

1 Deanna L. Forbush, Esq.
Nevada Bar No. 6646
2 Jeremy J. Thompson, Esq.
Nevada Bar No. 12503
3 **CLARK HILL, PLLC**
4 3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
5 ph. (702) 862-8300; fax (702) 862-8400
6 Email: dforbush@clarkhill.com
Email: jthompson@clarkhill.com
7 Attorneys for Defendant

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

10 **ANTONETTE PATUSH,**

11 **Plaintiff,**

12 **vs.**

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

15 **Defendants.**

Case No.: A-18-771491-C

Dept. No.: 10

**DEFENDANT LAS VEGAS
BISTRO, LLC'S MOTION FOR
RULE 11 SANCTIONS AGAINST
PLAINTIFF ANTONETTE
PATASH**

16 Defendant Las Vegas Bistro, LLC ("LVB"), by and through its counsel of record Clark
17 Hill PLLC, hereby moves for sanctions against Plaintiff, Antonette Patush ("Plaintiff") and her
18 counsel, James P. Kemp, Esq. of the law firm Kemp & Kemp, pursuant to Rule 11 for filing a
19 frivolous action against LVB.
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1 **I. INTRODUCTION.**

2 Litigation is not a game. The courts are not vehicles for litigants to harass others by filing
3 frivolous claims which wholly lack any conceivable merit under the existing facts and/or law.
4 Plaintiff, through her counsel, filed this frivolous lawsuit against LVB and now LVB is forced to
5 incur significant attorneys' fees and costs in defending itself in this matter. Had Plaintiff's
6 counsel conducted the requisite reasonable and competent inquiry, he would have quickly
7 discovered that the statute of limitations associated with Plaintiff's claim expired long ago.

8 Because Plaintiff's claim against LVB is frivolous and because no competent attorney
9 could believe Plaintiff's claim is well-grounded in fact and warranted by law, Rule 11 sanctions
10 are appropriate.

11 **I. ARGUMENT.**

- 12 1. On March 21, 2018 Plaintiff filed her Complaint against LVB.
- 13 2. In the Complaint, Plaintiff alleges that her employment with LVB was terminated by
14 LVB on or about July 3 or 4, 2014. See Complaint attached hereto as **Exhibit A**, ¶¶ 6,
15 12.
- 16 3. Plaintiff alleges that the true reason she was terminated was retaliation because she was
17 injured on the job and she subsequently filed a workers' compensation' claim under the
18 Nevada Industrial Insurance Act. The termination was therefore in violation of public
19 policy. *Id.* at ¶¶ 15, 19.
- 20 4. As noted in Plaintiff's Complaint, Plaintiff was advised that she was terminated for
21 failing to show up to work and for stealing others' personal property. *Id.* at ¶ 17.
- 22 5. Nevada recognizes a wrongful termination claim for filing a workers' compensation
23 claim in violation of public policy. *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 293
24 (1989); *Allum v. Valley Bank*, 114 Nev. 1313, 1319-20 (1998); *Steiner v. Showboat*
25 *Operating Co.*, 25 F.3d 1459, 1464 (9th Cir. 1994), cert. denied, 513 U.S. 1082 (1995).
- 26 6. Nevada also recognizes a claim for constructive discharge for filing a workers'
27 compensation claim. *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 377 (1999).
- 28

1 7. The statute of limitations for a wrongful discharge claim in Nevada is two years. *Taylor*
2 *v. Becket*, 2:13-cv-02199-APG-VCF, 2017 WL 44943, *4 (D. Nev. Jan. 3, 2017) (two-
3 year limitations period for personal injuries due to a wrongful act).

4 8. Plaintiff's wrongful discharge claim against LVB, if any, expired on or about July 4,
5 2016.

6 9. NRCP 11 provides, in relevant part, as follows:

7
8 The signature of an attorney or party constitutes a certificate by
9 that attorney or party that he or she has read the pleading, motion,
10 or other paper; that to the best of his or her knowledge, information
11 and belief, formed after reasonable inquiry under the
12 circumstances obtaining at the time of signature, that it is well
13 grounded in fact and is warranted by existing law or a good faith
14 argument for the extension, modification, or reversal of existing
15 law, and that it is not interposed for any improper purpose such as
16 to harass or to cause unnecessary delay or needless increase in the
17 cost of litigation.... If a pleading, motion, or other paper is signed
18 in violation of this rule, the court, upon motion or upon its own
19 initiative, shall impose upon the person who signed it, a
20 represented party, or both, an appropriate sanction, which may
21 include an order to pay to the other party or parties the amount of
22 the reasonable expenses incurred because of the filing of the
23 pleading, motion, or other paper, including a reasonable attorney
24 fee.

25 10. Nevada has imposed sanctions for filing a "frivolous claim," which is one that is both
26 baseless and made without reasonably competent inquiry. NRCP 11; *Marshall v. Eighth*
27 *Judicial Dist. Court In and For County of Clark*, 108 Nev. 459, 465 (1992); *Bergmann v.*
28 *Boyce*, 109 Nev. 670 (1993).

11. For purposes of determining whether sanctions should be imposed on a frivolous action,
court considers whether a pleading is well grounded in fact and is warranted by existing
law or good-faith argument for extension, modification, or reversal of existing law and
whether the attorney made a reasonable and competent inquiry. *Bergmann, supra*, 109
Nev. at 676 (citing *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531,
1537 (9th Cir. 1985)); see NRCP 11(c)(1)(B); *Trustees v. Developers Surety*, 120 Nev.

1 56, 63 (2004) (recognizing the legislative intent to obviate frivolous or vexatious claims
2 and defenses which overburden limited judicial resources, hinder the timely resolution of
3 meritorious claims, and increase the costs of engaging in business and providing
4 professional services to the public, through the courts' imposition of sanctions under Rule
5 11).

6 12. The Nevada legislature has declared its intent that the court award attorneys' fees and
7 impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all
8 appropriate situations to deter frivolous or vexatious claims, allegations and defenses
9 because such claims, allegations and defenses overburden limited judicial resources,
10 hinder the timely resolution of meritorious claims and increase the costs of engaging in
11 business and providing professional services to the public. S.B. 250, 72d Leg.
12 (Nev.2003); 2003 Nev. Stat., ch. 508, § 153, at 3478.

13 13. NRCP 11 is identical to FRCP 11. The Ninth Circuit has identified two circumstances in
14 which sanctions are appropriate. One circumstance occurs where a litigant makes a
15 "frivolous filing," that is, where she files a pleading or other paper which no competent
16 attorney could believe was well grounded in fact and warranted by law; and where a
17 litigant files a pleading or other paper for an "improper purpose" such as personal or
18 economic harassment. *Golden Eagle Distributing Corp., supra*, 801 F.2d at 1536-38.

19 14. Had Plaintiff's counsel been diligent and researched Plaintiff's claim, Plaintiff's counsel
20 would know that his client's claim is not well grounded in fact nor warranted by existing
21 law. Plaintiff's counsel did not make a reasonable and competent inquiry into his client's
22 claim.

23 15. Plaintiff and her counsel filed a claim that was not supported by law, that was frivolous,
24 that does not possess evidentiary support, and that is presented for an improper purpose
25 in violation of Rule 11.

26 16. The claims and legal contentions in Plaintiff's Complaint are not warranted by existing
27 Nevada law or by a non-frivolous argument for extending, modifying, or reversing
28

1 existing law or for establishing new law. Counsel for Plaintiff, by presenting and filing
2 the Complaint with the Eight Judicial District Court of Nevada, did so for an improper
3 purpose.

4 17. Pursuant to NRCP 11(c)(2), "the sanction may consist of, or include, directives of a
5 nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and
6 warranted for effective deterrence, an order directing payment to the movant of some or
7 all of the reasonable attorney's fees and other expenses incurred as a direct result of the
8 violation."

9 18. By way of this motion, LVB requests all attorneys' fees and costs incurred in this action
10 through the Notice of Entry of Order granting LVB's motion.

11 **II. CONCLUSION.**

12 For the foregoing reasons, LVB respectfully requests that this Court enter an order of
13 sanctions against Plaintiff and her counsel, James P. Kemp, Esq. of the law firm Kemp & Kemp,
14 pursuant to Rule 11 for filing a frivolous action against LVB and award to LVB its reasonable
15 attorneys' fees and costs incurred in this action.

16 Dated this _____ day of March, 2018.

17 **CLARK HILL, PLLC**

18
19 By _____
20 Deanna L. Forbush, Esq. (NSBN 6646)
21 Jeremy J. Thompson, Esq. (NSBN 12503)
22 3800 Howard Hughes Parkway, Suite 500
23 Las Vegas, Nevada 89169
24 Attorneys for Plaintiff
25
26
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Clark Hill, PLLC, and on the ____ day of March, 2018, I served a true and correct copy of the foregoing **DEFENDANT LAS VEGAS BISTRO, LLC'S MOTION FOR RULE 11 SANCTIONS AGAINST PLAINTIFF ANTONETTE PATASH** 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, Suite 110
Las Vegas, Nevada 89130
Attorneys for Plaintiff

Hill, PLLC

*- Not yet
- 2.14.18 -
- attached
to demand
letter only*

EXHIBIT B

EXHIBIT B

KEMP & KEMP
ATTORNEYS AT LAW
7435 W. AZURE DRIVE, #110
LAS VEGAS, NEVADA 89130
TEL. (702) 258-1183 ♦ FAX (702) 258-6983

J.P. KEMP, Esq.
~~HEATHER F. KEMP, Esq.~~
VICTORIA L. NEAL, Esq.

