IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

Petitioners,

vs.

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

Respondents,

and

JOYCE SEKERA, AN INDIVIDUAL,

Real Party in Interest.

No. 83600-COA

REAL PARTY IN INTEREST'S ANSWER TO PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

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NRAP 26.1 DISCLOSURE

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

1. Joyce Sekera is an individual.

2. Claggett & Sykes Law Firm and The Galliher Law Firm represent Joyce Sekera in the district court and in this court.

DATED this 9th day of December 2021.

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RELIEF SOUGHT

Petitioner Venetian Casino Resort, LLC requests that this court issue a writ of mandamus or, alternatively, prohibition, ordering the district court to vacate its order requiring Venetian to produce the names and contact information of invitees that slipped and fell on the same marble floors as real party in interest Joyce Sekera in the three years prior to her fall. Given that Venetian fails to satisfy the writ relief standard, Sekera urges this court to decline to entertain the instant petition. Alternatively, given that Venetian fails to demonstrate that the district court committed legal error in concluding that the requested discovery was relevant, that substantial evidence does not support the district court's factual findings regarding proportionality, or the district court manifestly abused its discretion in declining Venetian's request to protect the names and contact information of invitees that slipped and fell on the same marble floors as Sekera in the three years prior to her fall, Sekera urges this court to deny the petition on its merits.

ISSUES PRESENTED

Whether the district court committed legal error in concluding that the requested discovery is relevant to Sekera's negligence claims and Venetian's comparative negligence affirmative defense?

Whether substantial evidence supports the district court's factual findings that the requested discovery is proportional to the needs of Sekera's case?

Whether the district court manifestly abused its discretion in denying Venetian's request to protect the names and contact information of invitees that slipped and fell on the same marble floors as Sekera in the three years prior to her fall?

RELEVANT FACTS

Sekera slipped and fell on Venetian's marble floors due to the presence of a foreign substance. *Venetian Casino Resort, LLC v. Eighth Jud. Dist. Ct.*, 136 Nev., Adv. Op. 26, 467 P.3d 1, 3 (Ct. App. 2020). Following her fall, Venetian employees escorted her to the medical room for an examination. 1 PA 5-6. At some point, a Venetian employee took photographs of the tops and bottoms of Sekera's shoes. 1 PA 9; 4 RPIIA 936-37; 6 RPIIA 1165; 7 RPIIA 1364. Sekera filed a complaint, alleging

negligence and seeking general damages, special damages, and attorney fees and costs. 1 PA 1-4. She later amended her complaint, adding information about prior slip and falls on the same marble floors due to the presence of a foreign substance and added a request for punitive damages. *Id.* at 33-37. In its answer to the amended complaint, Venetian raised the affirmative defense of comparative negligence. 9 RPIIA 1816-19.

During discovery, Venetian employees opined that Sekera slipped and fell on the marble floors because her shoes were worn down. 4 RPIIA 939; 8 RPIIA 1558, 1570. Sekera requested that Venetian produce prior incident reports relating to invitee slip and falls on the same marble flooring in the three years preceding her slip and fall. *Venetian Casino Resort, LLC*, 136 Nev., Adv. Op. 26, 467 P.3d at 3. Venetian produced the requested information, but redacted personal information, including the names, addresses, and phone numbers of the invitees. *Id.*

Venetian eventually moved for a protective order, which Sekera opposed. *Id.* The discovery commissioner concluded that the invitees' privacy interests precluded disclosure and recommended that

Sekera identify similar incidents so the parties could work towards a resolution. *Id.* Sekera objected to the discovery commissioner's recommendation, and the district court sustained the objection. *Id.*

Venetian petitioned this court this court for writ of mandamus or, alternatively, prohibition, which this court granted. *Id.* at 4-8. This court concluded that the district court failed to weigh the proportionality of Sekera's requested discovery under NRCP 26(b)(1) and failed to conduct a good cause analysis regarding Venetian's request for a protective order under NRCP 26(c)(1). *Id.* at 7-8. The clerk of this court issued a writ of mandamus, and the district court vacated its order. *Id.* at 8.

Sekera then moved the district court to conduct the NRCP 26(b)(1) and NRCP 26(c)(1) analysis as this court ordered. 14 PA 3163-88. She argued that the requested information was relevant to her claims of negligence, her request for punitive damages, and to rebut Venetian's affirmative defense of comparative negligence. *Id.* at 3175-77. Sekera further argued that her need for the requested information was proportional to the needs of the case under the NRCP 26(b)(1) factors. *Id.* at 3178-81. Finally, Sekera argued that Venetian failed to demonstrate

good cause for a protective order under this court's holding. *Id.* at 3182-87.

Venetian opposed. 15 PA 3293-317. First, Venetian contended that it demonstrated good cause for a protective order under NRCP 26(c)(1). *Id.* at 3302-11. Second, Venetian averred that the requested information was not relevant or proportional to Sekera's case under NRCP 26(b)(1). *Id.* at 3311-16. Finally, Venetian requested that the district court adopt the prior recommendation of the discovery commissioner. *Id.* at 3317. Sekera replied, reiterating her prior arguments. *Id.* at 3465-91.

After a hearing, 15 PA 3503-24; 16 PA 3525-39, the district court granted in part and denied in part Sekera's motion to place on calendar. 16 PA 3558-70. First, the district court concluded that the requested information was relevant to Sekera's negligence claim, Sekera's request for punitive damages, and Venetian's affirmative defense of comparative negligence. *Id.* at 3563-64. Second, the district court found that all six NRCP 26(b)(1) factors weighed in favor of disclosure. *Id.* at 3564-67. Finally, the district court concluded that Venetian demonstrated good cause for a protective order regarding the

prior invitees' social security numbers, dates of birth, driver's license numbers, and private health information that the invitees disclosed to emergency medical technicians. *Id.* at 3567-69. Accordingly, the district court ordered Venetian to disclose prior incident reports containing the names and contact information of the prior invitees. *Id.* at 3569-70. Venetian again petitions this court for extraordinary relief.

POINTS AND LEGAL AUTHORITIES

I. *Standard of review*

A writ of mandamus is available to, among other uses, "control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 122 Nev. 132, 142, 127 P.3d 1088, 1096 (2006). Alternatively, a writ of prohibition is available "to prevent improper discovery." *State ex rel. Tidvall v. Eighth Jud. Dist. Ct.*, 91 Nev. 520, 524, 539 P.2d 456, 458 (1975). Given the discretionary nature of discovery rulings, Nevada appellate courts rarely entertain writ petitions challenging pretrial discovery orders. *Cotter v. Eighth Jud. Dist. Ct.*, 134 Nev. 247, 249, 416 P.3d 228, 231-32 (2018).

