

**SMITH EIBELER, LLC**

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LORETTA PICKUS,

Plaintiff,

v.

AC OCEAN WALK, LLC d/b/a OCEAN CASINO  
RESORT, LUXOR CAPITAL GROUP, LP,  
CORY MOROWITZ, FRED DEVESA,  
and JOHN and JANE DOES 1-10  
(fictitious names of unknown individuals),

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ATLANTIC COUNTY  
DOCKET NO.:

Civil Action

**COMPLAINT AND JURY DEMAND**

Plaintiff, Loretta Pickus, (“Plaintiff” or “Ms. Pickus”) having an address of 2317 Burroughs Avenue, in the City of Northfield, County of Atlantic, State of New Jersey, by way of Complaint against Defendants AC Ocean Walk, LLC d/b/a Ocean Casino Resort (hereinafter “AC Ocean Walk” or the “Company”), Luxor Capital Group, LP (hereinafter “Luxor”), Cory Morowitz (“Morowitz”), Fred DeVesa (“DeVesa”), and John Does (1-10) (fictitious names of unknown individuals) (hereinafter collectively referred to as the “Defendants”) says as follows:

**NATURE OF THIS ACTION**

1. Plaintiff brings this action to remedy the unlawful termination of her employment in violation of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et. seq. (“CEPA”) and

gender discrimination in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. (“LAD”).

### **THE PARTIES**

2. Plaintiff, Loretta Pickus, an individual residing at 2317 Burroughs Avenue, in the City of Northfield, County of Atlantic, State of New Jersey, is during all times relevant to this Complaint, an “employee” as that term is defined by CEPA, N.J.S.A. 34:19-2(b), and case law.

3. During all times relevant to this cause of action, Defendant AC Ocean Walk, LLC d/b/a Ocean Casino Resort (“AC Ocean Walk”) was a New Jersey limited liability company, doing business in the State of New Jersey, with its primary offices located at 500 Boardwalk, in the City of Atlantic City, County of Atlantic, State of New Jersey.

4. During all times relevant to this cause of action, Defendant Luxor Capital Group, LP (“Luxor”) was a hedge fund, doing business in the State of New Jersey and elsewhere, with its primary office located at 1114 Avenue of the Americas, 28<sup>th</sup> Floor, City of New York, County of New York, State of New York.

5. During all times relevant to this cause of action, Defendant Luxor was the owner and operator of AC Ocean Walk, LLC. Defendants AC Ocean Walk and Luxor are hereinafter referred to collectively as the “Company.”

6. During all times relevant to this action, Defendant Cory Morowitz (“Morowitz”), an individual who, upon information and belief, resides at 771 South 2<sup>nd</sup> Street, Unit D , in the City of Philadelphia, County of Philadelphia, State of Pennsylvania, is the Chair of the Casino’s Audit Committee, as a consultant to the Casino.

7. During all times relevant to this action, Defendant Fred DeVesa (“DeVesa”) an individual who, upon information and belief, resides at 150 Willow Drive, in the Borough of Newtown, County of Bucks, State of Pennsylvania, is a member of the Casino’s Audit Committee, as a consultant to the Casino.

8. Defendants Jane/John Does (1-10) are fictitious entities and persons who are not specifically named Defendants, who are unknown to Plaintiff at this time but who may be identified during discovery in this matter and who are responsible to Plaintiff for the claims set forth herein and/or which companies are responsible to Plaintiff as an employer and/or an aider and/or abettor for claims set forth herein.

#### **FACTS COMMON TO ALL COUNTS**

9. Plaintiff is an attorney with over 30 years of experience as in-house general counsel in the New Jersey casino industry.

10. The New Jersey casino gaming industry is highly regulated pursuant to the requirements of the Casino Control Act, N.J.S.A. 5:12-1, et seq, and the Casino Control Act’s enabling regulations, N.J.A.C. 13:69-1.1, et seq.

11. The New Jersey Division of Gaming Enforcement (“NJDE”) and Casino Control Commission (“CCC”) closely oversee New Jersey casino compliance with these regulations through licensing, investigation, inspection, auditing, and criminal and regulatory prosecution.

12. Plaintiff has been issued and has maintained a New Jersey Casino Key Employee License pursuant to N.J.A.C. 19:41A-5.1 for approximately thirty (30) years.

13. As the holder of a Casino Key Employee License, Plaintiff has continuously demonstrated to the satisfaction of the CCC that she satisfies the regulatory standards for this

license including exhibiting good character, honesty, and integrity, as well as sufficient business ability and casino experience.

14. Plaintiff has also served as a member of another international casino's Board of Directors and chaired its Compliance and Compensation committees.

15. In or about July 2013, Plaintiff commenced her employment with Revel Entertainment Group, LLC ("Revel") casino and hotel, the then-owner of the casino and hotel resort located at 500 Boardwalk, in the City of Atlantic City, County of Atlantic, State of New Jersey (the "Casino").

16. Revel hired Plaintiff, as part of its executive team, to stabilize and prepare the Casino for sale following a 2013 bankruptcy filing.

17. Plaintiff's employment with Revel ended in April 2015 when the Casino was sold to a Florida-based company.

18. In or about January 2018, Defendant AC Ocean Walk purchased the Casino.

19. On or about April 22, 2018, Defendant AC Ocean Walk contacted Plaintiff and offered to employ her in her former position as Senior Vice President and General Counsel.