VIA U.S. MAIL & FACSIMILE 702-862-8400

April 4, 2018

Deanna L. Forbush, Esq.
CLARK HILL
3800 Howard Hughes Parkway
Suite 500
Las Vegas, NV 89169

RE: *Patush vs. Las Vegas Bistro, LLC*
Case No.: A-18-771491

Dear Ms. Forbush:

I am in receipt of your missive dated March 27, 2018 regarding the above referenced case. I assure you that I studied and researched this matter in depth before bringing the case. The applicable statute of limitations for the common law claim at issue is four (4) years in Nevada under NRS 11.220. Thus the claim has been brought timely as it was filed prior to July 4, 2018.

No Nevada appellate court has ever addressed this issue so it is a matter of first impression in the state courts. As I am sure you are aware the Supreme Court of Nevada has repeatedly pointed out that neither it, nor the Nevada trial level courts are bound by decisions regarding state law emanating from the federal courts. It is telling that you have only cited to a 2017 U.S. District Court case as your authority. I have reviewed several of the federal cases that have ruled that the common law retaliatory discharge from employment in violation of public policy torts are governed by the two (2) year personal injury statute of limitations under NRS 11.190(4). None of them cite to controlling Nevada authority for the very good reason that there is none. Recent limitation of actions jurisprudence from the Supreme Court of Nevada supports my legal position that the four (4) year limit in the "catch-all" statute, NRS 11.220, would apply to this type of claim. *See Perry v. Terrible Herbst, Inc.*, 383 P.3d 257, 132 Nev. Adv. Op. 75, 132 Nev. (2016) (suggesting that where a claim is more of a hybrid and cannot be closely analogized to one of the specified statutory periods that the four (4) year "catch-all" period under NRS 11.220 is appropriate). A retaliatory discharge claim is certainly a hybrid of both tort and contract law and remedies.

Thus, my client's claim is on solid ground from a statute of limitations perspective, or there is certainly a good faith argument to be made as to the appropriate limitations period to apply. Accordingly, your threat to file motions for sanctions or civil actions for damages set forth in

Respondent's Appendix000024

Deanna L. Forbush, Esq.

4/4/18

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your letter (while certainly evidence of you and your client's further retaliation against my client for pursuing her rights under the Nevada Industrial Insurance Act), are not well founded.

I would hope that in the future that before threatening your professional colleagues in writing that you might consider picking up the telephone and having a professional conversation about your concerns. That is almost certainly better in terms of fostering good relationships with effective lines of communication.

Your client's response to the Complaint is due April 16, 2018. This is notice that no extensions will be granted and if no response is filed by the morning of April 17, 2018 I will submit an Entry of Default to the Clerk of the Court.

Please feel free to contact me should you have any questions or concerns about this letter or the matter at hand.

Sincerely,

A handwritten signature in black ink, appearing to be 'J.P. Kemp', written over the word 'Sincerely,'.

J.P. Kemp, Esq.

/jpk

EXHIBIT C

EXHIBIT C

CLARK HILL

3800 Howard Hughes Parkway, Suite 500, Las Vegas, NV 89169

T702.862.8300

Las Vegas Bistro, LLC
Attn: Ralph James
6007 Dean Martin Drive
Las Vegas, NV 89118

Invoice: 782169
Date: May 23, 2018
Client: 94121
Matter: 328844
File: 3239-DLF

LEGAL SERVICES RENDERED AND COSTS ADVANCED THROUGH April 30, 2018

Antonette Patush v. LV Bistro, LLC

DATE	DESCRIPTION	HOURS	AMOUNT
03/23/18	Telephone call with co-counsel Matt Hoffer. Review and analyze Patush V. Las Vegas Bistro Complaint; review and analyze select Workers Compensation documents. Pull docket and draft Entry of Appearance and Statement of Interested Parties. DLF	1.30	325.00
03/24/18	Correspond with GM Ralph James. Research applicable statute of limitations applicable to presumed claims in less than specific Complaint; correspond with Client and co-counsel regarding the same. DLF	1.10	275.00
03/26/18	PATUSH - Draft letter to opposing counsel regarding Rule 11 sanctions and dismissal of Complaint. JJT	0.70	175.00
03/26/18	PATUSH - Draft Motion for Rule 11 Sanctions. JJT	1.80	450.00
03/26/18	PATUSH - Review complaint and related research regarding statute of limitations and potential motion for Rule 11 sanctions. JJT	0.90	225.00
03/27/18	(Las Vegas Bistro)Review, analyze and edit Rule 11 demand and concomitant Motion for Rule 11 Sanctions. DLF	0.60	150.00

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Respondent's Appendix000027

CLARK HILL

Antonette Patush v. LV Bistro, LLC
Client: 94121 Matter: 328844
Invoice: 782169

May 23, 2018

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03/27/18	Continue drafting Motion for Rule 11 Sanctions. JJT	0.50	125.00
04/05/18	PATUSH - Review of response to Rule 11 letter in preparation of drafting a Motion to Dismiss plaintiff's complaint. JJT	0.20	50.00
04/05/18	(Las Vegas Bistro) Review and analyze certificate of service and correspondence from co-counsel Matt Hoffer regarding viability of SOL argument. Briefly research same. Review and analyze correspondence from opposing counsel. Correspond with co-counsel and Client regarding same; outline Motion to Dismiss. DLF	1.40	350.00
04/11/18	Draft Las Vegas Bistro LLC's Motion to Dismiss. JJT	3.80	950.00
04/13/18	Review, analyze and edit Motion to Dismiss. Correspond with Client regarding the same. DLF	0.60	150.00
04/30/18	Evaluation of Plaintiff's Opposition to Motion to Dismiss. JJT	0.80	200.00
04/30/18	Review and analyze Plaintiff's Opposition to LV Bistro's Motion to Dismiss, correspond with Client's regarding the same, draft outline for reply to opposition. DLF	1.80	450.00

Total Fees: \$3,875.00

TIME AND FEE SUMMARY

TIMEKEEPER	INIT	RATE	HOURS	FEES
Deanna L. Forbush	DLF	250.00	6.80	\$1,700.00
Jeremy Thompson	JJT	250.00	8.70	\$2,175.00
TOTALS			15.50	\$3,875.00

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Respondent's Appendix000028

CLARK HILL

Antonette Patush v. LV Bistro, LLC
Client: 94121 Matter: 328844
Invoice: 782169

May 23, 2018

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Total Current Charges	\$3,875.00
Net Current Charges	<u>\$3,875.00</u>
Total Balance Due	<u>\$3,875.00</u>

THIS BILL REFLECTS PAYMENTS RECEIVED THROUGH May 23, 2018

****PAYMENT DUE UPON RECEIPT****

*To Ensure Proper Credit, Please Return
Remittance Copy With Your Payment To Our Pittsburgh, PA Office.*

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Respondent's Appendix000029

CLARK HILL

3800 Howard Hughes Parkway, Suite 500, Las Vegas, NV 89169

T702.862.8300

Las Vegas Bistro, LLC
Attn: Ralph James
6007 Dean Martin Drive
Las Vegas, NV 89118

Invoice: 784022
Date: June 4, 2018
Client: 94121
Matter: 328844
File: 3239-DLF

LEGAL SERVICES RENDERED AND COSTS ADVANCED THROUGH June 4, 2018

Antonette Patush v. LV Bistro, LLC

DATE	DESCRIPTION	HOURS	AMOUNT
05/06/18	Conduct additional legal research regarding a claim for wrongful discharge based on violation of public policy, including standards in outside jurisdictions. JJT	2.50	625.00
05/07/18	Draft Reply in Support of Motion to Dismiss. JJT	4.10	1,025.00
05/08/18	Review, research, edit and finalize Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss. DLF	1.70	425.00
05/09/18	Research and analyze opposition in preparation for hearing on issue of first impression. DLF	2.50	625.00
05/15/18	Prepare for and attend hearing on Defendant's Motion to Dismiss. Argue Motion on behalf of Defendant. Draft and circulate proposed ORDER granting Defendant's Motion to Dismiss. Follow up telephone call with opposing counsel, and e-correspond with Client regarding the same. DLF	3.70	925.00
05/30/18	Review and analyze entry of Order granting Dismissal of the case; correspond with Client regarding the same; draft Notice of Entry of Judgment.	0.40	100.00

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Respondent's Appendix000030

CLARK HILL

Antoinette Patush v. LV Bistro, LLC
Client: 94121 Matter: 328844
Invoice: 784022

June 4, 2018

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DLF

06/01/18 Review, analyze, research and revise Defendant's Verified Memorandum of Costs and Disbursements. Review, analyze, research and revise Defendant's Motion for Attorneys' Fees. 1.20 300.00

DLF

06/04/18 Review and analyze Plaintiff's Notice of Appeal and Case Appeal Statement. 0.40 100.00

DLF

Total Fees: \$4,125.00

TIME AND FEE SUMMARY

TIMEKEEPER	INIT	RATE	HOURS	FEES
Deanna L. Forbush	DLF	250.00	9.90	\$2,475.00
Jeremy Thompson	JJT	250.00	6.60	\$1,650.00
TOTALS			16.50	\$4,125.00

