CASE NO. 76636

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Dec 26 2018 12:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

ANTONETTE PATUSH, Appellant

v.

LAS VEGAS BISTRO, LLC, Respondent

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
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Attorneys for Appellant

Docket 76636 Document 2018-910365

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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 26th day of December 2018

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

Electronically Filed
3/21/2018 9:29 AM
Steven D. Grierson
CLERK OF THE COURT

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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

Association of Entertainers,[1] which operates Larry Flynt's Hustler Club in Clark County, Nevada.

8. On the date of injury the Claimant was walking down a hallway near her office in Defendant's premises. She tripped over a rug on the floor in the hallway and fell hard to the floor. A video recording of the accident was submitted and is part of the record.

9. Plaintiff timely filled out a C-4 form claim for workers' compensation.

10. Plaintiff's workers' compensation claim was duly accepted on May 8, 2014 and benefits were paid on the claim

11. At the time of her termination, set forth herein, Plaintiff was working full duty.

12. Plaintiff was terminated on or about July 3, 2014.

13. Plaintiff was terminated by the General Manager Kelly Jones.

14. General Manager Kelly Jones was hostile, rude, and intimidating when he told Plaintiff that she had too many doctor's appointments. Plaintiff told Jones that the doctor appointments were to treat her workers' compensation injury. Jones said, in a hostile manner, that he did not care and then he fired her. Jones also told Plaintiff that her termination was ordered by Jason Mohney who was the owner of Defendant.

15. The true reason for Plaintiff's termination is retaliation because she was injured on the job and filed and pursued a workers' compensation claim under the Nevada Industrial Insurance Act.

16. Plaintiff, as a manager for Defendant, had attended training where she and others were instructed that they should "say something else" as the reason for terminating employees with workers' compensation claims even though the real reason was the workers' compensation claim. In other words, the management employees were instructed to come up with pre-

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

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

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

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

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

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

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

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

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

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

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

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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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B. A trial by jury on all issues that may be tried to a jury; and/or

C. For such other and further relief as the Court may deem just and proper.

DATED this 21st day of March 2018.

/s/ James P. Kemp

JAMES P. KEMP, ESQ.
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Email: dforbush@clarkhill.com
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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

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☒ Motion to Dismiss by Deft(s)
☐ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

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:

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

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

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

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

Dated this 25 day of May, 2018.

THE HONORABLE TERRA JONES

Respectfully submitted by:

CLARK HILL, PLLC

Deanna L. Forbush, Esq. (NSBN 6646)
Attorneys for Defendan

Respectfully submitted by:

KEMP & KEMP

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

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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.: **10**

NOTICE OF ENTRY OF ORDER

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

Dated this 31st day of May, 2018.

CLARK HILL, PLLC

By */s/ Deanna L. Forbush*
Deanna L. Forbush, Esq. (NSBN 6646)
Jeremy J. Thompson, Esq. (NSBN 12503)
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Case Number: A-18-771491-C

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Clark Hill, PLLC, and on the 31st day of May, 2018, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** 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

☒ 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.

James P. Kemp, Esq.
KEMP & KEMP
7435 W. Azure Drive, #110
Las Vegas, Nevada 89130
Attorneys for Plaintiff

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

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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.

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Dept. No.: **10**

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☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☒ Motion to Dismiss by Deft(s)
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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:

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Case Number: A-18-771491-C

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

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

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

Dated this 25 day of May, 2018.

THE HONORABLE TERRA JONES

Respectfully submitted by:

CLARK HILL, PLLC

Deanna L. Forbush, Esq. (NSBN 6646)
Attorneys for Defendan

Respectfully submitted by:

KEMP & KEMP

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

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6/2/2018 9:08 PM
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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

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ATTORNEYS AT LAW
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Tel. (702) 258-1183 ♦ Fax (702) 258-6983

Case Number: A-18-771491-C

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 2nd day of June 2018

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

KEMP & KEMP
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7/27/2018 9:24 AM
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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 FOR ATTORNEY'S FEES

WHEREAS, the above-captioned matter came on for hearing on Tuesday, July 10, 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 by and through its counsel of record, Deanna L. Forbush, Esq. of Clark Hill PLLC, and Plaintiff Antonette Patush ("Plaintiff"), appeared by and through her counsel of record, ~~Heather E. Kemp,~~ Victoria Neal Esq. of the law firm Kemp & Kemp.