20. On or about April 29, 2018, Plaintiff commenced employment as Senior Vice President and General Counsel to Defendant AC Ocean Walk.

21. As Senior Vice President and General Counsel, Plaintiff was responsible for managing the legal obligations and liabilities of Defendant AC Ocean Walk including administering the legal, business, and administrative aspects of re-opening the Casino under new management.

22. On or about June 28, 2018, AC Ocean Walk re-opened the Casino to the public.

23. In or about January 2019, Defendant Luxor assumed management of the Casino.

24. In or about March 2019, Defendant Luxor hired Terry Glebocki as the Company's Chief Financial Officer (CFO).

25. In or about August 2019, the Company promoted Glebocki to Chief Executive Officer (CEO).

26. Every New Jersey casino is required to have an independent audit committee (the "Audit Committee"), formed in accordance with N.J.A.C. 13:69D-1.11.

27. In her position as Senior Vice President and General Counsel, Plaintiff was invited to participate in the Casino's Audit Committee meetings.

28. The Audit Committee's members were Defendant Cory Morowitz, Chair of the Audit Committee, Defendant Fred DeVesa and Steve Morro.

29. Upon information and belief, Defendant DeVesa is a longtime personal friend of NJDGE Director David Rebeck.

30. Pursuant to N.J.A.C. 13:69C-8.1(a):

Each applicant or casino licensee or holding company thereof shall file, with the Division at its address set forth in N.J.A.C. 13:69-3.5(a), copies of the minutes of all meetings of its board of directors or equivalent governing authority, as applicable, and of all committee meetings including, without limitation, the audit committee, within 45 days of the meeting regardless of their formal adoption and in the instance of a casino license applicant, with a copy to the Commission at its address set forth in N.J.A.C. 13:69-3.5(a). Upon formal adoption of previously-submitted board and committee minutes, a copy of such final minutes shall be filed with the Division at its address set forth in N.J.A.C. 13:69-3.5(a) and, if the final minutes relate to a casino license applicant, with a copy to the Commission at its address set forth in N.J.A.C. 13:69-3.5(a).

31. Pursuant to the requirements of N.J.A.C. 13:69C-8.1, the Casino is required to file the minutes of the Audit Committee meetings with the NJDGE.

32. On or about January 30, 2019, the Audit Committee memorialized its formal minutes of its January 17, 2019 meeting (“the January 2019 Minutes”).

33. The January 2019 Minutes noted that effective January 11, 2019 “Mark Evans – Surveillance Room Manager is filling the role of previous Director of Surveillance, who resigned on January 11, 2019.”

34. The Casino, through the Audit Committee, appointed Mr. Evans pursuant to the requirements N.J.A.C. 13:69D-1.11(b)(1).

35. Pursuant to N.J.A.C. 13:69D-1.11(h), a casino may appoint surveillance directors on either temporary or permanent basis.

36. Pursuant to N.J.A.C. 13:69D-1.11(2)(iv), in the event of a casino’s temporary appointment of a surveillance director, the casino must fill the position on a permanent basis within 120 days of the original vacancy.

37. Pursuant to N.J.A.C. 13:69C-8.1, the Company filed the January 2019 Minutes with the NJDGE.

38. Consistent with the action taken by the Audit Committee in January 2019, as confirmed by the January 2019 Minutes, Plaintiff reported to the NJDGE that the Casino appointed Evans as Director of Surveillance on a permanent basis.

39. The Casino continued Evans in the position of Director of Surveillance up to and including July 2019, far beyond the 120-day deadline for appointing a permanent Director of Surveillance, which would have expired on or about May 11, 2019.

40. Had the Casino appointed Evans on a temporary basis in January 2019, the Casino's continuation of Evans in the position of Director of Surveillance beyond mid-May 2019 would have violated N.J.A.C. 13:69D-1.11(2)(iv).

41. On or about June 21, 2019, the Casino received an anonymous tip regarding staffing deficiencies in the surveillance department under the supervision of Director of Surveillance Evans.

42. On or about July 8, 2019, the Company's Human Resources office notified Plaintiff about the June 21, 2019 anonymous tip.

43. The Casino immediately launched an investigation into the anonymous allegations, which revealed suspected deficiencies in Evan's performance in the position of Director of Surveillance.

44. On or about July 8, 2019, Plaintiff sought advice from the NJDGE and to ensure any action the Company took with regard to Evans' employment as Director of Surveillance was in compliance with all statutory and regulatory requirements, particularly staffing requirements mandated by N.J.A.C. 13:69D-1.11.

45. In or about June 2019 the Casino, through action of its Audit Committee, hired a new Director of Surveillance who was scheduled to commence employment on July 22, 2019.

46. On or about July 18, 2019, Plaintiff attended the Company's regularly scheduled Audit Committee meeting.

47. During the July 18, 2019 Audit Committee meeting, the members of the Audit Committee stated they could not remember whether they appointed Evans as a temporary or permanent Director of Surveillance.

48. During the July 18, 2019 Audit Committee meeting, Defendant DeVesa indicated that he did not want a record reflecting the hiring and demotion of Evans because there would be less legal liability for the Company if Evans was deemed to have been only a temporary appointment.