EXPENSES

DATE	DESCRIPTION	AMOUNT
05/16/18	Court Fees Nevada E-File Fee VENDOR: Charter One Bank	233.19
05/16/18	Court Fees Nevada E-File Fee VENDOR: Charter One Bank	3.50
05/16/18	Court Fees Nevada E-File Fee VENDOR: Charter One Bank	3.50

Total Expenses: 240.19

CLARK HILL

Antonette Patush v. LV Bistro, LLC
Client: 94121 Matter: 328844
Invoice: 784022

June 4, 2018

Page 3

Total Current Charges	\$4,365.19
Net Current Charges	<u>\$4,365.19</u>
Previous Balance	\$3,875.00
Total Balance Due	<u><u>\$8,240.19</u></u>

THIS BILL REFLECTS PAYMENTS RECEIVED THROUGH June 4, 2018

****PAYMENT DUE UPON RECEIPT****

***To Ensure Proper Credit, Please Return
Remittance Copy With Your Payment To Our Pittsburgh, PA Office.***

CLARKHILL.COM

Respondent's Appendix000032



JAMES P. KEMP, ESQUIRE
Nevada Bar No. 006375
KEMP & KEMP
7435 W. Azure Drive, Suite 110
Las Vegas, NV 89130
(702) 258-1183/ (702) 258-6983 fax
jp@kemp-attorneys.com
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

**PLAINTIFF'S OPPOSITION TO
DEFENDANT LAS VEGAS BISTRO,
LLC'S INC.'S MOTION FOR
ATTORNEY'S FEES**

Hearing: July 10, 2018 @ 9:30 a.m.

COMES NOW the Plaintiff, by and through counsel, JAMES P. KEMP, ESQUIRE, and
hereby Opposes Defendant Las Vegas Bistro, LLC's Motion for Attorney's Fees.

POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Las Vegas Bistro, LLC, which does business as LARRY FLYNT'S HUSTLER CLUB, filed a Motion for Attorney's Fees citing NRS 18.010(2)(b) as authority and arguing that Plaintiff brought the case without reasonable grounds to do so and that the claim was "frivolous." The Defendant has repeatedly acknowledged that the statute of limitations issue upon which the court granted its Motion to Dismiss is an issue of first impression as no Nevada appellate court has every held Plaintiff's claim for retaliatory discharge in violation of public policy employment claim is

1 subject to the personal injury and wrongful death two year statute of limitations under NRS
2 11.190(4)(e). There is no other specific statute of limitations that would render Plaintiff's claim
3 time-barred in NRS Chapter 11, or anywhere else in Nevada law. The Plaintiff's contention, which
4 is now already on appeal to the Supreme Court of Nevada, that the retaliatory discharge of
5 employment in violation of public policy claim under Nevada common law is four years under NRS
6 11.220's "catch-all" provision because there is no other specific limitations period provided in NRS
7 Chapter 11 (or anywhere else in NRS) is a valid and reasonable legal position, even if it is ultimately
8 decided against her. The Plaintiff's position that the claim is a hybrid of contract and tort law and
9 remedies that NRS 11.220's "catch-all" provision was specifically designed to address is a
10 reasonable legal position even if it does not ultimately prevail. See *Perry v. Terrible Herbst, Inc.*, 383
11 P.3d 257, 261-262, 132 Nev. Adv. Op. 75, 132 Nev. (2016). (Citing and analyzing a Pennsylvania
12 case in which a "catch-all" statute of limitations was employed where the cause of action was a
13 hybrid of "multifarious" different types of claims and remedies)

14 NRS 18.010(2)(b) cited by Defendants, and NRCP Rule 11 which it incorporates, is not
15 applicable here because the Plaintiff's position, even if ultimately not successful, is not unreasonable
16 or frivolous. The Supreme Court of Nevada has not yet spoken and may agree with Plaintiff that
17 the four year period in NRS 11.220 applies to this claim.

20 II. STATEMENT OF FACTS

21 The basic facts are detailed in the Complaint and the Plaintiff incorporates the entire
22 Complaint by this reference. The essential in paragraphs 6 through 19 of the Complaint are as
23 follows:

24 6. Plaintiff began her employment with Defendant on February 6, 2013 as an Office Manager.

25 Her employment was terminated by Defendant on or about July 4, 2014.
26
27
28

- 1 7. Plaintiff sustained a serious on-the-job industrial injury to her knee, cervical spine, lumbar
2 spine, and other body parts on April 10, 2014. On that date the Claimant was working as an
3 Office Manager/Payroll person for Defendant, which may have then been known as National
4 Association of Entertainers,¹ which operates Larry Flynt's Hustler Club in Clark County,
5 Nevada.
- 6
- 7 8. On the date of injury the Claimant was walking down a hallway near her office in Defendant's
8 premises. She tripped over a rug on the floor in the hallway and fell hard to the floor. A
9 video recording of the accident was submitted and is part of the record.
- 10 9. Plaintiff timely filled out a C-4 form claim for workers' compensation.
- 11 10. Plaintiff's workers' compensation claim was duly accepted on May 8, 2014 and benefits were
12 paid on the claim
- 13 11. At the time of her termination, set forth herein, Plaintiff was working full duty.
- 14 12. Plaintiff was terminated on or about July 3, 2014.
- 15 13. Plaintiff was terminated by the General Manager Kelly Jones.
- 16 14. General Manager Kelly Jones was hostile, rude, and intimidating when he told Plaintiff that
17 she had too many doctor's appointments. Plaintiff told Jones that the doctor appointments
18 were to treat her workers' compensation injury. Jones said, in a hostile manner, that he did
19 not care and then he fired her. Jones also told Plaintiff that her termination was ordered by
20 Jason Mohny who was the owner of Defendant.
- 21 15. The true reason for Plaintiff's termination is retaliation because she was injured on the job and
22 filed and pursued a workers' compensation claim under the Nevada Industrial Insurance Act.
23
24
25

26 ¹ 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 16. Plaintiff, as a manager for Defendant, had attended training where she and others were
2 instructed that they should “say something else” as the reason for terminating employees with
3 workers’ compensation claims even though the real reason was the workers’ compensation
4 claim. In other words, the management employees were instructed to come up with pre-
5 textual reasons for terminating workers’ compensation claimants in order to be able to avoid
6 liability for retaliatory discharge.

7
8 17. Plaintiff was given the false and pre-textual reason of being a “no call/no show” on certain
9 days and with stealing a cell phone from the “lost & found” items held by Defendant (items
10 left by customers). These reasons were false and malicious.

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

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

16
17 Plaintiff’s counsel studied this matter, researched the statutes and case law, read several of the
18 unpublished U.S. District Court cases on the subject, and determined that the question of what
19 statute of limitations would apply in this case was an open question of first impression in the
20 Nevada appellate courts. (Ex. B to Motion April 4, 2018 letter of Plaintiff’s counsel) The Defendant
21 has acknowledged that it has no binding case law and no authority to show that this is not an issue
22 of first impression in Nevada.

23 **III. ARGUMENT**

24
25 **A. THE AMERICAN RULE IS THAT EACH PARTY PAYS ITS OWN**
26 **ATTORNEY FEES IN THE ABSENCE OF A CONTRACT, COURT**
27 **RULE, OR STATUTE THAT PROVIDES FOR AN AWARD OF FEES**

28 Nevada follows the “American Rule” which holds that each party must bear its own attorney

1 fees absent a contract, a court rule, or a statute that provides for the shifting of fees onto the other
2 party. *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1356, 971 P.2d 383 (1998). In this case there is
3 no contract providing for fee shifting. The Defendant cites only to NRS 18.010(2)(b) which
4 incorporates the standard for NRCP Rule 11 by reference. The statute states as follows:

5 **NRS 18.010 Award of attorney's fees.**

6 ...

7 2. In addition to the cases where an allowance is authorized by
8 specific statute, the court may make an allowance of attorney's fees to a prevailing
9 party:

10 ...

11 (b) Without regard to the recovery sought, when the court finds that
12 the claim, counterclaim, cross-claim or third-party complaint or defense of the
13 opposing party was brought or maintained **without reasonable ground or to**
14 **harass the prevailing party**. The court shall liberally construe the provisions of this
15 paragraph in favor of awarding attorney's fees in all appropriate situations. It is the
16 intent of the Legislature that the court award attorney's fees pursuant to this
17 paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil
18 Procedure in all appropriate situations to punish for and deter frivolous or vexatious
19 claims and defenses because such claims and defenses overburden limited judicial
20 resources, hinder the timely resolution of meritorious claims and increase the costs
21 of engaging in business and providing professional services to the public.

22 ...