The following matter was on calendar for hearing:

- *Defendant's Motion for Attorney's Fees 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:

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Las Vegas, Nevada 89169
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Fax. (702) 862-8400

IT IS HEREBY ORDERED, that Defendant's Motion for Attorneys' Fees and costs is hereby granted; and

IT IS FURTHER ORDERED, that Defendant is entitled to an award in the amount of $9,500.00 for its attorney fees incurred through July 10, 2018, and costs in the amount of $240.19. Defendant shall have Judgment against Plaintiff, Antonette Patush, for the total sum of $9,740.19, plus interest at the legal rate from the date Judgment was entered in this matter, until paid in full.

Dated this 19 day of July, 2018.

THE HONORABLE TIERRA JONES

Respectfully submitted by:

CLARK HILL, PLLC

Deanna L. Forbush, Esq.
Nevada Bar No. 6646
Jeremy J. Thompson, Esq.
Nevada Bar No. 12503
3800 Howard Hughes Parkway, Suite 500
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Attorneys for Defendant

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8/1/2018 11:51 AM
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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.: **10**

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Defendant's Motion for Attorney's Fees was entered on the 27th day of July 2018, a copy of which is attached hereto.

Dated this 1st day of August, 2018.

CLARK HILL, PLLC

By */s/ Deanna L. Forbush*
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Case Number: A-18-771491-C

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Clark Hill, PLLC, and on the 1st day of August, 2018, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** 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

☒ 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.

James P. Kemp, Esq.
KEMP & KEMP
7435 W. Azure Drive, #110
Las Vegas, Nevada 89130
Attorneys for Plaintiff

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

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7/27/2018 9:24 AM
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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.

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Dept. No.: **10**

ORDER GRANTING DEFENDANT'S MOTION FOR ATTORNEY'S FEES

WHEREAS, the above-captioned matter came on for hearing on Tuesday, July 10, 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 by and through its counsel of record, Deanna L. Forbush, Esq. of Clark Hill PLLC, and Plaintiff Antonette Patush ("Plaintiff"), appeared by and through her counsel of record, ~~Heather E. Kemp,~~ Victoria Neal Esq. of the law firm Kemp & Kemp.

The following matter was on calendar for hearing:

- *Defendant's Motion for Attorney's Fees 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:

Clark Hill, PLLC
3800 Howard Hughes Pkwy.
Suite 500
Las Vegas, Nevada 89169
Ph. (702) 862-8300
Fax. (702) 862-8400

IT IS HEREBY ORDERED, that Defendant's Motion for Attorneys' Fees and costs is hereby granted; and

IT IS FURTHER ORDERED, that Defendant is entitled to an award in the amount of $9,500.00 for its attorney fees incurred through July 10, 2018, and costs in the amount of $240.19. Defendant shall have Judgment against Plaintiff, Antonette Patush, for the total sum of $9,740.19, plus interest at the legal rate from the date Judgment was entered in this matter, until paid in full.

Dated this 19 day of July, 2018.

THE HONORABLE TIERRA JONES

Respectfully submitted by:

CLARK HILL, PLLC

Deanna L. Forbush, Esq.
Nevada Bar No. 6646
Jeremy J. Thompson, Esq.
Nevada Bar No. 12503
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Attorneys for Defendant

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8/3/2018 1:45 PM
Steven D. Grierson
CLERK OF THE COURT

JAMES P. KEMP, ESQUIRE
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(702) 258-6983 (fax)
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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 for Attorney Fees, said Order of the District Court having been entered on July 27, 2018.

DATED: August 3, 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
ATTORNEYS AT LAW
7435 W. Azure Dr., Suite 110
LAS VEGAS, NEVADA 89130
Tel. (702) 258-1183 ♦ Fax (702) 258-6983

Case Number: A-18-771491-C

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 3rd day of August 2018

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

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