 Q. Was there -- so you had -- you leave your  
16 kiosk, you take the elevator, you've got a cup of  
17 coffee, and you're planning to use the restroom and then  
18 you're going to get some lunch or smoke or -- I don't  
19 know what your -- what were your plans?

20 A. That -- that was it, to go to the restroom.

21 Q. And then get something to eat?

22 A. Uh-huh.

23 Q. Yes?

24 A. Yes.

25 Q. Were you going to go to the food court?

1 Q. This particular photo, this represents the  
2 bathroom that you were going to at the time of the  
3 incident?

4 A. Yes.

5 Q. And this is the bathroom that you would  
6 typically use at least once a day when you were working  
7 at the Venetian?

8 A. Yes.

9 Q. And typically to get to the bathroom, you would  
10 either go down the elevator or go down the escalator,  
11 both of which would be off to the left of the photo in  
12 this vantage point?

13 A. Yes.

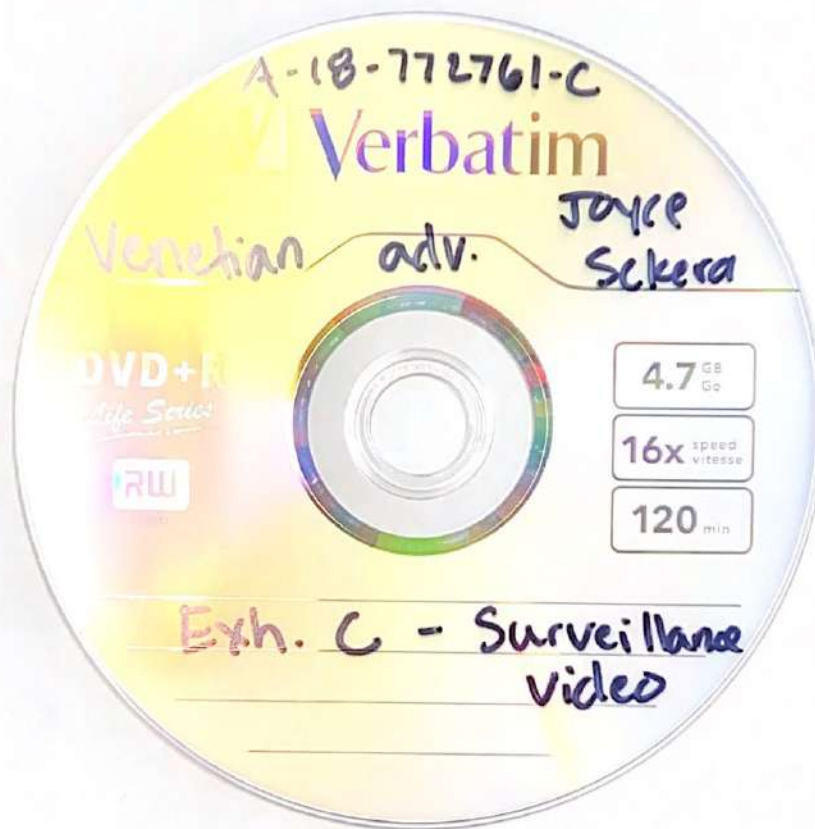
14 Q. Okay. Let's go to the next photo. I'll  
15 represent to you my understanding is is that you'll see  
16 the column here and that this VEN 040 represents the  
17 area where you fell.

18 Do you recognize it?

19 A. Yes.

20 Q. As you look at this photo, does anything about  
21 this photo refresh your recollection to anything you  
22 testified to at this point?

23 A. I'm looking at the pillar and I know they have  
24 a pillar. I don't remember the floor per se, but I  
25 fell --



## EXHIBIT "C"

# EXHIBIT “D”

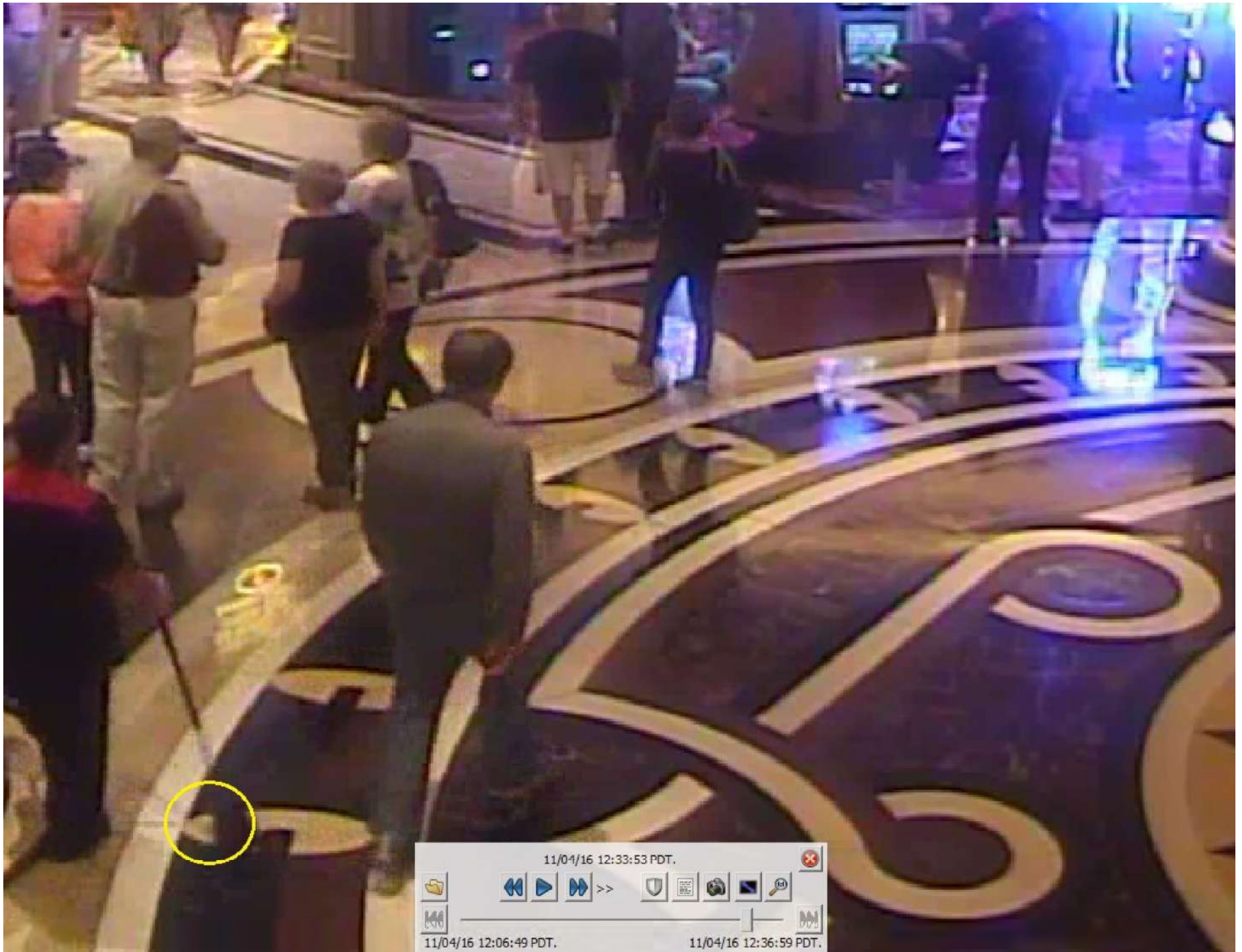


VEN 043

VEN 3353

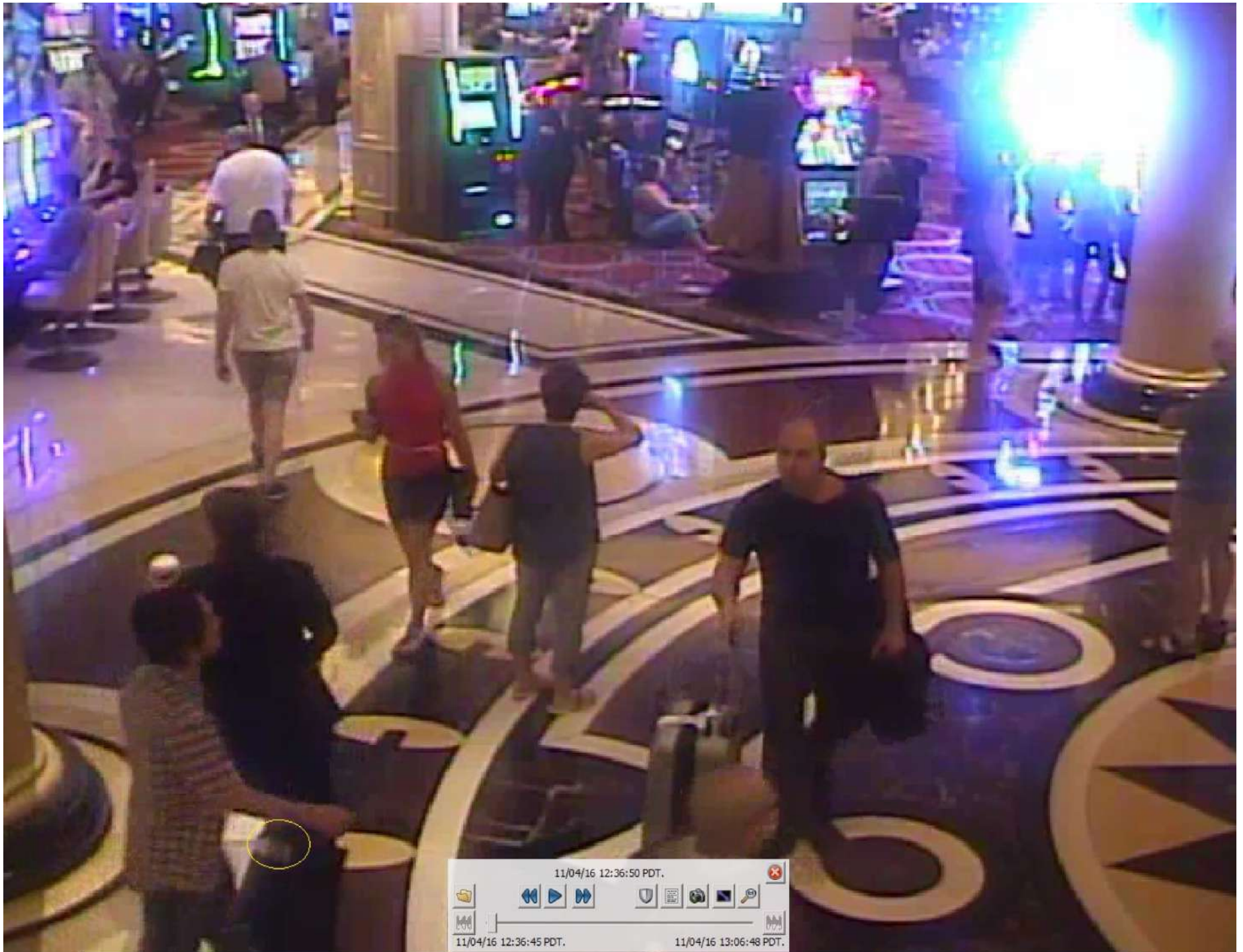
# EXHIBIT “E”





VEN 3355





VEN 3356



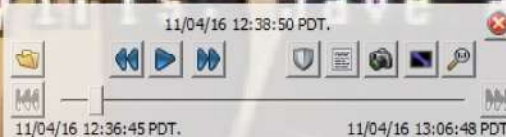
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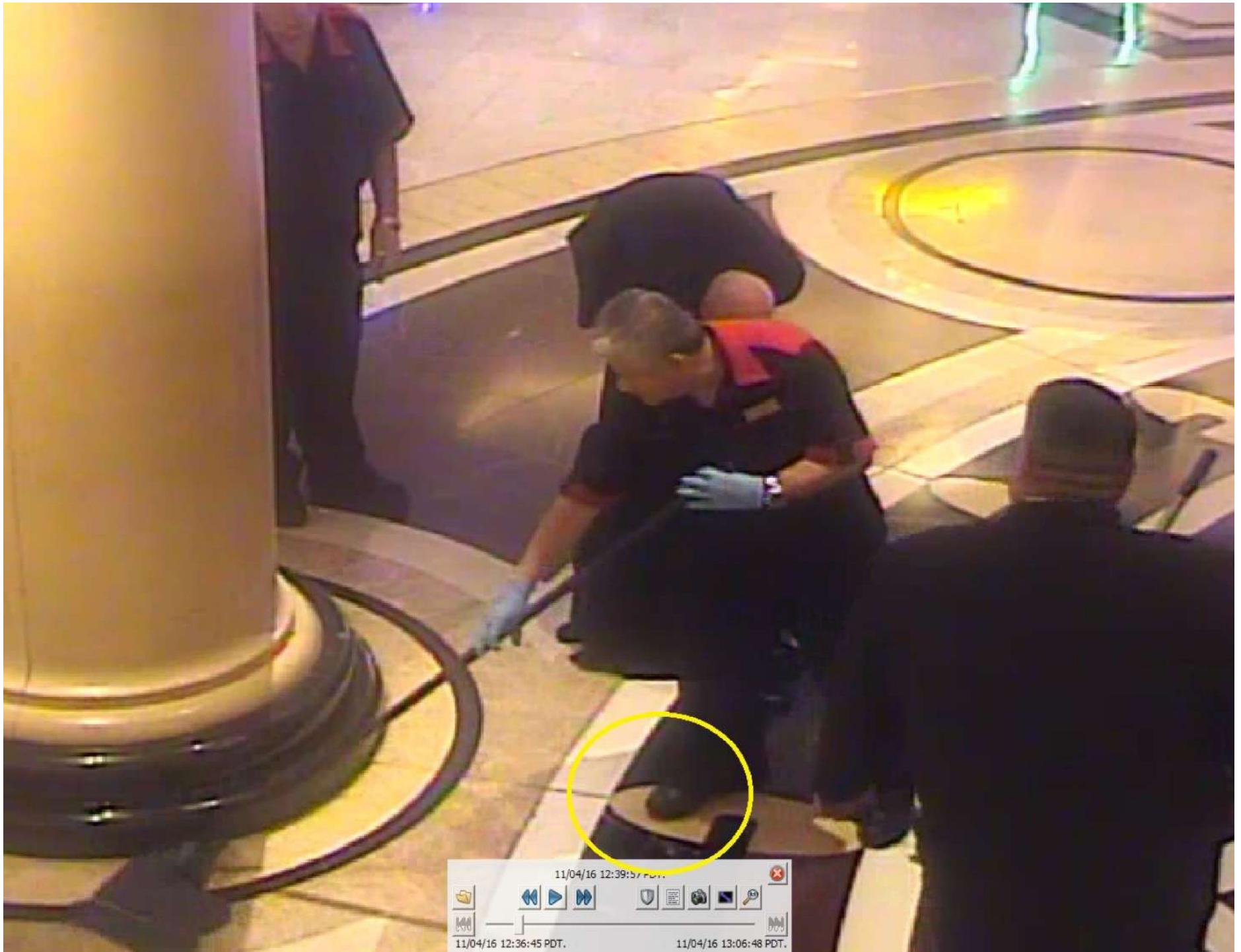
OFF

Return To Scene 1

Recall Previous Aux

Focus/Iris: Save and Exit





VEN 3358

# EXHIBIT “F”

DISTRICT COURT  
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

---

DEPOSITION OF MARIA CONSUELO CRUZ

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

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

Reported By: PAULINE C. MAY  
CCR 286, RPR

1 APPEARANCES:

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

6 For the Defendants: MICHAEL A. ROYAL, ESQ.  
7 Royal & Miles LLP  
1522 West Warm Springs Road  
Henderson, Nevada 89014  
(702) 471-6777

15 \* \* \* \* \*

18 I N D E X

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

25 -oOo-

MARIA CONSUELO CRUZ 4/17/2019

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

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

Page 5

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

Page 6

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

3 (Pages 3 to 6)



1 Q Then, were you a casino porter for the next  
2 12 years?  
3 A Yes.  
4 Q Tell me what a casino porter does at the  
5 Venetian.  
6 A Cleans slot machines, takes care of the  
7 floors, no spills, no trash, vacuum, clean bathrooms,  
8 pick up the trash and customer service.  
9 Q When you say "customer service," what do you  
10 mean?  
11 A We are aware if the customer needs something  
12 and offer assistance.  
13 Q When you worked at the Venetian, did you  
14 work in a specific area of the hotel?  
15 A No, they moved us around. They switched us  
16 to a different station every day.  
17 Q Do you know how many stations there are on  
18 the ground floor at the Venetian?  
19 A Gosh, so many. That's a very large casino.  
20 Q Do you know how many casino porters work the  
21 same shift that you worked at the Venetian when you  
22 worked there?  
23 A Like 20, maybe, or 24.  
24 Q Is that your best estimate?  
25 A Approximation.

1 to 8:00.  
2 Q And did it ever change?  
3 A Those were shifts, you know, that for a  
4 season you would work like that, and then they would  
5 be switched.  
6 Q My question is, was the graveyard shift ever  
7 from 11:00 to 7:00 and then changed from 12:00 to  
8 8:00 like the other shifts?  
9 A Yes. When one shifts, the three of them  
10 change.  
11 Q Did you work one shift more than any of the  
12 other shifts?  
13 A No.  
14 Q When I say worked more, did you spend more  
15 time working the day shift versus the afternoon shift  
16 versus the evening shift?  
17 A I was more at night.  
18 Q And when you talk "more at night," you are  
19 talking about the 11:00 a.m. -- or 11:00 p.m. to  
20 7:00 a.m. or 12:00 a.m. to 8:00 a.m. shift?  
21 A What happened is, while we worked from  
22 11:00 to 7:00 and then somehow we were switched from  
23 midnight to 8:00 a.m. It was not me, the one who was  
24 switched.  
25 Q But it's your recollection that most of the

1 Q All right. So when you were working at the  
2 Venetian as a casino porter, there were approximately  
3 20 other casino porters working the same shift?  
4 A Yes.  
5 Q And do you understand I'm talking strictly  
6 about the Venetian and not the Plaza?  
7 A Yes.  
8 Q So when we're talking about 20 casino  
9 porters, we're talking strictly about the Venetian?  
10 A Yes.  
11 Q Did you have a specific shift that you  
12 worked at the Venetian?  
13 A I was working for some time in the  
14 afternoon, then later on in the night shift, and then  
15 during toward the end, in the morning.  
16 Q So you actually worked all three shifts at  
17 the Venetian when you were employed there as a casino  
18 porter?  
19 A Yes, yes.  
20 Q What are the hours of the morning shift?  
21 A It used to be from 7:00 to 3:00, and then it  
22 was switched to from 8:00 to 4:00 in the daytime.  
23 Q And then what about the afternoon shift?  
24 A It was from 3:00 to 11:00, and then it was  
25 3:00 -- 4:00 to 12:00, and graveyard was from midnight

1 time when you worked at the Venetian, you worked the  
2 evening shift?  
3 A Yes.  
4 Q We call it graveyard. Do you understand  
5 what I mean?  
6 A Yes.  
7 Q You talked earlier about one of your duties  
8 as a casino porter was to clean and maintain the  
9 floors.  
10 A Yes.  
11 Q When you talk about the floors, I'm talking  
12 strictly now about the ground floor. Is that where  
13 you worked?  
14 A Yes.  
15 Q So for the 13 years that you were employed  
16 at the Venetian, you would work on the ground floor?  
17 A When I was in the day shift; yes.  
18 Q And --  
19 A Also when I was in the graveyard shift. But  
20 since they would switch us around to different  
21 stations, there were times when I was assigned to the  
22 small tower and another day I would be assigned close  
23 to the food court.  
24 But they were the ones -- say somebody does  
25 not show up for a shift, and then we are placed in a

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

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

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

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



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

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

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

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

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

Page 20

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

Page 21

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

Page 22

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

7 (Pages 19 to 22)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**MARIA CONSUELO CRUZ 4/17/2019**

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1 THE WITNESS: Is that it?  
2 MR. ROYAL: Yes. Nothing for me.  
3 MR. GALLIHER: Okay, we're done. Thank you.  
4 (The deposition concluded at 3:09 p.m.)  
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REPORTER'S DECLARATION

STATE OF NEVADA)  
COUNTY OF CLARK)

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

That I reported the taking of the deposition of the witness, MARIA CONSUELO CRUZ, commencing on Wednesday, April 17, 2019 at the hour of 2:00 p.m.