49. Following the July 18, 2019 Audit Committee meeting, minutes of the meeting were prepared for submission to the NJDGE pursuant to the regulatory requirements set forth in N.J.A.C. 13:69C-8.1(a).

50. The July 18, 2019 Audit Committee Minutes (the "July 2019 Minutes") state that, among others invited to attend the meeting, was "Mark Evans – Director of Surveillance."

51. In the July 2019 Minutes the Company submitted to the NJDGE, the Audit Committee alleged that the appointment of Evans was in violation of the Audit Charter.

52. Specifically, the Audit Committee's July 2019 Minutes stated falsely (1) that the Company's management did not consult the Audit Committee in January 2019 regarding Evans' appointment to the position of Director of Surveillance and (2) as such, the Company had violated the Audit Charter.

53. Neither of the foregoing statements were discussed during the July 18, 2019 Audit Committee meeting as set forth in the July 2019 Minutes

54. The statement in the July 2019 Minutes that the Casino management did not consult the Audit Committee in January 2019 regarding Evans' appointment to the position of Director of Surveillance is false.

55. The statement in the July 2019 Minutes that the Casino violated the Audit Charter with regard to Evans' appointment is false.



56. Further, the July 2019 Minutes stated that the Audit Committee had understood that Evans' appointment as Director of Surveillance in January 2019 was temporary.

57. Plaintiff complained about the false and misleading July 2019 Minutes to CEO Glebocki.

58. CEO Glebocki recommended that Plaintiff draft alternate, accurate language to correct the false statements in the July 2019 Minutes, which Plaintiff did.

59. The Audit Committee rejected Plaintiff's proposed language that would correct the false and misleading statements in the July 2019 Minutes and, instead, insisted on keeping the false language in the minutes as had been drafted.

60. Plaintiff objected to the Audit Committee submitting the July 2019 Minutes to the NJDGE with the false representations regarding Evans' appointment because she reasonably believed it would be a violation of the Audit Committee's regulatory reporting obligations to the NJDGE under N.J.A.C. 13:69C-8.1.

61. Plaintiff's objections to the false and misleading July 2019 Minutes and recommendations to correct the July 2019 Minutes were ignored by the Audit Committee.

62. On or about August 22, 2019, the NJDGE launched an investigation in response to the Audit Committee's July 2019 Minutes to determine if they constituted a violation of the Audit Charter.

63. Plaintiff cooperated with the NJDGE investigation by submitting a copy of the accurate January 2019 Minutes to the NJDGE.

64. On or about August 22, 2019, Plaintiff informed the NJDGE that Defendant DeVesa, Defendant Morowitz and Mr. Morro were confused at the July 18, 2019 Audit

Committee meeting regarding that actions taken at the January 2019 Audit Committee meeting to appoint Evans as Director of Surveillance.

65. Subsequently, on or about August 22, 2019, Plaintiff advised Defendant Morowitz that she had submitted the January 2019 Minutes to the NJDGE, confirming the Audit Committee's January 2019 appointment of Evans as Director of Surveillance on a permanent basis.

66. In response to Plaintiff, in the presence of CEO Glebocki, Defendant Morowitz stated something to the effect of, "Well, if that's what they say, I guess that's what happened."

67. Also, on or about August 22, 2019, Defendant Morowitz e-mailed Defendant DeVesa regarding Plaintiff's communications to the NDGE concerning the Audit Committee's appointment of Evans to the Director of Surveillance position.

68. Defendant Morowitz's August 22, 2019 e-mail to Defendant DeVesa states, among other things, that Plaintiff had "[thrown them] under the bus in meeting with the [NJ]DGE yesterday."

69. Morowitz's August 22, 2019 e-mail to DeVesa continues, "Bottom line, we now have a toxic relationship with Loretta."

70. During their e-mail exchange, Defendants Morowitz and DeVesa revealed that neither Audit Committee member reviewed the Audit Committee's January 2019 Minutes before preparing and filing the false July 2019 Minutes.

71. Further, Defendant DeVesa admitted in the e-mail exchange, "I attended that meeting telephonically but I don't remember that we actually discussed and **approved** his actual appointment."

72. On or about August 2019, Trustee Eric Matejevich was informed of the failures of diligence and compliance on behalf of Defendant Morowitz as well as Defendant Morowitz's disapproval of Plaintiff's cooperation with NJDGE.

73. In the presence of Glebocki and Plaintiff, Matajevich advised Michael Conboy, a hedge fund manager employed by Defendant Luxor, that a replacement for Defendant Morowitz should be sought and Mr. Conboy agreed.

74. Plaintiff relayed to the NJDGE that the Company intended to remove Defendant Morowitz as Chair of the Audit Committee for having produced Audit Committee minutes that were false, as well as other issues relating to a lack of diligence in his role as Chair of the Audit Committee.

75. Thereafter, the NJDGE sent correspondence dated November 13, 2019 to the Company concerning various licensing and regulatory issues (the "November 13 NJDGE Letter").

76. The November 13 NJDGE Letter addressed, among other things, the Audit Committee's submission to the NJDGE of false July 2019 Minutes regarding Evans' appointment status as Director of Surveillance.