23 (Emphasis added)

24 Thus, the standard incorporates NRCP Rule 11 and requires a finding by the court that the CLAIM
25 of Ms. Patush was brought to harass Larry Flynt's Hustler Club (Defendant Las Vegas Bistro, LLC's
26 operating name) or without reasonable ground. Ms. Patush was fired from her job for trumped up,
27 untrue, and pretextual reasons when the real purpose of discharging her from her employment was
28 to retaliate against her for filing and pursuing a workers' compensation claim when she was hurt on
the job. This is a valid cause of action seeking damages and compensation. Thus it was not
brought or maintained without reasonable ground. The statute of limitations defense brought by
Defendant is just that, a defense, which the Defendant may have waived. See NRCP Rule 8 (defense
or matter in avoidance such as statute of limitations must be affirmatively raised). There is simply
no evidence to suggest that Ms. Patush wanted merely to improperly harass Larry Flynt's Hustler

1 Club. She didn't. She wants her money damages caused by the illegal actions of the Defendant.

2 More importantly, as set forth below, Ms. Patush is seeking to clarify, extend, modify, or
3 reverse the law. She has already appealed this court's decision to the Supreme Court of Nevada for
4 that very purpose. Where such action is brought in good faith on a matter of first impression, the
5 sanction provision NRCP Rule 11 is expressly not applicable.

6 The Defendant's motion is meritless. The Defendant does not meet the standard to show
7 that fees would be recoverable on the facts and law of this case. The Motion should be denied.
8

9
10 **A. THE DEFENDANT FAILS TO MEET THE STANDARD FOR THE**
11 **ALLOWANCE OF FEES UNDER NRS 18.010 (2)(B) IN THAT THE**
12 **PLAINTIFFS' CLAIMS WERE NOT BROUGHT OR MAINTAINED**
13 **WITHOUT REASONABLE GROUND OR TO HARASS THE**
14 **DEFENDANTS.**

15 Where a complaint raises legal issues involving statutory interpretation and legislative intent
16 on reasonable grounds and without any purpose to harass, it is an abuse of discretion to award
17 attorney fees pursuant to NRS 18.010 (2) (b). *Key Bank v. Donnels*, 106 Nev. 49, 53, 787 P.2d 382
18 (1990) In the *Key Bank* case the plaintiff's complaint was dismissed for failure to state a claim under
19 NRCP 12 (b)(5). Because the case dealt with some complex issues of statutory interpretation and
20 legal intent regarding the statutes in question and the statutory intent was not entirely clear or "free
21 from doubt" the Nevada Supreme Court held that it was improper to award attorney fees pursuant
22 to NRS 18.010 (2)(b).

23 The U.S. District Court cases relied upon by Defendant are not binding on the state trial
24 courts or the Nevada Supreme Court. The doctrine is more succinctly stated in the following case:

25 Decisions of the federal district court and panels of the federal circuit court of
26 appeals are not binding upon this court. Even an en banc decision of a federal
27 circuit **743 court does not bind Nevada courts.

28 *Custom Cabinet Factory of New York, Inc. v. Eighth Judicial Dist. Court ex rel. County of Clark* 119
Nev. 51, *54, 62 P.3d 741, **742 - 743 (Nev., 2003) (Overruled on Other Grounds by *Winston*
Products Co. v. DeBoer, 134 P.3d 726 (Nev. May 25, 2006)) (Footnotes and Citations Omitted)

1 The applicable statute of limitations to Plaintiff's claim is an open questions with no
2 controlling state appellate court decisions directly addressing these issues of statutory interpretation
3 and legislative intent, just like in the *Key Bank* case *supra*.

4
5 Having established that this is an issue of first impression, the Defendant cannot establish
6 that the Plaintiff's case was brought without reasonable grounds as required by NRS 18.010 (2) (b).²

7 The standard and purpose of NRS 18.010 (2) (b) is similar to NRCP Rule 11 which is
8 referenced in the statute. NRCP 11 is based upon and evolved from FRCP 11 and the Nevada
9 Supreme Court often looks to Federal court decisions for guidance, although the Federal decisions
10 are not binding:

11 Federal cases interpreting the Federal Rules of Civil Procedure "are strong
12 persuasive authority, because the Nevada Rules of Civil Procedure are based
13 in large part upon their federal counterparts."
14 *Executive Mgmt. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872 (2002) (*quoting Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990))

15 Where a case involves an issue of first impression in the jurisdiction, sanctions under Rule 11
16 are inappropriate:

17 The plaintiff failed to establish a prima facie case. It does not follow, however,
18 that sanctions are appropriate. This is particularly true here, where the legal
19 issue is one of first impression in this circuit, and where the parties did not
20 agree on the elements of the plaintiff's prima facie case.

21 *Jones v. Slater Steels Corp.* 660 F.Supp. 1570, *1577 (N.D.Ind.,1987) (Footnotes and Citations
22 Omitted)

23 As the issues of which statute of limitations period will apply to a case of Retaliatory Discharge from
24 Employment in Violation of Public Policy is a complex question and issue of first impression in the
25 Nevada state courts, no sanctions would be appropriate under NRCP Rule 11 and consequently no
26 attorney fees may be awarded under NRS 18.010 (2) (b).

27 ² The Defendant does not appear to seriously contend that the Plaintiffs brought this action merely to harass them.
28 She brings the case to seek money damages for her lost wages and other remedies provided by law. There is absolutely no evidence to the contrary.

1 The legal and factual questions and issues in this case were not, and are not, “free from
2 doubt.” In accordance with *Key Bank v. Donnels*, 106 Nev. 49, 53, 787 P.2d 382 (1990), the
3 Defendants’ Motion for Attorney’s Fees Pursuant to NRS 18.010 (2) (b) should be denied.

4 The Defendants’ reliance on *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993) is
5 misplaced. The case on point where a Rule 12 (b) (5) motion is granted is *Key Bank*. *Bergmann* was a
6 situation where the defendant’s Rule 12 (b) (5) motion was denied and then plaintiffs failed to
7 produce at trial evidence to support their factual claims stated in the complaint resulting in dismissal
8 during trial and raising, according to the Nevada Supreme Court the issue of groundlessness. Here,
9 the issue is far more straightforward as the applicable statute of limitations period is purely a
10 question of law and the underlying merits, what evidence is available, etc. is all irrelevant at this
11 juncture.
12

13 The Defendants in the present case make the same error that the trial court did in the
14 *Bergmann* case by attempting to tie the analysis of whether an award of attorney fees is appropriate to
15 what the court did in ruling on a NRCP Rule 12 (b) (5) motion. This the *Bergmann* court clearly
16 disapproved of as the standards are different. The *Bergmann* case involved a situation where the
17 matter had proceeded to trial. The trial court had denied an NRCP 12 (b)(5) motion early on in the
18 case based on the standard requiring it to accept all allegations in the complaint as true. At trial, the
19 court effectively dismissed all of the claims except negligent misrepresentation prior to the case
20 going to the jury. The jury found for the defendant on the one remaining claim. The trial court
21 denied attorney fees pursuant to NRS 18.010 (2) (b) on the basis that the claims were not groundless
22 because they had survived dismissal under Rule 12. The Nevada Supreme Court held this to be
23 improper as the trial court should not accept the allegations of the complaint as true in ruling on an
24 attorney’s fees motion under NRS 18.010 (2) (b). The Nevada Supreme Court noted that the
25 standard under NRS 18.010 (2) (b) is similar to that of NRCP 11 when considering whether or not
26
27
28

1 the claim(s) are groundless. As discussed above, the Plaintiff's claims in Ms. Patush's case here
2 involve issues of first impression such that her claims are "well grounded in fact and [are] warranted
3 by existing law or a good faith argument for the extension, modification or reversal of existing law."
4 NRCP Rule 11. What happened in the NRCP Rule 12 (b)(5) motion is irrelevant, particularly in a
5 case of first impression where a party cannot be certain which way the court will rule on the issue.
6 Pursuing novel issues and attempting to advance the law in good faith would become a game of
7 chance and would result in a chilling effect on attorneys and parties if, as the Defendants argue, an
8 award of attorney fees is practically mandatory when a party does not prevail on a NRCP Rule 12 (b)
9 (5) motion to dismiss for failure to state a claim. The Defendant's argument is contrary to the law
10 and sound public policy. The Motion should be denied.
11

12 **B. THE DEFENDANT'S MOTION IS FRIVOLOUS AND WORTHY OF RULE**
13 **11 SANCTIONS.**

14 It is obvious that the dispute in this matter over the applicable statute of limitations is an
15 issue of first impression in the Nevada state courts. Defendant knows this. Plaintiff's counsel very
16 carefully explained this in his letter of June 4, 2018. (Ex. B to Motion) Notwithstanding this fact
17 and the law related to Rule 11 cited herein stating that it is an abuse of discretion to award fees when
18 the dispute involves complex issues and issues of first impression, the Defendant has frivolously
19 wasted this court's time and Plaintiff's attorney's time in pursuing this meritless motion for attorney
20 fees.
21

22 Further, the Defendant makes unsubstantiated and untrue statements such as, "every judge
23 and employment attorney in Nevada is aware that a claim for wrongful discharge in Nevada is a tort
24 governed by a two-year statute of limitations." (Motion at 8:2-4) Rule 11 does not permit such
25 outrageous false statements to be included in a document signed by an attorney and filed with this
26 court without providing evidentiary support. There is none. Plaintiff's counsel is not aware and has
27 contended for years that the Federal cases have been decided wrongly under Nevada law. Plaintiff's
28

counsel could easily find several employment attorneys in Nevada that agree with him that four years is the applicable statute of limitations for Ms. Patush's claim. The matter is unsettled and not "without doubt."

NRCP Rule 11 states in relevant part as follows:

RULE 11. SIGNING OF PLEADINGS

~ (a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. ...

