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DISTRICT COURT**CLARK COUNTY, NEVADA**JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
Corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

Case No.: A-18-785311-B

Dept. No.: XI

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT, an individual;
JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual, JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

NOTICE OF CROSS-APPEAL

Defendant/Counterclaimant Tropicana Investments, LLC, by and through its attorneys of record, Marquis Aurbach Coffing, hereby cross-appeals to the Supreme Court of Nevada from:

(1) the Findings of Fact and Conclusions of Law, which was filed on December 5, 2019 and is attached as **Exhibit A**; (2) the Order Denying Defendant's Motion to Alter or Amend Judgment,

1 which was filed on February 24, 2020 and is attached as **Exhibit B**; (3) the Order Granting
2 Plaintiff/Counterdefendants' Motion for Attorney Fees and Costs, which was filed on
3 February 24, 2020 and is attached as **Exhibit C**; (4) the Order Granting in Part Defendant's
4 Motion for Attorneys' Fees and Costs, which was filed on February 13, 2020 and is attached as
5 **Exhibit D**; (5) the Final Judgment, which was filed on February 25, 2020 and is attached as
6 **Exhibit E**; and all interlocutory orders made reviewable by an appeal from a final judgment.

7 Dated this 25th day of March, 2020.

8
9 MARQUIS AURBACH COFFING

10
11 By /s/ Terry A. Moore
12 Terry A. Moore, Esq.
13 Nevada Bar No. 7831
14 Collin M. Jayne, Esq.
15 Nevada Bar No. 13899
16 10001 Park Run Drive
17 Las Vegas, Nevada 89145
18 Attorneys for Tropicana Investments, LLC
19
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF CROSS-APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 25th day of March, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

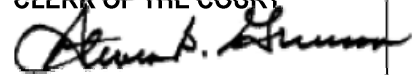
Mario Lovato: mpl@lovatolaw.com

/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit A



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

Case No.: A-18-785311-B

Dept.: XI

AND RELATED CLAIMS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez beginning on November 18, 2019, and continuing day to day, until its completion on November 22, 2019; Mario Lovato, Esq. appeared on behalf of Plaintiff/Counterdefendants ("Plaintiff") and Terry A. Moore, Esq. and Collin Jayne, Esq. appeared on behalf of Defendant/Counterclaimant Tropicana Investments, LLC ("Defendant"); the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the testimony of the witnesses called to testify and weighing their credibility;¹ having considered the oral and written arguments of counsel, and with the intent of

¹ The Court previously entered orders binding the Plaintiff to the answers and testimony given during deposition by its NRCP 30(b)(6) representative and ordering that with respect to any "I don't know" or similar answers related to topics for which the NRCP 30(b)(6) witness testified. The Court also ruled that with respect to communications made by prior counsel, those communications were authorized to be sent by Plaintiff and the Plaintiff is bound by the representations made in those communications.

1 rendering a decision on all remaining claims² before the Court,³ pursuant to NRCP 52(a) and 58;
2 the Court makes the following findings of fact and conclusions of law:

3 FINDINGS OF FACT

4 1. Plaintiff JSJBD Corp ("JSJBD") is a Nevada corporation doing business in Clark
5 County, Nevada.

6 2. Defendant Tropicana Investments, LLC ("Tropicana Investments") is a California
7 limited liability company doing business in Clark County, Nevada.

8 3. JSJBD was formed on March 8, 2007.

9 4. JSJBD was formerly named JSJ, LLC that filed Articles of Conversion under NRS
10 92A.205 with the Nevada Secretary of State on March 6, 2014, which changed the name of the
11 entity and converted it to a corporation.

12 5. Tropicana Investments owns the commercial shopping center commonly referred
13 to as Tropicana Plaza located at 3430 East Tropicana Avenue, Las Vegas, Nevada, 89121.

14 6. JSJBD does business as Blue Dog's Pub, and owns and operates a tavern in Suites
15 27, 28, and 29 comprising a space of approximately 4,200 square feet ("Subject Premises") in
16 Tropicana Plaza.

17 7. On or about July 9, 1996, Walter L. Schwartz ("Schwartz"), as lessor, and Mark S.
18 Van Aken ("Van Aken"), as tenant, entered into a written Lease ("Lease") for the Subject
19 Premises.

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23
24 ² Plaintiff's Complaint asserts three causes of action: (1) declaratory relief, (2) breach of
25 contract, and (3) breach of implied covenant of good faith and fair dealing. Defendant's
26 Counterclaim asserts four causes of action: (1) declaratory judgment, (2) breach of lease
27 agreement, (3) breach of the implied covenant of good faith and fair dealing, and (4) execution
28 and issuance of writ of restitution.

³ Plaintiff voluntarily abandoned its claim of damages from repair and maintenance issues.

1 8. Tropicana Investments is the successor-in-interest and current landlord under the
2 Lease entered into on July 9, 1996, and various Amendments/Addenda, for the Subject Premises.

3 9. Plaintiff is the successor-in-interest and current tenant under the Lease, and
4 various Amendments/Addenda for the Subject Premises.

5 10. The Lease provided for a tenancy lasting for a term of five years and five months,
6 commencing April 1, 1996, and terminating on August 31, 2001.

7 11. During the initial term of the Lease, from April 1, 1996 to August 31, 2001, the
8 minimum monthly rent began at \$3,150 per month, and this monthly rent increased by \$210 at the
9 beginning of every year of the five-year and five month term.

10 12. The 1996 Lease referenced \$500 per month in "estimated" common area
11 maintenance ("CAM") charges, which were subject to the quarterly accounting of actual CAM
12 costs.
13

14 13. The CAM costs are defined in the Lease:
15

16 to include but not limited to all upgrading, general maintenance and repairs, resurfacing,
17 rubbish removal, painting, restripping, cleaning, sweeping and janitorial services, personnel
18 to implement such services including property management fees for the entire parcel and
19 to police the automobile parking and common areas: real and personal property taxes and
assessment thereon, Water.

20 Insurance, including but not limited to General Liability and Property Damages, Fire
Hazard on Demised Premises, Building.

21 Common Areas and Parking Lot. A reasonable allowance to Landlord for Landlord's
22 administrative expenses of said automobile parking and common areas no to excess in any
calendar year fifteen percent of the total of the aforementioned expenses for said calendar
year.

23 (various errors in original).

24 14. Under Paragraph 7 of the Lease, Landlord is obligated to keep "common areas in a
25 neat, clean, and orderly condition, properly lighted and landscaped, and shall improve and repair
26 any damage to the facilities. The Lease further states: "[A]ll expenses in connection with said
27
28

1 automobile parking and common areas shall be charged and prorated in the manner herein after
2 [sic] set forth.”

3 15. Under paragraph 9 of the Lease, Roof expenses are carved-out and made the sole
4 obligation of the Landlord. The Lease states: “**Landlord shall at his sole cost and expense, keep**
5 **and maintain in good repair**, (excluding painting) of extension walls and **roof repairs . . .**”
6 (emphasis added).
7

8 16. Section 24 of the Lease contains an attorney’s fees provision.⁴

9 17. The Lease did not include any options to extend the term of the Lease. A separate
10 Option Agreement was executed by the original landlord and tenant (“1996 Option Agreement”).
11

12 18. The 1996 Option Agreement provided two (2) five-year options if the tenant was
13 in full compliance with the terms of the Lease. The first option provided that the tenant would be
14 entitled to renew the Lease for a five-year period commencing on September 1, 2001. The
15 second option provided that the tenant would be entitled to renew the Lease for a second five-year
16 period commencing on September 1, 2006.

17 19. The options provided by the 1996 Option Agreement were to be “at a market
18 rental rate and terms as agreed by Landlord and Tenant.”
19

20 20. On April 16, 2001, Van Aken exercised the first option under the 1996 Option
21 Agreement. As a result of the exercise of that Option, an Amendment to Retail Building Lease
22 Dated July 9, 1996 (“2001 Amendment”) was executed. The 2001 Amendment extended the
23 Lease term for five (5) years, from September 1, 2001 through August 31, 2006. During the
24 extended term, the parties agreed that the base rent would begin at \$5,670 per month, and that this
25

26 ⁴ That section states:

27 In the event the Landlord finds it necessary to retain an attorney in connection with the
28 default by the Tenant in any of the agreements or covenants contained in this Lease,
Tenant shall pay reasonable attorney’s fees to said attorney.

1 monthly rent would increase by \$210 at the beginning of every year, ending at \$6,510 per month
2 for the final year.

3 21. Paragraph 4 of the 2001 Amendment changed the documentation and accounting
4 for CAM expenses from quarterly to annual.

5 22. On March 7, 2006, Van Aken exercised the second option under the 1996 Option
6 Agreement. The Addendum to Retail Building Lease Dated July 9, 1996 ("2006 Addendum")
7 extended the tenancy for a term of five (5) years, from September 1, 2006 through August 31,
8 2011. During the extended term, it was agreed that the base rent would begin at \$6,720 per
9 month for the 2006–2007 year, and that this monthly rent would increase by \$210 at the
10 beginning of every year, ending at \$7,560 per month for the final year.

11 23. The 2006 Addendum gave Van Aken an option to extend the Lease term for "one
12 (1) final extension term of five (5) years," to begin on September 1, 2011, and provided that such
13 extension term would be "under terms and conditions to be negotiated."

14 24. In approximately 2007, Van Aken, sold the assets of his bar located in the Subject
15 Premises to JSJ, LLC.

16 25. Defendant, Van Aken, as assignor, and Plaintiff as assignee, entered into a Lease
17 Assignment and Modification agreement executed by all parties in June 2007 ("2007 Lease
18 Modification").

19 26. As part of the negotiations leading up to the 2007 Lease Modification, JSJ, LLC
20 attempted to add a term of "fair market value" for the rental rate in the Lease. The addition of
21 this term was rejected by Defendant.

22 27. After the Defendant rejected "fair market value" as a term, Plaintiff signed the
23 2007 Lease Modification with the wording requiring "rental increases."

1 28. The 2007 Lease Modification stated that it is the desire of all parties to allow Van
2 Aken to assign the Lease, the 2001 Amendment, and 2006 Addendum to the Assignee, Plaintiff,
3 under terms and conditions as set forth in the 2007 Lease Modification.

4 29. The 2007 Lease Modification provided a new provision conditionally granting the
5 Plaintiff three additional options to extend the Lease by five years at a time:
6

7 ...Landlord agrees to conditionally grant Assignee, J.S.J., LLC,
8 three (3) additional five (5) year options to renew the term of the
9 Lease under terms and conditions, including but not limited to
10 rental increases, to be negotiated. The conditional options shall
commence after August 31, 2016, provided Assignee has timely
complied with all terms and conditions of the Lease.

11 30. The 2007 Lease Modification regarding the three five-year options does not
12 include the term "fair market value."
13

14 31. The 2007 Lease Modification was entered into after the exercise of all prior
15 options by Plaintiff's predecessor in interest.

16 32. The 2007 Lease Modification changed the "estimated" CAM charge to \$1,176 per
17 month, but did not otherwise alter or change the accounting obligation of Defendant and/or the
18 other obligations of Defendant to properly charge for actual CAM expenses under the Lease.