77. In the November 13 NJDGE Letter, NJDGE Director David Rebuck, a personal friend of Audit Committee Member Defendant DeVesa, made false factual misrepresentations regarding Plaintiff's complaints and objections regarding the Audit Committee's submission of false July 2019 Minutes to the NJDGE.

78. Specifically, the November 13 NJDGE Letter inaccurately states the minutes for the Audit Committee meeting on January 17, 2019 indicate the committee was advised at that time that Mr. Evans would be "just filling in."

79. As set forth above, the January 2019 Minutes stated, “Mark Evans – Surveillance Room Manager is filling the role of previous Director of Surveillance....”

80. The November 13 NJDGE Letter further stated falsely that Plaintiff orchestrated the Company’s decision to remove Defendant Morowitz as Audit Committee Chair in retaliation for his participation in the NJDGE investigation into the July 2019 Minutes.

81. On or about November 18, 2019, Plaintiff prepared a letter to the NJDGE correcting false factual misrepresentations in the November 13 NJDGE Letter to the Audit Committee.

82. Plaintiff provided a copy of her November 18, 2019 letter to outside legal counsel for Defendant AC Ocean Walk and to Norris Nissim, Defendant Luxor’s General Counsel, for their review.

83. Plaintiff was advised that the letter would not be sent to the NJDGE so that the Company would not “rock the boat” with the NJDGE.

84. On or about November 20, 2019, Plaintiff spoke via telephone with Nissim and Conboy on behalf of Defendant Luxor regarding a meeting between NJDGE and the Company scheduled for November 21, 2019.

85. During the call, Plaintiff explained to Conboy and Nissim, on behalf of Defendant Luxor, that she was concerned that the November 13 NJDGE Letter targeted her with inaccurate accusations.

86. Plaintiff further noted to Conboy and Nissim her exemplary record with respect to compliance, including her appropriate reports to the NJDGE of the Company’s noncompliance

with its regulatory obligations including, but not limited to reporting the prior owner for sexual harassment of an employee.

87. Upon information and belief, on or about November 21, 2019, NJDGE Director Rebeck asked Defendants AC Ocean Walk and Luxor to exclude Plaintiff from the upcoming NJDGE meeting.

88. Defendants did exclude Plaintiff from the November 21, 2019 the Company's meeting with the NJDGE.

89. Subsequent to the meeting, Plaintiff was told that, during the NJDGE meeting with the Company, NJDGE Director Rebeck stated words to the effect of "there are people you [Defendants AC Oceans and Luxor] shouldn't have in your organization. They are hold overs. They need to go. Call me later as I do not want to name them here."

90. At the time of NJDGE Director Rebeck's comment, Plaintiff was the only remaining member of the Casino's previous management under Revel.

91. Also, at the time of NJDGE Director Rebeck's comment, Rebeck was aware that, due to then-pendency of the Casino's plenary casino license application, his comments would have significant, if not compelling, impact on the future of Plaintiff's employment with Defendants AC Ocean and Luxor.

92. Following the meeting with the NJDGE, also on November 21, 2019, at the invitation of NJDGE Director Rebeck, a teleconference occurred among outside legal counsel for Defendant AC Ocean Walk, Conboy and Nissim on behalf of Defendant Luxor, and NJDGE Director Rebeck.

93. Upon information and belief, during the call, NJDGE Director Rebuck told Defendant Luxor and Conboy that Plaintiff does not know what she is doing, that the NJDGE had problems with Plaintiff during the Revel bankruptcy, and that the Company should discharge her.

94. Upon information and belief, it was confirmed among the attendees of the November 21, 2019 conference call that the Company would not employ Plaintiff "long-term."

95. On or about December 19, 2019, outside legal counsel for Defendant AC Ocean Walk, Conboy and Nissim on behalf of Defendant Luxor, and the Audit Committee met to create a remediation plan in response to the November 13 NJDGE Letter.

96. Defendants excluded Plaintiff from this meeting as well.

97. Thereafter, Plaintiff was told, among other things, that the Company would not include Plaintiff's November 18, 2019 letter in its response to the NJDGE.

98. Plaintiff invited the Defendant AC Ocean Walk's outside legal counsel to attend the Audit Committee meeting scheduled for January 23, 2020.

99. On or about January 22, 2020, Plaintiff had a teleconference with CEO Glebocki, Defendant AC Ocean Walk's outside legal counsel, and Nissim regarding the Audit Committee meeting scheduled for the following day.

100. During the teleconference, Plaintiff reconfirmed that she would attend the Audit Committee meeting and wished to make a statement regarding the July 2019 Minutes.

101. Defendant AC Ocean Walk's outside legal counsel advised Plaintiff something to the effect of, "Clear the air, but do not go deeply into the facts at issue."

102. On or about January 23, 2020 Plaintiff attended the Audit Committee meeting, during which Plaintiff made a short statement, and provided an accompanying memo, requesting

that the Audit Committee correct its July 2019 Minutes and take responsibility for submitting false Minutes to the NJDGE

103. The January 23, 2020 Audit Committee meeting was attended by Defendants Morowitz and DeVesa, Nissim, and Conboy, who participated intermittently by telephone, and Audit Committee member Steve Morro, all of whom are male and the decisionmakers responsible for the termination of Plaintiff's employment.