However, Nevada appellate courts have entertained such petitions where the petitioner alleges that the challenged discovery order requires disclosure of privileged or confidential information. *Id.* at 249,

127 P.3d at 231. Once disclosed, such information loses its privileged or confidential status, thereby denying the petitioner a "plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330; *Cotter*, 134 Nev. at 249, 416 P.3d at 231. Thus, the Supreme Court of Nevada has entertained petitions for a writ of prohibition where the petitioner alleged that a district court discovery order compelled disclosure of materials that a privilege protected. *See id.* at 250, 416 P.3d at 232 (entertaining a writ petition involving the work-product privilege); *Wardleigh v. Second Jud. Dist. Ct.*, 111 Nev. 345, 351-59, 891 P.2d at 1180, 1184-89 (1995) (entertaining a writ petition involving the attorney-client and work-product privileges); *State ex rel. Tidvall*, 91 Nev. at 524-25, 539 P.2d at 458-59 (entertaining a writ petition involving an express statutory privilege).

Here, unlike the above authority, Venetian fails to argue that a specific privilege applies to the requested discovery. *See* Pet. 25-44. Rather, Venetian merely contends that the requested discovery invades some amorphous privacy interest held by non-parties to the underlying matter. *Id.* Such a contention stands in stark contrast to the "longstanding principle that the public . . . has a right to every man's

evidence," unless a "constitutional, common-law, or statutory privilege" protects it. *Branzburg v. Hayes*, 408 U.S. 665, 688 (1972) (internal quotations omitted). Indeed, legislatures and courts do not lightly create such privileges, nor do courts expansively construe the same, because "they are in derogation of the search for truth." *United States v. Nixon*, 418 U.S. 683, 710 (1974) *superseded by statute on other grounds as stated in Bourjaily v. United States*, 483 U.S. 171, 179 (1987); *Ashokan v. State, Dep't of Ins.*, 109 Nev. 662, 668, 856 P.2d 244, 247 (1993) (noting that Nevada courts narrowly construe privileges). As the adversarial system fundamentally depends on the comprehensive development of all relevant facts, and as "[t]he very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence," *Nixon*, 418 U.S. at 709, it was imperative that Venetian identify, with specificity and particularity, what constitutional, common-law, or statutory privilege or privacy interest the district court order violated. After two years of litigating this issue, Venetian is still unable to provide this court with a legal basis to preclude the sought discovery.

Nevada courts recognize that "[e]xtraordinary relief should be extraordinary." *Walker v. Second Jud. Dist. Ct.*, 136 Nev., Adv. Op. 80, 476 P.3d 1194, 1195 (2020). Indeed, the Supreme Court of Nevada has stated when, as in here, a petitioner challenges a district court's exercise of its discretionary power, "the petitioner's burden to demonstrate a clear legal right to a particular course of action by [the district] court is substantial." *Id*. at 1196. As Venetian has failed to provide this court with any privilege that applies to the requested discovery or any privacy interest that precludes disclosure of the same, Sekera respectfully urges this court to decline to entertain the instant petition. *See Superpumper, Inc. v. Leonard*, 137 Nev., Adv. Op. 43, 495 P.3d 101, 107 (2021) (noting that a party's "blanket invocation of privilege is insufficient to demonstrate" that a privilege applies); *Diaz v. Eighth Jud. Dist. Ct.*, 116 Nev. 88, 93, 993 P.2d 50, 54 (2000) (noting that writ relief is appropriate where a "writ petition offers [an appellate] court a unique opportunity to define the precise parameters of [a] privilege conferred by a statute that [an appellate] court has never interpreted"). Even if this court were to entertain the instant petition, the following analysis demonstrates that Venetian is not entitled to extraordinary relief.

II. *The district court correctly concluded that prior incident reports are relevant to the underlying matter*

Venetian contends that Sekera did not meet her burden of proof in establishing her need for the requested discovery under NRCP 26(B)(1). Pet. 21-24. In so doing, Venetian solely relies upon *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 377 P.2d 174 (1962), asserting that evidence of prior incident reports is not relevant in cases involving the temporary presence of foreign substances on a walking surface. Pet. 22. However, Venetian's reliance upon *Eldorado Club, Inc*. is misplaced, as the facts are inapposite to the instant matter.

In considering writ petitions, Nevada appellate courts review legal questions de novo. *Cotter*, 134 Nev. at 250, 416 P.3d at 232. Contrary to Venetian's assertion, Nevada courts have long recognized that evidence of prior incidents is admissible to prove liability so long as the factual, spatial, and temporal characteristics are relevant to the controversy. *See Powell v. Nev., Cal. & Or. Ry.*, 28 Nev. 40, 63-65, 78 P. 978, 979 (1904) (affirming the district court's admission of a witness's testimony that, on a prior occasion, the appellant's engine whistle frightened his team of horses, causing them to run away); *Longabaugh v. Va. City & Truckee R.R. Co.*, 9 Nev. 271, 288 (1874) (holding that evidence

of fires that the appellant's engine caused a few weeks prior was admissible to prove that the appellant's engine caused the at-issue fire). Regarding prior slip and fall incident reports, the Supreme Court of Nevada noted that such evidence is relevant where "there is [a] proper showing that the conditions surrounding the prior occurrences have continued and persisted." *Eldorado Club, Inc.*, 78 Nev. at 511, 377 P.2d at 174; *S. Pac. Co. v Harris*, 80 Nev. 426, 431, 395 P.2d 767, 770 (1964) (noting that courts allow "evidence of prior accidents at the same place involv[ing] a specific physical condition, usually permanent or continuing in character"). Therefore, whether prior slip and fall incident reports are relevant and admissible turns on the particular facts of a given controversy.