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

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

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

Dated at Las Vegas, Nevada this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Pauline C. May, CCR 286, RPR

# EXHIBIT “G”

**Deposition of:**

David A. Martinez

**Case:**

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

**Date:**

07/26/2019



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<p>1 DISTRICT COURT</p> <p>2 CLARK COUNTY, NEVADA</p> <p>3</p> <p>4 JOYCE SEKERA, an Individual, )</p> <p>5 Plaintiff, )</p> <p>6 vs. ) CASE NO.: A-18-772761-C</p> <p>7 ) DEPT NO.: XXV</p> <p>8 VENETIAN CASINO RESORT, LLC, )</p> <p>9 d/b/a, THE VENETIAN LAS )</p> <p>10 VEGAS, a Nevada Limited )</p> <p>11 Liability Company; LAS VEGAS )</p> <p>12 SANDS, LLC d/b/a THE )</p> <p>13 VENETIAN LAS VEGAS, a Nevada )</p> <p>14 Limited Liability Company; )</p> <p>15 YET UNKNOWN EMPLOYEE; DOES I )</p> <p>16 through X, inclusive, )</p> <p>17 Defendants. )</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>INTERPRETED DEPOSITION OF DAVID A. MARTINEZ</p> <p>Taken on Friday, July 26, 2019</p> <p>By a Certified Court Reporter</p> <p>At 1522 West Warm Springs Road</p> <p>Henderson, Nevada</p> <p>At 10:02 a.m.</p> <p>Reported by: Blanca I. Cano, CCR No. 861, RPR</p> <p>Job No.: 34994A</p>	<p>1 HENDERSON, NEVADA, FRIDAY, JULY 26, 2019;</p> <p>2 10:02 A.M.</p> <p>3 -oOo-</p> <p>4</p> <p>5 (Counsel agreed to waive the court</p> <p>6 reporter requirements under Rule</p> <p>7 30(b)(4) of the Nevada Rules of Civil</p> <p>8 Procedure.)</p> <p>9</p> <p>10 ELISSA MENDOZA,</p> <p>11 the interpreter, herein, was sworn to translate the</p> <p>12 proceedings from the English language into the Spanish</p> <p>13 language and from the Spanish language into the English</p> <p>14 language to the best of her ability.</p> <p>15</p> <p>16 Thereupon,</p> <p>17 DAVID A. MARTINEZ,</p> <p>18 was called as a witness, and having been first duly</p> <p>19 sworn, was examined and testified as follows:</p> <p>20</p> <p>21 EXAMINATION</p> <p>22 BY MR. ROYAL:</p> <p>23 Q. Can you please state your full name?</p> <p>24 A. My name is David Antonio Martinez.</p> <p>25 Q. And it's David?</p>
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<p>1 APPEARANCES:</p> <p>2 For the Plaintiff:</p> <p>3 THE GALLIHER LAW FIRM</p> <p>4 BY: GEORGE J. KUNZ, ESQ.</p> <p>5 1850 East Sahara Avenue</p> <p>6 Suite 107</p> <p>7 Las Vegas, Nevada 89104</p> <p>8 For the Defendants:</p> <p>9 ROYAL &amp; MILES, LLP</p> <p>10 BY: MICHAEL A. ROYAL, ESQ.</p> <p>11 1522 West Warm Springs Road</p> <p>12 Henderson, Nevada 89014</p> <p>13 Also Present: Elissa Mendoza, Spanish interpreter</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>INDEX</p> <p>WITNESS: DAVID A. MARTINEZ</p> <p>EXAMINATION PAGE</p> <p>BY MR. ROYAL 3, 23, 26</p> <p>BY MR. KUNZ 21, 26</p> <p>EXHIBITS</p> <p>DEFENDANT MARKED</p> <p>A Photographs 18</p> <p>*****</p>	<p>1 A. (Nods head.)</p> <p>2 Q. My name is Mike Royal. I represent the</p> <p>3 Venetian in some litigation -- a lawsuit brought by</p> <p>4 Joyce Sekera. It relates to a slip-and-fall that</p> <p>5 occurred on November 4th, 2016.</p> <p>6 Are you familiar with the incident?</p> <p>7 A. Yes.</p> <p>8 Q. All right. I've got some questions I'm going</p> <p>9 to ask you about that today. Before I get to that, I</p> <p>10 have a few background questions for you.</p> <p>11 A. Okay.</p> <p>12 Q. First of all, I have an address for you of</p> <p>13 517 North Yale Street, Las Vegas, Nevada 89107; is that</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. I have a phone number of 702-878-2504.</p> <p>17 A. Yes.</p> <p>18 Q. Is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. How long have you lived in Las Vegas?</p> <p>21 A. Approximately about 25 years.</p> <p>22 Q. Okay. Have you ever had a deposition taken</p> <p>23 before?</p> <p>24 A. No. Never.</p> <p>25 Q. Have you ever served on a jury?</p>

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<p>1 A. No. Never.</p> <p>2 Q. Have you ever testified in any capacity before?</p> <p>3 A. No. Never.</p> <p>4 Q. Okay. So I'm going to -- this deposition is an</p> <p>5 opportunity for both attorneys, myself and Mr. Kunz, who</p> <p>6 represents Ms. Sekera, to ask you questions and receive</p> <p>7 your answers under oath.</p> <p>8 A. Very well.</p> <p>9 Q. It's the same oath you would take if you were</p> <p>10 testifying in court.</p> <p>11 A. Yes.</p> <p>12 Q. You understand that?</p> <p>13 A. Yes.</p> <p>14 Q. So you're obligated to tell the truth.</p> <p>15 Do you understand that?</p> <p>16 A. Yes. Yes.</p> <p>17 Q. We have a court reporter, and she's taking down</p> <p>18 everything that's said and you need to wait until I'm</p> <p>19 done with my question before providing your answer.</p> <p>20 Okay?</p> <p>21 A. That's fine.</p> <p>22 Q. I don't think we'll have any trouble with that</p> <p>23 because we're doing this through an interpreter. But</p> <p>24 because we're doing this through an interpreter, you may</p> <p>25 understand some of what I'm saying in English. I want</p>	<p>1 18 years or did you move around?</p> <p>2 A. Well, they're different ones, different areas.</p> <p>3 Q. Okay. Did you typically work the day shift?</p> <p>4 A. When I started, I started in the graveyard.</p> <p>5 And then after that, they moved me to the afternoon.</p> <p>6 And then after that, to the daytime.</p> <p>7 Q. How long were you on the graveyard shift?</p> <p>8 A. Well, I only worked there for, like, eight</p> <p>9 months.</p> <p>10 Q. What kind of work did you do on the graveyard</p> <p>11 shift?</p> <p>12 A. It's the same, just cleaning.</p> <p>13 Q. Okay. Did you have a title?</p> <p>14 A. Well, they call it porter.</p> <p>15 Q. I've heard a title of, like, Cleaning</p> <p>16 Specialist I, Cleaning Specialist II.</p> <p>17 A. Correct. I mean, I was a Cleaning Specialist</p> <p>18 II.</p> <p>19 Q. Okay. What is a Cleaning Specialist II? What</p> <p>20 do you do?</p> <p>21 A. The same, cleaning restrooms, pick up trash,</p> <p>22 and clean carpeting and things -- you know, windows and</p> <p>23 that sort of thing.</p> <p>24 Q. Okay. All right. Let's talk about this</p> <p>25 incident that occurred involving you responding to this</p>
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<p>1 you to wait until the Spanish interpreter is done before</p> <p>2 responding and then respond in Spanish.</p> <p>3 A. That's fine.</p> <p>4 Q. Okay. Do you have any questions about the</p> <p>5 process, what we're doing today?</p> <p>6 A. Well, no.</p> <p>7 Q. Okay. So you have been in Las Vegas for 26 or</p> <p>8 so years?</p> <p>9 A. Approximately, yes.</p> <p>10 Q. Okay. Now, I understand you used to work for</p> <p>11 the Venetian; is that correct?</p> <p>12 A. Yes, that is correct.</p> <p>13 Q. And how long have you -- did you work for the</p> <p>14 Venetian?</p> <p>15 A. 18 years.</p> <p>16 Q. Okay. And what did you do during those</p> <p>17 18 years, what department did you work in?</p> <p>18 A. The PAD department.</p> <p>19 Q. PAD stands for Public Area Department?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. What does the Public Area Department do?</p> <p>22 A. Pick up trash, clean the restrooms, clean the</p> <p>23 casino area, and -- well, there's others.</p> <p>24 Q. Okay. And what did -- did you have a</p> <p>25 particular area that you were working in during those</p>	<p>1 incident that occurred on November 4, 2016.</p> <p>2 When did you first become aware of an incident</p> <p>3 on that date?</p> <p>4 A. Can you please explain that better?</p> <p>5 Q. Yes. Let me back up.</p> <p>6 How did you first become aware that there was a</p> <p>7 slip-and-fall at the Venetian?</p> <p>8 A. Oh, well, because my manager called me up and I</p> <p>9 was told that there was a spill by them. Yes.</p> <p>10 Q. Where were you at the time?</p> <p>11 A. I was working inside a restroom.</p> <p>12 Q. Okay. Were there other PAD coworkers with you</p> <p>13 when you received that call?</p> <p>14 A. Well, not at the time.</p> <p>15 Q. Okay. What did you do after you got the call?</p> <p>16 A. Well, immediately I took my bucket and my mop</p> <p>17 and I went to inspect the area.</p> <p>18 Q. Okay. What do you recall when you got to the</p> <p>19 area?</p> <p>20 A. Well, what I recall is that I inspected the</p> <p>21 area but I did not see a spill.</p> <p>22 Q. What were you -- why did you bring a mop and a</p> <p>23 bucket to the area?</p> <p>24 A. Because they said that water was there, but I</p> <p>25 did not see no water anywhere.</p>

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<p>1 Q. Who is "they"?</p> <p>2 A. Well, my manager, the one that called me, you</p> <p>3 know, on the radio.</p> <p>4 Q. Okay. Do you know who the manager was who</p> <p>5 called you?</p> <p>6 A. No, I don't remember that exactly.</p> <p>7 Q. Do you remember seeing the manager ever at the</p> <p>8 scene when you showed up with a mop and a bucket?</p> <p>9 A. No.</p> <p>10 Q. Do you remember other PAD members who were</p> <p>11 there at the scene with you?</p> <p>12 A. Yes, a person from PAD arrived. His name is</p> <p>13 Milan, and Maria.</p> <p>14 Q. Okay. So you arrived with a mop and a bucket?</p> <p>15 A. Correct.</p> <p>16 Q. And what did you do once you arrived with a mop</p> <p>17 and a bucket?</p> <p>18 A. Well, since there wasn't any water there, well,</p> <p>19 I just inspected around. And I did see a little bit of</p> <p>20 coffee like on some extreme [sic] somewhere there, and,</p> <p>21 well, that's what I ended up mopping.</p> <p>22 Q. Okay. Now, have you had a chance to watch the</p> <p>23 video related to this incident?</p> <p>24 A. Yes.</p> <p>25 Q. When did you first see the video of this --</p>	<p>1 look at it.</p> <p>2 George, I'll get in between the two of you.</p> <p>3 MR. KUNZ: Okay.</p> <p>4 BY MR. ROYAL:</p> <p>5 Q. I'm starting -- this is a video we've</p> <p>6 identified as VEN 019. And I'm going to back up just a</p> <p>7 little bit here. So I've got it as 12:39:27, I'm going</p> <p>8 to start it.</p> <p>9 Is this part of the video you remember</p> <p>10 watching?</p> <p>11 A. Yes.</p> <p>12 Q. Now I'm starting at 12:39:36.</p> <p>13 Do you see anyone you recognize at that</p> <p>14 particular point?</p> <p>15 A. Milan.</p> <p>16 Q. And Milan is looking down?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. You testified earlier that there was</p> <p>19 coffee on the floor somewhere?</p> <p>20 A. Yes.</p> <p>21 Q. Do you remember where?</p> <p>22 A. Approximately in the area, like, where Milan</p> <p>23 is, somewhere over there.</p> <p>24 Q. So the woman who is on the floor, it would be</p> <p>25 to her left?</p>
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<p>1 involving this particular incident?</p> <p>2 A. Well, when I was in the office with you.</p> <p>3 Q. Okay. And when was that?</p> <p>4 A. Maybe like two months ago.</p> <p>5 Q. Okay. All right. And at that particular time,</p> <p>6 how much of the video do you remember watching?</p> <p>7 A. Well, I mean, I saw there were a lot of people</p> <p>8 that were going by the area where, you know, the lady</p> <p>9 allegedly fell. And, in fact, coworkers and workers,</p> <p>10 you know, that went by there too.</p> <p>11 Q. Okay. Do you remember seeing any -- anyone</p> <p>12 spill anything in the area prior to the fall when you</p> <p>13 watched the video?</p> <p>14 A. No, there wasn't anything like that.</p> <p>15 Q. Did you see yourself responding to the</p> <p>16 incident?</p> <p>17 A. What do you mean? Explain that to me.</p> <p>18 Q. Okay. When you watched the video, did you see</p> <p>19 yourself coming to the scene with a mop and a bucket?</p> <p>20 A. Oh, yes, yes. Of course.</p> <p>21 Q. Okay. Let me ask you a few questions about the</p> <p>22 video. Okay?</p> <p>23 A. Very well.</p> <p>24 Q. One second here. I'm going to come over here</p> <p>25 and -- I'll turn it around this way; this way we can all</p>	<p>1 A. Yes.</p> <p>2 Q. All right. Now, I'm going to stop it at</p> <p>3 12:39:50.</p> <p>4 Is that you with the mop and a bucket?</p> <p>5 A. Yes.</p> <p>6 Q. And you see Maria?</p> <p>7 A. Yes.</p> <p>8 Q. Where is she?</p> <p>9 A. On the right side.</p> <p>10 Q. Okay. Now it's 12:39:55. I'm going to stop it</p> <p>11 there.</p> <p>12 Do you remember doing this?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. What are you looking for at this</p> <p>15 particular point?</p> <p>16 A. Supposedly at this point I'm looking for the</p> <p>17 water spill.</p> <p>18 Q. And at this point, what did you see? You just</p> <p>19 put the mop down at 12:39:56.</p> <p>20 A. On the ground?</p> <p>21 Q. Right.</p> <p>22 Why did you start mopping there?</p> <p>23 A. Well, because they were saying there was water</p> <p>24 there, but there was nothing there.</p> <p>25 Q. And now at 12:39:57, you see where your right</p>



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<p>1 foot is?</p> <p>2 A. Yes.</p> <p>3 Q. Why did you put your foot there?</p> <p>4 A. Well, because that's supposedly where they were</p> <p>5 saying that the water was at.</p> <p>6 Q. Okay. Why are you mopping over on the near</p> <p>7 side of the column?</p> <p>8 A. Sincerely, it was just to, you know -- I mean,</p> <p>9 I just did not see anything.</p> <p>10 Q. So I'm going to let this roll for just a little</p> <p>11 bit. You just said something to Milan. I'm stopping it</p> <p>12 at 12:40:03.</p> <p>13 Do you remember what you told him?</p> <p>14 A. To move because I was going to mop there a</p> <p>15 little bit because there was a little bit of coffee over</p> <p>16 there.</p> <p>17 Q. So when you were mopping -- you're mopping to</p> <p>18 the left of the woman who's on the floor at 12:40:03;</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And you're mopping there because why?</p> <p>22 A. Because there was, like, a little bit of coffee</p> <p>23 there.</p> <p>24 Q. Now, is this a wet mop or a dry mop?</p> <p>25 A. A wet mop.</p>	<p>1 as opposed to a wet mop?</p> <p>2 A. Because it's much faster to dry it up that way.</p> <p>3 Q. I see.</p> <p>4 Did you ever use a dry mop that you recall?</p> <p>5 A. At that moment, no. You can see it in the</p> <p>6 video. No, I just didn't have it with me.</p> <p>7 Q. Okay. So why -- at 12:40:23 you were putting</p> <p>8 the mop back in the bucket.</p> <p>9 Why did you do that?</p> <p>10 A. To squeeze it.</p> <p>11 Q. For what purpose? You're continuing to mop</p> <p>12 away from where the woman on -- where she fell, you're</p> <p>13 mopping way to her left on the other side of the column.</p> <p>14 Why are you doing that?</p> <p>15 A. Because supposedly -- because that area where</p> <p>16 they were saying the water was spilled, nothing was</p> <p>17 there. It was dry, so then I'm kind of, like, you know,</p> <p>18 going around the column.</p> <p>19 Q. Now, at 12:41:01 a guest starts to walk through</p> <p>20 this area where you've been mopping and you stopped him.</p> <p>21 Why did you do that?</p> <p>22 A. Because since the mop was moist, you know, that</p> <p>23 area, where I actually had just mopped, you know, it was</p> <p>24 somewhat moist. That's why.</p> <p>25 Q. What was Maria doing now at 12:41:22 -- or 23,</p>
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<p>1 Q. Okay. How do you typically respond to a spill?</p> <p>2 A. Well, it depends. Like if there's a lot of</p> <p>3 water, I take a dry mop.</p> <p>4 Q. Did you have a dry mop with you on this</p> <p>5 occasion?</p> <p>6 A. No, but I have one in storage.</p> <p>7 Q. Where is your storage located from this point?</p> <p>8 A. To the left side.</p> <p>9 Q. About how far away?</p> <p>10 A. Like two meters away.</p> <p>11 Q. Okay. So if you needed it, it was available to</p> <p>12 you?</p> <p>13 A. Correct.</p> <p>14 Q. All right. So let's say if you showed up</p> <p>15 before you started mopping with the wet mop and you saw</p> <p>16 a spill, what would your protocol be?</p> <p>17 A. Practically to leave the bucket in the area --</p> <p>18 if water would have been there, I leave it there, then I</p> <p>19 go to the restroom and then I grab the, you know -- my</p> <p>20 dry mop to, you know -- yeah, to clean the wet area.</p> <p>21 Q. So why would you use a dry mop to clean the wet</p> <p>22 area?</p> <p>23 THE INTERPRETER: Can you repeat the question?</p> <p>24 BY MR. ROYAL:</p> <p>25 Q. Why would you need a dry mop to clean an area</p>	<p>1 we see her with something on the floor.</p> <p>2 What is she doing?</p> <p>3 A. She has possibly -- it's a dry mop, and she's</p> <p>4 just trying to dry the area where I had just finished</p> <p>5 mopping.</p> <p>6 Q. Is that what you typically do?</p> <p>7 A. Well, sometimes yes. But sometimes no.</p> <p>8 Q. All right. Now, you just took the wet mop off</p> <p>9 at 12:41:32 and you're doing something else, you're</p> <p>10 putting another mop on.</p> <p>11 What are you doing there?</p> <p>12 A. Same thing. I am using the dry mop to just dry</p> <p>13 up the area where I had just gone by with the wet mop.</p> <p>14 Q. So we've continued watching this to 12:42:06.</p> <p>15 At this particular point, had you seen any</p> <p>16 spill on the floor other than the coffee that you made</p> <p>17 reference to?</p> <p>18 A. Just that, the coffee, nothing else, no.</p> <p>19 Q. I'm going to let this run.</p> <p>20 Now I'm going to stop it here at 12:42:53.</p> <p>21 See you're on the other side of the column from</p> <p>22 where the woman is on the floor?</p> <p>23 A. Yes.</p> <p>24 Q. Why are you cleaning way over there?</p> <p>25 A. Well, for the same reason, just in case there's</p>

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<p>1 something there, I am there to clean it.</p> <p>2 Q. At that point, had you seen anything on the</p> <p>3 floor other than the coffee?</p> <p>4 A. No.</p> <p>5 Q. I'm going to let it run some more. I'm going</p> <p>6 to stop it at 12:43:44 or 45.</p> <p>7 At that particular point, what are you doing?</p> <p>8 A. Well, I believe that there was, like, a little</p> <p>9 bit of coffee there, like, a little bit.</p> <p>10 Q. On the base of the column?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. At 12:44:47 the woman is standing.</p> <p>13 She's got her coffee and she's walking away and you and</p> <p>14 Maria stay at the area.</p> <p>15 What do you remember doing at that particular</p> <p>16 point once they leave?</p> <p>17 A. Well, just to remove the yellow signs.</p> <p>18 Q. Okay. At the time that they walked away from</p> <p>19 the scene, when you're standing with Maria, at 12:44:49</p> <p>20 of the tape -- or the video, had you seen anything on</p> <p>21 the floor to mop up other than the coffee?</p> <p>22 A. No. No.</p> <p>23 Q. I just have a few documents. I'm not sure how</p> <p>24 many of these I'm actually going to use.</p> <p>25 MR. KUNZ: Thank you.</p>	<p>1 part of Exhibit A, at 12:39:59.</p> <p>2 Do you see yourself in that photo?</p> <p>3 A. Yes, of course.</p> <p>4 Q. And is this part of the video we just reviewed</p> <p>5 where you were standing when you first started mopping?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And that's you with the mop?</p> <p>8 A. Yes, correct.</p> <p>9 Q. When you started mopping there, did you notice</p> <p>10 whether or not your right foot was standing in a puddle</p> <p>11 of water?</p> <p>12 A. No. No, there wasn't anything there.</p> <p>13 Q. Did you notice any water between your right</p> <p>14 foot at this particular time and the column?</p> <p>15 A. There was no water.</p> <p>16 Q. I'm just going to skip ahead to this picture</p> <p>17 here of 12:44:47 that we looked at in the video.</p> <p>18 Is that you standing with your arm resting on</p> <p>19 the column?</p> <p>20 A. Yes.</p> <p>21 Q. And you were facing Maria Cruz?</p> <p>22 A. Yes.</p> <p>23 Q. So at that particular point in the video, what</p> <p>24 had you noticed on the floor from the time you first</p> <p>25 appeared?</p>
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<p>1 BY MR. ROYAL:</p> <p>2 Q. These are actually stills from the video we</p> <p>3 just finished watching. I'm just going to mark these</p> <p>4 collectively as A, and I'll refer to them by the time</p> <p>5 stamp because they're not Bates-stamped.</p> <p>6 (Exhibit A was marked.)</p> <p>7 BY MR. ROYAL:</p> <p>8 Q. I'm going to show you a still from 12:39:50</p> <p>9 from the video we just watched.</p> <p>10 Do you see yourself in that still?</p> <p>11 A. Yes.</p> <p>12 Q. Where are you?</p> <p>13 A. On the right side.</p> <p>14 Q. Let me have you circle yourself. Just circle</p> <p>15 yourself.</p> <p>16 A. (Complies.)</p> <p>17 Q. I'm going to use a marker. Make a bigger</p> <p>18 circle with this dark pen, don't mark over yourself, and</p> <p>19 will you put your initial next to it.</p> <p>20 A. (Complies.)</p> <p>21 Q. Okay. Thank you.</p> <p>22 And at that point, where you just marked, you</p> <p>23 had the mop and the bucket?</p> <p>24 A. Yes.</p> <p>25 Q. I'm going to show you this next photo, which is</p>	<p>1 THE INTERPRETER: From the first time...</p> <p>2 BY MR. ROYAL:</p> <p>3 Q. The first time you first arrived on the scene.</p> <p>4 A. Well, the only thing I did see was somewhere</p> <p>5 over here way by this area there was a little bit of</p> <p>6 coffee.</p> <p>7 Q. Okay. So I am going to -- I'm going to show</p> <p>8 you a photo that is a still from 12:40:37 from the</p> <p>9 video.</p> <p>10 Can you identify the area where you saw coffee?</p> <p>11 A. Well, yes, somewhere on the left side of the</p> <p>12 lady, like way over here.</p> <p>13 Q. Can I have you mark where you just pointed?</p> <p>14 A. (Complies.)</p> <p>15 Q. Can you write "coffee" in the middle, if you</p> <p>16 can?</p> <p>17 A. (Complies.)</p> <p>18 Q. You wrote "cafe," is that "coffee" in Spanish?</p> <p>19 A. Yes, that's right, sir.</p> <p>20 Q. Can you put your initials next to that outside</p> <p>21 the circle?</p> <p>22 A. (Complies.)</p> <p>23 Q. Thank you.</p> <p>24 Did you report back to your manager after this</p> <p>25 incident?</p>