19 33. The 2007 Lease Modification provided that Van Aken would pay Defendant ten
20 percent (10%) of the total sales price of the business as consideration for the Defendant offering
21 Plaintiff the three additional five-year options.
22

23 34. Concurrently with the execution of the 2007 Lease Modification, the three
24 managers of JSJ, LLC—Jeffrey Vincent, Stuart Vincent, and Jeff White—each executed a
25 personal guaranty of JSJ, LLC's obligations under the Lease.
26
27
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1 35. On or about February 22, 2011, Defendant and Plaintiff entered into a written
2 Addendum II to Retail Building Lease ("2011 Addendum") which gave effect to the option⁵
3 exercised by Plaintiff and set forth the amount of rent that was agreed upon for the term.

4 36. The 2011 Addendum extended the term of the Lease from September 1, 2011 to
5 August 31, 2016.
6

7 37. In the 2011 Addendum, Defendant and Plaintiff agreed that the monthly rent for
8 the first two years of the first option term (September 2011 through August 2012, and September
9 2012 through August 2013) would remain at the same rate as was paid the prior year (September
10 2010 through August 2011), and that the regular annual increases of monthly rent by \$210 would
11 resume thereafter at the beginning of each of the remaining three (3) years of the option (from
12 September 1, 2013, through August 31, 2016). Monthly rent remained at \$7,560 through August
13 31, 2013; increased by \$210 on September 1, 2013, to \$7,770; increased by \$210 on September 1,
14 2014 to \$7,980; and increased by \$210 on September 1, 2015 to \$8,190.
15

16 38. On February 26, 2016, Plaintiff notified Defendant that it was exercising its option
17 available under the 2007 Lease Modification, to commence on September 1, 2016.

18 39. During the negotiations on the terms of the modification to implement the option,
19 Plaintiff requested a \$2,500 reduction in monthly rent - a 30% reduction in the rental rate.
20

21 40. Defendant did not accept this request.

22 41. Defendant informed Plaintiff that, instead of exercising another addenda or
23 amendment as the parties had done in the past to effectuate the exercise of options, Defendant
24 preferred to execute an entirely new form of Lease to replace the outdated form of lease.
25

26
27 ⁵ This option was the first of the three 5-year options granted under the 2007 Lease
28 Modification.

1 42. On June 15, 2016, Defendant's authorized agent, Commercial Investment Real
2 Estate Services, extended an offer in writing to Plaintiff that, among other terms, proposed the
3 amount of base rent for the initial year of the lease extension to remain the same as the previous
4 year (2015–2016), which amounted to \$8,190 per month with 3% annual increases thereafter.

5
6 43. On August 2, 2016, Lesley B. Miller, Esq. of the law firm Kaempfer Crowell,
7 notified Landlord that she represented Plaintiff. Miller requested that the payment of base rent
8 for the first year of the five-year renewal term would remain the same as the previous year
9 (9/1/2015–8/31/2016).

10 44. On August 31, 2016, Miller again reiterated the exercise of the option rights under
11 the Lease to renew for an additional five-year term. Miller attached a proposed amendment to the
12 Lease which provided for the following rent schedule:

13
14 09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum
15 09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum
16 09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum
17 09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum
18 09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum

19 45. On September 7, 2016, Defendant's counsel, John M. Sacco, Esq., sent
20 correspondence to Miller discussing several other issues including: parking, CAMs, security
21 patrols, and issues related to personal guaranties. No mention of rejecting the amount of rent was
22 set forth in Sacco's letter. He confirmed that the parking, CAMs, security patrols and guaranty-
23 related issues were the "final matters" that the parties were attempting to work through.

24 46. Sacco called Miller to let her know that the Defendant agreed with the rent
25 schedule as she had proposed in her August 31st addendum and he reiterated that he thought the
26 other issues set forth in his letter were the final matters that needed to be resolved.

27 47. Consistent with the parties' agreement, the Plaintiff began paying \$8,400 per
28 month in September 2016. The Plaintiff paid this sum through August 2017. These monthly

1 rental payments were accepted by the Defendant, and Plaintiff remains in possession of the
2 premises to date.

3 48. At no point during the first year of the Option Term (9/1/16 – 8/31/17) did the
4 Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the
5 Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it
6 was making such payments to preserve its rights under the option agreements.
7

8 49. Although the parties reached an agreement on the rent amounts for the option
9 term, and Plaintiff then paid consistent with that agreement, Plaintiff and Defendant, through their
10 respective counsel, exchanged drafts of a proposed updated standardized lease form during the
11 next twelve months in an attempt to update the remaining non-rent portions of the twenty-year old
12 Lease.
13

14 50. During that time frame, the parties' conduct was consistent with the parties having
15 agreed to the rent term of the Option, as Plaintiff paid the full amount of rent in accordance with
16 the agreement reached in September 2016, Plaintiff continuously occupied the Premises, and both
17 Plaintiff and Defendant performed their obligations under the Lease without protest or dispute.
18

19 51. On August 7, 2017, Plaintiff, through new counsel, Lucas A. Grower, Esq., sent
20 Defendant correspondence advising that Grower would be representing Plaintiff.

21 52. On August 31, 2017, the Plaintiff, through its new counsel, demanded that Lease
22 negotiations be restarted for the base rent on the basis of "market rental rate and terms".

23 53. Defendant's attorney disagreed with Plaintiff's new position, maintaining that the
24 parties had reached an agreement as to rent, and that the option did not provide for negotiations
25 based on market rental rate.
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1 54. Beginning in September of 2017, Plaintiff continued to pay monthly rent of
2 \$8,400. Payment of this amount was consistent with the second year of the rent schedule that had
3 been agreed upon by the parties.

4 55. At no point during the second year of the Option Term (9/1/17 – 8/31/18) did the
5 Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the
6 Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it
7 was making such payments to preserve its rights under the option agreements.

8 56. On November 30, 2018, 27 months after the Option term commenced, Plaintiff
9 filed the instant lawsuit.

10 57. At trial, Plaintiff presented an expert witness, Matthew Lubawy, who testified to
11 his opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was
12 \$1.05 per square foot per month, or monthly rent of \$4,410.

13 58. Defendant presented an expert witness, Charles E. Jack IV, who testified to his
14 opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was
15 \$1.75 per square foot per month, or monthly rent of \$7,350.

16 59. The Court determines that both expert witnesses provided credible testimony.
17 However, the Court finds that the comparables utilized by Jack were more applicable to the
18 conditions of the Subject Premises.

19 60. \$8,400 per month is not an unreasonable amount of rent for the option period, as
20 this comports with the terms of the option exercised by Plaintiff, as well as the understanding of
21 the parties that rent would increase during the option periods, and reflects the schedule Plaintiff's
22 attorneys proposed and Defendant accepted.

1 61. After receiving Jack's expert report that opined that \$1.75 per square foot per
2 month was the market rental rate, Plaintiff reduced the amount it was paying monthly from
3 August 2019 through November 2019, from \$8400 to \$5150.

4 62. Defendant did not present sufficient evidence that Plaintiff was previously
5 undercharged for its water usage within the Leased Premises. The Court finds that the
6 methodology utilized by Defendant in determining the amount of the Plaintiff's pro-rata water
7 usage was not reasonable, and not credible.

8
9 63. From the date of the assignment of the Lease in approximately 2007 to present,
10 Plaintiff has paid the "estimated" CAM of \$1,176 for each and every month.

11 64. Defendant did not present sufficient evidence that it incurred \$239,803 in CAM
12 expenses from 2012 through 2018 that were not previously assessed to the Plaintiff.

13 65. The list of items to be included in CAMS does not include the category used by
14 Defendant for "reserves".

15
16 66. Defendant has failed to provide a CAM accounting including the accounting of
17 the various "reserves" referenced in the annual Statements produced by Defendant in this case.

18 67. As a result of Defendants inclusion of "reserve" funds in the CAMS, Plaintiff has
19 overpaid the CAM expense and is entitled to reimbursement.

20 68. Defendant did not breach the Lease by failing to provide quarterly accounting
21 CAM costs as that provision was modified in writing by the 2001 Amendment to an annual
22 accounting.

23 69. Defendant has charged amounts in excess of the CAM charges, for which
24 restitution and reimbursement should be made to Plaintiff.

25
26 70. Defendant has not breached its obligation to repair and maintain the premises,
27 including the roof, the HVAC system, and other portions of the premises.
28

71. The witnesses for Plaintiff were not credible. The testimony at deposition of the NRCP 30(b)(6) representative presented by Plaintiff provided virtually no substantive information, after motion practice before trial the Court permitted Plaintiff to inquire of the witnesses subject to question by question challenge based upon the inconsistency with the NRCP 30(b)(6) representative testimony. The lack of credibility and general lack of knowledge of any of Plaintiff's witnesses forces the Court to rely upon the documentary evidence admitted during the proceedings.

72. If any findings of fact are properly conclusions of law, they shall be treated as if appropriately identified and designated.

CONCLUSIONS OF LAW

73. A preponderance of the evidence supports the conclusion that Plaintiff's predecessor in interest executed both options provided in the Option Agreement, extending the Lease for two successive five-year periods. The exercise of these options is memorialized in the 2001 Amendment and the 2006 Addendum. As Plaintiff's predecessor in interest exercised these options, the only option Plaintiff could have exercised in 2016 was an option provided in the 2007 Lease Modification.

74. The execution of the option in 2016 was timely. It was sent more than 90 days prior to the August 31, 2016 expiration date of the Lease.

75. Although Defendant sought modification of the Lease, all terms and conditions of the Lease were already in place, except for the rental rate.

76. Plaintiff continued paying the rent agreed to in the schedule proposed by its counsel until August 2019.

77. Plaintiff has by payment of such rent remained entitled to enforce its option rights.

78. Beginning September 1, 2016, Plaintiff paid \$8,400 in base rent.

1 79. The elements of a claim for breach of contract are: (1) the parties entered into a
2 valid and existing contract; (2) Plaintiff performed or was excused from performance; (3)
3 Defendant breached; and (4) Plaintiff sustained damages as a result of the breach.

4 80. A contract must contain all essential terms to be enforceable, and rent is an
5 essential term of an option agreement.
6

7 81. Interpretation of a contract is a question of law. The Court looks at the plain
8 language in the contract.

9 82. Nevada has recognized an exception for a lease extension option containing all
10 terms except for rent, holding that such an option should be enforced at an agreed rent or at a
11 court-fixed reasonable rent. *Cassinari v. Mapès*, 91 Nev. 778, 781 (1975).
12

13 83. A commercial tenant may affirm the option rights and seek judicial determination
14 of the amount of rent where the parties have been unable to agree. *Cassinari* at 781.

15 84. The terms of the 2007 Lease Modification are plain and unambiguous and may be
16 interpreted as a matter of law. Under these clear terms, the five-year options were expressly and
17 unambiguously made conditional upon “terms and conditions, including but not limited to rental
18 increases, to be negotiated.”