In *Eldorado Club, Inc*. an invitee stepped on a lettuce leaf on a ramp, slipping and falling. *Id.* at 508, 377 P.2d at 175. The invitee sued the property owner for damages under a theory of negligence. *Id.* at 508-09, 377 P.2d at 175. During trial, a witness for the invitee testified that he also slipped and fell on the same ramp on two separate occasions two months prior to the at-issue fall. *Id.* at 509, 377 P.2d at 175. He testified that "a smear or wet spot" on the ramp caused his first slip and

that a "lettuce leaf or some green leafy vegetable" caused his second slip. *Id.* The district court allowed the testimony, concluding that it established that the owner had "notice . . . of the dangerous condition of the ramp when wet or with refuse upon it." *Id.* The jury found for the invitee and the owner appealed. *Id.*

On appeal the court considered whether the district court's admission of prior incident evidence was erroneous. *Id.* While subtle, the court noted that whether a district court could admit such evidence turned on the nature of the allegations and the facts therein. *Id.* at 510-11, 377 P.2d at 176. In particular, the court identified three distinct factual scenarios. *Id.*

First, the court suggested that prior incident evidence is admissible where the plaintiff alleges that "a structural, permanent or continuing defect" caused his or her injury. *Id.* at 510, 377 P.2d at 176. In such an instance, prior incident evidence may demonstrate that the defendant had notice of the danger that a permanent condition posed. *Id.* at 511, 377 P.2d at 176. Second, the court explained that prior incident evidence is not admissible where the plaintiff alleges that "a temporary condition which might or might not exist from one day to the other"

caused his or her injury. *Id.* In this scenario, the prior incident evidence is not relevant because it does not demonstrate that the defendant had notice of the presence of the temporary condition. *Id.* at 510, 377 P.2d at 176. However, the court noted an exception to the second factual scenario where the plaintiff proffers evidence that the "conditions surrounding the prior occurrences have continued and persisted." *Id.* at 511, 377 P.2d at 176. Thus, a third scenario exists where the plaintiff shows that a surface continuously has debris or foreign substances on it. *Id.* at 511, 377 P.2d at 176. In such a scenario, prior incident evidence is admissible to demonstrate that the defendant had notice that a surface continuously has debris or foreign substances on it, triggering a duty remedy the dangerous condition. *Id.* at 510-11, 377 P.2d at 176; *see also Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250, 849 P.2d 320, 323 (1993) (noting that a jury could determine "that the virtually continual debris on the produce department floor put [defendant] on constructive notice that, at any time, a hazardous condition might exist which would result in an injury to [defendant's] customers").

Applying this framework, the court held that the district court erred in admitting prior incident reports. *Eldorado Club, Inc.*, 78 Nev.

at 511, 377 P.2d at 176. The court reasoned that testimony of two prior slips within the two months preceding the invitee's slip was insufficient to demonstrate a continuous and persistent presence of debris or foreign substances on the ramp. *Id.* Thus, the invitee's claim fell within the second category, and the district court's admission of prior incident evidence was erroneous. *Id.*

Here, Sekera alleged that she slipped on Venetian's marble floors, which had liquid on it. 1 PA 35. She further alleged that Venetian had notice that its marble floors regularly had liquid on them. *Id.* Alternatively, she alleged that Venetian's marble floors caused an unreasonable number of slips. *Id.* The record before this court demonstrates that as many as 73 individuals slipped and fell on the same marble floor as Sekera in the 3 years prior to her fall. 1 PA 36, 175-85. The record further demonstrates that as many as 59 individuals slipped and fell on the same marble floor due to the presence of liquid in the 3 years prior to her fall. *Id.* at 175-85.

Applying the *Eldorado Club, Inc.* framework, Sekera's claims fall into the first category and the third category, as she alleged that Venetian's marble floors were permanently dangerous or, alternatively,

that Venetian's marble floors continuously had foreign substances on them. Therefore, prior incident reports are relevant and admissible to Sekera's claims, as they demonstrate that Venetian had notice of the danger that its marble floors posed. Accordingly, Nevada caselaw belies Venetian's averment that the prior incident reports are inadmissible. Thus, as Venetian has failed to demonstrate that the district court abused its discretion or allowed improper discovery, Sekera urges this court to reject Venetian's request for extraordinary relief. *See Int'l Game Tech., Inc.*, 122 Nev. at 142, 127 P.3d at 1096; *State ex rel. Tidvall*, 91 Nev. at 524, 539 P.2d at 458.

III. *Substantial evidence supports the district court's factual findings regarding the relevance and proportionality of the requested discovery*

Because it asserts that *Eldorado Club, Inc.* precluded prior incident reports as a matter of law, Venetian does not challenge the district court's factual findings regarding the relevance or proportionality of the requested discovery. Pet 21-24. Even if Venetian had done so, substantial evidence supports the district court's factual findings.

In considering writ petitions, Nevada appellate courts give deference to the district court's factual findings. *Cotter*, 134 Nev. at 250, 416 P.3d at 232. An appellate court will not set aside the district court's

findings of fact "unless they are clearly erroneous" or substantial evidence does not support them. *Canarelli v. Eighth Jud. Dist. Court*, 136 Nev., Adv. Op. 29, 464 P.3d 114, 119 (2020).

NRCP 26(b)(1) provides that

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

Consistent with this court's opinion, *Venetian Casino Resort, LLC*, 136 Nev., Adv. Op. 26, 467 P.3d at 5-6, the district court engaged in the fact-intensive analysis that NRCP 26(b)(1) demands, 16 PA 3563-67.

A. *The requested discovery is relevant to Sekera's negligence claim and Venetian's comparative negligence affirmative defense*

Relevant evidence is that which tends "to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015. To demonstrate that a defendant breached its duty to maintain a safe premises in a slip and fall matter, the plaintiff must show that the defendant had actual or constructive notice of a dangerous permanent

defect, or that a surface continuously or persistently had debris or foreign substances on it. *Eldorado Club, Inc*., 78 Nev. at 510-11, 377 P.2d at 175-76. A plaintiff may recover punitive damages where he or she demonstrates by clear and convincing evidence that the defendant, among other things, acted with conscious disregard "of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences." NRS 42.001(1); *see also* NRS 42.005(1). To demonstrate an affirmative defense of comparative negligence, the defendant must show that the plaintiff's negligence was greater than the defendant's negligence in causing the plaintiff's damages. NRS 41.141(1).

Here, the district court found that the prior incident reports, including the names and contact information of the prior slip and fall victims, were relevant to Sekera's negligence claim, punitive damages claim, and to rebut Venetian's comparative negligence affirmative defense. 16 PA 3563-64. Substantial evidence supports the district court's factual findings.