Page 21	Page 23
<p>1 A. Yes.</p> <p>2 Q. What did you tell your manager, if you</p> <p>3 remember?</p> <p>4 A. Well, the only thing that I told them was there</p> <p>5 was no spill there.</p> <p>6 Q. Is there anything else?</p> <p>7 A. Well, that the only thing that was there was</p> <p>8 just a little bit of coffee.</p> <p>9 Q. Okay. And that would be in the area that you</p> <p>10 marked on Exhibit A and wrote "cafe"?</p> <p>11 A. Yes.</p> <p>12 MR. ROYAL: All right. Thank you.</p> <p>13 MR. KUNZ: Just a couple of questions.</p> <p>14</p> <p>15 EXAMINATION</p> <p>16 BY MR. KUNZ:</p> <p>17 Q. We won't be much longer, but I need to ask you</p> <p>18 a couple of questions.</p> <p>19 The mop buckets that you use, how many parts</p> <p>20 are there to that? How many parts to the mop bucket are</p> <p>21 there?</p> <p>22 A. It has two parts.</p> <p>23 Q. What are they?</p> <p>24 A. The one that contains the water and then the</p> <p>25 one where you squeeze it.</p>	<p>1 A. No. No.</p> <p>2 Q. Why did you put it in the wringer?</p> <p>3 A. Because of the same thing, because I need --</p> <p>4 it's a public area and it has to be as dry as possible</p> <p>5 or somewhat moist, you know, so that you can mop around.</p> <p>6 Q. But I thought the area was already dry?</p> <p>7 A. What area?</p> <p>8 Q. The area where you mopped.</p> <p>9 A. No, I'm not understanding.</p> <p>10 Q. So is it my question or is it something else?</p> <p>11 A. According to the question you are asking me,</p> <p>12 that's it.</p> <p>13 Q. So you didn't see any -- you didn't see any</p> <p>14 water before you used the mop on that area and you wrung</p> <p>15 the mop out again even if there was no water on the</p> <p>16 floor?</p> <p>17 A. That is correct.</p> <p>18 Q. Okay.</p> <p>19 MR. KUNZ: Thank you. That's all I have.</p> <p>20 MR. ROYAL: Give me one second.</p> <p>21</p> <p>22 EXAMINATION</p> <p>23 BY MR. ROYAL:</p> <p>24 Q. I just want to be clear about your process, so</p> <p>25 we are going to look at this again. So again at</p>
Page 22	Page 24
<p>1 Q. Would that be called a wringer?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now, when you came to the scene of the</p> <p>4 spill, was the mop in the wringer or in the bucket?</p> <p>5 A. In the wringer.</p> <p>6 Q. Why was it in the wringer?</p> <p>7 A. Because I had just used it beforehand in the</p> <p>8 restroom.</p> <p>9 Q. And when you use a wringer, what do you do to</p> <p>10 the mop?</p> <p>11 A. Well, the word says it itself, you wring out</p> <p>12 the water.</p> <p>13 Q. So you're taking the water out of the mop?</p> <p>14 A. Correct.</p> <p>15 Q. So you took the mop out of the wringer and you</p> <p>16 mopped the area near where Ms. Sekera fell; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And then after that, you wrung the mop in the</p> <p>19 wringer several times; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And why was that?</p> <p>22 A. It's logical that I had to squeeze it every</p> <p>23 time more to make it drier.</p> <p>24 Q. Okay. So when you put the mop back in the</p> <p>25 wringer, it was wet?</p>	<p>1 12:39:53 we'll start the video, VEN 019.</p> <p>2 Now, we've already established you're stepping</p> <p>3 right in the area with your right foot, and at that</p> <p>4 particular time where I stopped it at 12:40:03, you</p> <p>5 don't recall there being anything there?</p> <p>6 A. No, nothing was there.</p> <p>7 Q. Okay. You wouldn't step in a spill while</p> <p>8 you're cleaning it up?</p> <p>9 A. That is correct.</p> <p>10 Q. All right. So you do some initial cleaning?</p> <p>11 A. Yes.</p> <p>12 Q. And then at 12:40:19, you put the mop back in</p> <p>13 the wringer and you wring it out.</p> <p>14 So why did you do that?</p> <p>15 A. Because for the same reason that I actually</p> <p>16 need to squeeze it really well, because that area is a</p> <p>17 public area and I just need for it to be -- that area to</p> <p>18 be drier much faster.</p> <p>19 Q. Okay. But why did you put the mop back into</p> <p>20 the -- strike that.</p> <p>21 Did you put the mop in water? What did you do</p> <p>22 when you put it back? I'm going to go back so I can</p> <p>23 tell.</p> <p>24 A. No. No. I just squeezed it.</p> <p>25 Q. Okay. So why do that?</p>

Page 25	Page 27
<p>1 A. Because I had used it previously and then I</p> <p>2 came over, so the mop was already wet from before.</p> <p>3 Q. All right. So you put it in the wringer the</p> <p>4 first time after you started mopping because you just</p> <p>5 wanted it to be drier?</p> <p>6 A. That is correct.</p> <p>7 Q. Did you put it in the wringer because it was</p> <p>8 soaking up water from the floor?</p> <p>9 A. There was no water on the floor.</p> <p>10 Q. Okay. So there are other people who have</p> <p>11 testified in this case based on what they saw you do on</p> <p>12 the video who have concluded because of what they saw</p> <p>13 you do on the video, that there must have been a spill.</p> <p>14 I want to be very clear about what we see on</p> <p>15 the video you doing once you show up at the scene, and</p> <p>16 what other people think you did based on what they see</p> <p>17 on the video.</p> <p>18 So I want you to tell us, did you clean up any</p> <p>19 water?</p> <p>20 A. No.</p> <p>21 Q. So the only thing that you cleaned up while you</p> <p>22 were there was what you indicated in Exhibit A as</p> <p>23 "cafe"; is that correct?</p> <p>24 A. Yes.</p> <p>25 MR. ROYAL: That's all.</p>	<p>1 around the whole area just in case there was something</p> <p>2 there.</p> <p>3 Q. Did you wring it the first time after you</p> <p>4 started mopping because it was soaking up water that you</p> <p>5 were mopping from the floor?</p> <p>6 A. No. No. Nothing -- no water -- water was not</p> <p>7 there. It's just that that area I have to make sure</p> <p>8 that I just wring it up really well.</p> <p>9 Q. So you started mopping when you first arrived</p> <p>10 and after mopping for a few seconds, you decide it</p> <p>11 needed to be drier?</p> <p>12 A. That is correct.</p> <p>13 MR. ROYAL: All right. I don't have anything</p> <p>14 further.</p> <p>15 MR. KUNZ: I'm good.</p> <p>16 MR. ROYAL: How do you say that's it?</p> <p>17 THE INTERPRETER: Es todo (Spanish).</p> <p>18 THE WITNESS: That's all for today.</p> <p>19 MR. ROYAL: You'll be notified when the</p> <p>20 transcript is ready to review, and you'll have 30 days</p> <p>21 in which to review it where you can make changes to it</p> <p>22 if you remember something different later.</p> <p>23 You can waive your right to do that or you can</p> <p>24 just reserve your right and the court reporter will let</p> <p>25 you know when it's available.</p>
Page 26	Page 28
<p>1 MR. KUNZ: Just a follow-up.</p> <p>2</p> <p>3 EXAMINATION</p> <p>4 BY MR. KUNZ:</p> <p>5 Q. So just so I can get clear in my own mind, and</p> <p>6 we won't be much longer.</p> <p>7 When you brought the mop over, it was in the</p> <p>8 wringer and you had wrung it out before; correct?</p> <p>9 A. Yes.</p> <p>10 Q. You mopped the floor where the fall occurred</p> <p>11 and you thought you should mop -- you should wring the</p> <p>12 mop again; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Based on your experience working there?</p> <p>15 A. Correct.</p> <p>16 MR. KUNZ: That's all I have. Thank you.</p> <p>17</p> <p>18 EXAMINATION</p> <p>19 BY MR. ROYAL:</p> <p>20 Q. And again, why did you wring it out after</p> <p>21 mopping the first time?</p> <p>22 A. For the same reason, that the mop has to be</p> <p>23 really wrung out because since it's a public area and</p> <p>24 what happened -- if you saw the area -- you saw the</p> <p>25 video, that I went around and I just kind of mopped</p>	<p>1 THE WITNESS: That's fine.</p> <p>2 MR. ROYAL: Okay. We're done.</p> <p>3 MR. KUNZ: Okay.</p> <p>4 THE COURT REPORTER: Mr. Kunz, do you need this</p> <p>5 transcript?</p> <p>6 MR. KUNZ: A regular and a mini, please.</p> <p>7 (The proceedings concluded at 10:49 a.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON
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\* \* \* \* \*

I, David A. Martinez, deponent herein, do certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

DAVID A. MARTINEZ, Deponent

This \_\_\_\_ day of \_\_\_\_\_, 2019.

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### REPORTER'S CERTIFICATE

STATE OF NEVADA )

COUNTY OF CLARK )  
ss: )

I, Blanca I. Cano, CCR No. 861, RPR, do hereby declare:

That I reported the taking of the deposition of  
DAVID A. MARTINEZ, commencing on Friday, July 26, 2019.

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

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true, and accurate transcription of my said shorthand notes, and that a request has been made to review the transcript.

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

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this 7th  
day of August 2019.

Blanca I. Cano, CCR No. 861, RPR

# EXHIBIT “H”





1 **ROPP**  
2 Peter Goldstein, Esq. (SBN 6992)  
3 **PETER GOLDSTEIN LAW CORPORATION**  
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7 Tel: 702.474.6400  
8 Fax: 888.400.8799  
9 Attorney for Plaintiff  
10 **CAROL SMITH**

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 CAROL SMITH, an individual,

10 Plaintiff,

11 vs.

12 VENETIAN CASINO RESORT, LLC; and  
13 DOES 1 through 50, inclusive,

14 Defendants.  
15  
16  
17  
18  
19

Case No.: A-17-753362-C

Dept. No.: X

Discovery Commissioner

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

Date of Hearing: March 20, 2019

Time of Hearing: 9:00 a.m.

20 Plaintiff, CAROL SMITH, by and through her attorney of record, PETER GOLDSTEIN, ESQ.,  
21 hereby submit Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's  
22 Motion for Termination Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant to  
23 NRCP Rule 37.  
24

25 Dated: 3.12.19

PETER GOLDSTEIN LAW CORPORATION

26 BY:   
27 PETER GOLDSTEIN, ESQ.  
28 Attorney for Plaintiff

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

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

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



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

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

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

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

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



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

4         Similar to the Defendant's Opposition to Plaintiff's Motion for Disqualification, it rambles  
5 between ad hominem attacks without any semblance of organized or cogent points and authorities. For  
6 example, Defendant attack on Plaintiff's expert, Fred Hueston has nothing to do with the issues  
7 presented in Plaintiff's Motion. Defendant falsely accuses Plaintiff of concealing information from the  
8 Court without any basis. Fred Hueston's expert testimony concerns his opinions about the treatment,  
9 maintenance and application of polymer to the marble floor in order to increase friction coefficient. He  
10 is not testifying as an expert about anything other than his expertise in the area of marble flooring  
11 treatment and maintenance. One of his opinions is that the product which Defendant utilizes to clean the  
12 marble floors is V2, but after cleaning they fail to apply the V3 polymer which the manufacturer  
13 recommends to help traction. This was admitted by defendant in its response to Request for Admissions,  
14 set 3.  
15

16         Defendant argues that the main line of questioning of Plaintiff's expert was the number of  
17 incidents and gratuitously inserted an argument without any evidentiary support that the marble floors  
18 were built within building codes which have been approved. This is unsupported hyperbole and lacks  
19 evidentiary support.  
20

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

1 *Inc.*, 109 Nev. 247, 849 P.2d 320 (1993). However, the Nevada Supreme Court first departed from  
2 tradition in *Sprague*, based on an approach near identical to the mode of operations. Even in the absence  
3 of constructive notice, the court looked at Lucky's "chronic hazard" from its self-service produce area.  
4 Continual debris from falling items onto the store's floor required more than sweeping; rather, a jury  
5 could continue that further precautions were necessary. In *FGA, Inc. v. Giglio*, 278 P.3d 490, 128 Nev.  
6 Adv. Op. 26 (Nev. June 14, 2012), the Nevada Supreme Court stated it had "implicitly adopted the mode  
7 of operation approach" with its *Sprague* ruling. *Id.*, 278 P.3d at 497.  
8  
9

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

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

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



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

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

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

23 The United States Supreme Court stated that:  
24

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



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

2  
3 Defendant clearly found that it was better to be deceitful and attempt to hide evidence that would  
4 harm their case than comply with discovery orders.  
5  
6  
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9

10 DATED: 3.12.19

LAW OFFICES OF PETER GOLDSTEIN

BY: 

PETER GOLDSTEIN, ESQ.  
Attorney for Plaintiff

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1. I am an attorney duly licensed to practice law in Nevada and am counsel of record for Plaintiff. I have personal knowledge of all matters stated herein that I know to be true
2. Exhibit 7 is Defendant's Response to Request for Production of Documents in *Sekera v. Venetian*.
3. Exhibit 8 is Defendant's Supplemental Response to Request for Production of Documents in *Sekera v. Venetian*.
4. Exhibit 9 is a true and correct copy of Defendants' Ninth Supplemental Disclosures in *Smith v. Venetian*.
5. Exhibit 10 is a CD of 660 bates stamped pages of documents produced by Defendant in *Sekera v. Venetian*.
6. Exhibit 11 is a detailed spreadsheet of incident reports disclosed in both the *Sekera v. Venetian* and *Smith v. Venetian* cases.

Dated March 12, 2019 at Las Vegas, Nevada.

Signed:   
Peter Goldstein, Declarant

1  
2 **CERTIFICATE OF SERVICE**  
3

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

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

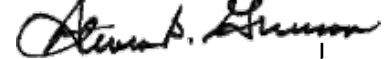
17 Michael Edwards  
18 Lisa Thayer  
19 Lani Maile  
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Attorney for Venetian Casino Resort, LLC

26  
27 3/12/19  
28 Date

Jocelynn Jordan  
Jocelynn Jordan

An employee of the Law Office of Peter Goldstein

# EXHIBIT “I”



**ORDER**

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

**ROYAL & MILES LLP**

1522 West Warm Springs Road

Henderson Nevada 89014

Tel: (702) 471-6777

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*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.: 24

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

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

**ROYAL & MILES LLP**

1522 W Warm Springs Road

Henderson NV 89014

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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        1.     Plaintiff's request that Venetian produce evidence of coefficient of friction testing is  
2               limited to the Grand Lux rotunda dome area from November 4, 2011 to November 4,  
3               2016 to the extent it was disclosed pursuant to NRCP 16.1 and which is not otherwise  
4               protected in accordance with NRCP 26;  
5        2.     Plaintiff's request that Venetian produce evidence of changes to the casino level  
6               flooring is limited to the Grand Lux rotunda dome area from November 4, 2011 to  
7               November 4, 2016;  
8        3.     Plaintiff's request for evidence of other incidents extends to all slip and falls on marble  
9               flooring on the Venetian casino level and limited in time from November 4, 2011 to the  
10              present; and  
11        4.     All documents produced by Venetian related to incident reports from November 4,  
12              2011 to the present are to be produced unredacted without protections sought by  
13              Venetian under NRCP 26(c).  
14  
15

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

18            IT IS FURTHER HEREBY ORDERED that the DCRR is hereby modified and adopted as  
19 follows: Venetian must produce prior incident reports limited to the Grand Lux rotunda dome area  
20 from November 4, 2011 to November 4, 2016. Plaintiff's request for documents outside this given  
21 scope is hereby DENIED.  
22

23            ///

24            ///

25            ///

26

27

28

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.

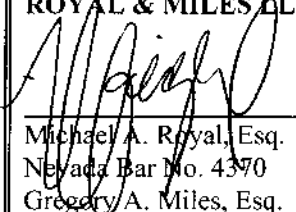
6 DATED this 11<sup>th</sup> day of March, 2020.

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:

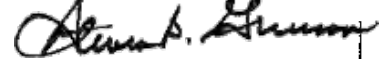
21 **CLAGGETT & SYKES LAW FIRM**

22 Sean K. Claggett, Esq.  
23 William T. Sykes, Esq.  
24 Geordan G. Logan, Esq.  
25 CLAGGETT & SYKES LAW FIRM  
26 4101 Meadows Lane, Suite 100  
27 Las Vegas, NV 89107  
28 Attorneys for Plaintiff

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Las Vegas, NV 89014  
Attorneys for Plaintiff

# EXHIBIT “J”



1 **OBJ**

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

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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;

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,

*Hearing Requested*

27 Defendants.

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

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

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

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

3 DATED this 16 day of December, 2019.

4 **ROYAL & MILES LLP**

5  
6 By 

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

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I.**

16 **NATURE OF OBJECTION**

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

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

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

16 **II.**

17 **DECLARATION OF MICHAEL A. ROYAL**

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

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

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

26       ///

27       ///

28



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

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

DATED this 16 day of December, 2019.

MICHAEL A. ROYAL

III.

### PERTINENT FACTS AND EVIDENCE

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

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

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

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

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

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

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

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

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

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

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

### 18 III.

### 19 DISCUSSION

#### 20 A. Standard of Review

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

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

1 Plaintiff must therefore demonstrate that the desired discovery is **relevant** to her claims here  
2 and that it is **proportional** to the needs of the case with five factors: 1) importance of issues at stake;  
3 2) amount in controversy; 3) parties' relative access to relevant information; 4) parties' resources; the  
4 importance of the discovery in resolving contested issues; and 5) the burden of proposed discovery vs.  
5 the likely benefit.  
6

7 1. **Relevancy**

8 Under the first prong of this test, for information to be discoverable, it must be "relevant to any  
9 party's claim or defense." (*Id.*) The phrase "reasonably calculated to lead to the discovery of  
10 admissible evidence" has been omitted from the previous rule. The word "relevant" has been provided  
11 as one of the driving factors in weighing discovery issues.  
12

13 Recall that Plaintiff was not a normal guest/patron of the Venetian property at the time of the  
14 incident, but was instead a pseudo employee, someone assigned a Venetian employee parking pass and  
15 ID badge to gain special access to the property. She worked on property for nearly a year prior to the  
16 incident and, as discussed further herein, Plaintiff walked the Grand Lux rotunda area many hundreds  
17 of times without incident until November 4, 2016 - the only difference being the alleged existence of  
18 a foreign substance reportedly causing her to fall.  
19

20 What is "relevant" about incidents occurring anywhere other than the Grand Lux rotunda area  
21 where Plaintiff fell? It is an area of which Plaintiff was extremely familiar in the course of her  
22 employment. There is no evidence that Plaintiff routinely ventured into any other areas of the Venetian  
23 property - to the contrary, it was her daily routine to traverse the Grand Lux rotunda area. What may  
24 have occurred in areas outside the Grand Lux rotunda area or on occasions following the subject  
25 incident is simply not "relevant".  
26

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

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

4           2.     **Proportionality**

5           Even if the Court deems the information "relevant", that alone is insufficient. Under the second  
6 part of the NRCP 26(b)(1) test, to be discoverable, information must be "proportional to the needs of  
7 the case." The rule provides six factors to consider: 1) "the importance of the issues at stake in action";  
8 2) "the amount in controversy"; 3) "the parties' relative access to relevant information"; 4) "the parties'  
9 resources; 5) the importance of the discovery in resolving the issues" and 6) "whether the burden or  
10 expense of the proposed discovery outweighs its likely benefit." Defendants have previously produced  
11 a total of sixty-eight (68) prior incident reports and Plaintiff claims to have a total of 196.<sup>1</sup> Requiring  
12 Defendants to produce additional prior incident reports beyond the Grand Lux rotunda area and beyond  
13 the date of the subject incident serves no good purpose other than to burden and harass Defendants.  
14

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11  
12  
13 V.

14 **CONCLUSION**

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

21 DATED this 16 day of December, 2019.

22  
23 **ROYAL & MILES LLP**

24 By 

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



**CERTIFICATE OF SERVICE**

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

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

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

\_\_\_\_\_ to be served via facsimile; and/or

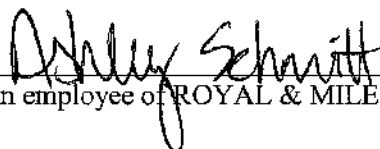
☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

\_\_\_\_\_ to be hand delivered;

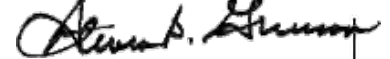
to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

Keith E. Galliher, Jr., Esq.  
THE GALLIHER LAW FIRM  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, NV 89104  
*Attorneys for Plaintiff*  
Facsimile: 702-735-0204  
E-Service: all registered parties

Sean K. Claggett, Esq.  
William T. Sykes, Esq.  
Geordan G. Logan, Esq.  
CLAGGETT & SYKES LAW FIRM  
4101 Meadows Lane, Suite 100  
Las Vegas, NV 89107  
*Co-Counsel for Plaintiff*  
Facsimile: 702-655-3763  
E-Service: all registered parties

  
An employee of ROYAL & MILES LLP

# EXHIBIT “K”



**DCRR**

Michael A. Royal, Esq.  
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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,

v.

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

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATION**

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

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

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

I.

FINDINGS

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

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

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

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

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

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**II.**

**RECOMMENDATIONS**

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

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

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

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

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

///

///

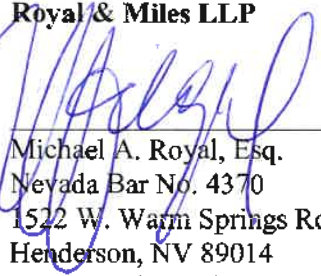
1 IT IS FURTHER RECOMMENDED that the motion is otherwise denied.