19 85. The language in the 2007 Lease Modification related to rent after the execution of
20 the Option is unambiguous.
21

22 86. As the Plaintiff contends that the parties failed to come to an agreement as to the
23 amount of rent for the option period beginning September 1, 2016, the Court is empowered to
24 declare the amount of rent applicable to that option period. The evidence and the terms of the
25 2007 Lease Modification do not support Plaintiff’s position that the contract permits a lower “fair
26 market value” to be established.
27
28

1 87. While there is some evidence that the Plaintiff attempted to change the terms of
2 the proposed rent schedule in July 2017 to reduce the amount of rent for the first year, the
3 evidence shows that Plaintiff never actually paid this lower amount.

4 88. The language of the 2007 Lease Modification states that the rent for the option
5 period would be "under terms and conditions, including but not limited to rental increases to be
6 negotiated." The parties agree that all essential terms other than rent are provided elsewhere in
7 the 2007 Lease Modification, leaving only the rent to be negotiated. Thus, if no agreement was
8 reached as to rent, all essential terms of the option are present except the rental rate, and
9 *Cassinari* would apply to render the option enforceable based on a reasonable rental amount to be
10 determined by this Court.

11 89. Based on the facts presented, the Court determines that an agreement was reached
12 and that the reasonable rent is \$8,400 per month for the first two years of the second option term
13 under the 2007 Lease Modification increasing by \$210 every year starting on September 1, 2018.
14 The Plaintiff agreed to the 2007 Lease Modification option language which requires that any
15 options be based on "rental increases," so it would not be reasonable for rent to decrease.

16 90. The rent agreed to by the parties and reflected in this schedule based upon the
17 evidence before the Court, reflects a reasonable amount of rent under *Cassinari*.

18 91. After hearing and weighing the evidence the Court sets the rent as the schedule
19 agreed to and partially performed by the parties:

20 09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum
21 09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum
22 09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum
23 09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum
24 09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum
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92. As Plaintiff deviated from this schedule from September 1, 2018 through November 2019, the Plaintiff has underpaid the rent due in the amount of \$13,000.⁶

93. This deviation is a breach of the Plaintiff's obligations under the Lease.

94. The Lease provision related to CAM expenses does not include the ability of Defendant to charge for "reserves".

95. The Defendant's charging of "reserves" as a CAM expense is a breach of contract.

96. Plaintiff has requested that an accounting be ordered as part of the relief in this matter.

97. In light of the Plaintiff disputing various CAM charges and its request to the Court to reevaluate the 2012 through 2018 CAM charges, the Court finds that Plaintiff has overpaid the CAM expenses.

98. As the evidence was presented at trial there is no need for an accounting and the Court orders reimbursement of the overpayment.⁷

⁶ The agreed upon rental rate was \$8400 per month. The reduced rental rate paid by Plaintiff was \$5150. The monthly deficiency of \$3250 accrued for 4 months yielding a total underpayment of \$13,000.

⁷ The Court disallows the line items for parking lot reserve and painting reserve from the annual CAM statements. The calculation for the breach of contract claim related to CAMS is to divide the revised "Total Operating Expense" by 115,671 square feet as represented in the Lease for a square footage rate and multiply by 4200 representing the square footage occupied by Plaintiff as represented in the Lease and to compare the pro rata share to estimated amounts advanced by Plaintiff pursuant to the 2007 Lease Modification on a monthly basis of \$1176.

Year	Operating Expense	Less Disallowed Reserve	Revised Operating Expense	Square Foot Rate	Plaintiffs Pro Rata Share	Less Payments Made	Difference
2015	385185	32500	352685	3.05	12810	14112	-1302
2016	389683	32500	357183	3.09	12978	14112	-1134
2017	398059	32500	365559	3.16	13272	14112	-840
2018	385363	32500	352863	3.05	12810	14112	-1302
Total							-4578

1 99. The elements of a claim for breach of the implied covenant of good faith and fair
2 dealing are: (1) Plaintiff and defendant were parties to a contract; (2) Defendant owed a duty of
3 good faith to plaintiff; (3) Defendant breached that duty by performance in a manner that was
4 unfaithful to the purpose of the contract; and (4) Plaintiff's justified expectations were thus
5 denied.
6

7 100. In every contract there is an implied promise of good faith and fair dealing.

8 101. Where the terms of a contract are literally complied with, but one party to the
9 contract deliberately contravenes the intention and spirit of the contract, that party can incur
10 liability for breach of the implied covenant of good faith and fair dealing.

11 102. When one party performs a contract in a manner that is unfaithful to the purpose of
12 the contract and the justified expectations of the other party are thus denied, damages may be
13 awarded against the party who does not act in good faith.
14

15 103. Whether the controlling party's actions fall outside the reasonable expectations of
16 the dependent party is determined by the various factors and special circumstances that shape
17 these expectations.

18 104. The use of reserves as part of the CAM expenses is a breach of the covenant of
19 good faith and fair dealing.
20

21 105. Substantial evidence was submitted establishing beyond a preponderance of the
22 evidence that, based on the contractual language negotiated and agreed to by the parties as part of
23 the 2007 Lease Modification, as well as the subsequent negotiations and conduct of the parties,
24 the appropriate rent applicable to the option period cannot be based on market rental rate or fair
25 market value.

26 106. The doctrines of part performance and/or estoppel preclude the Plaintiff from
27 arguing that no agreement existed. In general, principles of part performance and/or estoppel
28

1 prevent a party from taking a position contrary to a previously asserted position when another
2 party has relied upon the previous position.

3 107. At the time Plaintiff began paying rent in September 2016, Plaintiff was apprised
4 of all relevant facts. Plaintiff's conduct of paying this amount of rent was designed to be relied
5 upon, in that Plaintiff intended for Defendant to accept the full amount of rent as payment under
6 the Lease, in exchange for being allowed to continue to occupy the Premises. Plaintiff's
7 significant delay in asserting any dispute or protest as to the amounts being paid demonstrate the
8 Defendant had no idea of Plaintiff's purported hidden understanding that it did not agree to the
9 rent. Defendant detrimentally relied on Plaintiff's position, as Defendant kept the property off the
10 market instead of attempting to find a new tenant willing to pay full rent. The Plaintiff is estopped
11 from now taking a contrary position as to the amount of rent that Plaintiff offered, agreed to, and
12 did, in fact, perform.
13

14
15 108. As there were good faith disputes related to the amount of rent for the option
16 period presented for determination to the Court, the Court finds that there has been no breach of
17 the implied covenant of good faith and fair dealing on that issue.

18 109. Judgment in Defendant's favor is appropriate on Defendant's counterclaim for
19 breach of Lease, as Plaintiff's failure to pay the agreed-upon amount of rent from August 2019
20 through November 2019 constituted a breach of Plaintiff's obligations under the Lease and
21 Counterdefendants' obligations under the Guaranties.
22

23 110. If any conclusions of law are properly findings of fact, they shall be treated as if
24 appropriately identified and designated.

25 Based upon the foregoing Findings of Fact and Conclusions of Law

26 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
27 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,
28

1 LLC, on the First Claim for Relief for Declaratory Judgment establishing a reasonable rent
2 schedule as :

3 09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum
4 09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum
5 09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum
6 09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum
7 09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum

8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
9 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,
10 LLC, on the Second Claim for Relief for Breach of Contract in the amount of \$4,578.

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
12 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,
13 LLC, on the Third Claim for Relief for Breach of the Implied Covenant of Good Faith and Fair
14 Dealing in the amount of the attorney's fees and costs related to the CAM expense portion of the
15 litigation only.

16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
17 hereby entered in favor of Defendant Tropicana Investments, LLC, and against Plaintiff JSJBD
18 Corp, on all other claims for relief contained in the Complaint.

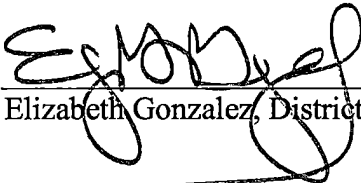
19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
20 hereby entered in favor of Counterclaimant Tropicana Investments, LLC, and against
21 Counterdefendant JSJBD Corp, and all other Counterdefendants on the Second Claim for Relief
22 for Breach of Lease Agreement for the underpayment of rent according to the schedule in the
23 amount of \$13,000.

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
25 hereby entered in favor of Counterdefendant JSJBD Corp, and all other Counterdefendants, and
26 against Counterclaimant Tropicana Investments, LLC, on all other claims for relief contained in
27
28

1 the Counterclaim.

2 In light of the awards on both the Complaint and Counterclaim, the issue of attorney's
3 fees as sought in both the Complaint and Counterclaim is reserved for post-trial motion practice.
4

5
6 DATED this 5th day of December, 2019.

7
8 
9 Elizabeth Gonzalez, District Court Judge

10 **Certificate of Service**

11 I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of
12 Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth
13 Judicial District Court Electronic Filing Program.

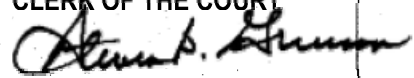
14 *If indicated below, a copy of the foregoing Scheduling Order was also:*

15 ☐ Placed in the Attorney(s) Folder on the 1st Floor of the RJC for;

16 ☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at
17 their last known address(es):

18
19 
20 Dan Kutinac

Exhibit B



Marquis Aurbach Coffing
Terry A. Moore, Esq.
Nevada Bar No. 7831
Collin M. Jayne, Esq.
Nevada Bar No. 13899
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
tmoore@maclaw.com
cjayne@maclaw.com
Attorneys for Tropicana Investments, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT, an individual;
JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B
Dept. No.: XI

Date of Hearing: January 27, 2020
Time of Hearing: 9:00 a.m.

ORDER DENYING DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT

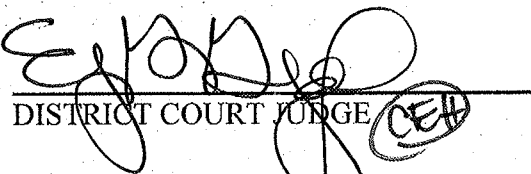

This matter having come before the Court on January 27, 2020 for a hearing regarding Defendant/Counterclaimant Tropicana Investments, LLC's Motion to Alter or Amend Judgment, with Terry A. Moore Esq. and Collin M. Jayne, Esq. of the law firm of Marquis Aurbach Coffing appearing for Defendant/Counterclaimant Tropicana Investments, LLC; and Mario P. Lovato,

1 Esq. of Lovato Law Firm, P.C. appearing for Plaintiff/Counterdefendants JSJBD Corp, Stuart
2 Vincent, Jeffrey Vincent, and Jeff White; and the Court, having entertained the arguments of
3 counsel, and for good cause appearing,

4 IT IS HEREBY ORDERED that Defendant's Motion to Alter or Amend Judgment is
5 DENIED.

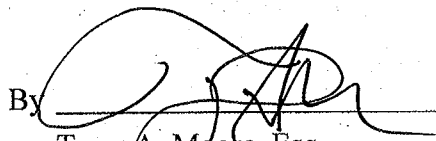
6 Dated this 21 day of February, 2020.