As stated above, *see supra* Points and Legal Authorities § II, Sekera alleged that the Venetian breached its duty to maintain a safe

premise for invitees because it had constructive or actual notice that its marble floors were permanently dangerous or continuously or persistently had foreign substances on it, rending it dangerous. 1 PA 36. Sekera also requested punitive damages. *Id.* at 37. To defend against Sekera's allegation, Venetian raised an affirmative defense of comparative negligence. 9 RPIIA 1816-19. Sekera suspects, and the record before this court demonstrates, that Venetian will blame Sekera's fall on her shoes rather than its marble floors. *See* 1 PA 6, 9, 121-22; 4 RPIIA 936-37, 939; 6 RPIIA 1165; 7 RPIIA 1364; 8 RPIIA 1558, 1570. Thus, to rebut Venetian's affirmative defense, Sekera must investigate the facts surrounding the prior victims' falls, including the condition of the marble floors and the condition of the prior victims' shoes. Given that substantial evidence supports the district court's factual findings regarding the relevance requested discovery, this court may not set them aside. *Canarelli*, 136 Nev., Adv. Op. 29, 464 P.3d at 119.

B. *The requested discovery is proportional to Sekera's needs*

As this court held, district courts must conduct the fact-intensive analysis under NRCP 26(b)(1) in determining whether requested discovery is proportional to the needs of a given case. *Venetian Casino Resort, LLC*, 136 Nev., Adv. Op. 26, 467 P.3d at 5-6. Here, the

district court found that all six NRCP 26(b)(1) factors weighed in favor of disclosure of the requested discovery. 16 PA 3564-67. Substantial evidence supports the district court's factual findings.

1. *The requested discovery is important to the issues*

The district court found that the requested discovery was important to the issues of notice and foreseeability underpinning Sekera's negligence claim, as well as Venetian's comparative negligence affirmative defense. *Id.* at 3564-35. Thus, the district court found that this factor weighed in favor of disclosure of the requested discovery. *Id.* As stated above, *supra* Points and Legal Authorities § III(A), the requested discovery is important to Sekera's negligence claim, Sekera's request for punitive damages, and Sekera's ability to rebut Venetian's affirmative defense of comparative negligence. Given that substantial evidence supports the district court's factual findings, 1 PA 6, 9, 36-37, 121-22; 4 RPIIA 936-37, 939; 6 RPIIA 1165; 7 RPIIA 1364; 8 RPIIA 1558, 1570; 9 RPIIA 1816-19, this court may not set them aside, *Canarelli*, 136 Nev., Adv. Op. 29, 464 P.3d at 119.

2. *The amount in controversy is substantial*

The district court found that Sekera is claiming $114,009.27 in past medical expenses; $457,936.99 in future medical expenses; an

undetermined amount of lost wages and earning capacity; past and future pain, suffering, mental anguish, and the loss of enjoyment of life damages; punitive damages; and attorney fees and costs. 16 PA 3565-66. Given the amount of claimed damages, the district court found that the amount in controversy was substantial, *see Guerrero v. Wharton*, No. 2:16-CV-01667-GMN-NJK, 2017 U.S. Dist. LEXIS 225185 at *10-11 (D. Nev. Mar. 30, 2017) (finding that $242,675.94 in claimed past and future medical expenses and lost wages weighed in favor of disclosing the requested discovery under FRCP 26(b)(1)), which weighed in favor of disclosure. 16 PA 3565-66. The record before this court demonstrates that Sekera's initial NRCP 16.1(a)(3) disclosures, and the 18 supplements thereto, support the district court's factual findings.[1] *See* 1 RPIIA 1-229; 2 RPIIA 230-459; 3 RPIIA 460-703; 4 RPIIA 704-917; 5 RPIIA 955-1058; 8 RPIIA 1476-97, 1610-99; 9 RPIIA 1700-815, 1821-40; 10 RPIIA 1841-2024; 11 RPIIA 2025-2144; 12 RPIIA 2145-341; 13 RPIIA 2342-577. Accordingly, substantial evidence supports the district court's

[1]In the interest of providing this court with a complete record, Sekera has included all her NRCP 16.1(a)(3) disclosures that support the district court's factual findings. Sekera's eighteenth supplement to her initial disclosure contains the table summarizing her past and future medical expenses that the district court relied upon. 14 PA 3290-91.

factual findings, and this court may not set them aside. *Canarelli*, 136 Nev., Adv. Op. 29, 464 P.3d at 119.

3. *Venetian is in sole possession of the requested discovery*

The district court found that Venetian is in sole possession of the requested discovery and that Sekera has no other means of obtaining the requested discovery. 16 PA 3566. Thus, the district court found that this factor weighed in favor of disclosure. *Id.* The record before this court demonstrates that the Venetian is in possession of unredacted versions of the requested discovery, as they disclosed redacted versions on three occasions. 14 RPIIA 2578-797; 15 RPIIA 2798-3017; 16 RPIIA 3018-237; 17 RPIIA 3238-77. Accordingly, substantial evidence supports the district court's factual findings, and this court may not set them aside. *Canarelli*, 136 Nev., Adv. Op. 29, 464 P.3d at 119.

4. *Venetian has substantial resources*

The district court found that Venetian has substantial resources. 16 PA 3566. Thus, the district court found that this factor weighed in favor of disclosure. *Id.* Here, this court may take judicial notice of Las Vegas Sands Corporation's United States Securities and Exchange Commission filings, in which it disclosed that it owns the Venetian, is a Fortune 500 company, and generated over $13 billion in

revenue in 2019. *See* U.S. Sec. & Exch. Comm'n Archive, No. 001-32373, Las Vegas Sands Corp. (Feb. 7, 2020), https://www.sec.gov/ix?doc=/Archives/edgar/data/1300514/000130051420000011/lvs-20191231x10k.htm; *see also* NRS 47.130(2)(b) (providing that a court notice a fact "[c]apable of accurate and ready determination by resort to sources whose accuracy [this court] cannot reasonably . . . question[ ], such that the fact is not subject to reasonable dispute"). Accordingly, substantial evidence supports the district court's factual findings, and this court may not set them aside. *Canarelli*, 136 Nev., Adv. Op. 29, 464 P.3d at 119.