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

Reviewed by:

THE GALLIHER LAW FIRM

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



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

2 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

3  
4 \_\_\_\_\_  
DISCOVERY COMMISSIONER

5 Submitted by:

6 **Royal & Miles LLP**

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

Reviewed by:

THE GALLIHER LAW FIRM

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

1  
2  
3  
4  
5 **NOTICE**

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

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

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

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

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

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

21  
22 By:   
23 COMMISSIONER DESIGNEE  
24  
25  
26  
27  
28

# EXHIBIT “L”

DISTRICT COURT  
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF JOSEPH LARSON

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

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

Reported By: PAULINE C. MAY  
CCR 286, RPR

1 APPEARANCES:

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

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

15 \* \* \* \* \*

17 I N D E X

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

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

25 -o0o-

JOSEPH LARSON 10/11/2018

Page 3

Page 5

1 (Plaintiff's Exhibits 1 and 2 marked for  
2 identification.)  
3 JOSEPH LARSON,  
4 having been first duly sworn to tell the truth, the  
5 whole truth and nothing but the truth, was examined  
6 and testified as follows:  
7

8 EXAMINATION

9 BY MR. GALLIHER:  
10 Q Would you state your name, please.  
11 A Joseph Larson.  
12 Q Your business address.  
13 A I don't have one.  
14 Q All right. Your home address.  
15 A 3339 Horned Lark -- H-o-r-n-e-d, space,  
16 L-a-r-k -- Court, Las Vegas, Nevada 89117.  
17 Q Have you ever had your deposition taken  
18 before?  
19 A Yes.  
20 Q Do you understand today that you are under  
21 oath?  
22 A Yes.  
23 Q The oath you've taken carries with it the  
24 same solemnity as if you were testifying in court  
25 before a judge and a jury?

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

Page 4

Page 6

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

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

3 (Pages 3 to 6)

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

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

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

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



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

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

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

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

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

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

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

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

1 A Nothing officially, unless he would have  
2 done a voluntary statement. But if the officer that  
3 was on scene before me, if he didn't actually witness  
4 anything and was just responding, we wouldn't ask him  
5 to write a voluntary statement.  
6 Q Do you have a recollection of whether or not  
7 there was an officer there before you arrived?  
8 A I'm not sure.  
9 Q If there was an officer there before you  
10 arrived, would that information be contained in the  
11 report that we have just talked about?  
12 A If he wasn't a witness to the incident, I  
13 wouldn't have included him.  
14 Q And what about witnesses to the fall? Is  
15 that something that you would have taken care of in  
16 terms of interviewing and getting statements from  
17 them?  
18 A Potentially, yes, if we had identified any  
19 witnesses. But at that time, I was more concerned  
20 about her well being.  
21 Q So would it be fair to state that your focus  
22 was on caring for Joyce Sekera as a result of her  
23 injuries from the fall, rather than locating and  
24 obtaining statements from witnesses?  
25 A Yeah. That's my primary duty.

1 A Yes.  
2 Q Is there any type of rule that a person  
3 can't walk through the Venetian with a drink in their  
4 hand?  
5 A As far as I know, we didn't have any rules  
6 like that.  
7 Q In other words, if I were a customer at the  
8 Venetian and I decided to buy a bottle of water or a  
9 drink from one of the businesses located nearby, I  
10 decided to walk through the Venetian, would you stop  
11 me and tell me I couldn't drink?  
12 A No.  
13 Q So as far as you know, there's no  
14 prohibition at the Venetian that would make it -- not  
15 unlawful, but some cause for stopping a customer  
16 saying, Hey, you can't drink that here?  
17 A The only provision that I'm aware of -- in  
18 fact, I don't even know if I would call it that. Call  
19 it policy. There was a policy on having an actual  
20 bottle of liquor. Like a bottle of Jack Daniels, say  
21 for example, you couldn't walk around with that. A  
22 simple beer, simple drink, would be fine, but no  
23 actual, like, bottles of hard liquor you could get at  
24 a convenience store.  
25 Q And you are aware that you can buy hard

1 Q And you don't recall whether or not there  
2 was any other security officer at the scene of the  
3 fall to help you to the extent of contacting  
4 witnesses, if there were any, and getting statements  
5 from them?  
6 A I don't recall if there was other officers  
7 there.  
8 Q If there were statements taken, is that  
9 something that would be part of her?  
10 A If a statement was taken, yes.  
11 Q And when you reviewed the report in  
12 connection with today's deposition, the only  
13 information that you reviewed is the information that  
14 we have previously discussed in this report?  
15 A Correct.  
16 Q There was nothing else in the file that you  
17 saw, other than this report and your photographs?  
18 A Correct.  
19 Q As far as you know, there were no other  
20 witnesses that were identified or statements obtained  
21 from?  
22 A Correct.  
23 Q Now, you were at the Venetian in the  
24 security department part as an EMT for approximately  
25 nine years?

1 liquor inside the convenience store at the Venetian?  
2 A Yes.  
3 Q So the fall occurred near the restroom  
4 adjacent to the Grand Lux Cafe; right?  
5 A Correct.  
6 Q That's a marble floor?  
7 A Correct.  
8 Q Is that the first fall that you were aware  
9 of on a marble floor at the Venetian when you worked  
10 there?  
11 A First fall?  
12 Q Yes, ever.  
13 A No, that wasn't the first.  
14 Q Give me an idea of how many falls you  
15 personally attended to when you were at the Venetian  
16 in security.  
17 A Like an actual number?  
18 MR. ROYAL: I'm sorry --  
19 BY MR. GALLIHER:  
20 Q I'm asking for your best estimate.  
21 MR. ROYAL: Are you asking falls on marble  
22 floors or just any falls?  
23 BY MR. GALLIHER:  
24 Q We can clarify that after he answers the  
25 first question and I can go from there.

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

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

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

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

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

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

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

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

9 (Pages 27 to 30)

1 Q So at least as you testify here today, you  
2 are unable to give me any quantification, so to speak,  
3 of what percentage of falls you investigated at the  
4 Venetian versus the Palazzo?

5 A I -- I would be unable to.

6 Q And that includes slip-and-falls?

7 A Correct.

8 Q And I think we have established previously  
9 there was roughly 175 slip-and-fall events that you  
10 personally investigated?

11 A My estimate; yes.

12 Q And 80 percent of the time the people were  
13 injured?

14 A Correct.

15 Q Now, you said there were two EMTs per shift.  
16 Was that at the Venetian, Palazzo or both?

17 A Both.

18 Q So was it two plus two equals four or just  
19 two together?

20 A Correct. And depending on scheduling and  
21 depending on the shift, some shifts had more EMTs than  
22 others. On day shift and the shift I worked, it was  
23 between two and three EMTs.

24 Q So was it between two and three EMTs for the  
25 Venetian?

1 A That would fall on the shift manager or the  
2 assistant shift manager.

3 Q When you say shift manager or assistant  
4 shift manager, is that of the security department?

5 A Yes.

6 Q And do you remember the names of the  
7 security manager or assistant security manager while  
8 you were there?

9 A George Valley(phonetic) would have been --  
10 November 2016, George Valley would have been the shift  
11 manager. Michael Dean I think was a new addition at  
12 that time, if I recall correctly, and I think Jacob  
13 Johnson was the other assistant manager.

14 Q Let me shift gears again, go downstairs.  
15 We're adjacent to the area where the fall happened,  
16 which is next to the restroom areas by the Grand Lux  
17 Cafe.

18 With me?

19 A Yes.

20 Q Do you know whether or not there are any  
21 businesses in, let's say, within a 100-foot radius of  
22 where the fall occurred that sell drinks?

23 A There would be -- at Grand Lux Cafe, they  
24 had a small bistro.

25 Q Bakery?

1 A Yes, and that just depends on scheduling.

2 But more often than not, it was two.

3 Q What about the swing shift when -- I  
4 presume -- a casino was busier, was there more EMTs?

5 A The Venetian had four EMTs scheduled, you  
6 know, with varying days off. The Palazzo had three  
7 and then that switched for overnight. The Venetian  
8 had three EMTs on their overnight, the Palazzo had  
9 four EMTs on their overnight.

10 Q What was the reason for that?

11 A I don't know.

12 Q You weren't part of the plan?

13 A No. Yeah, I didn't schedule anything.

14 Q So the total number of EMT security  
15 officers, such as yourself, at the Venetian would vary  
16 between two and four depending upon the shift --

17 A Correct.

18 Q -- and the conditions?

19 For example, if there was a major convention  
20 there, I would presume they would have more EMTs on  
21 the shift than the normal EMTs because of the volume  
22 of customers.

23 A Depending on the day, yeah, it would change.

24 Q And who was responsible for scheduling the  
25 EMT security officers?

1 A Like a bakery where you could order coffee  
2 or a pastry.

3 Q Water?

4 A Probably. I never shopped there.

5 Q And if you walked down the hallway to the  
6 left past the restrooms, is there a food court?

7 A There is a food court around the corner.

8 Q Do you know how many businesses occupy the  
9 food court?

10 A I don't know.

11 Q And then as you walk past the food court  
12 around the corner, there is Bouchon Bakery?

13 A Bouchon Bakery, that would be the opposite  
14 direction of the food court.

15 Q What I'm getting at is this -- I'll try to  
16 show you with my hand as best I can. We've got the  
17 Grand Lux Cafe. To the immediate -- as we face it to  
18 the immediate left, we've got the bakery.

19 A Yes.

20 Q And then to the immediate right, we've got  
21 the restrooms?

22 A All the way to the right; yes.

23 Q And then past the restrooms to the right, as  
24 you walk down that hallway, you've got the food court?

25 A Yes.

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

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

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

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



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

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

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

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

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

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

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

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

1 lateral back pain would be also just left back side.  
 2 So I mean it could be any number of things if she  
 3 landed on at the base of the pillar.  
 4 What it would indicate to me is she maybe  
 5 made contact there and she maybe wasn't feeling it  
 6 because maybe the pain in her elbow was masking other  
 7 pain.  
 8 Because I did notate a little below that  
 9 that there was an increase, there's an arrow up and  
 10 seven out of 10, that was her pain in the area at the  
 11 time.  
 12 Q Pain for what?  
 13 A At the left elbow.  
 14 Q Did she give you a pain -- degree of pain in  
 15 anything other than the left elbow, that seven out of  
 16 10?  
 17 A No.  
 18 Q She didn't rate this back pain?  
 19 A No.  
 20 Q This lateral back pain, was that -- did she  
 21 explain about that after you had already done your  
 22 palpation? Was it during when you were palpating the  
 23 spine?  
 24 A That would have been towards the end. It's  
 25 stated in the narrative.

1 Q Did Ms. Sekera indicate to you she had  
 2 observed any spill at any time, that you recall?  
 3 A She said she had slipped and -- I think what  
 4 I said in the report was that something like water,  
 5 but I never observed what she stated she slipped in.  
 6 Q Okay. Let's go through the rest of this on  
 7 017.  
 8 A So continuing, that's "RX," which would be  
 9 treatment, which is splint to left elbow, slash FA,  
 10 which is forearm. And below that is positive CMS  
 11 which is -- what that indicates is after we apply a  
 12 splint to somebody, we want to reassess their injury  
 13 and anything distal or further down the body, so that  
 14 would be the fingertips.  
 15 So we would reevaluate CMS at the fingertips  
 16 again after the splint to make sure the splint isn't  
 17 doing any damage or hindering anything.  
 18 After that it goes negative triangle, which  
 19 is delta or change. So negative change. There is a  
 20 "P" with a line above it that's post, after. So  
 21 negative change after application.  
 22 And then that's negative HX, which is  
 23 history.  
 24 Q What does that mean?  
 25 A That would be no history of injury to that

1 Q Okay, we'll go to the narrative. That's  
 2 okay. Let's just read the rest of this as we can.  
 3 So there's -- go ahead and read it, what you  
 4 can. I realize a little bit's cut off here, but to  
 5 the degree you can just read the rest of it, under  
 6 where it says left flank.  
 7 A Okay. So at the angle, that's positive  
 8 video, and I'm not sure if that's from surveillance or  
 9 security control. It would be one of those two  
 10 entities that told me that we had video of the  
 11 incident. And below that is just kind of the quick  
 12 notes I took while they were talking to me on the  
 13 phone which would be left foot slipped, 30 minutes  
 14 prior, no spill, below that.  
 15 Q Do you know what that means?  
 16 A That would have been -- they reviewed  
 17 coverage 30 minutes before the fall and they said no  
 18 spill was observed.  
 19 MR. GALLIHER: And I'll allow the testimony,  
 20 but it's hearsay. But you can go ahead and answer.  
 21 THE WITNESS: But they didn't observe any  
 22 spill in the video footage.  
 23 BY MR. ROYAL:  
 24 Q Did you ever observe any spill?  
 25 A I did not see any wet areas.

1 elbow.  
 2 Q Prior to the fall?  
 3 A Correct.  
 4 Q And that's information obtained from where?  
 5 A The assessment interview, speaking with her.  
 6 Q Okay. So let's go to, still on Exhibit 1,  
 7 VEN006. You asked about -- this was called the case  
 8 MO, and you were asked about I guess how you put this  
 9 information together. You said you checked boxes.  
 10 A Correct.  
 11 Q On a computer program you used?  
 12 A Correct.  
 13 Q When did you complete this report? Did it  
 14 say here?  
 15 Look at the VEN006 at the bottom by your  
 16 name. It says date and time, it says 15:30. What's  
 17 that?  
 18 A That would be November 4, 2016, at 3:30 p.m.  
 19 That, I believe -- and I'm not 100-percent sure  
 20 because I normally don't see these printouts. These  
 21 aren't what we normally look at in the report system,  
 22 but I think that's the time the report was submitted.  
 23 Q So if that's accurate, you would have  
 24 prepared this report within two hours of clearing?  
 25 A Correct.

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

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

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

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

1 beyond saying it was on the floor? Did she describe  
2 it? Did she give any indication about size or  
3 location?

4 A No, not that I can recall.

5 Q The next sentence says "She reported that  
6 she fell backwards and put her right hand behind her  
7 head to protect it."

8 When you say "She reported," is that any  
9 different than when you said "She stated"?

10 A No.

11 Q Do you recall -- okay. Then it says, the  
12 next sentence, "She landed on the marble floor and her  
13 left elbow struck the base of the pillar next to her."

14 You didn't say "she reported" or "she  
15 stated" prior to that particular statement. Is there  
16 a reason for that?

17 A That would have been a continuation of the  
18 previous sentence --

19 Q Okay.

20 A -- because obviously I wouldn't have seen  
21 it.

22 Q Okay. The next sentence, "She denied  
23 striking her head during the fall and denied losing  
24 consciousness prior to or after falling."

25 Do you see that?

1 Q The next sentence, "She denied any head  
2 pain, neck pain, weakness, dizziness or nausea at that  
3 time."

4 Again, when you use the words "She denied,"  
5 what does that indicate to us?

6 A That would be her saying, no, to basically  
7 any of those things: Do you have any head pain, neck  
8 pain, back pain? The weakness and dizziness would  
9 have been included in the loss of consciousness  
10 conversation.

11 Q Okay. So up to this point in paragraph 2,  
12 other than the first sentence where you said she was  
13 alert, oriented to person, place and time, pretty much  
14 what we've been reading is information she has  
15 provided to you; is that correct?

16 A Yes, correct.

17 Q All right. The next sentence says "I noted  
18 she was guarding her left elbow and reported she was  
19 only experiencing pain there at that time."

20 See that?

21 A Correct.

22 Q Okay. So you observed -- tell us about what  
23 you observed in that sentence versus what information  
24 she gave to you.

25 A So from what I typed there, guarding is

1 A Yes.

2 Q When you say "She denies," would you explain  
3 to us how we're supposed to read that in this report?

4 A So that would be me asking her just  
5 basically that: Did you feel like you were going to  
6 pass out or did you pass out before falling, before  
7 being on the floor? And do you remember being on the  
8 floor and everything up until seeing me, is basically  
9 how I would put it.

10 And then that's just kind of a paraphrasing  
11 of that conversation.

12 Q Okay. So when we read this and it says she  
13 denied striking her head, that indicates you had a  
14 conversation with her?

15 A Correct. I would have asked her, you know,  
16 how she fell, did her head hit anything; and then in  
17 line with that, it would be other questions about loss  
18 of conscious or levels of consciousness.

19 Q Okay. So as you sit here today and as you  
20 read this report so far, does any of this refresh your  
21 recollection as to any of the conversation you  
22 actually had with Ms. Sekera?

23 A The exact conversation, no. No, I --  
24 outside of what's written here, I have no independent  
25 recollection of this conversation.

1 basically kind of protecting or shielding. So a lot  
2 of times people, when they're guarding an injury, they  
3 won't put their hands directly over it, but they'll  
4 guard like a body part near it. I didn't exactly  
5 explain that she was holding an arm across her chest  
6 or anything like that.

7 But guarding in the medical assessment is  
8 usually something along those lines, that the patient  
9 is protecting the injury from any further movement or  
10 anything affecting it.

11 Q Okay. The next sentence, "She was  
12 embarrassed, to which I offered to assist her to a  
13 more private area." Again she stated she was  
14 embarrassed, I should say.

15 That, again, was conversation you had with  
16 Ms. Sekera?

17 A Yes.

18 Q Okay, let's continue. "She agreed and was  
19 assisted to a standing position."

20 Did you do that?

21 A I would have, yeah.

22 Q Then it says, "I asked if she felt any new  
23 pain, weakness, dizziness or nausea, to which she  
24 denied at that time."

25 Can you explain to us why you would ask that

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

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

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

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

18 What's the medical room?

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

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

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

7 A The paragraph that ends on 008?

8 Q I'm sorry. Secure left elbow.

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

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

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

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

23 Can you explain what that means again?

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

1 get her to and then finish the assessment there.

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

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

6 Q Do you remember anything about that walk?

7 A No.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 See that?

14 A Yes.

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

19 A Yes.

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

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

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

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

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

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

13 Can you explain what that indicates or  
14 reads?

15 A Sure.

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

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

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

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

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

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

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

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

24 Q Why did you on this occasion?

25 A Because she was an outside vendor. She

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

5 Do you see that?

6 A Yes.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



REPORTER'S DECLARATION

STATE OF NEVADA)  
)  
COUNTY OF CLARK)

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

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

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

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

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

Dated at Las Vegas, Nevada this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Pauline C. May, CCR 286, RPR

# EXHIBIT “M”

The Venetian Las Vegas The  
Venetian Las Vegas



## Privacy Policy

*Last Updated: May 2018*

This is the Data Privacy Policy ("Privacy Policy") of Venetian Casino Resort, LLC and its parent, affiliate and subsidiary entities (collectively, the "Company") located in the United States. In order to provide multiple access points to the services and products we offer, the Company operates many websites, including, but not limited to, [www.venetian.com](http://www.venetian.com); [www.palazzo.com](http://www.palazzo.com); [www.pasands.com](http://www.pasands.com); and [www.sands.com](http://www.sands.com). Any one of these websites may ask for and collect your personal data in order to provide you with our products and/or services, enhance your experience, and provide you with other relevant information about our offerings. This Privacy Policy applies to activities the Company engages in on its websites and activities that are offline or unrelated to our websites, as applicable. We are providing this notice to explain our information practices and the choices you can make about the way your information is collected and used.

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



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

This Privacy Policy applies to all personal data in any format or medium, relating to all guests, prospective guests, patrons, employees, suppliers and others who do business with the Company.

#### **Note to EU and non-EU Residents**

The Company respects all individuals' privacy rights under all the laws that apply to it, all over the world. We work to comply with privacy laws, including, but not limited to, any right you may have if you live in or visit the United States, Macao, or Singapore where our properties are located.

The Company voluntarily tries to accommodate privacy requests made by individuals. Each request is evaluated to determine whether it can be accommodated without violating legal obligations and without creating a risk to the security or integrity of the other information we hold.

For residents of the European Union ("EU"), European Economic Area ("EEA") and Switzerland, the Company recognizes the legal privacy protections afforded to individuals located in the EEA, the EU, and Switzerland, with regard to personal data. For more information about this, please read the Notice to Residents of the EU, EEA, and Switzerland provided below.

#### **Personal Data We Collect and Use**

##### **General Information**

When you use the Internet, your computer may transmit certain information to the servers that host the websites you visit. The information may include the type of Internet browser you are using, the type of computer operating system you are using, your Internet Protocol (IP) address, the pages you visited on our websites, and how you arrived at our websites. When you visit our websites, we collect this information, and we use this information to create a better user experience, to identify areas for improvement on our websites, to enhance the security of our systems, and to provide information on our special offers and promotions.

##### **Cookies**

*What Are Cookies?* A "cookie" is a small text file that a website can place on your computer to store your preferences. Cookies are not personally identifiable by themselves, but they can be linked to personal data you provide to us.

*How We Use Cookies:* We may use cookies, including Google Analytics, so that we can improve your online experience, including to detect your browser's capabilities, to track ads we display to you, to store login and purchase information of your choice, and to generate statistics on website usage.



*Your Control of Cookies:* Most web browsers allow some control of cookies through your browser settings. You can opt out of cookies and advertising related to the same by visiting the Network Advertising Initiative opt-out page: <http://www.networkadvertising.org/choices>.

According to its own policy, Google does not collect any personal data using Google Analytics. Nevertheless, if you do not want to use the remarketing feature from Google, you can disable it by changing the appropriate settings at <http://www.google.com/settings/ads>.

You have many choices to manage cookies on your computer. Most browsers allow you to block or delete cookies from your system, and you can set most browsers to prevent cookies from being placed on your devices. If you do this, however, you may have to manually adjust preferences every time you visit our websites and it may not be possible to use the full functionality of the websites. To learn more about your ability to manage cookies, please consult the privacy features in your browser.

#### **Personal Data**

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

*When you enroll in our loyalty program,* we also may collect your name, title, date of birth, and email address.

*When you complete a credit application,* we also may collect your credit information including your name, mailing address, email address, phone number, date of birth, credit score, Social Security number, employment information, financial information, including bank account and bank rating information, supporting your eligibility to receive credit, other lines of casino credit in your name, and other information you provide to us to assist us in making a determination concerning extending credit to you.

*When you complete an employment application,* we also may collect your name or aliases, current and previous, mailing address information, current and previous, email address, phone number, date of birth, Social Security number, employment history, credit history, education, training, and skills, including licenses and certificates, convictions for felonies or misdemeanors,



proof of eligibility to work in the United States, military service, and any other information provided in your employment application form.

