

CASE NO. 76062

IN THE SUPREME COURT OF THE STATE OF NEVADA

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ANTONETTE PATUSH, Appellant

Electronically Filed  
Aug 28 2018 10:57 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

v.

LAS VEGAS BISTRO, LLC, Respondent

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APPEAL FROM THE  
EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA

**APPELLANT'S APPENDIX**

James P. Kemp, Esq.  
Nevada Bar No. 6375  
Victoria L. Neal, Esq.  
Nevada Bar No. 13382  
KEMP & KEMP  
7435 West Azure Drive, Suite 110  
Las Vegas, NV 89130  
(702) 258-1183  
Attorneys for Appellant

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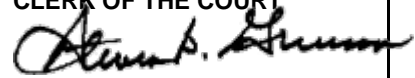
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of KEMP & KEMP ATTORNEYS AT LAW and on the date indicated below the Appellant's Appendix along with the Appellant's Opening Brief were submitted for service through the Court's electronic filing system to be served on the following:

Deanna Forbush, Esq.  
Jeremy Thompson, Esq.  
CLARK HILL, PLLC  
3800 Howard Hughes Pkwy, #500  
Las Vegas, NV 89169

DATED this 27<sup>th</sup> day of August 2018

\_\_\_\_\_  
/s/James P. Kemp  
An Employee of James P. Kemp, Esq.



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*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ANTONETTE PATUSH,

Plaintiff,

vs.

LAS VEGAS BISTRO, LLC; DOES I-X; ROE  
BUSINESS ENTITIES I-X,

Defendants.

Case No.: A-18-771491-C

Dept No.: Department 10

**COMPLAINT**

**JURY TRIAL DEMANDED**

**Arbitration Exemption: action seeking  
equitable or extraordinary relief.**

COMES NOW Plaintiff, ANTONETTE PATUSH, by and through Counsel, KEMP &  
KEMP, ATTORNEYS AT LAW, and hereby complains and alleges the following:

**JURISDICTION**

1. ANTONETTE PATUSH (herein "Plaintiff") is a resident of Clark County, Nevada. The amount in controversy in this case is in excess of \$15,000.00.
2. Defendant LAS VEGAS BISTRO, LLC (herein "Defendant"), which does business at "LARRY FLYNT'S HUSTLER CLUB is a Nevada Limited Liability Company. It is registered with the Nevada Secretary of State, has a Nevada state business license and has

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continuous and ongoing business operations in the state of Nevada and Clark County. Plaintiff reserves the right to amend this Complaint to name any and all appropriate parties in addition to this Defendant or instead of this Defendant should Plaintiff learn of additional or different facts from those set forth herein, or as a result of further discovery, analysis, and fact development in this case.

3. Plaintiff is unaware of the true names and capacities whether individuals, corporations, associates, or otherwise of Defendants DOE INDIVIDUALS I through X and ROE BUSINESS ENTITIES I through X, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes and thereupon alleges that the Defendants, and each of them, are in some manner responsible and liable for the acts and damages alleged in this Complaint. Plaintiff will seek leave of this Court to amend this Complaint to allege the true names and capacities of the DOE INDIVIDUAL and ROE CORPORATION Defendants when the true names of the DOE INDIVIDUAL and ROE CORPORATION Defendants are ascertained.
4. The Court has jurisdiction over the parties named herein and the subject matter of this case.
5. This action has been timely filed.