5. *The requested discovery will resolve material issues*

The district court found that the requested discovery would resolve the material issues of notice, foreseeability, and comparative negligence. 16 PA 3566. Thus, the district court found that this factor weighed in favor of disclosure. *Id*. As argued above, *see supra* Points and Legal Authorities §§ III(A), III(B)(1), Sekera alleged that Venetian was negligent, and Venetian raised comparative negligence as an affirmative defense. 1 PA 36-37; 9 RPIIA 1816-19. The requested discovery will assist Sekera in demonstrating notice and foreseeability, and it is the only evidence that can assist Sekera in rebutting Venetian's affirmative

defense of comparative negligence. Given that substantial evidence supports the district court's factual findings, 1 PA 6, 9, 36-37, 121-22; 4 RPIIA 936-37, 939; 6 RPIIA 1165; 7 RPIIA 1364; 8 RPIIA 1558, 1570; 9 RPIIA 1816-19, this court may not set them aside, *Canarelli*, 136 Nev., Adv. Op. 29, 464 P.3d at 119.

6. *Venetian will incur minimal burden or expense in disclosing the requested discovery*

Given that Venetian already possesses unredacted versions of the requested discovery and given that Venetian already disclosed redacted versions of the same, the district court found that any burden or expense that Venetian would incur in producing the requested discovery is nominal. 16 PA 3567. Therefore, the district court found that the likely benefit of the requested discovery outweighed any burden or expense the Venetian would incur in disclosure. *Id*. Given that substantial evidence supports the district court's factual findings, *see supra* Legal Authorities §§ III(B)(1)-(5), this court may not set them aside, *Canarelli*, 136 Nev., Adv. Op. 29, 464 P.3d at 119.

The record before this court demonstrates that substantial evidence supports the district court's factual findings regarding all six of the NRCP 26(b)(1) factors. Venetian did not, nor could it, demonstrate

that substantial evidence does not support the district court's factual findings or that the district court's factual findings were clearly erroneous. *See* Pet. 21-24. Accordingly, Venetian is not entitled to this court's extraordinary relief on this ground. *See Int'l Game Tech., Inc.*, 122 Nev. at 142, 127 P.3d at 1096; *State ex rel. Tidvall*, 91 Nev. at 524, 539 P.2d at 458.

IV. *The district court acted within its sound discretion in denying Venetian's motion to protect prior invitee contact information as Venetian failed to identify an applicable constitutional, common-law, or statutory privilege or privacy interest precluding disclosure*

Venetian argues that the district court abused its discretion in refusing to protect the names and contact information of the invitees that slipped and fell on the same marble floors as Sekera in the three years prior to her fall. Pet. 25-44. In so doing, Venetian relies upon Nevada caselaw regarding public records requests, *id.* at 25-28, federal caselaw regarding FRCP 26(b)(1), *id.* at 28-32, this court's holding in

Venetian Casino Resort, LLC, *id*. at 32-34, and NRS 603A,[2] *id*. at 34-35. Venetian's reliance upon the above is unavailing, as the above authority is either factually or legally inapposite, or otherwise fails to demonstrate

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[2]Venetian also contends that disclosing the requested discovery would violate its privacy policy and expose it to legal liability. Pet. 35-38. However, Venetian provides no authority, and does not argue, that it and its prior invitees are bound by that privacy agreement such that prior invitees would have a cause of action against it should it disclose the requested discovery. *Id*. Thus, Venetian has failed to cogently argue this appellate concern. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that Nevada appellate courts will not consider claims that a petitioner failed "to cogently argue" or "present relevant authority" in support thereof). Regardless, Venetian's privacy policy contains two disclaimers that would shield it from liability even if invitees acquired contractual rights under the privacy policy. Specifically, the privacy policy provides:

> *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.

3 PA 491. Accordingly, Venetian's own privacy policy belies its facially disingenuous argument that disclosure would subject it to legal liability. *See* RPC 3.3(a)(1) (precluding lawyers from knowingly making "a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer").

a constitutional, common-law, or statutory privilege or privacy interest precluding disclosure of the requested discovery. Venetian does not, however, challenge the district court's application of the three-part test for conducting a good-cause analysis that this court adopted in *Venetian Casino Resort, LLC*.[3] *See* Pet. 25-44.

This court reviews a district court's grant or denial of a protective order for an abuse of discretion. *Venetian Casino Resort, LLC*, 136 Nev., Adv. Op. 26, 467 P.3d at 7. A district court abuses its discretion when it acts "in clear disregard of the guiding legal principles." *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014) (internal quotations omitted).

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[3]Indeed, Venetian's petition does not discuss *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417 (9th Cir. 2011), or *Glenmede Trust Co. v. Thompson*, 56 F.3d 476 (3d Cir. 1995). *See* Pet. iii-iv, 25-44. Accordingly, Venetian waived any argument regarding the district court's application of the three-part test for conducting a good-cause analysis. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (holding that a party waives arguments that it does not raise in its opening brief are waived). Even if Venetian had raised the argument, the record before this court demonstrates that the district court considered *In re Roman Catholic Archbishop of Portland in Oregon* and *Glenmede Trust Co.* in rejecting the at-issue portion of Venetian's requested protective order. 16 PA 3567-69.

Here, Venetian contends that the district court abused its discretion in failing to protect allegedly privileged or private information. Pet. 25-44. Nevada appellate courts review questions concerning the proper scope of discovery privileges arising in writ petitions de novo. *Las Vegas Sands Corp. v. Eighth Jud. Dist. Ct.*, 130 Nev. 643, 650, 331 P.3d 905, 909 (2014). Additionally, Nevada appellate courts narrowly construe privileges as they are in derogation of the search for the truth. *Ashokan*, 109 Nev. at 668, 856 P.2d at 247. In construing statutes, Nevada appellate courts begin with the statute's language, and "when a statute's language is plain and its meaning clear," Nevada appellate courts "will apply that plain language." *Leven v. Frey*, 123 Nev. 399, 403, 163 P.3d 712, 715 (2007). Finally, Nevada appellate courts review the scope of privacy interests de novo. *Las Vegas Metro. Police Dep't v. Las Vegas Rev.-J.*, 136 Nev., Adv. Op. 86, 478 P.3d 383, 386-87 (2020).