#### **Information Collected During Your Stay**

*Check-In Information:* When you provide your personal data to make your reservation, whether it be through our websites, by phone, or in person at one of our properties, we may use that data to complete your reservation request. We also may need to collect information to comply with local laws, including your passport number, type of entry visa, date and place of birth, and driver's license number. If you choose to provide it, we also may collect additional information from you, including your frequent flyer or travel partner program information.

*Preferences and Marketing:* When you check in, you may be asked whether you wish to receive promotional and other marketing materials, including your interest in participating in contests, promotional offers, or using certain services we can provide to you, such as membership in our loyalty program. We also may send surveys to you to learn more about your stay and preferences. You may withdraw your consent to receive marketing and promotional materials at any time.

*Itemized Spending:* During your stay, we record your itemized spending related to your reservation. This includes your room rate, other expenses billed to your room, food and beverage preferences, and other special requests. We collect and record this information to keep a record of your expenses and preferences during your stay and provide it to you upon check-out.

*Video Surveillance:* We use closed circuit television and other security systems to monitor all gaming areas as required by the applicable local regulatory gaming authorities, as well as other public or sensitive areas of our properties for safety and security. Video surveillance cameras are used to protect us, our guests, and our employees. We monitor our surveillance cameras, and may share surveillance footage with law enforcement and/or regulatory authorities.

#### **Other Sources of Data**

When you interact with one of our properties, others may provide your information to us so that we can provide products and services.

*Vendors, Suppliers, and Others Doing Business with Us:* We have strict rules in place to comply with the laws that apply to us. Before we do business with a third party, we take reasonable steps to make sure that they will prudently protect the information we share with each other, including your personal data they may collect or receive.

*Casino Credit:* For guests who request casino credit at our properties, we may collect/check, or hire a third party to collect/check, public records available about you. We must collect this



information to comply with the law, and to protect against financial risk.

*Meetings, Incentives, Conferences and Exhibitions (MICE):* We may collect your data through events you attend with our exhibitor clients at any of our MICE event spaces. When you attend an event and provide personal data during the registration process to exhibitors, we may have access to your personal data because we collect certain information from the exhibitors.

*Third Parties Authorized By You:* When someone else arranges for you to interact with our properties, they may provide us information so that we can provide you with products and/or services during your visit. For example, when your employer or a travel agent arranges for you to stay at one of our properties, they may provide us with the information listed above so that we can provide you with products and services.

### **Legal Gaming Age Policy**

Persons under the age of twenty-one (21) are not permitted to gamble at our properties or loiter in casino areas. Our websites are not intended for persons under the age of 21. In accordance with the Children's Online Privacy Protection Act, persons younger than 21 years of age are not allowed to use our websites, accept offers, or win contests, and we do not knowingly collect information from such persons. The Company does not knowingly collect personal information from children under the age of 16. Children are not permitted to use our websites or services, and the Company requests that children under the age of 16 not submit any personal information to it, using its websites or any other method. Since information regarding children under the age of 16 is not collected, the Company does not knowingly distribute personal information regarding children under the age of 16.

### **How We May Use Your Information**

Your privacy is important to us. We collect and use information we believe is necessary to our business, and to provide you with the products, services, and experiences you expect when you interact with us. When we collect and use your information, we take your privacy and security very seriously.

We collect personal data to deliver superior quality of service. We will use the information you provide to us for the purpose you provided it to us (e.g., to make a reservation and book a suite at one of our properties); which is stated when information is collected. We may also use your information in other ways for our business purposes and to provide you with the products, services, and experiences you request and expect from us, including but not limited to the following purposes:

- fully respond to your questions, requests, or communications
- to provide you with products and services, including but not limited to loyalty membership and benefits and display of content
- to check if you qualify for certain offers or services (e.g., casino credit, special events,



promotional offers, etc.) and for payment and billing for products and services:

- to develop new products and services
- to improve and personalize the guest experience for you and others
- to audit, research and conduct analysis in order to maintain and improve our services and protect our guests and patrons
- for guest reservations and/or requests for information or services
- for marketing and promotions planning and execution, market research and analysis, customer satisfaction and quality assurance surveys
- to ensure third parties protect your information
- to consider your job application
- to comply with applicable laws and regulations
- for safety and security, including working with third parties to help protect your information
- to ensure the technical functioning and security of our network
- to protect the rights or property of the Company, its employees, and its guests and patrons

#### **How We Share Information**

We may share information about you to the third parties as indicated below:

*Promotions:* From time to time we may run promotions or marketing efforts, such as contests, sweepstakes, and/or giveaways with third parties. If you choose to participate in any such promotions, then any personal data you provide in order to participate may be shared with those third parties and be subject to their privacy policies.

*Affiliates:* We may share your personal data with our other properties, subsidiaries, and third parties if we need to. If we share your information, we will share only the information that is necessary and we will take reasonable steps to make sure that third parties take prudent steps to protect your information.

*Agents:* We use others to help us provide some of our products and services (e.g., maintenance, IT support, analysis, audit, payments, marketing, development, credit, reservations, and security). Unless we tell you differently or as described elsewhere in this Privacy Policy, our agents are expected not to have the right to use your information beyond what is needed to assist us.

*Legal Requests:* We may be required to respond to legal requests for your information, including from law enforcement authorities, regulatory agencies, third party subpoenas, or other government officials.

*Compliance with Legal Obligations:* We may have to disclose certain information to auditors, government authorities, or other authorized individuals in order to comply with laws that apply to us or other legal obligations such as contractual requirements.

*Changes in Business Structure/Ownership:* We may disclose or transfer your personal data to a



third party in the event of any reorganization, merger, sale, joint venture, assignment, transfer, or other disposition of all or any portion of the Company's business, assets, or stock (including any bankruptcy or similar proceedings).

### **Your Choices Regarding Your Information**

For all personal data that we have about you, you have the following rights and/or choices that we will accommodate where your requests meet legal and regulatory requirements and do not risk making other data less secure or changing other data:

*Opt Out, Object, Withdraw Consent:* You can always choose not to disclose certain information to us. Where we rely on your consent to process your personal data, you have the right to withdraw or decline consent at any time. If you have provided us with your email address and you would like to stop receiving marketing emails from us, click on the unsubscribe link at the bottom of any of our email communications. If you do not wish to receive marketing communications from us via direct mail, or if you want to request that we do not share your contact information with our marketing partners, please contact us using the methods in the Contact Us section and include your name, address, and any other specific contact information that you wish to restrict.

*Automated Decision-making:* We may use automated decision-making to determine whether job applicants meet the required qualifications. You have the right to have a human involved in this process, to express your point of view, and to contest the decision. You may do so by using the methods in the Contact Us section below.

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

*Data Portability:* If you would like to request that we provide a copy of your information to you, please contact us using the methods in the Contact Us section below.

*Responding to Requests:* Each request to access, correct, restrict processing, erase, or provide a copy of data will be evaluated to determine whether the requested change meets legal regulatory requirements and does not risk making our other data less secure or changing our other data.

*Complaints to Supervisory Authority:* If you find yourself in the European Economic Area, European Union, or Switzerland, you have the right to lodge a complaint with a supervisory authority of the European Union or European Economic Area according to that authority's rules and procedures.

### **How We Protect Your Personal Data**



We strive to take appropriate security measures to help safeguard your personal data from unauthorized access and disclosure. For example, only authorized employees are allowed to access personal data, and they may only access it for permitted business functions. We also use technology to protect your information, including encrypting sensitive personal data that is transferred to or from our systems and using firewalls to help prevent unauthorized persons from accessing information. If you have an online account with us, your account is also protected by a password for your privacy and security, and you must prevent unauthorized access to your account and personal data by selecting and protecting your password appropriately, limiting access to your devices, and by signing off after you have finished accessing your account.

While we cannot guarantee that loss, misuse, or alteration of information will never occur, we use reasonable efforts to prevent it. Please keep in mind that no method of storage or transmission over the Internet is completely secure, so your use of our products and services and provision of information to us is at your own risk.

Please be aware that our websites may contain links to other sites on the Internet that are owned and operated by third parties. The information practices of those websites linked to our websites are not covered by this Privacy Policy. We are not responsible for the privacy policies of websites to which our website links. If you provide any information to such third parties, different rules regarding the collection and use of your personal data may apply. We strongly suggest you review such third party's privacy policies before providing any data to them.

#### **Notice to Residents of the EU, EEA, and Switzerland**

If you reside or otherwise find yourself in the European Economic Area, European Union, or Switzerland, the Company is committed to respecting your rights as a data subject under the applicable laws of these countries. If you have a privacy concern or questions about how your personal data is used, please contact us using the methods in the Contact Us section below.

Consistent with our values, we observe the following privacy principles when collecting or processing your personal data:

- Data will be processed fairly and in accordance with applicable law.
- Data will be collected for specified and legitimate purposes, and will not be processed in ways that are incompatible with those purposes.
- Data collection and use will be limited to what is relevant for the specified purposes and will not be excessive. We will limit the amount and type of information gathered to what is necessary for the uses and purposes defined in this Privacy Policy.
- We will only collect and process personal data about you where we have a lawful basis. Lawful bases include consent (where you have given consent), contract (where we must process your personal data based on a contract we have with you, for example, to deliver requested products or services), and legitimate interests (where processing is necessary for the purposes of



- compelling legitimate interests of the Company that are not overridden by your rights).
- Data subjects in the European Union, European Economic Area, and Switzerland will be asked to provide their clear and unambiguous consent for collection, processing, and transfer of their personal data.
- We will keep your personal data as accurate, complete, and up-to-date as necessary, and we will take reasonable steps to correct or delete personal data that is inaccurate or incomplete. If you think that your information is inaccurate or incomplete, please contact us using the methods in the *Contact Us* section below.
- Data will only be kept where it is necessary for the purposes for which it was collected and processed. Those purposes are defined in this Privacy Policy.
- We are required by law to comply with many regulations that require us to keep information, including your personal data, for varying time periods. We must evaluate any request to change or delete information, including your information, prior to fulfilling such request to make sure that the requested change or deletion meets legal regulatory requirements and does not change our other data or make it less secure.
- Your data will be deleted or amended if we receive a relevant request from you, if we are permitted by law to do so, and if making the change does not risk making other data less secure or risk changing other data. Please contact us using the methods in the *Contact Us* section below to submit a request.
- We have taken appropriate measures to prevent unauthorized access, loss, use, or damage to your personal data.

*International Transfers of Personal Data:* If you are located outside the United States and you interact with our website or provide your personal data, then your personal data may be transferred to the United States, Macao, or Singapore. If you are located in the European Economic Area, European Union, or Switzerland, please note that the United States, Macao, and Singapore currently are not on the list of countries that the European Commission considers adequate regarding the protection of personal data.

#### **Changes to this Privacy Policy**

We reserve the right to modify or change this Privacy Policy at any time. When we make a material change to this Privacy Policy, we will inform you by posting a prominent notice on the home page of our website or changing the date on this page noting when the Privacy Policy was last updated.

#### **Contact Us**

For questions regarding this Privacy Policy or to submit any of the requests mentioned above relating to your personal data, contact us using any of the following options:

##### ***Mail***

Privacy Office, Legal Department  
Las Vegas Sands Corp.

The Venetian® Las Vegas | Privacy Policy

3355 Las Vegas Boulevard South  
Las Vegas, Nevada 89109

Email

[Privacy@Sands.com](mailto:Privacy@Sands.com)

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# EXHIBIT “N”

**Deposition of:**

Thomas A. Jennings

**Case:**

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

**Date:**

07/02/2019



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1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4  
5 JOYCE SEKERA, an Individual, )  
6 Plaintiff, )  
7 vs. ) CASE NO.: A-18-772761-C  
8 ) DEPT NO.: XXV  
9 VENETIAN CASINO RESORT, LLC, )  
10 d/b/a, THE VENETIAN LAS VEGAS, a Nevada Limited )  
11 Liability Company; LAS VEGAS )  
12 SANDS, LLC d/b/a THE )  
13 VENETIAN LAS VEGAS, a Nevada )  
14 Limited Liability Company; )  
15 YET UNKNOWN EMPLOYEE; DOES I )  
16 through X, inclusive, )  
17 Defendants. )  
18  
19 DEPOSITION OF THOMAS A. JENNINGS  
20 Taken on Tuesday, July 2, 2019  
21 By a Certified Court Reporter  
22 At 1850 East Sahara Avenue, Suite 107  
23 Las Vegas, Nevada  
24 At 8:58 a.m.  
25 Reported by: Blanca I. Cano, CCR No. 861, RPR  
Job No.: 34329

1 APPEARANCES:  
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3 THE GALLIHER LAW FIRM  
4 BY: GEORGE J. KUNZ, ESQ.  
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8 For the Defendants:  
9 ROYAL & MILES, LLP  
10 BY: MICHAEL A. ROYAL, ESQ.  
11 1522 West Warm Springs Road  
12 Henderson, Nevada 89014  
13  
14 I N D E X  
15 WITNESS: THOMAS A. JENNINGS  
16 EXAMINATION PAGE  
17 BY MR. ROYAL 4  
18  
19 \* \* \* \* \*  
20  
21  
22  
23  
24  
25

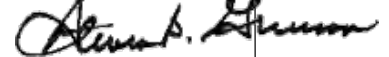
## E X H I B I T S

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Re: Carol Smith v. Venetian Casino  
Resort, LLC

\* \* \* \* \*

1 LAS VEGAS, NEVADA, TUESDAY, JULY 2, 2019;  
2 8:58 A.M.  
3 -oOo-  
4  
5 (Counsel agreed to waive the court  
6 reporter requirements under Rule  
7 30(b)(4) of the Nevada Rules of Civil  
8 Procedure.)  
9  
10 Thereupon,  
11 THOMAS A. JENNINGS,  
12 was called as a witness, and having been first duly  
13 sworn, was examined and testified as follows:  
14  
15 EXAMINATION  
16 BY MR. ROYAL:  
17 Q. Please state your name.  
18 A. Thomas A. Jennings, J-e-n-n-i-n-g-s.  
19 Q. And, Mr. Jennings, what is your occupation?  
20 What do you do for a living?  
21 A. I'm a safety engineering consultant.  
22 Q. Okay. Can you just tell us what a safety  
23 engineering consultant does?  
24 A. Yes. Part of it is the forensic engineering  
25 side where I serve as an expert witness for plaintiff

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<p>1 Just a minute.</p> <p>2 All right. Let's go to the next report. We'll</p> <p>3 mark it as G. May 30th -- your May 30th report.</p> <p>4 A. Hang on a second, Mike.</p> <p>5 (Exhibit G was marked.)</p> <p>6 BY MR. ROYAL:</p> <p>7 Q. So May 30th, 2019, you prepared a rebuttal</p> <p>8 report, and in addition to what we've already reviewed,</p> <p>9 by the time you prepared this report, the only other</p> <p>10 documents that you would have reviewed beyond those</p> <p>11 identified on your December 28, 2018, report would be</p> <p>12 the report of Dr. Hayes; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. All right. So this is a pure rebuttal report.</p> <p>15 You got his initial report, it was sent to you by</p> <p>16 Mr. Galliher, and then you prepared this?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. No other documents, correct, were</p> <p>19 reviewed that you can recall?</p> <p>20 A. Correct.</p> <p>21 Q. All right. So in the third paragraph here, you</p> <p>22 make the -- we've kind of already bantered this about,</p> <p>23 but I'll just ask a quick question.</p> <p>24 You make the conclusion there was a spilled</p> <p>25 liquid on the marble surface.</p>	<p>1 examination of her shoes.</p> <p>2 A. Correct.</p> <p>3 Q. Now, I think we covered this before, but you</p> <p>4 examined her shoes but you didn't indicate you examined</p> <p>5 her shoes nor did you comment on your examination of her</p> <p>6 shoes in your December 28, 2018, report?</p> <p>7 A. Correct.</p> <p>8 Q. Because it was inconsequential?</p> <p>9 A. Yes. To me, it's irrelevant in this case.</p> <p>10 Q. Okay. And it's irrelevant to you because as</p> <p>11 you -- because no property can control who's wearing</p> <p>12 safe or unsafe shoes when they come on their property;</p> <p>13 right?</p> <p>14 A. Correct.</p> <p>15 Q. You mentioned that you have represented</p> <p>16 Venetian in cases where maybe people are wearing</p> <p>17 flip-flops.</p> <p>18 There are cases that you've handled where shoes</p> <p>19 do become kind of a factor?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Flip-flops in particular would be those kinds</p> <p>22 of shoes?</p> <p>23 A. I'm not a fan of flip-flops.</p> <p>24 Q. Because they don't have a heel, they're not</p> <p>25 very supportive, and they can contribute to slips and</p>
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<p>1 That's your conclusion?</p> <p>2 A. Yes, sir. Based on the plaintiff's testimony,</p> <p>3 yes, sir.</p> <p>4 Q. Well, but you don't have her testimony.</p> <p>5 A. Well, not her testimony, but she said she</p> <p>6 slipped on a wet substance, water.</p> <p>7 Q. She said she believed --</p> <p>8 A. She slipped.</p> <p>9 Q. -- she slipped in water?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And that's it, that's what you're basing it on?</p> <p>12 A. That's it. Yes, sir.</p> <p>13 Q. You don't know how long it was there or how it</p> <p>14 was introduced; correct?</p> <p>15 A. Correct.</p> <p>16 Q. And it's your opinion that that is the single</p> <p>17 primary causal factor contributing to her slip-and-fall,</p> <p>18 the plaintiff?</p> <p>19 A. Correct.</p> <p>20 Q. And that's based on just what is provided in</p> <p>21 the security report that she believed that she slipped</p> <p>22 in water?</p> <p>23 A. Correct.</p> <p>24 Q. All right. He makes -- then you also make a</p> <p>25 comment about Dr. Hayes's opinions related to his</p>	<p>1 falls more so than other kind of footwear?</p> <p>2 A. They can.</p> <p>3 Q. So it's not always your opinion that footwear</p> <p>4 is not a primary causal factor?</p> <p>5 A. I think we discussed that earlier. It could be</p> <p>6 a contributing factor, but I don't believe that was the</p> <p>7 case in this situation.</p> <p>8 Q. Okay. If a jury were to determine that the</p> <p>9 area where the plaintiff slipped and fell was dry, your</p> <p>10 opinion would be that -- would be what?</p> <p>11 A. That the floor was slip resistant.</p> <p>12 MR. KUNZ: Objection. Speculation.</p> <p>13 Go ahead.</p> <p>14 THE WITNESS: If it was dry, that the floor was</p> <p>15 slip resistant as tested.</p> <p>16 BY MR. ROYAL:</p> <p>17 Q. And that the floor did not cause the</p> <p>18 plaintiff's fall?</p> <p>19 MR. KUNZ: Same objection.</p> <p>20 BY MR. ROYAL:</p> <p>21 Q. Would that be your opinion?</p> <p>22 A. I think that would be reasonable, yes, sir.</p> <p>23 Q. All right. I think you -- on page 2 of your</p> <p>24 rebuttal report, you dismiss the Burnfield and Power</p> <p>25 study just because it happened in a laboratory, it was</p>



**RPLY**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOYCE SEKERA, an Individual,  
  
Plaintiff,

v.

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

Defendants.

Case No.: A-18-772761-C

Dept. No. XXV

**REPLY IN SUPPORT OF  
PLAINTIFF'S MOTION TO  
PLACE ON CALENDAR**

**HEARING DATE: JUNE 1,  
2021**

**HEARING TIME: 9:00 A.M.**

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 Reply in Support of Plaintiff’s Motion to Place on Calendar.

18 This Reply 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 25th day of May, 2021.

22 CLAGGETT & SYKES LAW FIRM

23 /s/ William T. Sykes

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## 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.

In Plaintiff's Amended Complaint, she included a claim for punitive damages, alleging that Defendants "knew that its marble floors caused unreasonable amount of injury slip and falls and thus were dangerous to pedestrians." *See* Plaintiff's Amended Complaint attached hereto as Exhibit 1 at pg. 3. Plaintiff also alleged that despite Defendants' notice of the dangerous condition, its "marble floors were significantly more slippery than is safe for pedestrians [and] Defendant failed to take any appropriate precautions to

1 prevent injury.” *Id.* at pg. 4. For years now, Plaintiff has sought information  
2 regarding Defendants’ prior incident reports, including witness information,  
3 such as victim’s contact information and the names and titles of Venetian  
4 employees who attended the incidents. The information on those incident  
5 reports is relevant and proportional to the needs of the case as the witnesses  
6 possess relevant information regarding the dangerous flooring conditions at  
7 Defendants’ property, whether it was foreseeable that guests, such as Plaintiff,  
8 could slip and fall, and Plaintiff’s lack of comparative negligence.<sup>1</sup>

9 Defendants oppose Plaintiff’s Motion contending, incredibly, that Plaintiff  
10 has no need to know the names and contact information of these witnesses. *See*  
11 *Defs.’ Opp.* at 2:6-2:24. According to Defendants, the disclosure of these  
12 witnesses’ names, phone numbers, and addresses (in other words, the same  
13 information available in the telephone book) constitutes a breach of these third-  
14 party’s privacy rights. The Court should take nothing from Defendants’  
15 Opposition and instead grant Plaintiff’s Motion for the following reasons:

- 16 1. A party seeking a protective order must demonstrate good cause under  
17 NRCp 26(c) why the requested discovery should not be produced as  
18 requested. *Cf. Okada v. Eighth Judicial Dist. Court*, 359 P.3d 1106, 1111  
19

---

20  
21 <sup>1</sup>Not only has the Venetian claimed comparative negligence in this case, but  
22 they sued the Plaintiff’s former employer, Third Party Defendant Brand Vegas,  
23 LLC, alleging that Brand Vegas must indemnify the Venetian for the Plaintiff’s  
24 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.