104. On or about January 27, 2020, the Casino terminated Plaintiff's employment.

105. Plaintiff was advised that the Company was terminating her employment because of the statements that she made during the January 23, 2020 Audit Committee meeting.

106. The Company terminated Plaintiff's employment because she disclosed, first to the Company's CEO Glebocki, and then to the NJDGE, the above-described regulatory violations committed by the Company's Audit Committee.

107. Plaintiff disclosed the violations, including the Audit Committee filing false minutes with the NJDGE, in violation of N.J.A.C. 13:69C-8.1, and other deficiencies in the Casino's appointment of a Surveillance Director.

108. Plaintiff advised the Company's senior management that her January 23, 2020 statements were accurate, and the Company was retaliating against her for having made a complaint on the Audit Committee's submission of false July 2019 Minutes to the NJDGE.

109. Plaintiff further complained that she did not have any meaningful avenue to voice her complaints and objections because members of the Audit Committee also sit on the Compliance Committee, which would have been the body to which she could have reported internally the Audit Committee's regulatory violation.

110. Plaintiff objected that the Audit Committee did not permit her to defend herself against NJDGE Director Rebeck's false allegations and the only recourse the Company provided was to permit Plaintiff to voice her complaints and objections directly to the Audit Committee.

111. The Company told Plaintiff that the substance of her complaints and objections were allegedly not at issue, but that the Company was terminating her employment because she should have been "softer" and spoken "less harshly" in delivering the statements to the Audit Committee.

112. Upon information and belief, the Casino would not have told a male General Counsel that he should have spoken more softly and less harshly to the Audit Committee.

113. Plaintiff objected to the Company that the stated reason its decision to terminate her employment was discriminatory based upon her sex, in addition to the termination being retaliatory.

114. Notwithstanding Plaintiff's objections, Plaintiff was told that the Company's only option was to terminate her employment.

115. As a direct result of Plaintiff's whistleblowing regarding the filing of false Audit Committee minutes, Plaintiff was wrongfully terminated.

116. As a direct result of result of Plaintiff's whistleblowing, Defendants discriminated against Plaintiff on the basis of her gender in terminating her employment.

117. Upon information and belief, in or about July 2020, the Company replaced Plaintiff in the Senior Vice President and General Counsel role with a male attorney who has less in-house casino experience than Plaintiff.



118. As a direct and proximate result of Defendants' aforesaid conduct, Plaintiff has suffered and shall continue to suffer loss of earnings and other employment benefits, severe mental, physical and emotional distress, stress, humiliation, pain, damage to reputation and harm to her career development.

**FIRST COUNT**

**VIOLATION OF THE CONSCIENTIOUS EMPLOYEE PROTECTION ACT (“CEPA”)**

**N.J.S.A. 34:19-1, et seq.**

119. Plaintiff repeats and realleges each of the prior allegations of the within Complaint as if set forth at length herein.

120. During all times relevant to this cause of action, Defendant AC Ocean Walk was Plaintiff’s “employer” as t CEPA, N.J.S.A. 34:19-2(a), and case law define that term.

121. During all times relevant to this cause of action, Plaintiff was an “employee” of Defendant AC Ocean Walk as CEPA, N.J.S.A. 34:19-2(b), and case law define that term.

122. During all times relevant to this cause of action, Defendant Luxor was Plaintiff’s “employer” as CEPA, N.J.S.A. 34:19-2(a), and case law define that term.

123. During all times relevant to this cause of action, Plaintiff was an “employee” of Defendant Luxor as CEPA, N.J.S.A. 34:19-2(b), and case law define that term.

124. During all times relevant to this cause of action, Defendant Cory Morowitz was an “employer” and “supervisor” of Plaintiff as CEPA, N.J.S.A. 34:19(2)(a) and (d), and case law define those terms.

125. During all times relevant to this cause of action, Defendant Fred DeVesa was an “employer” and “supervisor” of Plaintiff as CEPA, N.J.S.A. 34:19(2)(a) and (d), and case law define those terms.

126. Defendants' actions were in violation of the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq. ("CEPA").

127. As set forth above, in or about July 2019, Plaintiff reasonably believed that the Defendants' Audit Committee submitted false minutes of its July 18, 2019 meeting to the NJDGE in violation of its regulatory obligations under, at a minimum, N.J.A.C. 13:69C-8.1.

128. Plaintiff reasonably believed that Defendants' conduct with regard to filing the false July 2019 Minutes with the NJDGE, constituted unlawful conduct in violation of laws, rules and/or regulations and/or fraudulent and/or incompatible with a clear mandate of public policy.

129. Plaintiff engaged in protected whistleblowing activities when she reported the Audit Committee's submission of the July 2019 Minutes, which she reasonably believed were in violation of regulations governing casinos in New Jersey, to Defendant AC Ocean Walk CEO Terry Glebocki.

130. Plaintiff engaged in further protected whistleblowing activities when she reported the Audit Committee's submission of the July 2019 Minutes, which she reasonably believed were in violation of regulations governing casinos in New Jersey, to the NJDGE.