A. *NRCP 26(b)(1) permits discovery of relevant and proportional information unless a particular privilege applies*

NRCP 26(b)(1) provides that a party may obtain discovery regarding relevant and proportional information so long as a privilege does not apply to the requested discovery. Should a party wish to claim a privilege, they must "expressly make the claim" and "describe the

nature of the documents . . . not produced or disclosed" such that "other parties [may] assess the claim." NRCP 26(b)(5)(A); *see also Superpumper, Inc. v. Leonard*, 137 Nev., Adv. Op. 43, 495 P.3d 101, 107 (2021) (noting that a party's "blanket invocation of privilege is insufficient to demonstrate" that a privilege applies). Accordingly, Venetian had the burden in the district court, and has the burden in the instant petition, of demonstrating that a specific privilege applies to the requested discovery. Venetian failed to meet its burden. Given that no privilege applies to the requested discovery, the district court acted within its sound discretion in ordering the Venetian to disclose the requested information.

B. *Venetian's proffered Nevada caselaw is inapposite to the instant matter and Venetian otherwise fails to identify a privacy interest precluding disclosure*

Venetian contends that Nevada caselaw provides that an individual's privacy interests are sufficient to preclude disclosure of otherwise relevant and proportional information. Pet. 25-28. In so doing, Venetian first relies upon *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P.2d 1342 (1977). There, the Supreme Court of Nevada explained that a district court may compel discovery of medical records or tax returns where a litigant's physical or financial condition is relevant

to the case and the information is otherwise unobtainable. *Id.* at 192, 561 P.2d at 1343. The court cautioned, however, that a district court exceeds its jurisdiction if it "permit[s] carte blanche discovery of all information contained in [medical records and tax records] without regard to relevancy." *Id.* at 192, 561 P.2d at 1343-44. The court did not, however, identify a constitutional or common-law privacy interest that would otherwise preclude disclosure of relevant information. *Id.* at 192-93, 561 P.2d at 1343-44. Thus, contrary to Venetian's representation, *Schlatter* does not stand for the proposition that an individual's privacy interest alone may preclude disclosure of relevant information. Rather, *Schlatter* stands for the proposition that district courts must consider relevancy before compelling a litigant to disclose information regarding his or her physical or financial condition.

Next, Venetian relies upon *Clark County Office of the Coroner/Medical Examiner v. Las Vegas Review-Journal*, 136 Nev., Adv. Op. 5, 458 P.3d 1048 (2020) for the proposition that an individual's nontrivial privacy interests may preclude disclosure of otherwise relevant and proportional information. There, the court addressed the interaction between the Nevada Public Records Act and statutes

governing information pertaining to child fatality reviews. *Id*. at 1052. Indeed, the court devoted much of its analysis to the competing public policy interests of open access to government records and protecting medical information. *Id*. at 1054-59. Given that the instant petition does not involve public records requests and given that the requested discovery pertains to names and contact information rather than medical records, Venetian's reliance upon *Clark County Office of the Coroner/Medical Examiner* is misplaced.

Regardless of the legal and factual incongruence of *Schlatter* and *Clark County Office of the Coroner/Medical Examiner*, this petition still poses to this court a question about the interaction of privacy interests with requests for non-privileged, relevant, and proportional discovery requests. While Venetian, in seeking this court's extraordinary relief, bore the burden of clearly establishing a privacy interest that disclosure would violate, *Walker*, 136 Nev., Adv. Op. 80, 476 P.3d at 1196, Sekera nonetheless provides this court with Nevada caselaw governing privacy interests.

Article 1, Sections 18 and 20 of the Nevada Constitution guarantee the right of privacy for all persons within Nevada. *See Nelson*

v. State, 96 Nev. 363, 366, 609 P.2d 717, 719 (1980) (classifying the right against unreasonable government searches and seizures as a right to privacy); *State v. Eighth Jud. Dist. Ct.*, 101 Nev. 658, 661, 708 P.2d 1022, 1024 (1985) (noting that the Article 1, Section 20 of the Nevada Constitution guarantees a right to privacy like the Ninth Amendment of the United States Constitution). The Supreme Court of Nevada has also recognized that Nevada common-law recognizes a right to privacy through the "tort of invasion of privacy for unreasonable intrusion upon the seclusion of another." *Clark Cty. Sch. Dist. v. Las Vegas Rev.-J.*, 134 Nev. 700, 708, 429 P.3d 313, 320 (2018). Finally, "[t]he Legislature has also recognized privacy interests in a laundry list of areas." *Id.* A review of each follows in turn.

1. *The Nevada Constitution does not preclude disclosure*

Article 1, Section 18 of the Nevada Constitution guarantees an individual's right to be free from government intrusion where the individual has a subjective and objective expectation of privacy that

society recognizes.[4] *Young v. State*, 109 Nev. 205, 211, 849 P.2d 336, 340 (1993). An individual demonstrates a subjective expectation of privacy when he or she engages in "conduct which shields an individual's activities from public scrutiny." *Id.* Thus, an individual may not invoke the protection of Article 1, section 18 of the Nevada Constitution when he or she "knowingly exposes" activity or information to the public. *Id.* at 213-14, 849 P.2d at 342. Regarding phone numbers, the Supreme Court of Nevada has noted that an individual has no reasonable expectation of privacy in his or his phone number where they disclose it to the public. *DR Partners v. Bd. of Cty. Comm'rs*, 116 Nev. 616, 627, 6 P.3d 465, 472 (2000) (holding that public employees had no expectation of privacy in their cellular phone numbers where they used those phones to call members of the public or received calls from members of the public).

Here, the invitees that slipped and fell on the same marble floors as Sekera voluntarily disclosed their names and phone numbers to

[4]Sekera recognizes that Article 1, section 18 of the Nevada Constitution only applies against the state, not private actors. Sekera nonetheless provides a cursory analysis of Nevada caselaw governing this topic to inform this court's analysis.

the Venetian after their falls. Thus, as the district court concluded, 16 PA 3569, the invitees did not have a subjective expectation of privacy in their contact information as they did not shield their contact information from the Venetian. Had the invitees wished to keep their contact information private, they could have refused disclosure. Accordingly, even if this court were to assume that Article 1, Section 18 of the Nevada Constitution applied, it would not preclude disclosure of the requested information.