(Nev. 2015) (examining a protective order issue in the context of depositions). In their Opposition, Defendants failed to demonstrate good cause. Instead, Defendants baldly assert that the witness information “implicates a nontrivial privacy interest’ related to Venetian guests involved in prior incidents.” *See* Defs.’ Opp. at 3:11 – 3:14. What privacy interest is implicated? Well, Defendants don’t say, opting instead to rely on broad generalities and suppositions. *See Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (“Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test”). Defendants have not, and cannot, show that any actual harm would befall these witnesses should Plaintiff learn of their identities. Accordingly, Defendants’ request for a protective order should be denied and Plaintiff respectfully requests that the Court order Defendants to produce unredacted incident reports with the necessary witness contact information.

2. Next, Defendants wrongly argue that the information Plaintiff seeks is not relevant and proportional to the needs of the case within NRCP 26(b)(1). However, 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,

1 470 P.2d 135, 139 (1970)). Incident reports are relevant to establish  
2 notice of a dangerous condition, as well as foreseeability that guests may  
3 be injured as a result of the dangerous condition. *See, e.g., Alcantara v.*  
4 *Bodega Latina Corp.*, 2020 U.S. Dist. LEXIS 61271, at \*8 (D. Nev. Apr. 7,  
5 2020); *Shakespear v. Wal-Mart Stores*, 2012 U.S. Dist. LEXIS 205322, at  
6 \*5 (D. Nev. Nov. 5, 2012); *Humphries v. New York-New York Hotel &*  
7 *Casino*, 133 Nev. 607, 609-11 (2017). Thus, Defendants' prior incident  
8 reports, including witness information, is relevant as to notice,  
9 foreseeability, and Plaintiff's alleged comparative negligence. The  
10 unredacted incident reports should therefore be disclosed by Defendants.

## 11 II.

### 12 LEGAL ARGUMENT

#### 13 A. Defendants Misstate the Applicable Legal Standard

14 In their Opposition, Defendants erroneously claim, "Plaintiff must  
15 therefore demonstrate that the desired discovery is **relevant** to her claims here  
16 and that it is **proportional** to the needs of the case...." *See* Defs.' Opp. at 9:11 –  
17 9:12. In fact, Defendants, as the parties resisting production, are the ones who  
18 must show that Plaintiff's request for unredacted incident reports is irrelevant  
19 and not proportional to the needs of the case. "As was the case before the 2015  
20 amendments, the party seeking to avoid discovery continues to bear the burden  
21 of explaining why discovery should be denied." *Guerrero v. Wharton*, 2017 U.S.  
22 Dist. LEXIS 225185, at \*5 (D. Nev. Mar. 30, 2017) (citing *Carr v. State Farm*  
23 *Mut. Auto. Ins. Co.*, 312 F.R.D. 459, 465-69 (N.D. Tex. 2015)). "To satisfy the  
24

1 burden, the resisting party must make a ‘specific objection and showing’ that  
2 the discovery is improper or otherwise fails the proportionality analysis by  
3 coming forward with specific information available to it to address the pertinent  
4 considerations.” *Id.* “A party resisting discovery will not be successful by  
5 making boilerplate objections that the discovery is not proportional or is  
6 otherwise objectionable.” *Id.* at \*6 (citing *Lima LS PLC v. Nassau Reinsurance*  
7 *Grp. Holdings, L.P.*, 160 F. Supp. 3d 574, 579 n.1 (S.D.N.Y. 2015)).

8 **B. Defendants Failed to Demonstrate Good Cause Within NRCP**  
9 **26(c)(1)**

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

16 “First, the district court must determine if particularized harm would  
17 occur due to public disclosure of the information.” *Venetian Casino Resort, LLC*  
18 *v. Eighth Judicial Dist. Ct.*, 467 P.3d 1, 10 (Nev. App., May 14, 2020) (citing *In*  
19 *re Roman Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 424 (9th Cir.  
20 2011) (“As we have explained, ‘[b]road allegations of harm, unsubstantiated by  
21 specific examples or articulated reasoning, do not satisfy the Rule 26(c) test”).

22 “Second, if the district court concludes that particularized harm would  
23 result, then it must ‘balance the public and private interests to decide whether  
24

1 ... a protective order is necessary.” *Id.* (citing *Roman Catholic*, 661 F.3d at 424).

2 In order to balance private and public interests, the Nevada Court of Appeals  
3 directed courts to the following list of factors set forth in *Glenmede Trust Co. v.*  
4 *Thompson*, 56 F.3d 476, 483 (3d Cir. 1995):

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

15 *Id.* at 10-11 (quoting *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir.  
16 1995)).

17 “Third, even if the factors balance in favor of protecting the discovery  
18 material, ‘a court must still consider whether redacting portions of the discovery  
19 material will nevertheless allow disclosure.” *Id.* at 11 (quoting *Roman Catholic*,  
20 661 F.3d at 425).

21 Here, Defendants have not, and cannot, show that good cause exists for  
22 their requested protective order as Defendants failed to demonstrate that  
23 particularized harm would occur should they disclose the full, un-redacted  
24 incident reports. Therefore, Defendants’ request for a protective order should be  
denied, in its entirety.

1           **1. Defendants Have Not Demonstrated That Particularized**  
2           **Harm Would Result from Their Disclosure of Unredacted**  
3           **Incident Reports**

4           In their Opposition, Defendants failed to demonstrate that particularized  
5           harm would result from their disclosure of unredacted incident reports. Rather  
6           than articulate how the individuals named on the incident reports would suffer  
7           actual harm as a result of their contact information being disclosed, Defendants  
8           instead fall back on oft repeated, yet unsupported, platitudes regarding “privacy  
9           interests.” Such an approach fails to satisfy the ‘particularized harm’ prong laid  
10          out by the Nevada Court of Appeals. *See Venetian Casino Resort, LLC v. Eighth*  
11          *Judicial Dist. Ct.*, 467 P.3d 1, 10 (Nev. App., May 14, 2020) (citing *In re Roman*  
12          *Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 424 (9th Cir. 2011) (“As  
13          we have explained, ‘[b]road allegations of harm, unsubstantiated by specific  
14          examples or articulated reasoning, do not satisfy the Rule 26(c) test”).

15          Defendants rely heavily on the Nevada Supreme Court’s decision in *Clark*  
16          *Cty. Office of the Coroner v. Las Vegas Review-Journal*, 458 P.3d 1048 (Nev.  
17          2020) for their contention that the names, addresses, and phone-numbers listed  
18          on their incident reports implicate “nontrivial privacy interests”. *See* Defs.’ Opp.  
19          at 10 – 12. That case involved requests to the Clark County Coroner’s Office  
20          from the Las Vegas Review-Journal for juvenile autopsy reports within the  
21          Nevada Public Records Act (“NPRA”). *Id.* at 1050-51. The court held that the  
22          NPRA’s disclosure requirements mandated disclosure of the requested  
23          materials; however, the court also remanded for further proceedings to  
24          determine whether the autopsy reports should be redacted to prevent disclosure

1 of “private medical or health-related information.” *Id.* at 1059. The court  
2 instructed the district court to utilize the two-part test articulated in  
3 *Cameranesi v. United States Department of Defense*, 856 F.3d 626, 637 (9th Cir.  
4 2017). *Id.* at 1057. “The first step in a *Cameranesi* analysis requires the  
5 government to establish that disclosure implicates a personal privacy interest  
6 that is nontrivial or more than de minimis.” *Id.* “If the government shows that  
7 the privacy interest at stake is nontrivial, the requester must then show that  
8 the public interest sought to be advanced is a significant one and the  
9 information sought is likely to advance that interest.” *Id.* “The *Cameranesi* test  
10 thus balances ‘individual nontrivial privacy rights against the public’s right to  
11 access public information.’” *Id.*

12 Notably, the *Clark Cty. Office of the Coroner* court acknowledged that the  
13 Coroner’s Office previously provided the Las Vegas Review-Journal with a  
14 spreadsheet “identifying the case number; the **decedent’s name, gender, age,**  
15 **and race;** and **the cause, manner, and location of death** for juveniles who  
16 were the subject of the autopsies, and the Office also provided heavily redacted  
17 sample autopsy reports for cases not handled by a CDR team.” *Id.* at 1059  
18 (emphasis added). Thus, the court was not concerned with this sort of basic  
19 identifying information, akin to the information requested by Plaintiff in this  
20 case.

21 Instead, the court referenced the declaration of Clark County Coroner  
22 John Fudenberg, who explained that unredacted autopsy reports might reveal  
23 intimate medical details regarding a decedent, such as, “references to specific  
24



1 medical records, specific medical or health information and personal  
2 characteristics about the decedent.” *Id.* at 1058. “Such private information and  
3 personal characteristics, according to Fudenberg, may include the decedent’s  
4 sexual orientation, preexisting medical conditions, drug or alcohol addiction,  
5 and various types of diseases or mental illness, as well as other personal  
6 information that the decedent or the decedent’s family might wish to remain  
7 private.” *Id.*

8 Here, the witness information sought is similar to that found in the  
9 phone book, i.e., name, address, and phone number, plus dates of birth. It is not  
10 the sort of private medical information contemplated in *Clark Cty. Office of the*  
11 *Coroner*. Defendants’ incident reports do not contain references to ‘medical  
12 records’ or ‘specific medical or health information’. They simply detail the  
13 circumstances regarding the at-issue incident, in this case slip-and-falls. In  
14 *Clark Cty. Office of the Coroner*, the court acknowledged that the Coroner’s  
15 Office previously provided the identities of the decedents, as well as the cause,  
16 manner, and location of their deaths. *Id.* at 1059. Similarly, Plaintiff merely  
17 wants to know the identities of the slip-and-fall victims in conjunction with the  
18 rest of the incident reports, which provides details on the when, where, and how  
19 of the specific falls. Therefore, the holding in *Clark Cty. Office of the Coroner* is  
20 actually consistent with Plaintiff’s position that the requested information does  
21 not implicate nontrivial privacy interests.

22 Next, Defendants cite to a series of federal cases which they claim stand  
23 for the proposition that witness contact information is private and, thus,

1 protectable. However, upon closer scrutiny, the cases cited to by Defendants are  
2 inapplicable and unpersuasive. First, Defendants cite to *Izzo v. Wal-Mart*  
3 *Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210 (D. Nev. Feb. 2, 2016). There, Wal-  
4 Mart provided the plaintiff with particularized information and lists of prior  
5 slip-and-fall incidents. *Izzo*, at \*13. Subsequently, the plaintiff served its FRCP  
6 30(b)(6) deposition notice wherein it requested that Wal-Mart produce a witness  
7 to testify regarding “facts and circumstances surrounding any other slip and fall  
8 incident by guests/patrons of Walmart #2884 during the three year period of  
9 time prior to the incident, through present time, including without limitation,  
10 the general area where Plaintiff fell.” *Id.* at \*11. Wal-Mart objected, arguing  
11 that “preparing testimony on this topic would require ‘hundreds of hours of  
12 personnel time’ and ‘would require weeks of work, if not months.’” *Id.* at \*12-  
13 \*13. The court agreed, concluding “the value of the material sought is  
14 outweighed by Defendant’s burden of providing it.” *Id.* at \*13. Thus, the court in  
15 *Izzo* granted Wal-Mart’s motion for protective order based upon the plaintiff’s  
16 overly broad request and the undue burden it would place on Wal-Mart, and not  
17 on any purported privacy interests of third-parties as Defendants portray it.  
18 *Izzo* is therefore wholly distinguishable from this present matter.

19 Second, Defendants cite to *Rowland v. Paris Las Vegas*, 2015 U.S. Dist.  
20 LEXIS 105513 (S.D. Cal. Aug. 11, 2015). In that case, the plaintiff requested the  
21 names, addresses, and phone numbers of all prior hotel guests “who complained,  
22 reported or otherwise informed” the defendant of slippery floors. *Id.* at \*6. This  
23 request broadly requested that defendant go through its hotel guest records and  
24

1 provide all information linked with those guests. The defendant raised a  
2 concern over the guests' constitutional right to privacy, and the court held that  
3 "[f]ederal courts ordinarily recognize a constitutionally-based right of privacy  
4 that can be raised in response to discovery requests." *Id.* at \*7 (emphasis  
5 added). The court went on to explain that the right is not absolute and is subject  
6 to a balancing test. *Id.* In this case, the information was given voluntarily for  
7 the Defendants' benefit in connection with the incidents, as opposed to being  
8 mandated at registration for a hotel room. Importantly, Defendants have not  
9 raised a constitutionally-based right of privacy, nor has it suggested that the  
10 Court should apply a federal balancing test. Without articulating the claimed  
11 right, or even identifying the legal authority that would supposedly create such  
12 a constitutional right of privacy, Defendants have not demonstrated that  
13 *Rowland* is applicable or that they are entitled to their requested relief.

14       It is true, individuals do have a right to protect "private facts" from being  
15 released by government entities in accordance with the Fourth Amendment of  
16 the United States Constitution. *See Montesano v. Donrey Media Grp.*, 99 Nev.  
17 644, 650-51, 668 P.2d 1081, 1085 (1983). However, information freely given to a  
18 non-public entity during an investigation into an incident is not considered  
19 private and does not invoke the Constitution. The statements and incident  
20 reports to be produced were given voluntarily without privacy implications. *See*  
21 NRS 49.385(1) (Waiver of privilege by voluntary disclosure) ("A person upon  
22 whom these rules confer a privilege against disclosure of a confidential matter  
23 waives the privilege if the person or the person's predecessor while holder of the  
24

1 privilege voluntarily discloses or consents to disclosure of any significant part of  
2 the matter.”). Thus, it remains unclear how Defendants or third-party witnesses  
3 have any privacy interest in voluntarily provided information.

4       The requested witness names, addresses, and phone numbers are forms  
5 of publicly available information and, therefore, Defendants cannot establish a  
6 protectable interest in the same. *See, e.g., Khalilpour v. CELLCO P’ship*, 2010  
7 WL 1267749, at \*2 (N.D. Cal. 2010) (requiring disclosure of names, addresses  
8 and phone numbers because they do not involve revelation of personal secrets,  
9 intimate activities, or similar private information); *Busse v. Motorola, Inc.*, 351  
10 Ill. App. 3d 67, 72, 813 N.E.2d 1013, 1018 (2004) (“Matters of public record –  
11 name, address, date of birth and fact of marriage – have been held not to be  
12 private facts”); *Keel v. Quality Med. Sys., Inc.*, 515 So. 2d 337 (Fla. Dist. Ct. App.  
13 1987) (information commonly known in the industry and not unique to allegedly  
14 injured party not “confidential” and thus not entitled to protection); *Brignola v.*  
15 *Home Properties, L.P.*, 2013 WL 1795336, at \*12 (E.D. Pa. Apr. 26, 2013)  
16 (“name, address, phone number, etc. These are not private facts...”); *Mount*  
17 *Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly*, 2013 WL  
18 3200713, at \*4 (D.N.J. June 24, 2013) (defendant must disclose contact  
19 information for potential witnesses of the plaintiff; defendant’s concerns about  
20 privacy “are overblown”). When the prior slip and fall victims added their  
21 information to Defendants’ incident reports, they did so voluntarily, to a private  
22 third-party business, and for Defendants’ benefit. Defendants cannot turn  
23 around now and claim that the information is somehow private or privileged.

1 Defendants also cite NRS 603A.010 et seq. for the purpose of arguing that  
2 the Nevada Legislature desire the protection of personal information by  
3 business entities. However, this statute does not apply to the basic contact  
4 information that Plaintiff seeks. *See* NRS 603A.040(1) (“‘Personal information’  
5 means a natural person’s first name or first initial and last name in  
6 combination with any one or more of the following data elements, when the  
7 name and data elements are not encrypted: (a) Social security number. (b)  
8 Driver’s license number, driver authorization card number or identification card  
9 number. (c) Account number, credit card number or debit card number, in  
10 combination with any required security code, access code or password that  
11 would permit access to the person’s financial account. (d) A medical  
12 identification number or a health insurance identification number. (e) A user  
13 name, unique identifier or electronic email address in combination with a  
14 password, access code or security question and answer that would permit access  
15 to an online account.”). The information protected by that statute is nonpublic  
16 information used in a transaction (generally financial in nature), not  
17 information given freely to a private party in description of an incident.

18 Defendants next argue they will incur liability for the release of  
19 information by virtue of their privacy policy. This argument is flawed for several  
20 reasons, primarily the fact that Defendants explicitly state that they may  
21 unilaterally change the policy and how they use and disseminate the  
22 information: “We reserve the right to modify or change this Privacy Policy at  
23 any time.” *See* Exhibit M to Defs.’ Opp. at VEN 494. However, a unilateral  
24

1 alteration of terms is unnecessary as Defendants' policy provides that  
2 Defendants reserve the right to release the information in connection with  
3 defending themselves in a court case, and to comply with a court order. Under  
4 "How We Share Information," Defendants describe how it uses personal  
5 information: "*Legal Requests*. We may be required to respond to legal requests  
6 for your information, including from law enforcement authorities, regulatory  
7 agencies, third party subpoenas, or other government officials." *Id.* at VEN 491.  
8 Also, "*Compliance with Legal Obligations*. We may have to disclose certain  
9 information to auditors, government authorities, or other authorized individuals  
10 in order to comply with laws that apply to us or other legal obligations such as  
11 contractual requirements." *Id.* Therefore, this Court should disregard  
12 Defendants' misleading argument regarding their own policies.

13 Based on the foregoing, it is apparent that Defendants cannot  
14 demonstrate that particularized harm would occur should they disclose the  
15 requested witness information. Accordingly, Defendants' request for a protective  
16 order should be denied and Defendants should instead be ordered to produce the  
17 unredacted incident reports.

18 **2. The Balance of Public and Private Interests Weigh in Favor**  
19 **of Disclosure**

20 The balance of public and private interests similarly weighs in favor of  
21 disclosure. To balance private and public interests, the Nevada Court of Appeals  
22 directed courts to the following list of factors set forth in *Glenmede Trust Co. v.*  
23 *Thompson*, 56 F.3d 476, 483 (3d Cir. 1995):



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

7 *Id.* at 10-11 (quoting *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir.  
8 1995)). These factors weigh heavily in favor of full disclosure.

9 First, as discussed above in greater detail, disclosure of the witness  
10 contact information on the incident reports will not violate any privacy interests  
11 as the information is essentially that which is contained in the phone book and,  
12 thus, not protected by any applicable privilege or privacy right. Defendants  
13 argue that the Nevada Supreme Court's decision in *Clark Cty. Office of the*  
14 *Coroner* demonstrates otherwise; however, as shown above, the information  
15 deemed to implicate a nontrivial privacy interest in that case was private  
16 medical information and not, as here, basic contact information. *See Clark Cty.*  
17 *Office of the Coroner v. Las Vegas Review-Journal*, 458 P.3d 1048, 1058-59 (Nev.  
18 2020). Moreover, these third-party witnesses voluntarily provided Defendants  
19 with their contact information. Defendants should not be permitted to maintain  
20 and possess the information for its own use and benefit while denying Plaintiff  
21 the opportunity to examine it.

22 Furthermore, the information is being sought for legitimate purposes as  
23 the incident reports and contact information will allow Plaintiff to contact  
24

1 witnesses with relevant information regarding issues of notice, foreseeability,  
2 and Plaintiff's claim for punitive damages.

3 Defendants claim that disclosure "threatens to 'cause a party  
4 embarrassment' and harm under factor no. 3, undermining the business  
5 relationship between Venetian and its guests." *See* Defs.' Opp. at 19:4 – 19:5.  
6 How so? Well, Defendants do not say. In truth, disclosure of the information will  
7 not cause anyone embarrassment, as it is merely contact information, including  
8 names, addresses, and phone numbers.

9 Defendants do not address factor no. 4, instead summarily asserting that  
10 "it does not apply to the circumstances here." *See* Defs.' Opp. at 19:5 – 19:6. But  
11 it does. Plaintiff has brought a claim for punitive damages alleging Defendants  
12 "knew that its marble floors caused unreasonable amount of injury slip and falls  
13 and thus were dangerous to pedestrians." *See* Plaintiff's Amended Complaint,  
14 Ex. 1 at pg. 3. Plaintiff also alleged that despite Defendants' notice of the  
15 dangerous condition, its "marble floors were significantly more slippery than is  
16 safe for pedestrians [and] Defendant failed to take any appropriate precautions  
17 to prevent injury." *Id.* at pg. 4. These witnesses are crucial to Plaintiff's  
18 punitive damages claim, through which she seeks to hold Defendants  
19 responsible for the dangerous walkway and flooring they have maintained for  
20 years in conscious disregard of the threat it posed to its guests' health and  
21 safety.

22 Additionally, the sharing of the information will promote fairness and  
23 efficiencies as Defendants are currently in sole possession of the requested  
24

1 information and Plaintiff has no means of obtaining the same information in  
2 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 Based on the foregoing, Defendants have not satisfied their burden of  
8 demonstrating that good cause exists to support their request for a protective  
9 order. As such, Defendants should be ordered to produce the unredacted  
10 incident reports.

11 **C. The Incident Reports are Relevant to Plaintiff's Claims.**

12 Relevant evidence is, "evidence having any tendency to make the  
13 existence of any fact that is of consequence to the determination of the action  
14 more or less probable than it would be without the evidence." NRS 48.015. The  
15 Nevada Supreme Court has held that evidence of "similar accidents involving  
16 the same condition may be relevant on the issues of causation and whether  
17 there is a defective and dangerous condition. *Reingold v. Wet 'n Wild Nev., Inc.*,  
18 113 Nev. 967, 969, 944 P.2d 800, 802 (1997) *overruled in part by Bass-Davis v.*  
19 *Davis*, 122 Nev. 442, 134 P.2d 103 (2006) (citing *Ginnis v. Mapes Hotel Corp.*, 86  
20 Nev. 408, 415, 470 P.2d 135, 139 (1970)). Incident reports are relevant to  
21 establish notice of a dangerous condition, as well as foreseeability that guests  
22 may be injured as a result of the dangerous condition. *See, e.g., Alcantara v.*  
23 *Bodega Latina Corp.*, 2020 U.S. Dist. LEXIS 61271, at \*8 (D. Nev. Apr. 7, 2020);

1 *Shakespear v. Wal-Mart Stores*, 2012 U.S. Dist. LEXIS 205322, at \*5 (D. Nev.  
2 Nov. 5, 2012); *Humphries v. New York-New York Hotel & Casino*, 133 Nev. 607,  
3 609-11 (2017).