~ (b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

~ (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

~ (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

~ (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

~ (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

~ [As amended; effective January 1, 2005.]

~ (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

~ (1) How initiated.

~ ...

~ (B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate

subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

~ (2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

~ (A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

~ (B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

~ (3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Plaintiff is going to focus on moving forward with the appeal and the merits of the matter at hand. However, the court may elect to invoke Rule 11 and issue an order to show cause why sanctions should not be imposed for the Defendant's violations of Rule 11 in accordance with the procedure set forth in the Rule.

IV. CONCLUSION

For the reasons set forth above, under the standards of NRCP Rule 11 and NRS 18.010(2)(b), the Defendant's Motion seeking attorney fees should be DENIED. The Plaintiff makes a reasonable argument because the issue is not "without doubt" and the matter has never been decided in a binding court decision in Nevada. If the shoe were on the other foot and the court had denied the 12(b)(5) motion and concluded that the statute of limitations for retaliatory discharge in violation of public policy claims in Nevada is four years under NRS 11.220, would the Plaintiff have been entitled to attorney fees because the Defendant was wrong? Plaintiff brought

her claim to seek damages for having been fired illegally from her job. This is a valid claim cognizable under Nevada law and it was brought in good faith, not to improperly harass the Defendant.

DATED this 16th day of June, 2018

/s/ James P. Kemp
JAMES P. KEMP, ESQUIRE
Nevada Bar No. 006375
KEMP & KEMP
7435 W. Azure Drive, Suite 110
Las Vegas, NV 89130
702-258-1183/702-258-6983 fax
Attorney for Plaintiff

CERTIFICATE OF E-SERVICE

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

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

DATED this 16th day of June 2018

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

Electronically Filed
7/3/2018 4:16 PM
Steven D. Grierson
CLERK OF THE COURT



REPLY
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
Telephone No. (702) 862-8300
Facsimile No. (702) 862-8400
Email: dforbush@clarkhill.com
jthompson@clarkhill.com
Counsel for Defendant Las Vegas Bistro, LLC

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**

**DEFENDANT LAS VEGAS
BISTRO, LLC'S REPLY IN
SUPPORT OF MOTION FOR
ATTORNEY'S FEES**

Defendant Las Vegas Bistro, LLC ("Defendant" and/or "LVB"), by and through its attorneys of record of Clark Hill PLLC, hereby submits its Reply in Support of Motion for Attorney's Fees.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. THE NEVADA SUPREME COURT ESTABLISHED IN 1984 THAT A CLAIM**
3 **FOR RETALIATORY DISCHARGE FOR VIOLATION OF PUBLIC POLICY**
4 **SOUNDS IN TORT.**

5 The substance of plaintiff's opposition is that because she filed an appeal, which she
6 will similarly lose, her complaint against LVB was brought on reasonable grounds. The fact
7 that plaintiff appealed this Court's decision is irrelevant to whether she sued LVB without
8 reasonable grounds.¹ Moreover, plaintiff's contention that her claim for wrongful discharge
9 stemming from her filing of worker's compensation claim "is a hybrid of contract and tort
10 law and remedies" is not supported by any case law and is in fact belied by Nevada Supreme
11 Court precedent. The law is clear and has been clear since at least 1984, despite plaintiff's
12 counsel's purported belief, that plaintiff's claim sounded in tort and the statute of limitations
13 set forth in NRS 11.190(4)(c) governs claims for tortious discharge. The Nevada Supreme
14 Court made that clear in *Hansen v. Harrah's*, 100 Nev. 60, 63, 675 P.2d 394, 396 (1984).

15 In *Hansen*, former employees brought separate actions alleging retaliatory discharge
16 by former employers in response to the former employees' filing of worker's compensation
17 claims. The Nevada Supreme Court was tasked with considering whether Nevada should
18 adopt the public policy exception to the at-will employment recognizing as a proper cause of
19 action retaliatory discharge for filing a worker's compensation claim. The Court specifically
20 said:

21 We elect to support the established public policy of this state
22 concerning injured workmen and adopt the narrow exception to the
23 at-will employment rule recognizing that retaliatory discharge by
24 an employer stemming from the filing of a workmen's
25 compensation claim by an injured employee is actionable in tort.
26 Since both the cause of action and the remedy are governed by the
27 law of torts...

28
¹ By way of filing her appeal, plaintiff unreasonably asks the Nevada Supreme Court to find that her
claim for tortious discharge in violation of public policy is not a tort, but instead a "hybrid of contract and tort
law remedies." Ruling in Plaintiff's favor based on that argument would require the Court to ignore *Hansen*
and its progeny.

1 *Id.* at 65 (emphasis added). The Court also stated that “as with any intentional tort” punitive
2 damages are available as a remedy if certain conditions are met. *Id.*

3 The Court subsequently confirmed in *K Mart Corporation v. Ponsock and D’Angelo*
4 *v. Gardner* that retaliatory discharge of an employee dismissed for filing a workmen’s
5 compensation claim was a claim for “tortious discharge” or “public policy tort.” *K Mart*
6 *Corporation v. Ponsock*, 103 Nev. 39, 46, 732 P.2d 1364, 1369 (1987) (citing *Hansen, supra*:
7 “This court has already recognized the presence of tort liability in non-contractual
8 employment situations founded upon strong public policy.”); *D’Angelo v. Gardner*, 107 Nev.
9 704, 712, 819 P.2d 206 (1995) (“An employer commits a tortious discharge by terminating
10 an employee for reasons which violate public policy.”). Thus, plaintiff’s counsel’s
11 contention that his client’s claim for retaliatory discharge in violation of public policy
12 “was/is a hybrid of contract and tort law remedies” is belied by numerous cases issued by the
13 Nevada Supreme Court. That was information undersigned counsel provided to plaintiff’s
14 counsel *prior to* the filing of the Motion to Dismiss.

15 Because it is indisputable that plaintiff’s claim sounded in tort, it is/was likewise
16 indisputable that the two-years statute of limitations set forth in NRS 11.190(4)(e) is
17 applicable. NRS 11.190(4)(e) provides that the statute of limitation for an action to recover
18 damages for injuries to a person caused by the wrongful act of another (*i.e.* an intentional
19 tort) is two years. *See, e.g., Meadows v. Sheldon Pollack Corp.*, 92 Nev. 636, 637, 556 P.2d
20 546 (1976) (finding that the gravamen of the claim was in tort and therefore NRS
21 11.190(4)(e) applied); *Bugay v. Clark County School District*, No. 63652, 2014 WL 6609508
22 (Nev. Nov. 20, 2014) (applying two-year statute of limitations to tort claim); *Taylor v.*
23 *Becket*, 2:13-cv-02199-APG-VCF, 2017 WL 44943, *4 (D. Nev. Jan. 3, 2017) (two-year
24 limitations period for injuries due to a wrongful act).

25 The applicability of NRS 11.190(4)(e) to intentional torts is not “an issue of first
26 impression,” “a complex issue,” or “a novel issue” as plaintiff’s counsel contends.

1
2 **II. PLAINTIFF BROUGHT HER CLAIM WITHOUT REASONABLE**
3 **GROUND; LVB IS ENTITLED TO ITS ATTORNEY'S FEES.**

4 Because plaintiff brought her claim without reasonable grounds, let alone any legal
5 basis, LVB is entitled to an award of its attorney's fees pursuant to NRS 18.010(2)(b). As
6 noted in LVB's Motion for Attorney's Fees, the court is required to "liberally construe" the
7 provisions of NRS 18.010(2)(b) "in favor of awarding attorneys' fees in all appropriate
8 situations," such as here where plaintiff refused to dismiss the complaint despite being
9 advised of the groundless nature of her claim against LVB. Plaintiff was advised that her
10 claim, if any, against LVB expired in 2016 when the two-year statute of limitation expired,
11 but she refused to dismiss the complaint.

12 The decision to award attorney fees is within the sound discretion of the district court
13 and will not be overturned absent a manifest abuse of discretion. *Kahn v. Morse &*
14 *Mowbray*, 121 Nev. 464, 480 117 P.3d 227, 238 (2005). Determining whether attorney fees
15 should be awarded requires the court to inquire into the actual circumstances of the case,
16 rather than a hypothetical set of facts favoring plaintiff's averments. *Baldonado v. Wynn Las*
17 *Vegas*, 124 Nev. 951, 967-68, 194 P.3d 96, 106 (2008). Here, plaintiff clearly had no legal
18 justification to sue LVB and, therefore, an award of attorney's fees pursuant to NRS
19 18.010(2)(b) is warranted.

20 Plaintiff cites *Key Bank v. Donnels*, 106 Nev. 49, 787 P.2d 382 (1990) in defense of
21 her opposition, and points out that the Nevada Supreme Court held that it was improper for
22 the lower court to award attorney fees pursuant to NRS 18.010(2)(b) because the case
23 involved complex legal questions concerning statutory interpretation and legislative intent.
24 Plaintiff misinterprets *Donnels*. In *Donnels*, Key Bank of Alaska loaned money to a Nevada
25 borrower. The obligation was evidenced by a promissory note and secured by a deed of trust
26 on real property located in Nevada as well as personal guaranties. The note and guaranties
27 were governed by Alaska law while the deed of trust incorporated by reference Nevada
28 foreclosure provisions. After a default, Key Bank elected to sell the property and thereafter

1 sought a deficiency judgment. The borrowers moved for dismissal of the action and the court
2 granted the motion. The dismissal involved the court's application of and interpretation of
3 Alaska law and legislative intent. Thereafter, the court granted the borrowers' motion for
4 attorney fees.