Article 1, Section 20 of the Nevada Constitution guarantees that individuals in Nevada retain rights not otherwise enumerated in the Nevada Constitution. Regarding the right to privacy, the Nevada Supreme Court has only held that statutes requiring drivers and passengers of motorcycles does not violate the right to privacy under Article 1, Section 20 of the Nevada Constitution. *State v. Eighth Jud. Dist. Ct.*, 101 Nev. at 661, 708 P.2d at 1024. The court has yet to construe Article 1, Section 20 of the Nevada Constitution to apply to phone

numbers,[5] and thus, Venetian may not rely upon the same to preclude disclosure of the requested discovery.[6]

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[5]Venetian does not argue that Article 1, Section 20 of the Nevada Constitution incorporates Supreme Court of the United States jurisprudence regarding the Ninth Amendment or the Due Process Clause of the Fourteenth Amendment of the United States Constitution. *See* Pet. 25-44. Even if it had, such an argument would be unavailing, as the United States Supreme Court has yet to extend the right to privacy under those constitutional provisions to informational privacy. *See Nat'l Aeronautics & Space Admin. v. Nelson*, 562 U.S. 134, 151-53 (2011) (holding that the government may require contractors to disclose whether they used illicit substances and received treatment or counseling for the same); *Whalen v. Roe*, 429 U.S. 589, 603-04 (1977) (holding that a state may require doctors to report the names and addresses of patients they prescribed prescriptions drugs to with a potential for abuse).

[6]Indeed, the Supreme Court of the United States has only recognized a handful of fundamental rights under the Ninth Amendment or the Due Process Clause of the Fourteenth Amendment of the United States Constitution that fall within a zone of privacy or otherwise constitute a privacy interest. *See Moore v. City of E. Cleveland*, 431 U.S. 494, 503 (1977) (holding that fundamental rights under the Due Process Clause of the Fourteenth Amendment are those that are "deeply rooted in . . . history and tradition"); *see also Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (recognizing the right of consenting adults to engage in sexual intercourse as a fundamental right); *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982) (recognizing a parent's custody of his or her child as a fundamental right); *Moore*, 431 U.S. at 502 (recognizing the right of relatives to stay together as a fundamental right); *Roe v. Wade*, 410 U.S. 113, 154 (1973) (recognizing the right to abortion as a fundamental right) *overruled in part by Planned Parenthood v. Casey*, 505 U.S. 833 (1992); *Loving v. Virginia*, 388 U.S. 1 (1967) (recognizing the right to marry as a fundamental right); *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965) (recognizing the right to use contraceptives as a fundamental right); *Skinner v. Oklahoma*, 316 U.S. 535, 536 (1942) (recognizing the right to

2. *Nevada common-law does preclude disclosure*

Nevada courts recognize a common-law right of privacy. *People for the Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 615, 629, 895 P.2d 1269, 1278 (1995) *overruled on other grounds by City of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 644, 650, 940 P.2d 134, 138 (1997). The tort of intrusion allows an individual to seek redress for an invasion of his or her common-law privacy rights. *People for the Ethical Treatment of Animals*, 111 Nev. at 630, 895 P.2d at 1279. Thus, by knowing the elements of an invasion of privacy, this court may glean the contours of the common-law right to privacy.

To hold a defendant liable for intrusion, the plaintiff must demonstrate: "[(1)] an intentional intrusion (physical or otherwise); [(2)] on the solitude or seclusion of another; [(3)] that would be highly offensive

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procreate as a fundamental right); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (recognizing that individuals have the fundamental right "to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men").

to a reasonable person." *Id.* Proving the second element requires the plaintiff to show "that he or she had an actual expectation of seclusion or solitude, and that expectation was objectively reasonable." *Id.* at 631, 895 P.2d at 1279. Thus, an individual may not claim an invasion of privacy if another individual photographs him or her in a public place. *Id.* Rather, such a claim generally arises where there is some form of eavesdropping, invasion into a realm of personal seclusion, prying, or uncovering what another tries to cover-up. *Id.* at 635, 895 P.2d at 1282.

Here, the prior invitees voluntarily disclosed their names and phone numbers to Venetian after their falls. Thus, much like the analysis under Article 1, Section 18 of the Nevada Constitution, the invitees had no expectation of seclusion or solitude that was objectively reasonable in their voluntarily disclosed information. Accordingly, Nevada common-law does not preclude disclosure of the requested information. Therefore, as no established common-law privacy interest provides the contrary, the district court acted within its sound discretion in ordering disclosure of the requested information.

3. *Nevada statutes do not preclude disclosure*

Venetian contends that NRS Chapter 603A precludes disclosure of the requested information. This court may reject this

contention, as it is premised on a misreading what NRS 603A.040 defines as personal information. That statute provides:

> 1. "Personal information" means a natural person's first name or first initial and last name in combination with any one or more of the following data elements, when the name and data elements are not encrypted:
>
> (a) Social security number.
>
> (b) Driver's license number, driver authorization card number or identification card number.
>
> (c) Account number, credit card number or debit card number, in combination with any required code, access code or password that would permit access to the person's financial account.
>
> (d) A medical identification number of a health insurance identification number.
>
> (e) A username, unique identifier or electronic mail address in combination with a password, access code or security question and answer that would permit access to an online account.
>
> 2. The term does not include the last four digits of a social security number, the last four digits of a driver's license number, the last four digits of a driver authorization card number or the last four digits of an identification card number or publicly available information that is lawfully made available to the general public from federal, state or local governmental records.

NRS 603A.040. As NRS 603A.040(1) uses the term "means," this court must narrowly construe it to only include the express terms that the Legislature included. 2A Norman Singer & Shambie Singer, *Sutherland*

Statutes and Statutory Construction § 47:7 (7th ed. 2020) ("[A] definition which declares what a term "means" usually excludes any meaning not stated). Indeed, the plain language of the statute represents the Legislature's carefully considered public policy determination balancing the right to privacy in personal information with competing interests. *See Schwartz v. Lopez*, 132 Nev. 732, 738, 382 P.3d 886, 891 (2016) (noting that considerations involving "public policy choices" lie within the "sound wisdom and discretion of [the] Legislature"); *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) (noting that Nevada courts have long followed the maxim "the expression of one thing is the exclusion of another").

Here, the district court ordered Venetian to disclose the names and contact information of the prior invitees that slipped and fell on the same marble floors as Sekera in the three years prior to her fall. 16 PA 3569. This information does not fall within the plain language of NRS 603A.040(1). Accordingly, Venetian's disclosure of the requested information will not subject it to liability under NRS Chapter 603A. Therefore, as Venetian has not proffered a Nevada statute that provides

the contrary, the district court acted within its sound discretion in ordering disclosure of the requested information.