4 In their Opposition, Defendants cite *Eldorado Club v. Graff*, 78 Nev. 507,  
5 377 P.2d 174 (1962) for the proposition that prior incidents are generally not  
6 admissible to establish notice in slip and falls involving a temporary hazard.  
7 See Defs.' Opp. at 20. Defendants' reliance on *Eldorado Club* is inaccurate. The  
8 defendant in *Eldorado Club* argued that the court could not admit a prior  
9 incident to establish his knowledge of the dangerous condition because that  
10 condition (a foreign substance) was not permanent. *Eldorado Club v. Graff*, 78  
11 Nev. 507, 509, 377 P.2d 174, 175 (1962). However, the Supreme Court held that  
12 prior similar incidents could be admitted when "the conditions surrounding the  
13 prior occurrences have continued and persisted." *Id.* at 511, 377 P.2d at 176. In  
14 the instant case, Plaintiff alleges that the incidents surrounding the falls on  
15 Defendants' slippery marble floors have continued and persisted, which entitles  
16 her to receive the discovery and determine for herself the relevancy according to  
17 NRCP 26(b)(1), which states, "Information within [the] scope of discovery need  
18 not be admissible in evidence to be discoverable." Defendants are essentially  
19 requesting that Plaintiff be kept from investigating the conditions surrounding  
20 the prior occurrences by blocking the incident reports and redacting the witness  
21 contact information.

22 Defendants also cite to *Caballero v. Bodega Latina Corp.*, 2017 U.S. Dist.  
23 LEXIS 116869 (D. Nev. July 25, 2017). There, the court denied the plaintiff's  
24

1 request for prior incident reports, in part, because “Caballero’s motion does not  
2 address whether Caballero’s slip and fall was caused by the temporary presence  
3 of a foreign substance on a surface or was instead caused by a continuing or  
4 permanent condition.” *Id.* at \*18. Here, Plaintiff has repeatedly alleged that  
5 Plaintiff’s fall was due to the continuing and permanent hazardous condition of  
6 Defendants’ slick marble flooring. As such, *Caballero* is inapplicable to this  
7 case.

8 In fact, Defendants’ incident reports, as well as the redacted information  
9 therein, are relevant to Plaintiff’s claims in multiple ways. First, the incident  
10 reports are relevant to show Defendants had notice of the unsafe and dangerous  
11 condition of their walkway, as well as to show that it was foreseeable that  
12 guests, such as Plaintiff, could be injured by the dangerous flooring.

13 Similarly, the incident reports are relevant to Plaintiff’s claim for  
14 punitive damages. “A plaintiff may recover punitive damages when evidence  
15 demonstrates that the defendant has acted with ‘malice, express or implied.’”  
16 *Wyeth v. Rowatt*, 126 Nev. Adv. Rep. 44, 244 P.3d 765, 783 (2010) (quoting NRS  
17 42.005(1)). “‘Malice, express or implied,’ means conduct which is intended to  
18 injure a person or despicable conduct which is engaged in with a conscious  
19 disregard of the rights or safety of others.” *Id.* (quoting NRS 42.001(3))  
20 (emphasis added). “A defendant has a ‘conscious disregard’ of a person’s rights  
21 and safety when he or she knows of ‘the probable harmful consequences of a  
22 wrongful act and a willful and deliberate failure to act to avoid those  
23 consequences.” *Id.* (quoting NRS 42.001(1)). Defendants’ incident reports  
24

1 demonstrate that Defendants knew the unsafe marble flooring posed a threat to  
2 its guests and, yet, despite that knowledge, willfully failed to act to avoid future  
3 injuries, all in conscious disregard of their guests' health and safety.

4 Finally, as to the redacted contact information for injured guests, that  
5 information is relevant and necessary, as well. Plaintiff needs the names and  
6 contact information on the incident reports because those individuals are  
7 potential witnesses. These other witnesses have relevant information regarding:  
8 (1) the facts and circumstances surrounding their slip and fall; and (2) the  
9 condition of Defendants' flooring at the time and location of their slip and fall.

10 Simply, Defendants should not be permitted to shield witness  
11 information that is highly relevant to the claims and defenses in this case.

12 **D. The Information Sought by Plaintiff is Proportional to the Needs**  
13 **of the Case.**

14 Discovery sought must be both relevant and proportionate to the  
15 requesting party's needs. *See Venetian Casino Resort, LLC v. Eighth Judicial*  
16 *Dist. Ct.*, 467 P.3d 1, 5 (Nev. App., May 14, 2020) (citing *In re Bard IVC Filters*  
17 *Prods. Liab. Litig.*, 317 F.R.D. 562, 564 (D. Ari. 2016) ("Relevancy alone is no  
18 longer sufficient – discovery must also be proportional to the needs of the case");  
19 *Samsung Elecs. Am., Inc. v. Yang Kun Chung*, 321 F.R.D. 250, 279 (N.D. Tex.  
20 2017) ("[D]iscoverable matter must be both relevant and proportional to the  
21 needs of the case – which are related but distinct requirements.")). NRCP  
22 26(b)(1) provides several factors for courts to consider regarding proportionality:  
23 (1) the importance of the issues at stake in the action; (2) the amount in  
24



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

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

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

8 The issues at stake in this action are vitally important, as they go to the  
9 question of whether Defendants knowingly maintained unsafe flooring at the  
10 peril of their guests, including Plaintiff. Defendants argue that the incident  
11 reports are irrelevant and not proportional based on the Nevada Supreme  
12 Court's decision in *Eldorado Club, Inc.*, discussed above. *See* Defs.' Opp. at  
13 22:13 – 22:15. Yet, just a few sentences later, Defendants admit that Plaintiff's  
14 fall was not caused by a temporary hazard, as was the case in *Eldorado Club,*  
15 *Inc.* Instead, Defendants state, "It is no secret that Venetian maintains – at  
16 least in part – that Plaintiff fell on a dry marble floor because of the poorly  
17 conditioned shoes she was wearing." *Id.* at 22:18 – 22:19. Thus, by Defendants'  
18 own admission, *Eldorado Club, Inc.* is inapplicable, and its holding cannot be  
19 used as a basis to bar production of the unredacted incident reports in this case.  
20 Accordingly, this factor weighs in favor of disclosure.

21 **2. The Amount in Controversy**

22 To date, Plaintiff is claiming: (1) \$114,009.27 in past medical specials; (2)  
23 \$457,936.99 in future medical expenses; (3) undetermined wage loss and loss of  
24

1 earning capacity; (4) past and future pain, suffering, mental anguish, and loss of  
2 enjoyment of life; (5) attorney's fees and costs; and (6) punitive damages. *See*  
3 Plaintiff's Eighteenth Supplemental Disclosure attached to Plaintiff's Motion as  
4 Exhibit 13 at pgs. 18-19. Defendants briefly attempt to minimize Plaintiff's  
5 damages before summarily concluding that this factor weighs in their favor. *See*  
6 Defs.' Opp. at 23:3 – 23:11. However, Plaintiff's claimed damages are  
7 substantial, particularly when potential awards of pain and suffering, emotional  
8 damages, and punitive damages are considered. Thus, the amount in  
9 controversy is substantial and weighs in favor of disclosure. *See, e.g., Guerrero*  
10 *v. Wharton*, 2017 U.S. Dist. LEXIS 225185, at \*10 – \*11 (D. Nev. Mar. 30, 2017)  
11 ("Plaintiff's claim is not limited to past medical expenses, and she is instead  
12 suing to recover for past medical expenses, future medical expenses, lost wages,  
13 pain and suffering, and emotional distress, as well as punitive damages.... Not  
14 including emotional damages and punitive damages, Plaintiff estimates these  
15 damages at approximately \$242,675.94.... Including the possibility of a jury  
16 award of emotional damages and punitive damages, the amount in controversy  
17 would be much higher than that amount. Especially given the limited burden on  
18 Defendant in complying with these discovery requests, the amount in  
19 controversy tilts in favor of discoverability, not against it").

### 20 3. The Parties' Relative Access to Relevant Information

21 Defendants admit that they have sole access to the requested information  
22 before absurdly claiming that this factor weighs against Plaintiff. *See* Defs.'  
23 Opp. at 23:12 – 23:17. Absent Defendants' full disclosure, Plaintiff has no other  
24

Defendants claim that this factor weighs in their favor even though they have substantial resources and the act of un-redacting the incident reports (redactions that were placed on the incident reports by Defendants in the first place) would involve minimal time, effort, or resources. According to Defendants, there is a “much greater cost to Venetian in terms of its guest relations.” *See* Defs.’ Opp. at 23:21. First, this line of argument has no bearing on the parties’ resources and should not be considered in assessing this factor. Second, Defendants provide no specifics that would allow Plaintiff or the Court to weigh these purported costs. Defendants’ business operations will surely survive its disclosure of relevant witness information. Therefore, this factor weighs in favor of disclosure, as well.

Defendants yet again cite to *Eldorado Club, Inc.* in claiming that “the information Plaintiff seeks is not amissible[.]” See Defs.’ Opp. 23:27 – 23:28.

1 However, the issue before the Court is not one of admissibility, but rather  
2 discoverability. The incident reports and the related witnesses are directly  
3 relevant to issues of notice, foreseeability, whether Plaintiff is comparatively at-  
4 fault, and Plaintiff's claim for punitive damages. This factor weighs in favor of  
5 disclosure.

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

8 Defendants broadly and baselessly claim that "the burden to Venetian is  
9 far beyond the expense of 'un-redacting' prior incident reports" because "[i]ts  
10 guests have a reasonable expectation that Venetian will protect their privacy[.]"  
11 See Defs.' Opp. at 24:10 – 24:12. As discussed above, the witness information,  
12 including names, phone numbers, and addresses, does not implicate the non-  
13 trivial privacy interests addressed in *Clark Cty. Office of the Coroner*, as  
14 Defendants claim. Instead, this contact information was voluntarily provided by  
15 the slip-and-fall victims to Defendants as part of their incident response.  
16 Defendants have failed to demonstrate that the witnesses had any expectation  
17 of privacy with regards to the information they submitted. Instead, the likely  
18 benefit far outweighs any purported burden given: (1) the information's  
19 relevance to the claims and defenses in this case; (2) the substantial amount in  
20 controversy, particularly when Plaintiff's claim for punitive damages is  
21 considered; and (3) the fact that Defendants are in sole possession of the  
22 requested information and Plaintiff has no alternative means of acquiring the  
23 same. Based on the foregoing, this factor weighs heavily in favor of disclosure.

III.

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 25<sup>th</sup> day of May, 2021.

CLAGGETT & SYKES LAW FIRM

/s/ William T. Sykes

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25<sup>th</sup> day of May, 2021, I caused to be served a true and correct copy of the foregoing **REPLY IN SUPPORT OF 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:

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

/s/ Maria Alvarez

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

# EXHIBIT 1





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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.

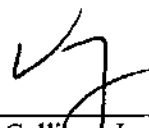
**WHEREFORE**, Plaintiff prays for judgment in her favor and against Defendant as follows:

**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*

## REGISTER OF ACTIONS

### CASE NO. A-18-772761-C

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

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

#### PARTY INFORMATION

<b>Defendant</b>	<b>Las Vegas Sands LLC <i>Doing Business As</i> Venetian Las Vegas</b>	<b>Lead Attorneys</b> <b>Michael A Royal</b> <i>Retained</i> 7024716777(W)
<b>Defendant</b>	<b>Venetian Casino Resort LLC <i>Doing Business As</i> Venetian Las Vegas</b>	<b>Michael A Royal</b> <i>Retained</i> 7024716777(W)
<b>Plaintiff</b>	<b>Sekera, Joyce</b>	<b>Keith E. Galliher, Jr.</b> <i>Retained</i> 7027350049(W)
<b>Third Party Defendant</b>	<b>Brand Vegas, LLC</b>	<b>Dalton L. Hooks</b> <i>Retained</i> 702-384-7000(W)
<b>Third Party Plaintiff</b>	<b>Venetian Casino Resort LLC <i>Doing Business As</i> Venetian Las Vegas</b>	<b>Michael A Royal</b> <i>Retained</i> 7024716777(W)

#### EVENTS & ORDERS OF THE COURT

06/01/2021 **Motion** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Plaintiff's Motion to Place on Calendar*

#### Minutes

06/01/2021 9:00 AM

- Court stated Pltf. has asked to place this matter on calendar to address two separate remands from the Court of Appeals that has directed the Court to determine, the Court's failure to have a record showing it analyzed proportionality in light of the revisions to NRCP 26(b)(1) in terms of the discovery request, this of course is overarching and dealing with Pltf's request to have accident reports from other individuals, Pltf's request was broader than what the Court had allowed, Venetian challenged even the scope that the Court had allowed and the Court's determinations were reversed and remanded for further analysis. In the first instance, the Court did not make a record of any determination regarding proportionality only relevance to the records and also the protective order sought by the Venetian, the Court of Appeals indicated that the Court had not made determination regarding good cause for the protective order. Mr. Logan argued matter is relevant and proportional to the needs of this case. Further, Pltf. has burden to prove foreseeability of harm and gravity of harm. Pltf. has a burden to prove the feasibility and the availability of alternative conduct that would have prevented the harm. Pltf. has the burden to prove lack of comparative negligence. Deft. is claiming Pltf's fall is due to the shoes that she was wearing. Additionally, we now have dozens of incident reports where people have also fallen on this property, these people are fact witnesses and Pltf. needs in order to prosecute their case. These fact witnesses can tell us what type of shoes they were wearing, how many times they traversed Deft's property and the things that counsel needs to speak to the fact witnesses about were not found in the reports that were produced or they were redacted. Deft. is in possession of the names, contact information of these fact witnesses that Pltf. must speak with in order to prosecute case and Deft. refuses to provide contact information of these fact witnesses because Deft. claims information requested, contact information which was voluntarily disclosed by persons injured on Deft's property, Deft. claiming this is protected, private information

and that disclosure is a violation of privacy rights of Deft's customers. These are fact witnesses that Pltf. must speak to in order to properly prosecute their case. The Court had already ordered certain limitations, even in granting original motions and agreeing that this information was relevant, not having address proportionality and agreeing a protective order was not warranted, although not addressing good cause according to the Court of Appeals. Further, Court inquired is counsel's feeling then everything should remain status quo or does counsel recognize that maybe some of the medical information is not appropriate to be allowed to remain in the records, maybe that should be redacted or other redactions in regards to private information. Mr. Logan argued this is not the sort of medical information that the cases cited by Mr. Royal is referring to as being information that must be protected. Further, this is not HIPPA related information. Mr. Royal argued in security report, EMT took medical history from Pltf. and is pretty detailed, In Mr. Larson's deposition, he went through Pltf's health history, similar to what we have in most of these prior incident reports. PHI stands for Protected health Information and it is the Venetian's intent to protect this particular health information to the extent possible as it relates to these particular individuals. Privacy information that Mr. Logan went over is not the same, name, address, telephone number, that is fine but that information is also connected directly to private health information that is found in these particular reports. Further, counsel still has not seen any particulars noted by Pltf. as to how even one prior incident report would have anything relevant related to these specific facts. Discovery Commissioner found that there was good cause and recommended that there be a protective order, that the names be redacted and that if Pltf. found within any of the incidents with the facts given and if they were sufficiently similar in facts and circumstances, then counsel could discuss whether those particular individuals and their contact information should be unredacted and provided to Pltf. Pltf. to this day, has not identified one case. Additionally, with respect to show cause, Mr. Royal stated Discovery Commissioner determined that the Venetian did show cause, that the Venetian did raise issue of privacy and that has continued. When this first came before the Court initially, Pltf. argued that not only should they be redacted, but Pltf. should be able to disseminate this information to whomever and however they desire. In bringing this back before the Court today, Pltf. did not address that alleged right once which is an indicator that Pltf. concedes there is no right or legitimate purpose for Pltf. to have unredacted information of guests involving prior incident reports and share them however they like to people outside litigation as they did initially in this case. Mr. Royal further argued Pltf. has had many opportunities to present the Court with some valid reason as to why they should have unredacted information and be able to freely share that and that to counsel, is a concession. The prior incident reports with respect to Pltf's desire to share these does not promote fairness and equity and to the extent Deft. is seeking protective order that is strictly good cause. In Pltf's reply where they said the Venetian redacted information of employees and if that happened, it was unintentional and will be corrected immediately. It was the intention to redact contact information associated with non-employee, Venetian guests that were involved in prior incident reports. Court noted Pltf's counsel placed matter on calendar today for discussion and this is really not a motion on today. Additional arguments by counsel. The Court had previously ordered and had limited the scope of production from date of incident, back five years prior and the scope of the area to the Grand Lux Cafe. The Court had previously determined relevancy but had not determined or at least no record of discussion of proportionality and even though the rules have that language, it is certainly is always something the Court is taking into account. As to the protective order, the Court believed it was addressed to the degree necessary that the Court did not find persuasive a protective order requirement. Further, the Court was trying to determine here in reversing the Discovery Commissioner is some parts and making the ruling that was made to give Pltf. opportunity to prove their case, defense has opportunity to provide defense but not to artificially withhold information that the Pltf. should be entitled to put on their case. The Court is going to keep in place for the most part the entirety of the prior orders with just a few adjustments. The Court is persuaded by Pltf's arguments that this discovery is not only still relevant and there has not been the full disclosure sought by the Pltf. or ordered by the Court. When you look at the factors regarding proportionality, the Court believes they all weigh in favor of the Pltf., persuaded by Pltf's arguments and not persuaded by Deft's argument. Pltf. has articulated specific rationals in order to put on case and to address Deft's defense. This is potentially a million dollar plus case, this is proportional, there are important issues at stake in the action that Pltf. has articulated, amount in controversy, second factor is well met here, Venetian has access to the information, has resources to address this,



is important to discovery to resolve case and expense does not outweigh the likely benefits. Where the Court is going to make an adjustment is, this is not HIPPA but there is privacy expectations, privacy interest beyond medical information to what is necessary for the incident. Name, address, telephone number to the extent that those things were provided by the individual who slipped and fell and to the Venetian and the Venetian otherwise has a policy to require opt out to share that information otherwise. Further, the Court believes there is no expectation of privacy in those things from these individuals and would be shared with a third party. To the extent that somebody came in and did other medical analysis that would of provided potential protectable health information, the Court believes the protected health information in report should be redacted if the Venetian wishes to be the one to protect that interest and is claiming that interest. The Court believes the proportionality and the relevancy is there for all reasons argued by the Pltf. Mr. Logan to prepare the order of clarification and ORDERED, motion GRANTED. Pltf's counsel was seeking for the Court make determinations that the Court of Appeals indicated the Court had not previous made and to reconfirm prior orders. Mr. Logan to indicate the information sought by Pltf. is proportional with the full analysis of the factors under NRCP 26(b)(1) and the Venetian has established good cause for a limited protective order and that limited protective that protects the protected health information that may be contained in the reports. That would be should they have engaged with medical professionals who added health information to these incident reports beyond the scope of what these individuals self-reported and that can be redacted but not the information as to how to contact these individuals, to the extent there is personal identifying information that is not really being sought by the Pltf., does not need to be sought by the Pltf., they asked for phonebook information, name, address, phone number to the extent those things could be publicly available. Social security number should be redacted, dates of birth can be redacted and to the extent that the Court did not previously preclude Pltf. from sharing information, finding no legal basis to preclude them from sharing information with others, that information that is able to and capable of being used by others improperly, social security numbers and dates of birth, those can be redacted. COURT ORDERED, the Venetian will produce incident reports limited to the Grand Lux rotunda dome area from November 4, 2011, to November 4, 2016, inclusive of guests names and contact information with all other information being redacted and Pltf. to include in order that the Court made analysis for proportionality that was previously not articulated and the Court has made the good cause for protective order for the limited purpose stated. Mr. Royal to review and ordered to be provided to the Court within 14 days. The Court is yet to make any determinations of admissibility of these things and should these things be admissible, then maybe Pltf. already had what they needed. The Court does not agree that the Pltf. already had everything they needed and whether or not Pltf. engaged previously with the information they had, is not relevant. But there is still much to be determined while Pltf. investigates and looks and this relevant proportional information to determine what if any of it will be utilized at the time of trial. Mr. Royal stated prior incident reports have been provided to the Pltf. which is attached to their motion and that information that the Court has now ordered redacted for those reports are already out there in this case and other cases and how does counsel address that. Further, once we give them the names, anyone can match them up and figure that out and Pltf. has made that a public record. Court stated although Mr. Royal has said this is what they have done with it and the argument from the beginning was they are not trying to find fact witnesses for their own case, they are trying to generate business for themselves and their colleagues. The Court is not sure if that is accurate, not sure what has happened in that regard, do not know how to do or undo anything and the Court has made the ruling that needed to be made and appropriate under the case law and direction for Court of Appeals. Further, counsel can do an oral motion to seal something that had previously gone out there that cannot be pulled back at this point because the Court does not know what they have done with it. We can say this is an oral motion to pull back anything that was put out that contained protected information that has been determined by the Court today that needs to be redacted and then the Venetian provide redacted reports or just seal the redacted ones so they cannot do a comparison. Further, let's seal what is now going to be provided and then comparison cannot be done but if counsel thinks that there needs to be some other documentation showing things have not gone out or things that have gone out have asked for them back. Mr. Royal stated these have been filed as attachments to motions in other case, do not know who they have been given to and once we provide the unredacted information and give them the same reports with redacted medical information, Pltf. will have to provide information as to all the people they gave this

information to. Further, Mr. Royal requested a 30 day stay on the order to allow counsel opportunity to bring back to the appellate court, if necessary. Court stated if Pltf's counsel can come up with a way to address this that will satisfy the Venetian maybe they will not want to do writ. The only issue that has hung this up, is to the extent Pltf's have instead of dealing with sharing the information with the necessary experts or other people relevant to the case have provided to other members of the bar so that they can support their own litigations or possibly folks finding new clients and that is what takes this to a whole new level that causes the Venetian appropriate concerns. If counsel can come up with something that says we will seal this, will not disclose that, we will agree attorney eyes only and not appropriate for the Court to order that. Mr. Logan stated he will work with Mr. Royal to come up with a solution and counsel does not believe very much if any information that the Court just said should be excluded in those reports. Also, any disclosures that were made to others were before this law firm was ever involved. This law firm is now handling this case and not disclosing this information to others. Court stated to the extent there is a dispute as to the order itself and how it addresses these issues of concern and counsel cannot work out something, contact this Court's laws clerk and submit competing orders.