**FACTS COMMON TO ALL CLAIMS**

6. Plaintiff began her employment with Defendant on February 6, 2013 as an Office Manager. Her employment was terminated by Defendant on or about July 4, 2014.
7. Plaintiff sustained a serious on-the-job industrial injury to her knee, cervical spine, lumbar spine, and other body parts on April 10, 2014. On that date the Claimant was working as an Office Manager/Payroll person for Defendant, which may have then been known as National

- 1 Association of Entertainers,<sup>1</sup> which operates Larry Flynt's Hustler Club in Clark County,  
2 Nevada.
- 3 8. On the date of injury the Claimant was walking down a hallway near her office in Defendant's  
4 premises. She tripped over a rug on the floor in the hallway and fell hard to the floor. A  
5 video recording of the accident was submitted and is part of the record.
- 6 9. Plaintiff timely filled out a C-4 form claim for workers' compensation.
- 7
- 8 10. Plaintiff's workers' compensation claim was duly accepted on May 8, 2014 and benefits were  
9 paid on the claim
- 10 11. At the time of her termination, set forth herein, Plaintiff was working full duty.
- 11 12. Plaintiff was terminated on or about July 3, 2014.
- 12 13. Plaintiff was terminated by the General Manager Kelly Jones.
- 13 14. General Manager Kelly Jones was hostile, rude, and intimidating when he told Plaintiff that  
14 she had too many doctor's appointments. Plaintiff told Jones that the doctor appointments  
15 were to treat her workers' compensation injury. Jones said, in a hostile manner, that he did  
16 not care and then he fired her. Jones also told Plaintiff that her termination was ordered by  
17 Jason Mohny who was the owner of Defendant.
- 18
- 19 15. The true reason for Plaintiff's termination is retaliation because she was injured on the job and  
20 filed and pursued a workers' compensation claim under the Nevada Industrial Insurance Act.
- 21 16. Plaintiff, as a manager for Defendant, had attended training where she and others were  
22 instructed that they should "say something else" as the reason for terminating employees with  
23 workers' compensation claims even though the real reason was the workers' compensation  
24 claim. In other words, the management employees were instructed to come up with pre-  
25

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26 <sup>1</sup> The Employer may have changed its name and/or reformed itself into a different entity during the  
27 relevant time period and Plaintiff reserves the right to amend this Complaint to substitute or add the  
28 correct entity if necessary under the "Doe" and "Roe" pleading paragraph herein.

1 textual reasons for terminating workers' compensation claimants in order to be able to avoid  
2 liability for retaliatory discharge.

3 17. Plaintiff was given the false and pre-textual reason of being a "no call/no show" on certain  
4 days and with stealing a cell phone from the "lost & found" items held by Defendant (items  
5 left by customers). These reasons were false and malicious.

6 18. Plaintiff's employment was terminated by Defendant in retaliation for her being injured on the  
7 job and her filing of a valid Workers Compensation claim and, thus, exercising her rights  
8 under the Nevada Industrial Insurance Act.

9 19. Termination of Plaintiff's employment was in violation of strong public policy of the state of  
10 Nevada.

11 20. Plaintiff suffered mental anguish and emotional distress as a direct and proximate result of  
12 Defendant's actions.

13 21. Plaintiff has suffered and will suffer lost wages and/or benefits of employment as a direct and  
14 proximate result of the actions of the Defendant.

15 22. The actions of Defendants were willful, malicious, fraudulent, or oppressive, and calculated to  
16 discourage Plaintiff and other of Defendants' employees from pursuing their rights under  
17 Nevada law. The Defendants should be subjected to Punitive and Exemplary damages to  
18 deter future conduct of this sort.

19 23. Plaintiff should be reinstated to her position with all wages, benefits, and seniority restored as  
20 though the unlawful and tortious termination had never occurred.

21 24. Plaintiff has been required to hire an attorney and expend fees and costs to pursue her rights  
22 through this action.

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25  
26 **WHEREFORE**, Plaintiff expressly reserves the right to amend his Complaint at or before  
27 the time of trial of the action herein to include all items of damages not yet ascertained, and  
28

demands judgment against the Defendants, upon each of them, for all applicable money damages and extraordinary or equitable relief provided for under common law and Nevada state law including, but not limited to the following:

1. Money damages in excess of \$10,000.00;
2. Economic damages including, but not limited to, lost wages and benefits of employment, incidental and consequential damages;
3. General damages including emotional distress and general economic harm;
4. Nominal damages;
5. Punitive and/or Exemplary Damages to deter the Defendants from future malicious, fraudulent, and oppressive conduct of a similar nature;
6. Pre-judgment and post-judgment interest on the amounts awarded at the prevailing legal rate;
7. Reasonable attorney fees, reasonable expert witness fees, and other costs of the action pursuant to statute, agreement, or court rule;
8. For extraordinary and equitable relief ordering that the Plaintiff shall be reinstated to his position with all wages, benefits, and seniority restored as though the unlawful and tortious termination had never occurred;

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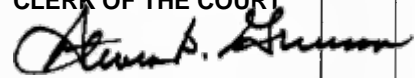


- 1 B. A trial by jury on all issues that may be tried to a jury; and/or  
2 C. For such other and further relief as the Court may deem just and proper.  
3

4 DATED this 21<sup>st</sup> day of March 2018.  
5

6 /s/ James P. Kemp  
7 JAMES P. KEMP, ESQ.  
8 Nevada Bar No.: 6375  
9 KEMP & KEMP  
10 7435 W. Azure Drive, Ste 110  
11 Las Vegas, NV 89130  
12 702-258-1183 ph./702-258-6983 fax

13 *Attorneys for Plaintiff*  
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Deanna L. Forbush, Esq.  
Nevada Bar No. 6646  
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Nevada Bar No. 12503  
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Attorneys for Defendant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ANTONETTE PATUSH,

Plaintiff,

vs.

LAS VEGAS BISTRO, LLC; DOES I-X;  
ROE BUSINESS ENTITIES I-X,

Defendants.

Case No.: A-18-771491-C  
Dept. No.: 10

**ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS**

**WHEREAS**, the above-captioned matter came on for hearing on Tuesday, May 15, 2018 in Department 10, before the Honorable Tierra Jones, in the Eighth Judicial District Court, Clark County, Nevada. Defendant, Las Vegas Bistro, LLC ("Defendant"), appeared in person, by and through its counsel of record, Deanna L. Forbush, Esq. of Clark Hill PLLC, and Plaintiff Antonette Patush ("Plaintiff"), appeared telephonically, by and through her counsel of record, James P. Kemp, Esq. of the law firm Kemp & Kemp.

The following matter was on calendar for hearing:

- *Defendant's Motion to Dismiss, and Plaintiff's Opposition thereto.*

The Court having reviewed all papers on file herein, and after accepting oral argument, for good cause appearing, hereby finds, notes and orders as follows:

<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Voluntary Dismissal
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Involuntary Dismissal
<input type="checkbox"/> Judgment of Arbitration	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Default Judgment	<input type="checkbox"/> Stipulated Judgment

1 It is the established public policy of the state that the retaliatory discharge of an employee  
2 by an employer stemming from the filing of a workmen's compensation claim by an injured  
3 employee is actionable in tort. Both the cause of action and its remedy are governed by the law  
4 of tort. Hansen v. Harrah's, 100 Nev. 60, 675 P.2d 394, 115 L.R.R.M. (BNA) 3024, 105  
5 Lab.Cas. P 55,663 (1984);

6 And finding further that, while this kind of public policy tort cannot ordinarily be  
7 committed absent the employer-employee relationship, the tort, the wrong itself, is not dependent  
8 upon or directly related to a contract of continued employment. D'Angelo v. Gardner, 107 Nev.  
9 704, 819 P.2d 206, 123 Lab.Cas. P 57,099 (1991);

10 Based upon the foregoing, it is hereby concluded that the appropriate statute of  
11 limitations for the retaliatory discharge of an employee in violation of public policy is governed  
12 by the law of tort, and that the applicable statute of limitation for said cause of action is the 2  
13 year statute of limitation set forth at NRS 11.190(e)(4).  
14

15 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss is hereby **GRANTED**;