C. *Venetian's proffered federal caselaw is inapposite to the instant matter*

Alternatively, Venetian relies upon persuasive authority from United States District Courts. Pet. 28-30. First, Venetian avers that *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210 (D. Nev. Feb. 2, 2016) stands for the proposition that property owners need not disclose the names and contract information of invitees that previously slipped and fell on their property. Pet. 28-29. Venetian's contention patently misrepresents *Izzo*.[7] There, the plaintiff requested disclosure of the property owner's incident files and information regarding all other invitee slips during the three years prior to the plaintiff's slip. *Izzo*, 2016 U.S. Dist. LEXIS 12210 at *11. The property owner objected on the grounds of relevance, undue burden, and the privacy interests of the prior invitees. *Id*. at *11-12. The court sustained the property owner's objection, concluding that "the value of the material sought is outweighed by [the property owner's] burden of providing it." *Id*. at *13. Accordingly,

[7]*See* RPC 3.3(a)(1).

privacy interests were not dispositive to the court's conclusion, rendering Venetian's reliance upon *Izzo* misplaced.

Next Venetian relies upon *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513 (S.D. Cal. Aug. 11, 2015). Pet. 29-30. There, the plaintiff "slipped and fell while walking barefoot on the polished tile floor of [the defendant's] hotel room, and broke her hip." *Rowland*, 2015 U.S. Dist. LEXIS 105513 at *1-2. The plaintiff filed a complaint, alleging premises liability and general negligence. *Rowland v. Paris Las Vegas*, 2014 U.S. Dist. LEXIS 24718 at *1-2 (S.D. Cal. Feb. 25, 2014). During discovery, the plaintiff requested that the defendant "[identify] each [person] who complained, reported, or otherwise informed [you] that the tile floor in the hotel rooms at Paris Las Vegas Hotel & Casino was slippery, at any time from day one through present." *Rowland*, 2015 U.S. Dist. LEXIS 105513 at *6. The defendant objected, arguing the information was irrelevant, overbroad, and violated its guests' privacy rights. *Id.* at *6. The plaintiff replied that the information related to notice but did not otherwise contest the defendant's privacy argument. *Id.* at *6-7.

The court noted that parties may raise constitutionally based privacy rights in response to discovery requests, and that courts must balance privacy rights with the needs of discovery. *Id.* at *7. Because the plaintiff failed to address the privacy rights of prior guests or demonstrate a compelling need for the information, the court summarily rejected the plaintiff's request for the prior guests' names and contact information without providing any substantive analysis of the competing interests. *Id.* at *7-8.

Here, unlike *Rowland*, Sekera provided the district court with argument regarding her compelling need for the discovery and the privacy interests of prior invitees. 14 PA 3182-86; 15 PA 3471-90. Accordingly, *Rowland* is inapposite to the instant matter insofar as it stands for the proposition that a court may summarily reject a plaintiff's request for information that may touch upon privacy interests without demonstrating a need or otherwise addressing the privacy interests. To the extent it wishes to rely on *Rowland*, Sekera urges this court to review *Zuniga v. W. Apartments*, 2014 U.S. Dist. LEXIS 83135 (C.D. Cal. Mar. 25, 2014), which the *Rowland* court cited for the proposition that parties

may raise constitutionally based privacy rights in response to discovery requests.

In *Zuniga*, the plaintiffs filed a complaint alleging violations of the Fair Housing Act. 2014 U.S. Dist. LEXIS 83135 at *1. During discovery, the plaintiffs requested "complete copies of all tenant files for each tenant who resided at the subject rental at any time since January 1, 2008." *Id*. at *17-18. The defendant raised a privacy objection to the requested discovery, which the court sustained in part and overruled in part. *Id*. at *8. The court concluded that the plaintiff's need for the information outweighed the privacy interests. *Id*. Indeed, the plaintiffs would be unable to demonstrate a policy and practice of discrimination without such information. Relevant here, the court ordered the defendant to disclose the following information:

> [the] names of tenants/proposed tenants, contact information except telephone numbers, birth years of all proposed occupants, number of intended occupants, any description of marital/family status (*e.g.* whether proposed occupants have children, number of children, age of children, etc.); . . . any complaints against the tenant relating to children, noise, use of common areas, or curfews; . . . documents sufficient to reflect the date(s) and substance of any warnings/notices communicated to tenants relative to any complaints or alleged violations of household rules

> involving children, noise, use of common areas, or curfews; . . . documents sufficient to reflect the date(s) and nature/amount of any penalties imposed upon tenants for any alleged violations of household rules involving children, noise, use of common areas, or curfews; . . . documents sufficient to reflect whether any other action (*e.g.* eviction, lawsuit, etc.) was taken against the tenant based upon complaints/alleged violations of household rules involving children, noise, use of common areas, or curfews.

Id. at *18-19.

Accordingly, as *Zuniga* demonstrates and contrary to Venetian's averment, district courts may order the disclosure of information that may implicate privacy concerns when the plaintiff demonstrates a compelling need. Indeed, the at-issue information in *Zuniga* is objectively more intrusive and sensitive than what Sekera requested and the district court ordered Venetian to compel. Here, the district court balanced the privacy interests of prior invitees and Sekera's needs and allowed Venetian to redact social security numbers, dates of birth, diver's license numbers, and private health information that the invitee's provided to emergency medical technicians. 16 PA 3563-69. Thus, as Venetian has not proffered another persuasive authority that provides the contrary, the district court acted within its sound discretion in ordering disclosure of the requested information.

CONCLUSION

In seeking this court's extraordinary relief, Venetian bore the burden of demonstrating that the district court manifestly abused its discretion or allowed impermissible discovery. Given that it failed to demonstrate, with specificity and particularity, a constitutional, common-law, or statutory privilege or privacy interest that the district court's order violated, Sekera urges this court to deny the instant petition.

DATED this 9th day of December 2021.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because I prepared this brief in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century Schoolbook font.

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

☒ proportionally spaced, has a typeface of 14 points or more and contains 8,954 words; or

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Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires a reference to the page and volume number, if any, of the transcript or appendix where the court will find the matter relied on to support every assertion in the brief.

I understand that I may be subject to sanctions if the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 9th day of December 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Real Party in Interest's Answer to Petition for Writ of Mandamus and/or Prohibition with the Nevada Court of Appeals on the 9th day of December 2021. I shall make electronic service of the foregoing document in accordance with the Master Service List as follows:

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I further certify that I emailed the foregoing document to the following:

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