7 THE HONORABLE ELIZABETH GONZALEZ

8
9
10 
DISTRICT COURT JUDGE 

11 Respectfully submitted by:
12 MARQUIS AURBACH COFFING

Approved as to form:
LOVATO LAW FIRM, P.C.

13
14 By 
15 Terry A. Moore, Esq.
16 Nevada Bar No. 7831
17 Collin M. Jayne, Esq.
18 Nevada Bar No. 13899
19 10001 Park Run Drive
20 Las Vegas, Nevada 89145
21 Attorneys for Defendant/Counterclaimant
22 Tropicana Investments, LLC

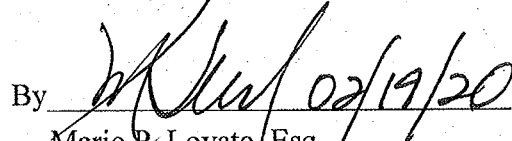
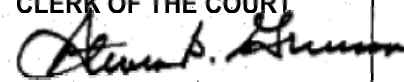
By 
Mario P. Lovato, Esq.
Nevada Bar No. 7407
7465 W. Lake Mead Blvd., #100
Las Vegas, Nevada 89128
Attorney for Plaintiff JSJBD and
Counterdefendants

Exhibit C



MARIO P. LOVATO
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T: (702) 979-9047
mpl@lovatolaw.com
Attorney for Plaintiff JSJBD Corp
dba Blue Dogs Pub and Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP dba Blue Dogs Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a California
limited liability company,

Defendant.

CASE NO. A-18-785311-B
DEPT 11

TROPICANA INVESTMENTS, LLC, a California
limited liability company,

Counterclaimant,

vs.

JSJBD CORP. dba Blue Dogs Pub, a Nevada
corporation; STUART VINCENT; JEFFREY B.
VINCENT; and JEFF WHITE,

Counterdefendants.

**ORDER GRANTING PLAINTIFF / COUNTERDEFENDANTS'
MOTION FOR ATTORNEY FEES AND COSTS**

On January 27, 2020, a hearing took place for Plaintiff / Counterdefendants' Motion for Attorney Fees and Costs, the parties appearing through their respective counsel of record and parties / party-representatives Stuart Vincent and Bruce Eisman also appearing, the Court, having reviewing the briefing and arguments of counsel, and good cause appearing:

02-20-20P02:59 RCVD

1 THE COURT HEREBY FINDS that:

2
3 1. Plaintiff JSJBD Corp was, and is, the prevailing party in this matter as pertains to
4 the claims in the Complaint filed by JSJBD Corp and as determined in the Court's Findings of
5 Fact and Conclusions of Law entered herein on December 5, 2019.

6 2. Under *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969), when
7 courts determine the appropriate fee to award in civil cases, they must consider various factors: (1)
8 the qualities of the advocate: his ability, his training, education, experience, professional standing
9 and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time
10 and skill required, the responsibility imposed and the prominence and character of the parties
11 where they affect the importance of the litigation; (3) the work actually performed by the lawyer:
12 the skill, time and attention given to the work; (4) the result: whether the attorney was successful
13 and what benefits were derived.

14
15 3. The *Brunzell* factors support the award of attorney fees. Mr. Lovato is a business
16 litigator who has appeared before the Court on numerous occasions, has worked at reputable law
17 firms in Las Vegas, Nevada, has charged a reasonable billing rate in this matter; the character of
18 the work involved the filing of motions and related pleadings, appearance at hearings, appearance
19 at trial, the drafting and service of written discovery and related work, which is commensurate
20 with the requested billable rate; the work performed by such counsel, was reasonable; and the
21 result obtained supports the fees.

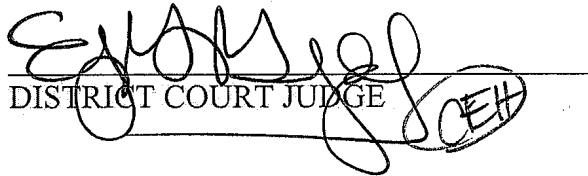
22
23 4. The following attorney fees and costs of Plaintiff JSJBD Corp and
24 Counterdefendants should be, and are, approved as being reasonable, and being necessarily and
25 actually incurred in the litigation of this matter from its inception up to December 26, 2019 (the
26 date of filing of the motion for attorney fees and costs: (a) attorney fees in the amount of
27 \$126,630.00; and (b) costs in the amount stated in, and separately addressed by, the Order
28 addressing Defendant / Counterclaimant's Motion to Retax Costs.

1 5. Judgment should be entered in favor of Plaintiff JSJBD Corp. and against
2 Defendant / Counterclaimant Tropicana Investments, LLC, as further stated below, based upon the
3 Findings and Fact and Conclusions of Law entered on December 5, 2019 and for the amounts
4 granted herein for the Motion for Attorney Fees and Costs.
5

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff /
7 Counterdefendants' Motion for Attorney Fees and Costs is GRANTED such that Plaintiff JSJBD
8 Corp is granted attorney fees in the amount of the attorney fee figure of One-Hundred Twenty-Six
9 Thousand Six-Hundred Thirty Dollars (\$126,630.00).
10

11 Dated: February 21, 2020.

12 THE HONORABLE ELIZABETH GONZALEZ

13 
14 DISTRICT COURT JUDGE

15 Submitted by:

16 LOVATO LAW FIRM, P.C.

17 
18 MARIO P. LOVATO, ESQ.

19 Nevada Bar No. 7427

20 Attorney for Plaintiff JSJBD Corp. and
21 Counterdefendants

22 Approved as to form:

23 MARQUIS AURBACH COFFING

24 
25 TERRY A. MOORE, ESQ.

26 Nevada Bar NO. 7831

27 COLLIN M. JAYNE, ESQ.

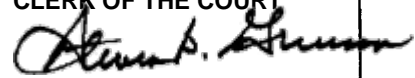
28 Nevada Bar No. 13899

10001 Park Run Dr.

Las Vegas, NV 89145

Attorneys for Defendant / Counterclaimant
Tropicana Investments, LLC

Exhibit D



Marquis Aurbach Coffing
Terry A. Moore, Esq.
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cjayne@maclaw.com
Attorneys for Tropicana Investments, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT, an individual;
JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B
Dept. No.: XI

Date of Hearing: January 27, 2020
Time of Hearing: 9:00 a.m.

**ORDER GRANTING IN PART DEFENDANT'S MOTION TO FOR ATTORNEYS'
FEES AND COSTS**

This matter having come before the Court on January 27, 2020 for a hearing regarding
Defendant/Counterclaimant Tropicana Investments, LLC's Motion for Attorneys' Fees and
Costs, with Terry A. Moore Esq. and Collin M. Jayne, Esq. of the law firm of Marquis Aurbach

1 Coffing appearing for Defendant/Counterclaimant Tropicana Investments, LLC ("Defendant");
2 and Mario P. Lovato, Esq. of Lovato Law Firm, P.C. appearing for Plaintiff/Counterdefendants
3 JSJBD Corp, Stuart Vincent, Jeffrey Vincent, and Jeff White (collectively, "Plaintiff"); and the
4 Court, having entertained the arguments of counsel, considered the points and authorities thereof,
5 and for good cause appearing, hereby finds and orders that Defendant's Motion for Attorneys'
6 Fees and Costs is granted in part and denied in part, as follows:

7 The Court finds that Defendant is entitled to recover its reasonable attorneys' fees
8 incurred in this litigation, regardless of whether Defendant is a prevailing party, under Section 24
9 of the Lease which provides that "In the event the Landlord finds it necessary to retain an
10 attorney in connection with the default by the Tenant in any of the agreements or covenants
11 contained in this Lease, Tenant shall pay reasonable attorney's fees to said attorney." Defendant
12 asserted a counterclaim for breach of the Lease, and this Court found in Defendant's favor on
13 this claim, concluding that Plaintiff breached the Lease. Thus, Defendant is entitled to recover
14 reasonable attorneys' fees.

15 After weighing the factors provided in *Brunzell v. Golden Gate National Bank*, 85 Nev.
16 345, 349-50, 455 P.2d 31, 33 (1969), the Court finds that Defendant's requested attorneys' fees
17 are reasonable, except for the fees related to a second attorney attending trial. The second
18 attorney's time at trial amounts to fees of \$10,807.50, and thus Defendant is entitled to all
19 requested fees, less this amount. Defendant is therefore awarded attorneys' fees of \$208,967.50.

20 Finally, the Court finds that Defendant was a prevailing party, and thus Defendant is
21 entitled to recover costs under NRS 18.020. As stated in this Court's order Granting Plaintiff's
22 Motion to Retax, Defendant has not established that the circumstances surrounding its expert's
23 testimony were of such necessity as to require fees beyond the \$1,500 cap provided by NRS
24 18.005(5), so Defendant's requested expert fees will be reduced to \$1,500. *Frazier v. Drake*,
25 131 Nev. 632, 357 P.3d 365 (Nev. App. 2015). Additionally, Defendant has not established that
26 its requested costs for scanning charges were reasonable and necessary, so this cost is not
27 recoverable. Defendant has properly established that all other requested costs were reasonable,
28 necessary, and actually incurred in this action. *Cadle Company v. Woods & Erickson LLP*, 131

MARQUIS AURBACH COFFING

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(702) 382-0711 FAX: (702) 382-5816

1 Nev. 114, 120-121, 345 P.3d 1049, 1054 (2015). In sum, Defendant will be awarded costs
2 totaling \$13,835.50.

3 Therefore,

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion
5 for Attorneys' Fees and Costs is GRANTED IN PART and DENIED IN PART. Defendant is
6 awarded attorneys' fees totaling \$208,967.50, and costs totaling \$13,835.50.


7 Dated this 11 day of February, 2020.

8 THE HONORABLE ELIZABETH GONZALEZ

9
10 
11 DISTRICT COURT JUDGE 

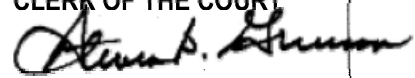
12 Respectfully submitted by:
13 MARQUIS AURBACH COFFING

Approved as to form:
LOVATO LAW FIRM, P.C.

14
15 By 
16 Terry A. Moore, Esq.
17 Nevada Bar No. 7831
18 Collin M. Jayne, Esq.
19 Nevada Bar No. 13899
20 10001 Park Run Drive
21 Las Vegas, Nevada 89145
22 Attorneys for Defendant/Counterclaimant
23 Tropicana Investments, LLC

By _____
Mario P. Lovato, Esq.
Nevada Bar No. 7407
7465 W. Lake Mead Blvd., #100
Las Vegas, Nevada 89128
Attorney for Plaintiff JSJD and
Counterdefendants

Exhibit E



1 **Marquis Aurbach Coffing**
2 Terry A. Moore, Esq.
3 Nevada Bar No. 7831
4 Collin M. Jayne, Esq.
5 Nevada Bar No. 13899
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 tmoore@maclaw.com
11 cjayne@maclaw.com
12 Attorneys for Tropicana Investments, LLC

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
16 corporation,

17 Plaintiff,

18 vs.

19 TROPICANA INVESTMENTS, LLC, a
20 California limited liability company,

21 Defendant.

22 TROPICANA INVESTMENTS, LLC, a
23 California limited liability company,

24 Counterclaimant,

25 vs.