5 On appeal, the Nevada Supreme Court concluded that the lower court erred in
6 interpreting and applying an Alaska statute. The Court further found that the lower court
7 abused its discretion in awarding fees under NRS 18.010(2)(b) because the case was not
8 "free from doubt" or brought without reasonable grounds as was evidenced by its ruling that
9 the lower court misapplied/misinterpreted the Alaska statute. The Nevada Supreme Court
10 further noted that the case involved the lower court's application of Alaska law and
11 interpretation of Alaska's legislative intent and therefore presented "complex legal questions
12 concerning statutory interpretation and legislative intent."

13 Thus, Plaintiff's reliance on *Donnels* is misplaced. In *Donnels*, The Nevada
14 Supreme Court held that the award of fees was improper because it found the lower court
15 erred in granting the underlying motion to dismiss.

16 Here, the Court rightly granted LVB's Motion to Dismiss, and there has been no
17 determination that the Court erred in doing so, which it did not. *Donnels* also involved
18 complex legal issues and the interpretation and application of an out of state statute, which
19 are absent in this case. The instant matter involves the application of Nevada's two-year
20 statute governing intentional torts and the associated case law. There is nothing complex,
21 novel or "hybrid" about that. Plaintiff's counsel might personally believe that the issue is
22 complex, but the legal authority cited above makes it clear that plaintiff's claim against LVB,
23 if any, was brought without reasonable grounds or legal justification as her claim, if any,
24 expired long ago.

25 ///

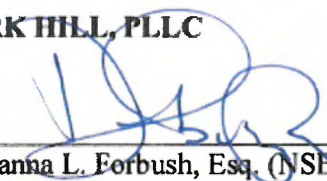
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27 ///

1 **III. CONCLUSION.**

2 For the reasons stated above and in its Motion for Attorney's Fees, LVB respectfully
3 requests that Rachel Patush and/or her counsel be ordered to pay LVB's attorney's fees in the
4 amount of **\$9,500.00** as well as the \$240.19 in costs it incurred.

5 DATED this 3rd day of July, 2018.

6 **CLARK HILL, PLLC**

7
8 By 

9 Deanna L. Forbush, Esq. (NSBN 6646)
10 Jeremy J. Thompson, Esq. (NSBN 12503)
11 3800 Howard Hughes Parkway, Suite 500
12 Las Vegas, Nevada 89169
13 ph. (702) 862-8300; fax (702) 862-8400
14 email: dforbush@clarkhill.com
15 email: jthompson@clarkhill.com
16 Attorneys for Defendant
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18
19
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2 effective June 1, 2014, I hereby certify that I am an employee of Clark Hill PLLC, and that on this 3rd day of July, 2018 I served a true and correct copy of the foregoing **DEFENDANT LAS VEGAS BISTRO, LLC'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES** via electronic means by operation of the Court's electronic filing system, upon each party to 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


An Employee of Clark Hill PLLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONETTE PATUSH,

Appellant,

v.

LAS VEGAS BISTRO, LLC,

Respondent.

Electronically Filed
Feb 11 2019 08:33 a.m.
Supreme Court No. 17-006 Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court
Department 10, Clark County, Nevada
The Honorable Tierra Jones, District Court Judge

RESPONDENT'S APPENDIX

Deanna L. Forbush, Esq. (NSBN 6646)
Jeremy J. Thompson, Esq. (NSBN 12503)
CLARK HILL PLLC
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
ph. (702) 862-8300; fax: (702) 862-8400
email: dforbush@clarkhill.com
email: jthompson@clarkhill.com
Attorneys for Respondent

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Clark Hill, PLLC, and on this 8th day of February, 2019, I served a true and correct copy of the foregoing

RESPONDENT'S APPENDIX 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;
- ☒ via electronic means 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;
- ☐ via facsimile to the following counsel of record:

James Kemp, Esq.
7435 West Azure Drive, Suite 110
Las Vegas, NV 89130
Attorney for Appellant

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



MAFC
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, NV 89169
Telephone No. (702) 862-8300
Facsimile No. (702) 862-8400
Email: dforbush@clarkhill.com
jthompson@clarkhill.com
Counsel for Defendant Las Vegas Bistro, LLC

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

**DEFENDANT LAS VEGAS
BISTRO, LLC'S MOTION FOR
ATTORNEY'S FEES**

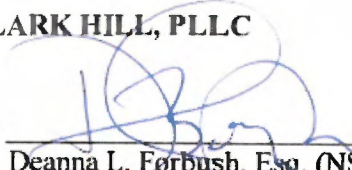
Defendant Las Vegas Bistro, LLC ("Defendant" and/or "LVB"), by and through its attorneys of record of Clark Hill PLLC, hereby moves for an award of attorneys' fees in the amount of \$9,500.00 which includes \$8,000.00 of previously incurred attorneys' fees and \$1,500.00 of attorneys' fees associated with additional work that will be billed following the filing of this Motion for Attorneys' Fees.¹ This Motion is made and based upon the following points and authorities, the Court's Order Granting Defendant's Motion to Dismiss

¹ Five hours billed at \$250.00 per hour associated with drafting the motion, reply and order associated with this motion and preparing for and attending the hearing on this motion to be billed by Jeremy J. Thompson and/or Deanna L. Forbush.

1 dated May 30, 2018 and the Notice of Entry of Order thereto dated May 31, 2018, the papers
2 and pleadings on file herein, any attached exhibit(s), and any oral argument allowed.

3 Respectfully submitted this 4 day of June 2018.

4 CLARK HILL, PLLC

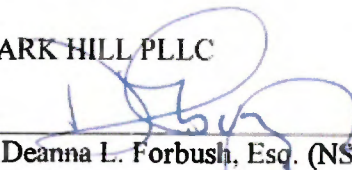
6 By 

7 Deanna L. Forbush, Esq. (NSBN 6646)
8 Jeremy J. Thompson, Esq. (NSBN 12503)
9 3800 Howard Hughes Parkway, Suite 500
10 Las Vegas, Nevada 89169
11 ph. (702) 862-8300; fax (702) 862-8400
12 email: dforbush@clarkhill.com
13 email: jthompson@clarkhill.com
14 Attorneys for Defendant

13 NOTICE OF HEARING

14 PLEASE TAKE NOTICE that the undersigned will bring LAS VEGAS BISTRO,
15 LLC'S MOTION FOR ATTORNEYS' FEES on for hearing in Department ~~XX~~^X on the ____
16 day of July 10, 2018, at the hour of 9:30 am
17 may be heard.

18 CLARK HILL PLLC

19 By 

20 Deanna L. Forbush, Esq. (NSBN 6646)
21 Jeremy J. Thompson, Esq. (NSBN 12503)
22 3800 Howard Hughes Parkway, Suite 500
23 Las Vegas, Nevada 89169
24 ph. (702) 862-8300; fax (702) 862-8400
25 email: dforbush@clarkhill.com
26 email: jthompson@clarkhill.com
27 Attorneys for Defendant

1 DECLARATION OF DEANNA L. FORBUSH, ESQ. IN SUPPORT LAS VEGAS
2 BISTRO, LLC'S MOTION FOR ATTORNEYS' FEES

3 I, Deanna L. Forbush, Esq., hereby declare under the penalty of perjury as follows:

- 4 1. The following facts are personally known to me, and if called to testify thereto, I
5 could and would competently do so, under oath.
- 6 2. I am a member at Clark Hill, PLLC and counsel for Defendant Las Vegas Bistro,
7 LLC in the above captioned case.
- 8 3. I make this declaration in support of Las Vegas Bistro, LLC's Motion for
9 Attorneys' Fees herewith.
- 10 4. Attached hereto as **Exhibit A** is a true and correct copy of the March 27, 2018
11 correspondence.
- 12 5. Attached hereto as **Exhibit B** is a true and correct copy of the April 4, 2018 letter.
13 In the letter, Plaintiff's counsel stated: "I assure you that I studied and researched
14 this matter in depth before bringing the case.
- 15 6. Attached hereto as **Exhibit C** is a true and correct copy of Clark Hill's fees and
16 costs for this matter, which are created and maintained by Clark Hill PLLC in the
17 ordinary course of it business compiled from information entered
18 contemporaneously with the incurrence of fees and expenses by persons with
19 knowledge thereof.
- 20 7. I reviewed true and accurate billing records related to Las Vegas Bistro, LLC's
21 Motion for Attorney Fees ("Motion"), which total **\$9,500.00** which includes
22 **\$8,000.00** of previously incurred attorneys' fees and **\$1,500.00** of attorneys' fees
23 associated with additional work that will be billed following the filing of this
24 Motion for Attorneys' Fees.
- 25 8. As a result, the total amount of attorneys' fees Las Vegas Bistro, LLC has
26 incurred/will incur is **\$9,500.00** as detailed in the following chart.
- 27

BILLER	NUMBER OF HOURS	FEES
Deanna Forbush (billed)	16.7	\$4,175.00
Jeremy J. Thompson (billed)	15.3	\$3,825.00
Jeremy J. Thompson (to be billed) ²	6.0	\$1,500.00
	TOTAL	\$9,500.00

9. The following attorneys provided services to Plaza in connection with the fees presently requested.

a. Deanna Forbush is a member with Clark Hill with over 27 years of litigation experience, representing employers and corporations, in the areas of employment and general civil litigation, Ms. Forbush's billing rate for this a matter is \$250.00 per hour³ and she billed 16.9 hours to this matter.

b. Jeremy Thompson is a senior attorney with Clark Hill, and has over five (5) years of experience in civil litigation, employment law, insurance defense, and product liability. Mr. Thompson's billing rate for this matter is also \$250.00 per hour.