16 Dated this 25 day of May, 2018.

17  
18  
19 THE HONORABLE TIERRA JONES  
20 *to*

21 Respectfully submitted by:

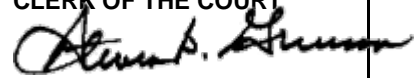
22 CLARK HILL, PLLC

23  
24 Deanna L. Forbush, Esq. (NSBN 6646)  
25 Attorneys for Defendant

26 Respectfully submitted by:

27 KEMP & KEMP

28 James P. Kemp, Esq. (NSBN 6375)  
Attorneys for Plaintiff



Deanna L. Forbush, Esq.  
Nevada Bar No. 6646  
Jeremy J. Thompson, Esq.  
Nevada Bar No. 12503  
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Attorneys for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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Plaintiff,

vs.

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ROE BUSINESS ENTITIES I-X,

Defendants.

Case No.: **A-18-771491-C**  
Dept. No.: **10**

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Granting Defendant's Motion to Dismiss was entered on the 30<sup>th</sup> day of May 2018, a copy of which is attached hereto.

Dated this 31<sup>st</sup> day of May, 2018.

**CLARK HILL, PLLC**

By /s/ Deanna L. Forbush

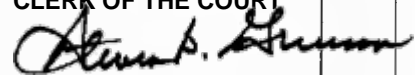
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Attorneys for Defendants

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☐ 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

☒ via electronic service by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk.

/s/ *Natasha Martinez*  
An Employee of Clark Hill, PLLC



Deanna L. Forbush, Esq.  
Nevada Bar No. 6646  
Jeremy J. Thompson, Esq.  
Nevada Bar No. 12503  
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Email: [jthompson@clarkhill.com](mailto:jthompson@clarkhill.com)  
Attorneys for Defendant

**DISTRICT COURT  
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ANTONETTE PATUSH,

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vs.

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15 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss is hereby **GRANTED**;

16 Dated this 25 day of May, 2018.

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19 THE HONORABLE TIERRA JONES  
20 *to*

21 Respectfully submitted by:

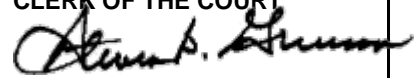
22 CLARK HILL, PLLC

23  
24 Deanna L. Forbush, Esq. (NSBN 6646)  
25 Attorneys for Defendant

26 Respectfully submitted by:

27 KEMP & KEMP

28 James P. Kemp, Esq. (NSBN 6375)  
Attorneys for Plaintiff



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Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

ANTONETTE PATUSH,

Plaintiff,

vs.

LAS VEGAS BISTRO, LLC; DOES I-X; ROE  
BUSINESS ENTITIES I-X,

Defendants.

Case No.: A-18-771491-C

Dept. No. X

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN to the District Court, Supreme Court of Nevada and all Defendants including those that are set forth in the Certificate of Service which are incorporated herein by reference, that the above-named Plaintiff, ANTONETTE PATUSH, by and through her counsel of record, JAMES P. KEMP, ESQUIRE, hereby appeals to the Supreme Court of Nevada from the District Court's Order GRANTING Defendant LAS VEGAS BISTRO LLC's Motion to Dismiss, said Order of the District Court having been entered on May 30, 2018.

DATED: June 2, 2018

\_\_\_\_\_  
/s/ James P. Kemp  
JAMES P. KEMP, ESQUIRE  
Nevada Bar No. 006375  
7435 W. Azure Drive, Suite 110,  
Las Vegas, NV 89130  
Attorney for Petitioner

**KEMP & KEMP**  
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Tel. (702) 258-1183 • Fax (702) 258-6983



**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this date, I submitted the foregoing NOTICE OF APPEAL for service on the following parties by electronic transmission through the court's electronic filing and service Odyssey system:

Deanna L. Forbush, Esq.  
Jeremy J. Thompson, Esq.  
CLARK HIL, PLLC  
3800 Howard Hughes Pkwy, Suite 500  
Las Vegas, NV 89169

All other parties registered for service through Odyssey.

DATED this 2<sup>nd</sup> day of June 2018

/s/ James P. Kemp  
JAMES P. KEMP, ESQ.