26 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
27 corporation; STUART VINCENT, an individual;
28 JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B

Dept. No.: XI

FINAL JUDGMENT

Date of Hearing: January 27, 2020

Time of Hearing: 9:00 a.m.

FINAL JUDGMENT

Whereas, the above matter having been tried to the Court, and good cause appearing.

JUDGMENT IS HEREBY ENTERED in favor of Defendant/Counterclaimant Tropicana Investments, LLC and against Counterdefendants JSJBD Corp., Stuart Vincent, Jeffrey Vincent, and Jeff White ("Counterdefendants"), jointly and severally, as follows:

1. JSJBD Corp. is awarded \$4,578.00 against Tropicana Investments, LLC, representing compensatory damages for overpaid CAMs;
2. JSJBD Corp. is awarded pre-judgment interest accruing from December 6, 2018, through December 5, 2019, against Tropicana Investments, LLC, in the amount of \$342.41;
3. JSJBD Corp. is awarded attorneys' fees in the amount of \$126,630.00 against Tropicana Investments, LLC;
4. JSJBD Corp. is awarded costs of suit against Tropicana Investments, LLC, in the amount of \$7,124.97;
5. Tropicana Investments, LLC is awarded \$13,000 against the Counterdefendants, representing compensatory damages for unpaid rent under the subject lease;
6. Tropicana Investments, LLC is awarded pre-judgment interest accruing from January 9, 2019, through December 5, 2019, against the Counterdefendants, in the amount of \$878.84;
7. Tropicana Investments, LLC is awarded costs of suit against the Counterdefendants, in the amount of \$13,835.50; and
8. Tropicana Investments, LLC is awarded its attorneys' fees totaling \$208,967.50 against the Counterdefendants.
9. After offsetting the amount awarded to JSJBD Corp. this Final Judgment is entered in favor of Tropicana Investments, LLC and against JSJBD Corp., Stuart Vincent, Jeffrey

MARQUIS AURBACH COFFING


10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 10. Vincent, and Jeff White, jointly and severally in the amount of \$98,006.46, with interest
2 accruing at the rate of 6.75% per annum until paid in full.

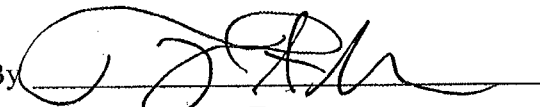
3 IT IS SO ORDERED.

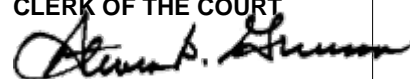
4 Dated this 11 day of February, 2020.

5 THE HONORABLE ELIZABETH GONZALEZ

6
7 
8 DISTRICT COURT JUDGE
9 A-18-785311-B
JSJBD v. Tropicana

10 Respectfully submitted by:
11 MARQUIS AURBACH COFFING

12
13 By 
14 Terry A. Moore, Esq.
15 Nevada Bar No. 7831
16 Collin M. Jayne, Esq.
17 Nevada Bar No. 13899
18 10001 Park Run Drive
19 Las Vegas, Nevada 89145
20 Attorneys for Defendant/Counterclaimant
21 Tropicana Investments, LLC
22
23
24
25
26
27
28

**Marquis Aurbach Coffing**

Terry A. Moore, Esq.
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tmoore@maclaw.com
cjayne@maclaw.com
Attorneys for Tropicana Investments, LLC

DISTRICT COURT**CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
Corporation,

Plaintiff,

Case No.: A-18-785311-B
Dept. No.: XI

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT, an individual;
JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual, JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

CASE APPEAL STATEMENT

Defendant/Counterclaimant, Tropicana Investments, LLC, by and through its attorneys of
record, Marquis Aurbach Coffing, hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:

Tropicana Investments, LLC.

- 1 2. Identify the Judge issuing the decision, judgment, or order appealed from:
- 2 The Honorable Elizabeth Gonzalez, Department 11 of the Eighth Judicial District
- 3 Court.
- 4 3. Identify each appellant and the name and address of counsel for each appellant:
- 5 **Appellant:**
- 6 Tropicana Investments, LLC
- 7 **Counsel for Appellant:**
- 8 Terry A. Moore, Esq.
- 9 Collin M. Jayne, Esq.
- 10 Marquis Aurbach Coffing
- 11 10001 Park Run Drive
- 12 Las Vegas, NV 89145
- 13 4. Identify each respondent and the name and address of appellate counsel, if known,
- 14 for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as
- 15 much and provide the name and address of that respondent's trial counsel):
- 16 **Respondents:**
- 17 JSJBD Corp. d/b/a Blue Dog's Pub
- 18 Stuart Vincent
- 19 Jeffrey B. Vincent
- 20 Jeff White
- 21 **Counsel for Respondents:**
- 22 Mario P. Lovato, Esq.
- 23 Lovato Law Firm, P.C.
- 24 7465 W. Lake Mead Boulevard, Suite 100
- 25 Las Vegas, NV 89128.
- 26 5. Indicate whether any attorney identified above in response to question 3 or 4 is
- 27 not licensed to practice law in Nevada and, if so, whether the district court granted that attorney
- 28 permission to appear under SCR 42 (attach a copy of any district court order granting such
- permission):
- All above-referenced attorneys are licensed to practice law in Nevada.
6. Indicate whether appellant was represented by appointed or retained counsel in
- the district court:
- Retained.

1 7. Indicate whether appellant is represented by appointed or retained counsel on
2 appeal:

3 Retained.

4 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and
5 the date of entry of the district court order granting such leave:

6 N/A.

7 9. Indicate the date the proceedings commenced in the district court (e.g., date
8 complaint indictment, information, or petition was filed):

9 The initial complaint was filed on November 30, 2018.

10 10. Provide a brief description of the nature of the action and result in the district
11 court, including the type of judgment or order being appealed and the relief granted by the
12 district court:

13 Respondent JSJBD Corp. ("JSJBD") rents a commercial property owned by
14 Appellant, Tropicana Investments, LLC ("Tropicana"). The subject lease
15 contained an option for JSJBD to extend the lease term under terms and
16 conditions to be negotiated. At the conclusion of the lease term, the parties were
17 unable to reach an agreement on the rental amount for the option term, so JSJBD
18 began paying reduced rent. Shortly thereafter, JSJBD filed suit against Tropicana
seeking judicial declarations as to the enforceability and required rent for the
option term, and seeking damages. Tropicana asserted counterclaims seeking
judicial declarations that the option was enforceable under different rental terms,
and seeking damages for underpaid rent both from JSJBD and from the individual
Respondents as personal guarantors of JSJBD.

19 After a five-day bench trial, the District Court agreed with Tropicana's position as
20 to the majority of issues; issued all but one declaration requested by Tropicana,
21 including a declaration that the rental amount for the option period is the amount
22 Tropicana asserted; issued one of the six declarations requested by JSJBD; and
23 awarded monetary damages to both sides, with Tropicana receiving a larger award
24 than JSJBD. The District Court subsequently concluded that both sides were
25 prevailing parties, and granted JSJBD's motion for attorneys' fees on this basis,
26 while also granting Tropicana's motion for attorneys' fees on this basis, as well as
27 on the basis of an attorneys' fees provision in the governing lease document. The
28 Court further denied Tropicana's motion to alter or amend the judgment as to the
award of attorneys' fees to JSJBD as special damages, the calculation of
underpaid rent owed to Tropicana, and the issue of clarifying the prevailing party
as to the declaratory relief claims. Thus, the final judgment takes into account all
monetary awards, resulting in an award in Tropicana's favor against all
Respondents for \$98,006.46.

1 11. Indicate whether the case has previously been the subject of an appeal to or
2 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
3 number of the prior proceeding:

4 JSJBD Corp. d/b/a Blue Dog's Pub, Stuart Vincent, Jeffrey B. Vincent, and Jeff
5 White filed their notice of appeal on March 16, 2020, but it has not yet docketed
to the Supreme Court.

6 12. Indicate whether this appeal involves child custody or visitation:

7 No.

8 13. If this is a civil case, indicate whether this appeal involves the possibility of
9 settlement:

10 Yes.

11 Dated this 25th day of March, 2020.

12 MARQUIS AURBACH COFFING

13
14 By /s/ Terry A. Moore
15 Terry A. Moore, Esq.
16 Nevada Bar No. 7831
17 Collin M. Jayne, Esq.
18 Nevada Bar No. 13899
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Tropicana Investments, LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CASE APPEAL STATEMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 25th day of March, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Mario Lovato: mpl@lovatolaw.com

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

CASE SUMMARY**CASE NO. A-18-785311-B****JSJBD Corp, Plaintiff(s)****vs.****Tropicana Investments, LLC, Defendant(s)**§
§
§
§
§Location: **Department 11**
Judicial Officer: **Gonzalez, Elizabeth**
Filed on: **11/30/2018**
Cross-Reference Case Number: **A785311****CASE INFORMATION****Statistical Closures**

12/26/2019 Judgment Reached (bench trial)

Case Type: **Other Business Court Matters**Case Status: **12/26/2019 Closed****DATE****CASE ASSIGNMENT****Current Case Assignment**Case Number A-18-785311-B
Court Department 11
Date Assigned 11/30/2018
Judicial Officer Gonzalez, Elizabeth**PARTY INFORMATION**

		<i>Lead Attorneys</i>
Plaintiff	JSJBD Corp	Lovato, Mario P. <i>Retained</i> 702-979-9047(W)
Defendant	Tropicana Investments, LLC	Moore, Terry A, ESQ <i>Retained</i> 702-382-0711(W)
Counter Claimant	Tropicana Investments, LLC	Moore, Terry A, ESQ <i>Retained</i> 702-382-0711(W)
Counter Defendant	JSJBD Corp	Lovato, Mario P. <i>Retained</i> 702-979-9047(W)
	Vincent, Jeffrey	Lovato, Mario P. <i>Retained</i> 702-979-9047(W)
	Vincent, Stuart	Lovato, Mario P. <i>Retained</i> 702-979-9047(W)
	White, Jeff	Lovato, Mario P. <i>Retained</i> 702-979-9047(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