10. The work performed by counsel in this matter included, but was not limited to,

a. Review of the Complaint, related research, and review of employment and related documents.

b. Interview of the Defendant and its employees regarding this matter.

² Mr. Thompson will be drafting the reply and order associated with the motion for attorneys' fees, preparing for and attending the hearing, and preparing the final judgment.

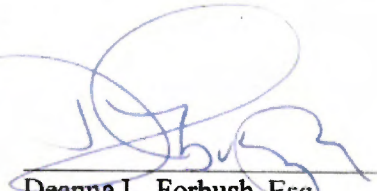
³ Ms. Forbush's regular billing rate is \$400.00 per hour, but was discounted by way of a firm wide blended rate in recognition of a significant ongoing relationship as counsel for LVB.

- 1 c. Preparing the Motion to Dismiss. Related briefing and drafting, legal
2 research and attendance at hearing on the Motion.
3 d. Communications with LVB and preparation of correspondence related
4 documents.

5 11. Thus, Plaintiff seeks an award of \$9,500.00 in attorneys' fees.

6 I declare under the penalty of perjury that the foregoing is true and correct to the best
7 of my knowledge, information, and belief.

8 Dated this 4th day of June, 2018.

9
10 
Deanna L. Forbush, Esq.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION.**

13 Las Vegas Bistro, LLC ("LVB") is entitled to an award of the attorneys' fees it
14 incurred in prevailing on its defense of the claim(s) asserted by plaintiff Rachel Patush
15 pursuant to NRS 18.010(2)(b). A court may make an allowance of attorney's fees to a
16 prevailing party.

17 Without regard to the recovery sought, when the court finds
18 that the claim, counterclaim, cross-claim or third-party
19 complaint or defense of the opposing party was brought or
20 maintained without reasonable ground or to harass the
21 prevailing party. The court shall liberally construe the
22 provisions of this paragraph in favor of awarding
23 attorney's fees in all appropriate situations. It is the
24 intent of the Legislature that the court award attorney's fees
25 pursuant to this paragraph and impose sanctions pursuant to
26 Rule 11 of the Nevada Rules of Civil Procedure in all
27 appropriate situations to punish for and deter frivolous or
28 vexatious claims and defenses because such claims and
defenses overburden limited judicial resources, hinder the
timely resolution of meritorious claims and increase the
costs of engaging in business and providing professional
services to the public.

1 *Id.* (Emphasis added).

2 Prior to filing its Motion to Dismiss, undersigned counsel advised Plaintiff's counsel
3 that Plaintiff's claim was not supported by law, was frivolous, and had no evidentiary
4 support. Nevertheless, Plaintiff's counsel refused to dismiss the Complaint. LVB
5 subsequently filed its Motion to Dismiss. This Court heard argument on LVB's motion and
6 after hearing the parties' arguments and reviewing the parties' briefing the Court granted
7 LVB's motion. It is clear that Plaintiff's claim was brought without reasonable grounds, was
8 frivolous, and wasted judicial resources.

9 LVB seeks an award of its reasonable attorneys' fees in the amount of \$9,500.00.
10 Concurrent with this Motion, LVB is filing its Verified Memorandum of Costs seeking
11 reimbursement for total costs in the amount of \$240.19.

12 **II. RELEVANT FACTS.**

13 2. Plaintiff commenced this action with the filing of a Complaint against LVB on
14 March 21, 2018.

15 3. In the Complaint, Plaintiff alleges that her employment with LVB was terminated
16 by LVB on or about July 3 or 4, 2014. *See* Complaint, ¶¶ 6, 12.

17 4. Plaintiff alleges that the true reason she was terminated was retaliation because
18 she was injured on the job and she subsequently filed a workers' compensation'
19 claim under the Nevada Industrial Insurance Act. The termination was therefore
20 in violation of public policy. *Id.* at ¶¶ 15, 19.

21 5. As noted in Plaintiff's Complaint, Plaintiff was advised by Defendant that she
22 was terminated for failing to show up to work and for stealing others' personal
23 property. *Id.* at ¶ 17.

24 6. Nevada recognizes a claim for wrongful termination in retaliation for filing a
25 workers' compensation claim in violation of public policy, as a tort. *Hansen v.*
26 *Harrah's*, 100 Nev. 60, 675 p.2d 394 (1984); *Wiltsie v. Baby Grand Corp.*, 105
27 Nev. 291, 293 (1989); *Allum v. Valley Bank*, 114 Nev. 1313, 1319-20 (1998);

1 *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1464 (9th Cir. 1994), cert.
2 denied, 513 U.S. 1082 (1995).

3 7. While this kind of public policy tort cannot ordinarily be committed also sent the
4 employer-employee relationship, the tort, the wrong itself, is not dependent upon
5 or directly related to a contract of continued employment. *D'Angelo v. Gardner*,
6 107 Nev. 704, 819 P.2d 20b (1991).

7 8. Nevada also recognizes as a tort for constructive discharge for filing a workers'
8 compensation claim. *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 377
9 (1999).

10 9. The statute of limitations for a wrongful tortious discharge claim in Nevada is two
11 (2) years. *Taylor v. Becket*, 2:13-cv-02199-APG-VCF, 2017 WL 44943, *4 (D.
12 Nev. Jan. 3, 2017) (two-year limitations period for personal injuries due to a
13 wrongful act; NRS 11.190(e)(4).

14 10. On March 27, 2018 undersigned counsel served Plaintiff's counsel with a letter
15 and a Motion for Sanctions pursuant to Rule 11, NRS 18.010, and Nevada law. In
16 the Rule 11 letter, Plaintiff's counsel was advised that there was no legal basis for
17 the legal action his client was pursuing against LVB. Specifically, that Plaintiff's
18 claim against LVB, if any, expired in July 2016. Attached hereto as **Exhibit A** is
19 a true and correct copy of the March 27, 2018 correspondence.

20 11. On April 4, 2018 Plaintiff's counsel served a response to the aforementioned
21 letter. Attached hereto as **Exhibit B** is a true and correct copy of the April 4,
22 2018 letter. In the letter, Plaintiff's counsel stated: "I assure you that I studied
23 and researched this matter in depth before bringing the case." Plaintiff's counsel
24 cited one, unrelated case in support of his theory that a four-year statute of
25 limitation governed Plaintiff's claim.

26 12. Further, Plaintiff's counsel remarkably stated without authority of any kind that,
27 in fact, the tort, of wrongful discharge is not a tort but is a "hybrid of both tort and
28

1 contract law and remedies.” Plaintiff’s counsel did not cite a single case to
2 support that theory. That is because every judge and employment attorney in
3 Nevada is aware that a claim for wrongful discharge in Nevada is a tort governed
4 by a two-year statute of limitations.

5 13. As a result of Plaintiff’s counsel unreasonable refusal to acknowledge the
6 operative statute of limitation, LVB was forced to engage counsel and file its
7 Motion to Dismiss on April 13, 2018.

8 14. On May 15, 2018 the Court granted LVB’s motion and found that Plaintiff’s
9 claim was actionable in tort and the appropriate statute of limitations for the claim
10 was the two year statute of limitations set forth in NRS 11.190(e)(4).

11 15. The following attorneys provided services to LVB in connection with the fees
12 presently requested.

13 a. Deanna Forbush is a member with Clark Hill with over 27 years of
14 litigation experience, representing employers and corporations, in the
15 areas of employment and general civil litigation, Ms. Forbush’s billing
16 rate for this a matter is \$250.00 per hour⁴ and she billed 16.9 hours to
17 this matter.

18 b. Jeremy Thompson is a senior attorney with Clark Hill, and has over five
19 (5) years of experience in civil litigation, employment law, insurance
20 defense, and product liability. Mr. Thompson’s billing rate for this
21 matter is also \$250.00 per hour.

22 c. LVB’s counsel expects to bill an additional five (5) hours at \$250.00 per
23 hour to this matter to draft the instant motion and related briefing and to
24 attend the hearing.

25
26 ⁴ Ms. Forbush’s regular billing rate is \$400.00 per hour, but was discounted by way of a firm wide
27 blended rate in recognition of a significant ongoing relationship as counsel for LVB.

1 16. The work performed by LVB's counsel in this matter included, but was not
2 limited to,

- 3 a. Review of the Complaint, related research, and review of employment
4 and related documents.
5 b. Interview of the Defendant and its employees regarding this matter.
6 c. Preparing the Motion to Dismiss. Related briefing and drafting, legal
7 research and attendance at hearing on the Motion.
8 d. Communications with LVB and preparation of correspondence related
9 documents.