131. Plaintiff engaged in further whistleblowing activity when she reported to CEO Glebocki that she reasonably believed Defendant Morowitz violated regulations governing casinos in New Jersey by failing to exercise due diligence and compliance in not reviewing the January 2019 Minutes in order to correct the false July 2019 Minutes submitted to the NJDGE.

132. In retaliation for Plaintiff's whistleblowing activities, Plaintiff suffered an adverse employment action when Defendants' terminated her employment on or about January 27, 2020.

133. Defendants' retaliation and adverse treatment of Plaintiff, including the termination of Plaintiff's employment, was wrongful and without cause or justification, and in retaliation for Plaintiff's complaints about, objections to, and refusal to participate in Defendants' conduct and/or proposed conduct in violation the New Jersey Administrative Code or to engage in other unlawful conduct as set forth herein.

134. The retaliatory actions taken by Defendants against Plaintiff are in violation of CEPA.

135. Defendants' acts or omissions were the cause of Plaintiff's harm and the conduct involved the upper management of Defendant Luxor and the upper management of Defendant AC Ocean Walk including but not limited Defendants Morowitz and DeVesa, and was egregious, actuated by actual malice or accompanied by a wanton and willful disregard of Plaintiff, who foreseeably was harmed by those acts or omissions, such that punitive damages are appropriate.

136. As a direct and proximate result of Defendants' aforesaid retaliatory conduct, Plaintiff has suffered and shall continue to suffer loss of earnings and other employment benefits, severe mental, physical and emotional distress, stress, humiliation, pain, damage to reputation, harm to her career development, and other damages recoverable under CEPA.

**WHEREFORE**, Plaintiff demands judgment against Defendants for harm suffered as a result of the violations of CEPA, N.J.S.A. 34:19-1 et seq., as follows:

- A. Back pay and benefits;
- B. Front pay and benefits;
- C. Compensatory damages;

- D. Consequential damages;
- E. Punitive damages;
- F. Equitable Relief;
- G. Pre-judgment interest and enhancements to off-set negative tax consequences;
- H. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- I. Declaring that Defendants have violated the CEPA and requiring Defendants to take appropriate corrective action to end unlawful retaliation in the workplace; and
- J. Such other relief as may be available pursuant to the CEPA and which the Court deems just and equitable.

**SECOND COUNT**

**SEX DISCRIMINATION IN VIOLAITON OF  
THE NEW JERSEY LAW AGAINST DISCRIMINATION, N.J.S.A. 10:5-1, et seq.**

137. Plaintiff repeats and realleges each and every prior allegation of the Complaint as if set forth at length herein.

138. During all times relevant to this cause of action, Defendant AC Ocean Walk is a “person” and Plaintiff's “employer” as the LAD, N.J.S.A. 10:5-5(a) and (e), and case law define those terms.

139. During all times relevant to this cause of action, Plaintiff was a “person” and “employee” of Defendant AC Ocean Walk as the LAD, N.J.S.A. 10:5-5(a) and (f), and case law define those terms

140. During all times relevant to this cause of action, Defendant Luxor is a “person” and Plaintiff's “employer” as the LAD, N.J.S.A. 10:5-5(a) and (e), and case law define those terms

141. During all times relevant to this cause of action, Plaintiff was a “person” and “employee” of Defendant Luxor as the LAD, N.J.S.A. 10:5-5(a) and (f), and case law define those terms

142. During all times relevant to this cause of action, upon information and belief, Defendant AC Ocean Walk was the holding company and provisional casino license holder for the Ocean Casino Resort, located at 500 Boardwalk, Atlantic City, New Jersey.

143. Plaintiff is in a protected class under the LAD by virtue of her sex.

144. Plaintiff was performing up to the expectations of Defendants.

145. Evidence of Plaintiff's exemplary performance includes, but is not limited to, a \$20,000.00 bonus Defendants awarded Plaintiff on or about December 18, 2019, shortly before Defendants terminated her employment. Such bonus was one of the highest discretionary bonuses issued by the Company at that time for calendar year 2019.

146. Additional evidence of Plaintiff's exemplary performance includes, but is not limited to, on or about December 18, 2019, shortly before they terminated Plaintiff's

employment, Defendants advised Plaintiff that they would include her in their recently adopted incentive compensation plan, which could result in Plaintiff earning up to \$50,000.00 bonus for the calendar year 2020.

147. Upon information and belief, the Company replaced Plaintiff in the Senior Vice President and General Counsel role with a male attorney who has less in-house casino experience than Plaintiff.

148. Based upon the above-described conduct set forth herein, Defendants discriminated against Plaintiff on the basis of her sex including terminating her employment.

149. Defendants' acts or omissions were the cause of Plaintiff's harm and the conduct involved the upper management of Defendant Luxor, including but not limited to Defendants Conboy and Nissim, and the upper management of Defendant AC Ocean Walk including but not limited Defendants Morowitz and DeVesa, and was egregious, actuated by actual malice or accompanied by a wanton and willful disregard of Plaintiff, who foreseeably was harmed by those acts or omissions, such that punitive damages are appropriate.

150. As a direct and proximate result of Defendants' aforesaid retaliatory conduct, Plaintiff has suffered and shall continue to suffer loss of earnings and other employment benefits, severe mental, physical and emotional distress, stress, humiliation, pain, damage to reputation, harm to her career development and other damages recoverable under the LAD.