11/30/2018

Complaint (Business Court)
Filed By: Counter Defendant JSJBD Corp
Complaint



12/04/2018



Summons Electronically Issued - Service Pending

CASE SUMMARY














CASE NO. A-18-785311-B

	Party: Counter Defendant JSJBD Corp <i>Summons</i>
12/11/2018	 Summons Filed by: Counter Defendant JSJBD Corp <i>Summons</i>
01/09/2019	 Answer (Business Court) Filed By: Counter Claimant Tropicana Investments, LLC <i>Answer and Counterclaim</i>
01/09/2019	 Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
01/23/2019	 Business Court Order <i>Business Court Order</i>
01/31/2019	 Reply to Counterclaim Filed by: Counter Defendant JSJBD Corp <i>Counterdefendant JSJBD Corp s Reply To Counterclaim</i>
02/05/2019	 Business Court Order <i>Business Court Scheduling Order and Order Setting Civil Bench Trial and Calendar Call</i>
03/19/2019	 Order
03/25/2019	 Summons Electronically Issued - Service Pending Party: Counter Claimant Tropicana Investments, LLC <i>Summons - Jeff White</i>
03/25/2019	 Summons Electronically Issued - Service Pending Party: Counter Claimant Tropicana Investments, LLC <i>Summons - Stuart Vincent</i>
03/25/2019	 Summons Electronically Issued - Service Pending Party: Counter Claimant Tropicana Investments, LLC <i>Summons - Jeffrey B. Vincent</i>
04/16/2019	 Affidavit of Service Filed By: Counter Claimant Tropicana Investments, LLC <i>Affidavit of Service - Jeff White</i>
04/29/2019	 Affidavit of Service Filed By: Counter Claimant Tropicana Investments, LLC <i>Affidavit of Service - Stuart Vincent</i>
05/02/2019	 Affidavit of Attempted Service Filed By: Counter Claimant Tropicana Investments, LLC <i>Affidavit of Attempted Service - Jeffrey B. Vincent</i>
05/07/2019	 Reply to Counterclaim Filed by: Counter Defendant White, Jeff; Counter Defendant Vincent, Stuart; Counter Defendant Vincent, Jeffrey

CASE SUMMARY

CASE NO. A-18-785311-B

Counterdefendants Stuart Vincent, Jeffrey Vincent, And Jeff White s Reply To Counterclaim

05/07/2019	 Initial Appearance Fee Disclosure Filed By: Counter Defendant White, Jeff; Counter Defendant Vincent, Stuart; Counter Defendant Vincent, Jeffrey <i>Initial Appearance Fee Disclosure</i>
05/22/2019	 Motion for Partial Summary Judgment Filed By: Counter Claimant Tropicana Investments, LLC <i>Motion for Partial Summary Judgment</i>
05/23/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
05/24/2019	 Affidavit of Attempted Service Filed By: Counter Claimant Tropicana Investments, LLC <i>Affidavit of Attempted Service (Jeffrey B. Vincent)</i>
06/19/2019	 Countermotion For Summary Judgment Filed By: Counter Defendant JSJBD Corp <i>Plaintiff JSJBD Corp dba Blue Dogs Pub s Opposition To Motion For Partial Summary Judgment And Countermotion For Partial Summary Adjudication</i>
06/21/2019	 Order Filed By: Counter Claimant Tropicana Investments, LLC <i>Stipulation and Order to Continue Hearing</i>
06/21/2019	 Notice of Entry of Order Filed By: Counter Claimant Tropicana Investments, LLC <i>Notice of Entry of Order</i>
07/01/2019	 Reply in Support Filed By: Counter Claimant Tropicana Investments, LLC <i>Reply in Support of Motion for Summary Judgment and Opposition to Countermotion for Partial Summary Adjudication</i>
07/03/2019	 Reply to Motion Filed By: Counter Defendant JSJBD Corp <i>Plaintiff JSJBD Corp dba Blue Dogs Pub s Reply In Support Of Countermotion For Partial Summary Adjudication</i>
07/24/2019	 Order Filed By: Counter Defendant JSJBD Corp <i>Order</i>
07/24/2019	 Notice of Entry of Order Filed By: Counter Defendant JSJBD Corp <i>Notice of Entry of Order</i>
08/09/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Hearing on Motion for Summary Judgment 7/8/19</i>
09/26/2019	 Motion to Compel Filed By: Counter Defendant JSJBD Corp

CASE SUMMARY



CASE NO. A-18-785311-B

Plaintiff JSJBD Corp's Motion To Compel Production Of Documents

09/26/2019	 Notice of Entry of Order Filed By: Counter Defendant JSJBD Corp <i>Notice Of Entry Of Order</i>
09/27/2019	 Motion in Limine to Exclude Expert Witness Filed by: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant Tropicana Investments, LLC's Motion in Limine to Preclude Testimony of Experts Whose Opinions Were Not Timely Disclosed</i>
09/30/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
09/30/2019	 Opposition to Motion to Compel Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Couterclaimant Tropicana Investments LLC's Opposition to Plaintiff JSJBD Corp's Motion to Compel Production of Documents (Motion for Order Shortening Time)</i>
10/01/2019	 Reply in Support Filed By: Counter Defendant JSJBD Corp <i>Plaintiff JSJBD Corp's Reply In Support Of Motion To Compel Production Of Documents</i>
10/01/2019	 Motion for Sanctions Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant Tropicana Investments, LLC's Motion for Sanctions for (I) JSJBD Corp's Failure to Present a Knowledgeable Designee and (II) JSJBD Corp's Failure to Appear and (III) for Leave to Take Deposition on Order Shortening Time</i>
10/01/2019	 Motion Filed By: Counter Claimant Tropicana Investments, LLC <i>Counterclaimant's Motion to Correct Order of the Court on Order Shortening Time</i>
10/08/2019	 Opposition Filed By: Counter Defendant JSJBD Corp <i>Plaintiff JSJBD Corp s Opposition To Motion To Correct Order Of Court</i>
10/08/2019	 Opposition Filed By: Counter Defendant JSJBD Corp <i>Plaintiff JSJBD Corp s Opposition To Motion For Sanctions</i>
10/09/2019	 Order Filed By: Counter Defendant JSJBD Corp <i>Order</i>
10/09/2019	 Notice of Entry of Order Filed By: Counter Defendant JSJBD Corp <i>Notice of Entry of Order</i>
10/16/2019	 Opposition and Countermotion Filed By: Counter Defendant JSJBD Corp <i>Plaintiff JSJBD Corp s Opposition To Motion To Preclude Testimony Of Experts Whose Opinions Were Not Timely Disclosed And Alternatively, Countermotion In Limine To Exclude Defendant s Untimely Expert Report And Testimony, And Allow Plaintiff s Timely Initial Expert Report And Testimony</i>

CASE SUMMARY

CASE NO. A-18-785311-B

10/17/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Hearing on Defendant's Motion for Sanctions, Motion for Leave to Take Deposition, and Motion to Correct Order of Court 10/09/19</i>
10/18/2019	 Transcript of Proceedings <i>Corrected Transcript of Proceedings: Hearing on Defendant's Motion for Sanctions, Motion for Leave to Take Deposition, and Motion to Correct Order of Court</i>
10/21/2019	 Pre-Trial Disclosure Party: Counter Claimant Tropicana Investments, LLC <i>Tropicana Investments, LLC's Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)</i>
10/28/2019	 Reply in Support Filed By: Counter Claimant Tropicana Investments, LLC <i>Reply in Support of Defendant/Counterclaimant Tropicana Investments, LLC's Motion in Limine to Preclude Testimony of Experts Whose Opinions Were Not Timely Disclosed and Opposition to Countermotion to Exclude Defendant's Untimely Expert Report and Testimony, and Allow Plaintiff's Timely Initial Expert Report and Testimony</i>
10/30/2019	 Reply in Support Filed By: Counter Defendant JSJBD Corp <i>Plaintiff JSJBD Corp s Reply In Support Of Countermotion In Limine (Made In The Alternative) To Exclude Defendant's Untimely Expert Report And Testimony, and Allow Plaintiff's Timely Initial Expert Report And Testimony</i>
11/06/2019	 Pre-Trial Disclosure Party: Counter Defendant JSJBD Corp <i>Plaintiff / Counterdefendants Pretrial Disclosures</i>
11/08/2019	 Order Filed By: Counter Claimant Tropicana Investments, LLC <i>Order Regarding Defendant's Motion for Sanctions</i>
11/08/2019	 Notice of Entry of Order Filed By: Counter Claimant Tropicana Investments, LLC <i>Notice of Entry of Order</i>
11/08/2019	 Pre-trial Memorandum Filed by: Counter Claimant Tropicana Investments, LLC <i>Tropicana Investments, LLC's Individual Pre-Trial Memorandum</i>
11/14/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Hearing on Defendant's Motion in Limine to Preclude Testimony of Experts Not Timely Disclosed and Plaintiff's Countermotion in Limine to Exclude Defendant's Untimely Expert Report and Testimony</i>
11/15/2019	 Supplemental Filed by: Counter Claimant Tropicana Investments, LLC <i>Tropicana Investments, LLC's Supplemental Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)</i>
11/15/2019	 Objection <i>Tropicana Investments, LLC's Objections to Plaintiff's Pretrial Disclosures</i>














CASE SUMMARY

CASE NO. A-18-785311-B

11/15/2019	 Brief Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant's EDCR 7.27 Brief</i>
11/18/2019	 Pre-trial Memorandum Filed by: Counter Defendant JSJBD Corp <i>Plaintiff JSJBD Corp / Counterdefendants EDCR 2.67 Pretrial Memorandum</i>
11/18/2019	 Order <i>Order Granting Defendant's Motion in Limine and Denying Plaintiff's Countermotion</i>
11/20/2019	 Notice of Entry of Order Filed By: Counter Claimant Tropicana Investments, LLC <i>Notice of Entry of Order</i>
12/05/2019	 Findings of Fact, Conclusions of Law and Judgment <i>Findings of Fact and Conclusions of Law</i>
12/10/2019	 Memorandum of Costs and Disbursements Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant's Verified Memorandum of Costs</i>
12/10/2019	 Memorandum of Costs and Disbursements Filed By: Counter Defendant JSJBD Corp <i>Plaintiffs / Counterdefendants' Memorandum of Costs and Disbursements</i>
12/12/2019	 Amended Filed By: Counter Defendant JSJBD Corp <i>Plaintiff / Counterdefendants' Amended Memorandum of Costs and Disbursements</i>
12/13/2019	 Motion to Retax Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant's Motion to Retax Costs</i>
12/13/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
12/13/2019	 Motion to Retax Filed By: Counter Defendant JSJBD Corp <i>Plaintiff / Counterdefendants' Motion to Retax Costs</i>
12/16/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
12/26/2019	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
12/26/2019	 Motion for Attorney Fees and Costs Filed By: Counter Defendant JSJBD Corp <i>Plaintiff / Counterdefendants' Motion for Attorney Fees and Costs</i>
12/27/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>




CASE SUMMARY

CASE NO. A-18-785311-B

12/27/2019	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Counter Claimant Tropicana Investments, LLC <i>Notice of Entry of Findings of Fact and Conclusions of Law</i>
12/27/2019	 Opposition to Motion Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant Tropicana Investments LLC's Opposition to Plaintiff JSJBD Corp's Motion to Retax Costs</i>
12/27/2019	 Motion to Amend Judgment Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant Tropicana Investments, LLC's Motion to Alter or Amend Judgment</i>
12/27/2019	 Motion for Attorney Fees and Costs Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant Tropicana Investments, LLC's Motion for Attorneys' Fees and Costs</i>
12/27/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
12/27/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
12/30/2019	 Opposition to Motion Filed By: Counter Defendant JSJBD Corp; Counter Defendant White, Jeff; Counter Defendant Vincent, Stuart; Counter Defendant Vincent, Jeffrey <i>Plaintiff / Counterdefendants' Opposition to Motion to Retax Costs</i>
01/09/2020	 Reply in Support Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant's Reply in Support of Motion to Retax Costs</i>
01/09/2020	 Opposition to Motion Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant Tropicana Investments LLC's Opposition to Plaintiff JSJBD Corp's Motion for Attorney Fees and Costs</i>
01/09/2020	 Reply in Support Filed By: Counter Defendant JSJBD Corp <i>Plaintiff / Counterdefendants' Reply in Support of Motion to Retax Costs</i>
01/10/2020	 Opposition Filed By: Counter Defendant JSJBD Corp <i>Plaintiff / Counterdefendants' Opposition to Motion for Attorney Fees</i>
01/10/2020	 Opposition <i>Plaintiff / Counterdefendants' Opposition to Motion to Alter or Amend Judgment</i>
01/21/2020	 Reply in Support Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant's Reply in Support of Motion to Alter or Amend Judgment</i>