10 **III. ARGUMENT.**

11 **1. LVB is Entitled to Recover \$9,500.00.**

12 With regard to an award for attorney's fees and costs, NRS 18.010(2)(b) permits an
13 award of attorney fees to the prevailing party to punish and deter frivolous or vexatious
14 claims, and NRS 18.020 permits an award of costs to the prevailing party. An award of
15 attorneys' fees is appropriate when a party pursues a claim without reasonable ground. *Kahn*
16 *v. Morse & Mowbray*, 121 Nev. 464, 479, 1117 P.3d 227, 238 (2005); NRS 18.010(2)(b).
17 The decision to award attorney fees as a sanction against a party for pursuing a claim without
18 reasonable ground is within the district court's sound discretion and will not be overturned
19 absent a manifest abuse of discretion. *Edwards v. Emperor's Garden Restaurant*, 122 Nev.
20 317, 331-32, 130 P.3d 1280, 1288 (2006). Sanctions will be imposed for filing a "frivolous"
21 claim," which is one that is both baseless and made without reasonable competent inquiry.
22 *Bergmann v. Boyce*, 109 Nev. 670, 674-75, 856 P.2d 560, 563 (1993).

23 Here, it is clear that Plaintiff's Complaint was baseless as her claim against LVB, if
24 any, expired in July 2016, almost two (2) years before she filed the instant action. Any
25 reasonably competent employment attorney would know that and would not have filed the
26 Complaint against LVB. It was not reasonable for Plaintiff's counsel to pursue a claim
27

1 against LVB especially after LVB served its Rule 11 letter and motion, which advised
2 Plaintiff's counsel of the frivolous nature of Plaintiff's claim.

3 LVB is entitled to its reasonable attorneys' fees and costs incurred pursuant to NRS
4 18.010(2)(b). Or, at a minimum have withdrawn its Complaint after being provided with
5 pervasive legal authority having no doubt but that Plaintiff had not plead a viable COA, as
6 Plaintiff was by Defendant on or About March 27, 2018. LVB requests an award for
7 attorneys' fees in the amount of \$8,000.00 for time previously billed and for an additional
8 award of attorneys' fees in the amount of \$1,500.00 for time it will bill on this matter, for a
9 total of \$9,500.00.

10 **2. LVB's Attorneys' Fees are Reasonable.**

11 While the trial court has discretion to determine the reasonable amount of attorney
12 fees provided for by an agreement, the court must evaluate the factors set forth in *Brunzell v.*
13 *Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969); *Miller v. Wilfong*,
14 121 Nev. 619, 623, 119 P.3d 727, 730 (2005); *Shuette v. Beazer Homes Holdings Corp.*, 121
15 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005). The *Brunzell* factors are as follows:

- 16 (1) the advocate's qualities, including ability, training, education,
17 experience, professional standing, and skill;
18 (2) the character of the work, including its difficulty, intricacy,
19 importance, as well as the time and skill required, the
20 responsibility imposed, and the prominence and character of the
21 parties when affecting the importance of the litigation;
(3) the work performed, including the skill, time, and attention
given to the work; and
(4) the result—whether the attorney was successful and what
benefits were derived.

22 *Wilfong, supra*, 121 Nev. at 623, 119 P.3d at 730; *Shuette, supra*, 121 Nev. at 865,
23 124 P.3d at 549.

24 **i. Clark Hill's quality and skills are well known in the community.**

25 The qualities of the attorneys of Clark Hill as advocates are well-known in the
26 community. By using a team approach to the practice of law, clients benefit from the
27

1 experience, training, and knowledge of each member of the firm. This approach was used by
2 Clark Hill during the pendency of this matter. The attorneys are well-experienced and their
3 competence is demonstrated by the quality of their work product submitted to the Court.

4 **ii. Clark Hill devoted important time and skill to this matter.**

5 The character of the work Clark Hill performed in this case for LVB is evident
6 throughout. Moreover, Clark Hill attorneys devoted the necessary time, and no more, and
7 skill to ensure LVB's interests were appropriately covered. For example, LVB's counsel
8 successfully litigated a motion to dismiss in favor of LVB and against the Plaintiff. Many of
9 the tasks performed in this matter were accomplished by talented associates demonstrating
10 billing efficiency. The character of the work Clark Hill performed in this case for LVB,
11 including the intricacy, importance, and the time and skill required in its work is evident
12 throughout.

13 **iii. The work actually performed was reasonable in light out the**
14 **outcome.**

15 The amount of time LVB's counsel spent on this matter and the corresponding
16 attorneys' fees were reasonable. The work actually performed by Clark Hill in this case is
17 evidenced by the Forbush declaration and exhibits thereto. Specifically, the Forbush
18 declaration and billing summary⁵ reflect the amount of time expended by LVB's counsel
19 since just prior to the filing of the Complaint. The hours expended in this case were
20 reasonable (approximately 30.40) in light of the fact that LVB's counsel obtained a dismissal
21 of Plaintiff's Complaint. Further, the hourly rates of LVB's counsel are well within the
22 range of prevailing market rates in the Las Vegas area. In all, LVB has incurred
23 approximately \$8,000.00 in attorneys' fees and it will incur an additional \$1,500.00 in
24 attorneys' fees \$25,000 for what will be approximately 35 hours of work, all of which
25

26 ⁵ **Exhibit C – Fees summary.**
27

1 successfully resulted in dismissal of Plaintiff's frivolous Complaint.

2 **iv. LVB's counsel achieved the desired result.**

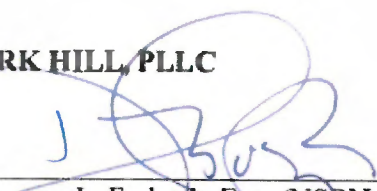
3 The result of the work performed by Clark Hill on behalf of LVB is self-evident.
4 Ultimately, LVB's counsel successfully obtained a dismissal of Plaintiff's Complaint Plaza's
5 That successful result coupled with the other *Brunzell* factors are compelling evidence and
6 favor awarding LVB the total amount of attorneys' fees incurred in this case.

7 **IV. CONCLUSION.**

8 For the reasons stated above, LVB respectfully requests that the Rachel Patush be
9 ordered to pay LV's attorneys' fees in the amount of \$9,500.00 as well as the \$240.19 in
10 costs it incurred.

11 DATED this 4th day of June, 2018.

12 **CLARK HILL, PLLC**

13
14 By 

15 Deanna L. Forbush, Esq. (NSBN 6646)
16 Jeremy J. Thompson, Esq. (NSBN 12503)
17 3800 Howard Hughes Parkway, Suite 500
18 Las Vegas, Nevada 89169
19 ph. (702) 862-8300; fax (702) 862-8400
20 email: dforbush@clarkhill.com
21 email: jthompson@clarkhill.com
22 Attorneys for Defendant
23
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27
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2 effective June 1, 2014, I hereby certify that I am an employee of Clark Hill PLLC, and that on this 7th day of June, 2018 I served a true and correct copy of the foregoing **DEFENDANT LAS VEGAS BISTRO, LLC'S MOTION FOR ATTORNEY'S FEES** via electronic means by operation of the Court's electronic filing system, upon each party to 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

An Employee of Clark Hill PLLC

EXHIBIT A

EXHIBIT A

CLARK HILL

Deanna L. Forbush
T: (702) 697-7525
Email: DForbush@clarkhill.com

Clark Hill
3800 Howard Hughes Parkway
Suite 500
Las Vegas, NV 89169
T (702) 862-8300
F (702) 862-8400
clarkhill.com

March 27, 2018

Sent via Email and U.S. Mail:
jp@kemp-attorneys.com

James P. Kemp, Esq.
Kemp & Kemp
7435 W. Azure Drive, Suite 110
Las Vegas, Nevada 89130

Re: Case No.: A-18-771491-C
Antonette Patush v. Las Vegas Bistro, LLC

Dear Mr. Kemp:

Please be advised the undersigned and this law firm are counsel for Las Vegas Bistro, LLC in the above-referenced matter. Accordingly, any further correspondence and/or communication of any kind, between your office and my Client regarding the above-referenced matter, should exclusively be had with me and/or a representative of the offices of Clark Hill PLLC.

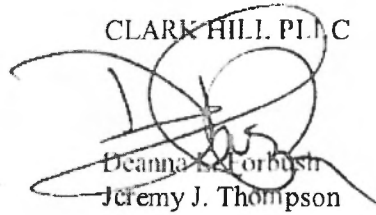
Enclosed you will find a Motion for Sanctions pursuant to NRCP 11, NRS § 18.010 and Nevada law. Your client, by and through your law firm, has filed a frivolous complaint against Las Vegas Bistro. A reasonable and competent attorney would have realized that, based upon the facts pleaded by you, your client's wrongful discharge claim against Las Vegas Bistro, if any, expired in 2016. There is absolutely no legal basis for the legal action you are pursuing against Las Vegas Bistro. Had you performed your Rule 11 obligations prior to filing the Complaint in this matter, you would know that the action you filed is unsustainable.

March 27, 2018
Page 2

Please be advised that Las Vegas Bistro will not only pursue sanctions against you and your client if you fail to immediately dismiss this action, it will also pursue a civil action against both your client and your firm for damages caused by your wrongful and tortious conduct.

Very truly yours,

CLARK HILL, PLLC



Deanna L. Forbush
Jeremy J. Thompson

DLF/jjt

C: Client
Matthew S. Hoffer, Esq.