**WHEREFORE**, Plaintiff demands judgment against Defendants for harm suffered due to sex discrimination in violation of the LAD as follows:

- A. Back pay and benefits;
- B. Front pay and benefits;

- C. Compensatory damages;
- D. Consequential damages;
- E. Equitable relief;
- F. Punitive damages;
- G. Pre-judgment interest and enhancements to off-set negative tax consequences;
- H. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- I. Ordering Defendants to take appropriate corrective action to stop and prevent discrimination at the workplace;
- J. Ordering Defendants to take appropriate corrective action to stop and prevent retaliation at the workplace;
- K. Ordering Defendants to take appropriate corrective action to stop and prevent harassment at the workplace;
- L. Ordering Defendants to undergo anti-discrimination training;
- M. Ordering Defendants to undergo anti-retaliation training;
- N. Ordering Defendants to undergo anti-harassment training;
- O. Ordering Defendants to undergo workplace civility training;
- P. Ordering Defendants to undergo bystander intervention training;

Q. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-discrimination training;

R. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-retaliation training;

S. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-harassment training;

T. Ordering Defendants to engage a research organization to assess the effectiveness of their workplace civility training;

U. Ordering Defendants to engage a research organization to assess the effectiveness of their bystander intervention training;

V. Ordering Defendants to identify an appropriate professional to investigate any future complaints of discrimination;

W. Ordering Defendants to identify an appropriate professional to investigate any future complaints of harassment;

X. Ordering Defendants to identify an appropriate professional to investigate any future complaints of retaliation;

Y. Such other relief as may be available and which the Court deems just and equitable.

**THIRD COUNT**

**RETALIATION IN VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION,  
N.J.S.A. 10:5-1, et seq.**

151. Plaintiff repeats and realleges each and every prior allegation of the Complaint as if set forth at length herein.



152. Plaintiff engaged in protected activity under the LAD when, as set forth herein, Plaintiff objected to the Defendants terminating her employment on the basis that she should have spoken “softer” and “less harshly” to the Audit Committee.

153. Upon information and belief, the Company would not have told a male General Counsel that he should have spoken more softly and less harshly to the Audit Committee.

154. In retaliation for Plaintiff engaging in this protected activity, Defendants proceeded with Plaintiff’s termination.

155. Defendants’ conduct and/or treatment of Plaintiff, including but not limited to terminating her employment, were in retaliation for opposition, objections and complaints made by Plaintiff to the Defendants respecting its practices or acts forbidden under the LAD or Plaintiff’s exercise, attempted exercise and/or enjoyment of rights provided to her under the LAD.

156. The retaliatory actions taken by Defendants against Plaintiff are an unlawful employment practice as defined in and in violation of N.J.S.A. 10:5-12(d).

157. Defendants’ acts or omissions were the cause of Plaintiff’s harm and the conduct involved the upper management of Defendant Luxor, including but not limited to Defendants Conboy and Nissim, and the upper management of Defendant AC Ocean Walk including but not limited Defendants Morowitz and DeVesa, and was egregious, actuated by actual malice or accompanied by a wanton and willful disregard of Plaintiff, who foreseeably was harmed by those acts or omissions, such that punitive damages are appropriate.

158. As a direct and proximate result of Defendants' aforesaid retaliatory conduct, Plaintiff has suffered and shall continue to suffer loss of earnings and other employment benefits,

severe mental, physical and emotional distress, stress, humiliation, pain, damage to reputation, harm to her career development, and other damages recoverable under the LAD.

**WHEREFORE**, Plaintiff demands judgment against Defendants for harm suffered due to the aforesaid violation of the LAD as follows:

- A. Back pay and benefits;
- B. Front pay and benefits;
- C. Compensatory damages;
- D. Consequential damages;
- E. Punitive damages;
- F. Equitable relief;
- G. Pre-judgment interest and enhancements to off-set negative tax consequences;
- H. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- I. Ordering Defendants to take appropriate corrective action to stop and prevent discrimination at the workplace;
- J. Ordering Defendants to take appropriate corrective action to stop and prevent retaliation at the workplace;
- K. Ordering Defendants to take appropriate corrective action to stop and prevent harassment at the workplace;

- L. Ordering Defendants to undergo anti-discrimination training;
- M. Ordering Defendants to undergo anti-retaliation training;
- N. Ordering Defendants to undergo anti-harassment training;
- O. Ordering Defendants to undergo workplace civility training;
- P. Ordering Defendants to undergo bystander intervention training;
- Q. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-discrimination training;
- R. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-retaliation training;
- S. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-harassment training;
- T. Ordering Defendants to engage a research organization to assess the effectiveness of their workplace civility training;
- U. Ordering Defendants to engage a research organization to assess the effectiveness of their bystander intervention training;
- V. Ordering Defendants to identify an appropriate professional to investigate any future complaints of discrimination;
- W. Ordering Defendants to identify an appropriate professional to investigate any future complaints of harassment;
- X. Ordering Defendants to identify an appropriate professional to investigate any future complaints of retaliation; and

Y. Such other relief as may be available and which the Court deems just and equitable.

**FOURTH COUNT**

**AIDING AND ABETTING BY DEFENDANT MOROWITZ IN VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION, N.J.S.A. 10:5-1, et seq.**

159. Plaintiff repeats and realleges each and every prior allegation of the Complaint as if set forth at length herein.

160. By and through his actions, Defendant Cory Morowitz has negligently, recklessly or intentionally aided and abetted Defendants AC Ocean Walk and Luxor in discriminating and retaliating against Plaintiff in violation of the LAD.