CASE SUMMARY

CASE NO. A-18-785311-B

01/23/2020	 Reply in Support Filed By: Counter Claimant Tropicana Investments, LLC <i>Defendant/Counterclaimant's Reply in Support of Motion for Attorneys' Fees and Costs</i>
01/24/2020	 Reply in Support Filed By: Counter Defendant JSJBD Corp <i>Defendants' Reply in Support of Motion in Limine No. 14 to Exclude Testimony of Lay Witnesses Regarding Whether Plaintiff Trusted Defendant Paul S. Padda, ESQ.</i>
01/31/2020	 Transcript of Proceedings <i>Transcript of Proceedings: Hearing on All Pending Motions</i>
02/03/2020	 Transcript of Proceedings <i>Transcript of Proceedings: Bench Trial - Day 11/18/2019</i>
02/03/2020	 Transcript of Proceedings <i>Transcript of Proceedings: Bench Trial - Day 2 11/19/2019</i>
02/03/2020	 Transcript of Proceedings <i>Transcript of Proceedings: Bench Trial - Day 3 11/20/19</i>
02/03/2020	 Transcript of Proceedings <i>Transcript of Proceedings: Bench Trial - Day 4 11/21/2019</i>
02/03/2020	 Transcript of Proceedings <i>Transcript of Proceedings: Bench Trial - Day 5 11/22/2019</i>
02/13/2020	 Order Granting Filed By: Counter Claimant Tropicana Investments, LLC <i>Order Granting in Part Defendant's Motion for Attorneys' Fees and Costs</i>
02/13/2020	 Notice of Entry of Order Filed By: Counter Claimant Tropicana Investments, LLC <i>Notice of Entry of Order</i>
02/19/2020	 Order Filed By: Counter Claimant Tropicana Investments, LLC <i>Order Granting in Part and Denying in Part Plaintiff's Motion to Retax Costs</i>
02/19/2020	 Notice of Entry of Order Filed By: Counter Claimant Tropicana Investments, LLC <i>Notice of Entry of Order</i>
02/24/2020	 Order Granting Motion Filed By: Counter Defendant JSJBD Corp <i>Order Granting Plaintiff / Counterdefendants' Motion For Attorney Fees And Costs</i>
02/24/2020	 Notice of Entry of Order Filed By: Counter Claimant Tropicana Investments, LLC <i>Notice of Entry of Order</i>
02/24/2020	 Order Denying Motion

CASE SUMMARY

CASE NO. A-18-785311-B

Filed By: Counter Claimant Tropicana Investments, LLC
Order Denying Defendant's Motion to Alter or Amend Judgment

02/25/2020



Order

Filed By: Counter Claimant Tropicana Investments, LLC
Order Granting in Part and Denying in Part Defendant's Motion to Retax Costs

02/25/2020



Notice of Entry of Order

Filed By: Counter Claimant Tropicana Investments, LLC
Notice of Entry of Order

02/25/2020



Amended Notice of Entry of Order

Filed By: Counter Claimant Tropicana Investments, LLC
Amended Notice of Entry of Order

02/25/2020



Judgment

Filed By: Counter Claimant Tropicana Investments, LLC
Final Judgment

02/25/2020



Notice of Entry of Judgment

Filed By: Counter Claimant Tropicana Investments, LLC
Notice of Entry of Final Judgment

02/25/2020



Notice of Entry of Order

Filed By: Counter Defendant JSJBD Corp
Notice of Entry of Final Judgment

03/16/2020



Notice of Appeal

Filed By: Counter Defendant JSJBD Corp; Counter Defendant White, Jeff; Counter Defendant Vincent, Stuart; Counter Defendant Vincent, Jeffrey
Notice of Appeal

03/16/2020



Case Appeal Statement

Filed By: Counter Defendant JSJBD Corp
Case Appeal Statement

03/25/2020



Notice of Appeal

Filed By: Counter Claimant Tropicana Investments, LLC
Notice of Cross-Appeal

03/25/2020



Case Appeal Statement

Filed By: Counter Claimant Tropicana Investments, LLC
Case Appeal Statement

DISPOSITIONS

07/24/2019

Partial Summary Judgment (Judicial Officer: Gonzalez, Elizabeth)

Debtors: Tropicana Investments, LLC (Defendant)

Creditors: JSJBD Corp (Plaintiff)

Judgment: 07/24/2019, Docketed: 07/24/2019

10/09/2019

Sanctions (Judicial Officer: Gonzalez, Elizabeth)

Debtors: Tropicana Investments, LLC (Defendant)

Creditors: JSJBD Corp (Plaintiff)

Judgment: 10/09/2019, Docketed: 10/10/2019


Total Judgment: 1,000.00

CASE SUMMARY

CASE NO. A-18-785311-B

11/08/2019	<p>Sanctions (Judicial Officer: Gonzalez, Elizabeth) Debtors: JSJBD Corp (Plaintiff) Creditors: Tropicana Investments, LLC (Defendant) Judgment: 11/08/2019, Docketed: 11/08/2019 Total Judgment: 2,000.00</p>
12/05/2019	<p>Judgment (Judicial Officer: Gonzalez, Elizabeth) Debtors: Tropicana Investments, LLC (Defendant) Creditors: JSJBD Corp (Plaintiff) Judgment: 12/05/2019, Docketed: 12/05/2019 Total Judgment: 4,578.00 Comment: Certain Claims Debtors: JSJBD Corp (Plaintiff) Creditors: Tropicana Investments, LLC (Defendant) Judgment: 12/05/2019, Docketed: 12/05/2019 Comment: Certain Claims Debtors: JSJBD Corp (Counter Defendant), Jeff White (Counter Defendant), Stuart Vincent (Counter Defendant), Jeffrey Vincent (Counter Defendant) Creditors: Tropicana Investments, LLC (Counter Claimant) Judgment: 12/05/2019, Docketed: 12/05/2019 Comment: Certain Claim Debtors: Tropicana Investments, LLC (Counter Claimant) Creditors: JSJBD Corp (Counter Defendant), Jeff White (Counter Defendant), Stuart Vincent (Counter Defendant), Jeffrey Vincent (Counter Defendant) Judgment: 12/05/2019, Docketed: 12/05/2019 Comment: Certain Claims</p>
02/13/2020	<p>Order (Judicial Officer: Gonzalez, Elizabeth) Debtors: JSJBD Corp (Plaintiff) Creditors: Tropicana Investments, LLC (Defendant) Judgment: 02/13/2020, Docketed: 02/13/2020 Total Judgment: 222,803.00</p>
02/24/2020	<p>Order (Judicial Officer: Gonzalez, Elizabeth) Debtors: Tropicana Investments, LLC (Counter Claimant) Creditors: JSJBD Corp (Counter Defendant) Judgment: 02/24/2020, Docketed: 02/25/2020 Total Judgment: 126,630.00</p>
02/25/2020	<p>Judgment Plus Interest (Judicial Officer: Gonzalez, Elizabeth) Debtors: Jeff White (Counter Defendant), Stuart Vincent (Counter Defendant), Jeffrey Vincent (Counter Defendant) Creditors: Tropicana Investments, LLC (Defendant) Judgment: 02/25/2020, Docketed: 03/03/2020 Total Judgment: 98,006.46 Comment: Total amount of \$138,675.38 awarded to JSJBD is offset by the amount of \$236,681.84 awarded to Tropicana Investments</p>

HEARINGS

01/28/2019	<p> Mandatory Rule 16 Conference (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Matter Heard; Journal Entry Details:</p>
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APPEARANCES CONTINUED: Bruce Iceman and Stewart Vincent, Client Representatives for the Plaintiff. Per parties' agreement, COURT ORDERED, today is the Joint Case Conference and the filing of the Joint Case Conference Report (JCCR) is WAIVED. Initial disclosures to be made within 30 days. Counsel advised they are not aware of any ESI and confidentiality issues; there is an issue of accounting. COURT ORDERED as follows: Initial expert disclosures where a party bears the burden of proof DUE June 14, 2019; Rebuttal expert disclosures where a party does not bear the burden of proof DUE July 26, 2019; Discovery cut-off SET for September 6, 2019; Motions TO BE FILED by September 27, 2019; Matter SET for a Bench

CASE SUMMARY

CASE NO. A-18-785311-B

Trial on the stack beginning on November 18, 2019. Per the parties' request, matter REFERRED to Judge Denton for a settlement conference on March 22, 2019. Counsel to contact Judge Denton's Executive Assistant if their clients have any issues with this date. Court inquired as to whether the lease agreement includes an attorney's fees provision. Mr. Lovato stated it does. Court inquired of Mr. Moore as to how much the attorney's fees will be up to / before trial. Mr. Moore advised \$40,000 to \$50,000. Court encouraged counsel, that if the parties are not able to settle at the settlement conference, to file an offer of judgment which is the highest amount the party is willing to pay since there is an agreement that is one-sided. At Mr. Lovato's inquiry, Court confirmed depositing monies in dispute with the Court would require an order; however, this account would not have any interest; parties can also do a court-blocked account from which withdrawals cannot be made without court approval, and that would get interest. Mr. Moore stated his hesitation is that they have been paying their lease. Court NOTED it has not ordered anything; Mr. Lovato was just asking a question; if the parties cannot reach a stipulation, counsel can file a motion. Finally, Mr. Lovato advised that there is a counter claim against Jeff White, who is no longer with the company; he does not know how serious these counter claims are but there is a guaranty of an additional \$210 per month, and he is making a request that Mr. White be dropped. Court stated it will let the parties work this out amongst themselves. 3-22-19 9:30 AM SETTLEMENT CONFERENCE (DEPT XIII - Denton) ;

03/22/2019



Settlement Conference (9:30 AM) (Judicial Officer: Denton, Mark R.)

Not Settled;

Journal Entry Details:

Jeff Chauncey, Representative of Tropicana Investments, LLC, present. Bruno Mark and Bruce Eisman, Representatives of Blue Dog's Pub, also present. Following several caucuses back and forth between the parties, Court advised the matter has not resolved; however, it will not terminate the Settlement Conference at this time. COURT ORDERED, matter SET for Status Check in 90 days regarding resumption of settlement conference. Counsel to appear at the Status Check and advise if resumption is warranted. 6/20/19 9:00 AM STATUS CHECK: RESUMPTION OF SETTLEMENT CONFERENCE;

06/20/2019



Status Check (9:00 AM) (Judicial Officer: Denton, Mark R.)