[Parties Present](#)

[Return to Register of Actions](#)

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6 IN THE EIGHTH JUDICIAL DISTRICT COURT  
7 CLARK COUNTY, NEVADA  
8

9 JOYCE SEKERA, )

10 Plaintiff, )

11 vs. )

Case No. A-18-772761-C

Dept. No. 25

12 VENETIAN CASINO RESORT LLC, )

13 ET AL, )

14 Defendants. )

15  
16 MOTION

17 Before the Honorable Kathleen Delaney  
18 Tuesday, June 1, 2021, 9:00 a.m.

19 Reporter's Transcript of Proceedings  
20  
21  
22

23 REPORTED BY:

24 BILL NELSON, RMR, CCR #191  
25 CERTIFIED COURT REPORTER

1  
2 APPEARANCES:

3 For the Plaintiff: Geordan Logan, Esq.

4 For the Defendants: Michael Royal, Esq.  
5 Sami Randolph, Esq.  
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1 Las Vegas, Nevada, Tuesday, June 1, 2021

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4 THE COURT: Selker versus Venetian Resort.

5 State appearances, counsel.

6 MR. LOGAN: Geordan Logan for the Plaintiff.

7 MR. ROYAL: Michael Royal representing the  
8 Defendants.

9 MS. RANDOLPH: Sami Randolph representing the  
10 Defendant.

11 (Thereupon, a discussion was had off  
12 the record.)

13 THE COURT: Do either counsel, any of the  
14 counsel, wish to have the matter reported today?

15 I do have my Court Reporter, my full staff in the  
16 courtroom. It will not be written if the request is not  
17 made in advance.

18 If it is written, there will be the opportunity  
19 to obtain a transcript.

20 If it is not written, what we would have is the  
21 Court minutes and the order from the matter, whichever  
22 party is directed to prepare it, and ultimately what the  
23 Court approves, but not have the opportunity to recreate  
24 a transcript later.

25 So would either counsel, any of the counsel, like

1 to have the matter reported?

2 MR. LOGAN: Yes, Your Honor.

3 THE COURT: Mr. Logan made the request?

4 MR. LOGAN: Yes, Your Honor.

5 THE COURT: Just for the record, today my  
6 Reporter, you can make a note, he will invoice and any  
7 of the parties are able to obtain the transcript as  
8 well, but will invoice. And his name is Bill Nelson.  
9 His office number is 702-360-4677 in case you need that  
10 record.

11 The Plaintiff asked to put this matter on  
12 calendar to address the two separate remands from the  
13 Court of Appeals that has directed the Court to  
14 determine basically two things.

15 First to as the Court of Appeals identified the  
16 Court's failure to have a record showing that it  
17 analyzed proportionality in light of NRCP 2061 in terms  
18 of the discovery request. This is of course  
19 over-arching in dealing with the request of Plaintiff to  
20 have accident reports from other individuals, and of  
21 course the Plaintiff's request was ultimately broader  
22 than what the Court had allowed, but the Venetian had  
23 challenged even the scope the Court had allowed, and the  
24 Court's determinations were reversed and remanded for  
25 further analysis because in the first instance the Court

1 did not make a record of any determination regarding  
2 proportionality would be relevant to the record, and  
3 also the protective order sought by the Venetian, the  
4 Court of Appeals indicated we had not made a  
5 determination regarding good cause for the protective  
6 order, and so in the end we are here today to revisit  
7 those items.

8         Like I said, the Plaintiff went through a  
9 significant amount of analysis in placing the matter on  
10 the calendar to explain why they believe the discovery  
11 sought is proportional to meet the case going through  
12 the factors analysis, and also why there is not good  
13 cause for a protective order to be issued, also going  
14 through factors adopted by our Appellate Court from some  
15 federal case law.

16         The Venetian equally went through and explained  
17 why they believe the Plaintiff's analysis is too broad  
18 and again not specific enough, they cite case law they  
19 believe is persuasive, if not binding, from our Federal  
20 Court on these subjects, and ultimately why they believe  
21 the determination to allow the discovery is not  
22 proportional, and also ultimately why there is good  
23 cause for the protective order.

24         Underlying some of this analysis of course is  
25 whether the information that would be in these other



1 incident reports is private information, personal  
2 information, possibly medical information, but otherwise  
3 protectable information of the customers of the  
4 Venetian.

5 So I just give that sort of summary to summarize  
6 and help the parties understand.

7 I have read your briefs and obviously would have  
8 in mind some thoughts for today, but I do want to give  
9 the opportunity for counsel to make a record of  
10 highlights if they wish, or whatever they want, to make  
11 sure the Court is focusing on everything out of their  
12 briefing, certainly not a complete wholesale review of  
13 the briefing, and we will make a final determination and  
14 get things moving in this case.

15 Let me go to Mr. Logan as the party put the  
16 matter back on the calendar for today and hear what you  
17 have to say.

18 MR. LOGAN: Thank you, Your Honor.

19 So it's been excessively briefed, so in an effort  
20 to keep it super simple I'd just highlight a few things  
21 on the most important things.

22 This matter is most certainly relevant and  
23 proportionally to this case. We believe this case is  
24 going to resolve in a multi-million dollar verdict, and  
25 Plaintiff has a burden to prove foreseeability of harm

1 and gravity of harm. We know this (Inaudible).

2 The Plaintiff has a burden to prove the  
3 feasibility and availability of alternative conduct  
4 would have prevented the harm.

5 Plaintiff has a burden of proof for lack of  
6 comparative negligence.

7 We know in this case based on the Defendant's  
8 briefing that the Defendant claims the Plaintiff's fall  
9 was due to those shoes she was wearing.

10 We know the Defendant claims that Plaintiff has  
11 walked that floor hundreds if not thousands of times and  
12 that as a result her fall is her own fault, and she  
13 should have known better.

14 Well, we have had dozens of incident reports  
15 where people have also fallen on this property. These  
16 people are fact witnesses that Plaintiff needs in order  
17 to prosecute their case.

18 These fact witnesses can tell us what types of  
19 shoes they were wearing, how many times they traversed  
20 the Defendant's property.

21 The things we need to talk to these fact  
22 witnesses about are not found in the reports were  
23 released to us, or they were redacted.

24 Defendant is in possession of the names and  
25 contact information of these fact witnesses that

1 Plaintiff must speak with in order to prosecute their  
2 case.

3 The Defendant refuses to provide the contact  
4 information of these fact witnesses that this Defendant  
5 claims was never requested, the contact information  
6 which was voluntarily disclosed by persons they knew  
7 were on the Defendant's property.

8 The Defendant claims this is protected  
9 information, and disclosure is a violation of privacy  
10 rights of its customers.

11 In so arguing, this Defendant provides us their  
12 policies and procedures for handing us the information.

13 When you look at the policy of the Defendant in  
14 protecting its customers' information, they say we share  
15 your personal information with our affiliates, with  
16 service providers, agents, other business partners,  
17 marketing partners, made promotional and marketing  
18 advertisements, conduct sweepstakes and giveaways. We  
19 also may disclose personal information about you if we  
20 are required or permitted to do so by application of  
21 law. Application of a a legal process such as a Court  
22 order or subpoena, law enforcement authorities, and  
23 other government officials to comply with the requests.  
24 When we believe disclosure is necessary to prevent  
25 physical harm or financial loss to company.

1           Our guests or the public is required by law to  
2     establish, exercise, or defend our legal rights.

3           The Defendant informed their customers how they  
4     use personal information, they stated again marketing  
5     efforts, including messages and other types of  
6     information about offers, promotions and events.

7           It also states, for prevention and protection to  
8     protect the Defendant against legal claims and other  
9     liabilities.

10          So this idea that the information is protected,  
11     and that these customers have some privacy interest or  
12     some belief that their information is being protected,  
13     is just not so.

14          In fact, in the Defendant's policies they say, if  
15     you disagree with any of the things we've just outlined  
16     how we use this information, you can opt out, and yet  
17     Defendant has not told us of any of these people opted  
18     out of these policies to be disclosed.

19          So this idea some proof isn't in this  
20     information, the address and phone numbers is a red  
21     herring, just not so.

22          These are fact witnesses the Defendant must speak  
23     to in order to properly prosecute their case.

24          On that, I will rest.

25          THE COURT: I appreciate, Mr. Logan, your

1 summary, and I think it was concise and covered the  
2 information we had.

3 I know we're going to hear from Mr. Royal  
4 contrary opinions as to these circumstances, but I think  
5 maybe before we leave you if I could just have you speak  
6 to the Court had already ordered certain limitations if  
7 you will even in granting your original motions, and  
8 agreeing that this information was relevant, not having  
9 addressed proportionality, and agreeing that a  
10 protective order was not warranted, although not  
11 addressed in good cause according to the Court of  
12 Appeals, but is your feeling then that everything should  
13 just be status quo, that we basically just say, well the  
14 Court of Appeals sent it back for this analysis, but it  
15 all was in our favor and leave it as it is, or do you  
16 recognize for instance in some of the persuasive, albeit  
17 not binding, case law that the Venetian cited that maybe  
18 some of the medical information is not appropriate to be  
19 allowed to remain in the record, maybe those things  
20 should be redacted, or other redactions with regard the  
21 private information?

22 I don't want to necessarily try to revisit name,  
23 address, phone number, because I know you made the  
24 argument already just now like we believe you believe  
25 these are fact witnesses that you need to be able to

1 contact, but there is some argument that to the extent  
2 that the incident reports would reveal medical  
3 information or other circumstances maybe there should be  
4 further limitation.

5 Do you want to speak to any of that before we  
6 hear from Mr. Royal?

7 MR. LOGAN: Certainly, Your Honor.

8 So when we pulled up the incident report, the  
9 type of medical information listed is the injury that  
10 the person complains of. This is not the sort of  
11 medical information that the cases cited by Mr. Royal is  
12 referring to as being information must be protected.

13 What the Court's concern in the past has been in  
14 getting this information is stuff about mental disorders  
15 or previous medical conditions like heart conditions,  
16 high cholesterol, these pieces of information that are  
17 essential to who a person is and their medical  
18 condition, not whether they injured their knee or their  
19 hand in a fall.

20 When you look at the information that was not  
21 protected that we can see looking into the report of our  
22 own client you can see there really is no medical  
23 information offered I hit my knee and injured my knee, I  
24 injured my head, this is not the kind of information  
25 needs to be protected. This is the information that the

1 person disclosed to the Venetian with the understanding  
2 that other people received the information and may  
3 proceed to Court where it would be public information.

4 This whole idea he's raised about this being  
5 HIPAA-protected information is just ridiculous because  
6 the Venetian is not a government entity under HIPAA,  
7 this is not HIPAA-related information, this is simply a  
8 person reporting an injury that they fell.

9 If this information in these reports are social  
10 security numbers, or driver's license numbers, or  
11 account numbers, we fully support redacting that  
12 information, but information that is limited to what was  
13 injured when they fell, that is not protected.

14 THE COURT: Thank you, Mr. Logan.

15 Mr. Royal.

16 MR. ROYAL: Thank you, Your Honor.

17 I guess in response to what counsel just said  
18 regarding HIPAA-related information and so forth, in our  
19 own security report the EMT took a medical history from  
20 her, it's pretty detailed.

21 THE COURT: Mr. Royal, can I ask a favor?

22 Can you hold on one second?

23 I apologize.

24 Mr. Logan, can you possibly mute your mic, and  
25 anyone else on the hearing mute your mic?



1 I think it's your mic, since you were talking  
2 before, I didn't want to interrupt you, but there's a  
3 lot of reverb, and it seems to have stopped now.

4 So go ahead, Mr. Royal.

5 I'm sorry.

6 MR. ROYAL: Thank you.

7 Mr. Larson's Deposition Exhibit L he went through  
8 her history updating somewhere, what we have in most of  
9 these prior incident reports, explain there's the  
10 acronym PHI stands for protective health information.  
11 It is Venetian's intent to protect this particular  
12 information to the extent possible as pertains to these  
13 particular individuals.

14 The privacy information is really gone over, it's  
15 not saying -- it's like when we talk about for example  
16 this is phone book information, name, address, so forth,  
17 that is fine, but that information is also connected  
18 directly to private health information found in these  
19 particular reports.

20 I think one of the things that when the Plaintiff  
21 has throughout from the beginning when this issue was  
22 first brought to the Court is they've argued this  
23 comparative fault issue, I still haven't seen any  
24 particulars noted by the Plaintiff as to -- even one  
25 prior incident report could have anything relevant

1 related to this particular set of facts.

2 Initially when this was brought before the  
3 discovery commissioner, the Court will remember the  
4 discovery commissioner granted, found there was good  
5 cause and granted that there be a protective order, and  
6 that if the Plaintiff found within any of the incidents  
7 with facts in them not redacted, if they were  
8 sufficiently similar to the facts and circumstances that  
9 counsel presents and discusses whether those particular  
10 individuals and their contact information should be  
11 redacted -- or I'm sorry -- unredacted and provided to  
12 the Plaintiff. The Plaintiff had never ever done that.

13 Even to this day they haven't identified one  
14 case.

15 Now, I wanted to mention also to the Court that  
16 before the Court put it back on calendar it attached all  
17 prior incident reports that were previously produced,  
18 and in redacted form initially produced subject to a  
19 protective order. They made no effort to go through  
20 those and make sure they were in compliance with the  
21 Court's order in March of 2020 limiting the scope to the  
22 Grand Lux area. I think that has some relevance to the  
23 Court's consideration today in light of some of their  
24 talk about why all of these are relevant. I think the  
25 Court needs to keep that in mind.

1 THE COURT: Mr. Royal, didn't this Court though  
2 limit it to just the Grand Lux area?

3 MR. ROYAL: Yes, Your Honor, you did, and I'm  
4 telling you the prior incidents reports were with the  
5 official filing with the Court were not limited to the  
6 Grand Lux area, that was a point I made in our  
7 opposition, I wanted to make that clear with the Court.

8 Also with respect to show cause, obviously the  
9 discovery commissioner determined the initial cause the  
10 Venetian did raise the issue of privacy before the  
11 discovery commissioner initially, and that has  
12 continued.

13 I wanted to add that when this first came before  
14 the Court initially, this Court, Plaintiff argued  
15 successfully that not only the Plaintiff should be able to  
16 disseminate this information to whomever and however  
17 they like.

18 In bringing it back before the Court today in  
19 their initial filing and/or reply they did not address  
20 that right, that alleged right, once, which is an  
21 indicator that the Plaintiff concedes that there is no  
22 right by any legitimate purpose for the Plaintiff to  
23 have unredacted information in prior reports and share  
24 them however they like with people out of litigation as  
25 they did in the history of the case.

1           One of the factors that the Court's to consider  
2 about with respect to whether information like this  
3 should be produced is found in the Glenby Trust  
4 (Phonetic) case where the Court determined are there any  
5 violations of privacy interests, and is there a  
6 legitimate purpose, is it for a legitimate purpose or  
7 improper purpose, and certainly our position initially  
8 was this was for an improper purpose.

9           As to these prior incident reports, while there  
10 was a pending motion for a protective order, which  
11 motion was granted by the discovery commissioner at  
12 least with the report the Plaintiff was already sharing  
13 this information, and what's being attached to motions  
14 and other unrelated cases.

15           With respect the Plaintiff's comparative fault,  
16 if they define one case, that would be great. They  
17 haven't. They are just talking in terms of  
18 generalities.

19           They've had many opportunities to present the  
20 Court with some valid reasons why they should have  
21 unredacted information, be able to share it freely with  
22 the Court. Certainly that to us is a concession that  
23 the prior incident reports with respect to their desire  
24 to share those should not to the extent we see the  
25 protective order that is certainly good cause.

1 I wanted to note also a correction in the  
2 Plaintiff's I believe their reply when they said the  
3 Venetian had redacted information of the employees. If  
4 that happened, Your Honor, they haven't provided any  
5 specifics, they just made a statement, if that happened,  
6 that was unintentional, and we would correct that  
7 immediately.

8 It was our intention to only redact contact  
9 information associated with those non-employees,  
10 Venetian guests involved in the prior incident reports.

11 They make arguments about, well we need these  
12 reports because we need to talk about corrective notice,  
13 want to make arguments about comparative fault and so  
14 forth. Counsel says -- he talks about shoes and things  
15 like that.

16 These reports have photographs were produced,  
17 photographs of shoes. If that is some kind of issue,  
18 they have that kind of information.

19 What particular incident reports have fallen in  
20 the scope of the March 20th, 2020 order is the Plaintiff  
21 talking about they are so critical to their case, they  
22 need to be able to contact these people. They haven't  
23 again identified anyone.

24 With respect to counsel's argument about the  
25 protective health information, no argument was made, no

1 reference to Clark County Coroner case cited by the  
2 Appellate Court, which I think is critical in this  
3 particular case. I think the Court made us aware of  
4 that in a footnote and opinion, so we would ask the  
5 Court would place some emphasis on that.

6 Although the HIPAA definitions do not include  
7 Venetian for example for a provider of health care,  
8 while it provides EMT assistance and in responding to  
9 cases like this, there's nevertheless a privacy interest  
10 order of protection. The was provided in that  
11 particular case, it's non-trivial, and it's been our  
12 argument from the outset that it was, and it was the  
13 discovery commissioner who determined that it was  
14 HIPAA-related medical private information. She didn't  
15 use the word non-trivial, but she certainly recognized  
16 that as a privacy interest.

17 So the burden has shifted to Plaintiff to show a  
18 public interest they want to advance some disclosure,  
19 and they talk about, well we have a multi-million dollar  
20 lawsuit, need to make certain points about safety and  
21 things like that.

22 And in the end, Your Honor, they have to  
23 acknowledge there is privacy interests involved that  
24 we've shown good cause to a minimum they should not have  
25 this information to be able to share it outside this at

1 a minimum, but it's our position the discovery  
2 commissioner had it right the first time, which was to  
3 redact the information that would connect individuals  
4 with the facts of these particular prior incident  
5 reports, and that this would be protected under 26(d),  
6 would not be -- only be used for purposes of this  
7 particular litigation, and if the Plaintiff felt that  
8 there was a particular prior incident report that was  
9 relevant with similar facts and circumstances in the  
10 same location, that then counsel could meet and  
11 determine whether or not there should be a disclosure of  
12 that particular information.

13 I think, Your Honor, when the Court balances the  
14 constitutional right of privacy, again this isn't using  
15 someone's contact information, some sort of marketing  
16 list, this is health-related information about an event  
17 that is perhaps not something that these people would  
18 want broadcasted to the world, and certainly I still  
19 fail to see how any of this is relevant.

20 They have the information with respect to prior  
21 incidents. To the extent have this is allowed, that any  
22 of this is admissible, they have the information.

23 The Plaintiff talks about prior incidents. They  
24 can talk about prior circumstances all they want, but as  
25 far as having the individuals and sorts of names as



1 witnesses, they haven't really explained how these  
2 people are going to contribute at all, do anything other  
3 than create some complexity and confusion to this  
4 particular case.

5 They have video, we have witness testimony of the  
6 Plaintiff, we have an incident report, we have a medical  
7 report and so forth talk about what happened to her.

8 The fact we're making a claim, and we're claiming  
9 she had some responsibility for the fall, remember, Your  
10 Honor, it's our position that there was nothing on the  
11 floor, that this was a dry floor, and the Plaintiff has  
12 even argued in reply that, hey, if it's a dry floor, it  
13 must be a dangerous floor, and if the Plaintiff wants to  
14 concede that the floor was dry, then I think we can have  
15 that discussion, but if -- remember in -- it's our  
16 position it's a dry floor, that none of these prior  
17 incidents relate to a foreign substance anyway.

18 Now, if he can identify someone who slipped and  
19 fell on a dry floor, and there are similar  
20 circumstances, and wore the same kind of shoes, they can  
21 identify that case, and we can talk about it, about  
22 whether or not that is information that needs to be  
23 brought forth, but right now it's just a shotgun  
24 approach by the Plaintiff they want all more than 70  
25 people and others with them identified, so they can

1 contact them going on rather a fishing expedition.  
2 Remember they are not even limited to the area of the  
3 fall, they've expanded this throughout the Venetian  
4 property.

5 So, Your Honor, with that, it's our position that  
6 we have met our burden with respect to the show cause  
7 part of the 26(d) motion that this information sought is  
8 not relevant, and frankly it's not proportional to this  
9 case.

10 They have all the information that they need to  
11 put their case on and work towards a multi-million  
12 dollar verdict.

13 Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Royal.

15 I don't really have any follow-up questions for  
16 you.

17 I wanted to give each side the opportunity, and I  
18 think you each side did a great job of reviewing and  
19 highlighting their information.

20 Mr. Logan, you placed it on calendar for this  
21 discussion, but it's not really a motion from you so to  
22 speak that doesn't need to have rebuttal necessarily,  
23 but I don't want to cut anybody off unfairly.

24 I do have several other matters to hear on this  
25 calendar before we get to our 10:30 dismissal calendar.

1           So I need to wrap it up.

2           Anything you feel compelled you need to highlight  
3 from a rebuttal stand point, not what you already  
4 covered, but anything you feel you need to address about  
5 what Mr. Royal said.

6           MR. LOGAN: I'll be extremely brief.

7           All of the things that Mr. Royal has just spoken  
8 to sort of frustrates me because it indicates Mr. Royal  
9 is not listening to what I've been saying, not reading  
10 what we've been writing, because we are saying all of  
11 these events are important to us because so long as the  
12 Venetian is saying, it's about those shoes they were  
13 wearing, that our client was wearing, it's about the  
14 floor she walked on so many times, we need to be able to  
15 talk to these another people to find out what shoes they  
16 were wearing, how many times they walked the floor, that  
17 is not in the incident reports.

18           So the information in those reports is important  
19 to us, so we can contact them and find out what is not  
20 in the report, the stuff that the Venetian is now saying  
21 is our client's fault.

22           If those things were present in these previous  
23 instances, and they didn't do anything about it, that  
24 goes exactly to our case, and we haven't even begun to  
25 discuss punitive damages also in this case, and it goes