161. By and through his actions, Defendant Cory Morowitz participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced, and/or aided and abetted the LAD violations.

162. As a direct and proximate result of Defendants' aforesaid discriminatory and/or retaliatory conduct, Plaintiff has suffered and shall continue to suffer loss of earnings and other employment benefits, severe mental, physical and emotional distress, stress, humiliation, pain, damage to reputation, harm to her career development and other damages recoverable under the LAD.

**WHEREFORE**, Plaintiff demands judgment against Defendant Morowitz for harm suffered due to the aforesaid violations of the LAD as follows:

- A. Back pay and benefits;
- B. Front pay and benefits;

- C. Compensatory damages;
- D. Consequential damages;
- E. Punitive damages;
- F. Equitable relief;
- G. Pre-judgment interest and enhancements to off-set negative tax consequences;
- H. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law); and
- I. Such other relief as the Court may deem equitable and just.

**FIFTH COUNT**

**AIDING AND ABETTING BY DEFENDANT DEVESA IN VIOLATION OF THE  
NEW JERSEY LAW AGAINST DISCRIMINATION, N.J.S.A. 10:5-1, et seq.**

163. Plaintiff repeats and realleges each and every prior allegation of the Complaint as if set forth at length herein.

164. By and through his actions, Defendant Fred DeVesa has negligently, recklessly or intentionally aided and abetted Defendants AC Ocean Walk and Luxor in discriminating and retaliating against Plaintiff in violation of the LAD.

165. By and through his actions, Defendant Fred DeVesa participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced, and/or aided and abetted the LAD violations.

166. As a direct and proximate result of Defendants' aforesaid discriminatory and/or retaliatory conduct, Plaintiff has suffered and shall continue to suffer loss of earnings and other employment benefits, severe mental, physical and emotional distress, stress, humiliation, pain, damage to reputation and harm to her career development, and other damages recoverable under the LAD.

**WHEREFORE**, Plaintiff demands judgment against Defendant DeVesa for harm suffered due to the aforesaid violations of the LAD as follows:

- A. Back pay and benefits;
- B. Front pay and benefits;
- C. Compensatory damages;
- D. Consequential damages;
- E. Punitive damages;
- F. Equitable relief;
- G. Pre-judgment interest and enhancements to off-set negative tax consequences;
- H. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law); and

I. Such other relief as the Court may deem equitable and just.

**SMITH EIBELER, LLC**

By: /s/ Kathryn K. McClure  
KATHRYN K. McCLURE  
Attorneys for Plaintiff Loretta Pickus

Dated: September 22, 2020

**JURY DEMAND**

Plaintiff herein demands trial by jury on all issues so triable.

**SMITH EIBELER, LLC**

By: /s/ Kathryn K. McClure  
KATHRYN K. McCLURE  
Attorneys for Plaintiff Loretta Pickus

Dated: September 22, 2020

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Kathryn K. McClure, Esq. is hereby designated as trial counsel in this matter.

**SMITH EIBELER, LLC**

By: /s/ Kathryn K. McClure  
KATHRYN K. McCLURE  
Attorneys for Plaintiff Loretta Pickus

Dated: September 22, 2020

**CERTIFICATION**

Pursuant to Rule 4:5-1, it is hereby stated to the best of my knowledge and belief that the matter in controversy is not the subject of any other action pending or contemplated in any other court or of a pending arbitration proceeding. Further, Plaintiff is unaware of any non-party who should be joined in the action pursuant to Rule 4:28 or who is subject to joinder pursuant to Rule 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts. I further certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

**SMITH EIBELER, LLC**By: /s/ Kathryn K. McClure

KATHRYN K. McCLURE

Attorneys for Plaintiff Loretta Pickus

Dated: September 22, 2020



# Civil Case Information Statement

**Case Details: ATLANTIC | Civil Part Docket# L-003144-20**

**Case Caption:** PICKUS LORETTA VS AC OCEAN WALK, LLC

**Case Initiation Date:** 09/22/2020

**Attorney Name:** KATHRYN KRISTINE MC CLURE

**Firm Name:** SMITH EIBELER LLC

**Address:** 101 CRAWFORDS CORNER RD STE 1-105R

HOLMDEL NJ 07733

**Phone:** 7324441300

**Name of Party:** PLAINTIFF : PICKUS, LORETTA

**Name of Defendant's Primary Insurance Company**

(if known): Unknown

**Case Type:** LAW AGAINST DISCRIMINATION (LAD) CASES

**Document Type:** Complaint with Jury Demand

**Jury Demand:** YES - 6 JURORS

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Are sexual abuse claims alleged by:** LORETTA PICKUS? NO

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE**

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** YES

**If yes, is that relationship:** Employer/Employee

**Does the statute governing this case provide for payment of fees by the losing party?** YES

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category:** Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

09/22/2020

Dated

/s/ KATHRYN KRISTINE MC CLURE

Signed