Status Check: Resumption of Settlement Conference

Matter Heard;

Journal Entry Details:

No appearance. Court noted no status has been reported regarding resumption of the Settlement Conference and apparently there is no interest in the same. COURT ORDERED, Settlement Conference TERMINATED.;

07/08/2019

Motion for Summary Judgment (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Motion for Summary Judgment

Denied;

07/08/2019

Opposition and Countermotion (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Plaintiff JSJBD Corp dba Blue Dogs Pub s Opposition To Motion For Partial Summary Judgment And Countermotion For Partial Summary Adjudication

Granted in Part;

07/08/2019



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

MOTION FOR SUMMARY JUDGMENT...PLAINTIFF JSJBD CORP DBA BLUE DOGS PUB'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT AND COUNTERMOTION FOR PARTIAL SUMMARY ADJUDICATION APPEARANCES CONTINUED: Bruce Iceman, Client Representative for the Plaintiff. Following arguments by counsel as to commercial lease dispute, COURT ORDERED, countermotion GRANTED IN PART. The option under the 2007 agreement was properly executed; however, since the option does not include an amount of rent, the Court will need to make a determination at an evidentiary hearing or bench trial related to the appropriate amount of that rent, including whether the tenant waived any claim for lower rent and whether market conditions should influence the Court's determination of rent and whether partial performance has waived a claim to lower rent. Motion for summary judgment DENIED. Counsel for Plaintiff to draft today's order. 9-9-19 9:00 AM STATUS CHECK: TRIAL READINESS 11-12-19 9:30 AM

CASE SUMMARY

CASE NO. A-18-785311-B

CALENDAR CALL 11-18-19 1:30 PM BENCH TRIAL ;

09/09/2019



Status Check: Trial Readiness (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

Upon Court's inquiry, counsel advised the pub is called the Blue Dog's Pub. Mr. Moore advised there is discovery to finish and the parties are working on that. Mr. Lovato advised they have agreed on deposition dates, and that is a minor issue; however, he asked for CAM (Common Area Maintenance) documents in July and still has not received a response; he also sent an email. Court noted that it typically grants an issue such as this when addressed in a motion. Court further noted a "secret subpoena" that was served. Mr. Lovato stated his objection. Mr. Moore advised his secretary served the subpoena on the deponent and forgot to serve it on Mr. Lovato; if the parties cannot work it out, he will understand; however, the deponent is agreeing to appear. Mr. Lovato advised the deponent has changed that and is no longer agreeing to appear. Mr. Moore stated he will file a motion if they cannot resolve the issue. 11-12-19 9:30 AM CALENDAR CALL 11-18-19 1:30 PM BENCH TRIAL;

09/19/2019



Telephonic Conference (1:18 PM) (Judicial Officer: Gonzalez, Elizabeth)

Telephonic Conference re: Issue at Deposition of 30(b)(6) Designee of JSJBD Corp

Matter Heard;

Journal Entry Details:

Following arguments by counsel regarding the 30(b)(6) designee's communications with the landlord, particularly with respect to a 2016 letter that was the subject of a motion for summary judgment that was filed by the Defendant, COURT ORDERED, to the extent Mr. Moore is asking the 30(b)(6) witness if Ms. Miller was authorized to send the letter the witness will answer yes, or no; however, the substance of the communications with Mr. Miller remain privileged. Mr. Moore requested clarification about another question: did you, or any other member of the company ever communicate to the landlord whether or not Mr. Miller was authorized or not authorized to make that representation? Court NOTED that is a different issue and is not privileged. Court FURTHER NOTED that it is concerned about Mr. Lovato's relevance objection; while it understands the nature of the issue, the Court ruled on summary judgment, but that does not eliminate the letter from the discovery process; Mr. Moore to only ask yes or no questions and rephrase to keep them shorter. 11-12-19 9:30 AM CALENDAR CALL 11-18-19 1:30 PM BENCH TRIAL;

10/02/2019



Motion to Compel (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Plaintiff JSJBD Corp's Motion To Compel Production Of Documents

Granted; \$1,000 attorney's fees awarded

Journal Entry Details:

APPEARANCES CONTINUED: Bruce Eisman, Client Representative for Plaintiff. Following arguments by counsel, COURT ORDERED, within one (1) week or by close of business next Wednesday, October 9, 2019, Mr. Moore's client will COMPLY full with requests for production 2, 3, 4, 7, 8, 9, 10, and 11. \$1,000 in attorney's fees AWARDED. If Mr. Moore's client cannot find the records a certification of efforts needs TO BE PROVIDED as to what the client did and why he could not find the information. Mr. Lovato to prepare today's order and run it by Mr. Moore prior to submission. 10-9-19 9:00 AM COUNTERCLAIMANT'S MOTION TO CORRECT ORDER OF THE COURT ON ORDER SHORTENING TIME...DEFENDANT/COUNTERCLAIMANT TROPINANA INVESTMENTS LLC'S MOTION FOR SANCTIONS FOR (I) JSJBD CORP'S FAILURE TO PRESENT A KNOWLEDGEABLE DESIGNEE AND (II) FOR LEAVE TO TAKE DEPOSITION ON ORDER SHORTENING TIME 11-4-19 9:00 AM DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION IN LIMINE TO PRECLUDE TESTIMONY OF EXPERTS WHOSE OPINIONS WERE NOT TIMELY DISCLOSED 11-12-19 9:30 AM CALENDAR CALL 11-18-19 1:30 PM BENCH TRIAL;

10/09/2019

Motion for Sanctions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Defendant/Counterclaimant Tropinana Investments LLC's Motion for Sanctions for (I) JSJBD Corp's Failure to Present a Knowledgeable Designee and (II) For Leave to Take Deposition on Order Shortening Time

Granted in Part; \$2,000 attorney's fees awarded

10/09/2019

Motion (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Counterclaimant's Motion to Correct Order of the Court on Order Shortening Time

CASE SUMMARY

CASE NO. A-18-785311-B

Matter Heard;

10/09/2019



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

COUNTERCLAIMANT'S MOTION TO CORRECT ORDER OF THE COURT ON ORDER SHORTENING TIME...DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS LLC'S MOTION FOR SANCTIONS FOR (I) JSJBD CORP'S FAILURE TO PRESENT A KNOWLEDGEABLE DESIGNEE AND (II) FOR LEAVE TO TAKE DEPOSITION ON ORDER SHORTENING TIME Proposed order from previous hearing signed in open court and returned to Mr. Lovato for filing. COUNTERCLAIMANT'S MOTION TO CORRECT ORDER OF THE COURT ON ORDER SHORTENING TIME: Mr. Moore advised he did not get a chance to file a reply because he got the opposition yesterday, but he is asking the Court not to change its mind and that the order should reflect what the Court said. Court read the transcript and NOTED that it understands that there could be some confusion, and, if there was not a system where the judge handles the case from beginning to end it might be an issue; however, those are the things that they are trying. Today the Court has discussed the contents of the order with counsel; the Court does not believe the order needs to be modified, but the Court understands counsel's position and has clarified the issues they will deal with at trial given the limited granting of the counter motion. Mr. Moore does not need to prepare an order, but if he wants to he can do one and will need to run it by Mr. Lovato. Court further noted that today's motion is not denied; the Court had a discussion with counsel, and the Court does not believe a correction needs to occur. DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS LLC'S MOTION FOR SANCTIONS FOR (I) JSJBD CORP'S FAILURE TO PRESENT A KNOWLEDGEABLE DESIGNEE AND (II) FOR LEAVE TO TAKE DEPOSITION ON ORDER SHORTENING TIME: Following arguments by Mr. Moore and Mr. Lovato, COURT ORDERED, motion GRANTED IN PART. With respect to any answer related to a communication for which the answer was "I don't know", the communication sent by JSJBD's lawyers were duly authorized to be sent by JSJBD and JSJBD is bound by the representations made in those communications. The Court will NOT GRANT court reporter's expenses related to the no-shows as those can be taxable at the end of the case. COURT ORDERED, \$2,000 in attorney's fees are AWARDED to be paid in ten (10) days from entry of the order. 11-4-19 9:00 AM DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION IN LIMINE TO PRECLUDE TESTIMONY OF EXPERTS WHOSE OPINIONS WERE NOT TIMELY DISCLOSED 11-12-19 9:30 AM CALENDAR CALL 11-18-19 1:30 PM BENCH TRIAL;

11/04/2019

Motion in Limine (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Defendant/Counterclaimant Tropicana Investments, LLC's Motion in Limine to Preclude Testimony of Experts Whose Opinions Were Not Timely Disclosed
Granted;

11/04/2019

Opposition and Countermotion (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Plaintiff JSJBD Corp s Opposition To Motion To Preclude Testimony Of Experts Whose Opinions Were Not Timely Disclosed And Alternatively, Countermotion In Limine To Exclude Defendant s Untimely Expert Report And Testimony, And Allow Plaintiff s Timely Initial Expert Report And Testimony
Denied;

11/04/2019



All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION IN LIMINE TO PRECLUDE TESTIMONY OF EXPERTS WHOSE OPINIONS WERE NOT TIMELY DISCLOSED...PLAINTIFF JSJBD CORP'S OPPOSITION TO MOTION TO PRECLUDE TESTIMONY OF EXPERTS WHOSE OPINIONS WERE NOT TIMELY DISCLOSED AND ALTERNATIVELY, COUNTERMOTION IN LIMINE TO EXCLUDE DEFENDANT S UNTIMELY EXPERT REPORT AND TESTIMONY, AND ALLOW PLAINTIFF'S TIMELY INITIAL EXPERT REPORT AND TESTIMONY Following arguments by counsel, COURT ORDERED, motion in limine GRANTED. Counter Motion DENIED. However, the denial of the counter motion does not permit the expert from criticizing the information contained in the other report, including factual allegations that are inaccurate. Mr. Moore to prepare the order and run it by Mr. Lovato prior to submission to the Court. 11-12-19 9:30 AM CALENDAR CALL 11-18-19 1:30 PM BENCH TRIAL;

CASE SUMMARY

CASE NO. A-18-785311-B

11/12/2019



Calendar Call (9:30 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

Per the parties' agreement, COURT ORDERED, bench trial SET to commence on Monday, November 18 at 10 am. Proposed findings of fact and conclusions of law in Microsoft Word format to be emailed to the Department by 9 am on November 18. 11-18-19 9:00 AM BENCH TRIAL;

11/18/2019



Bench Trial (10:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

11/18/2019-11/22/2019

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Decision Made;

Journal Entry Details:

Jeffrey Chauncey, Client Representative for the Defendant, also present. Testimony and Exhibits provided (see worksheets). Mr. Moore renewed Defendant's 56(c) Motions. Upon counsel's inquiry, Court advised the Court would rule on the "any reasonable fact finder" standard. Arguments by counsel with regard to Defendant's 56(c) Motions. COURT ORDERED, motions DENIED. Closing arguments by counsel. COURT FURTHER ORDERED, matter taken UNDER ADVISEMENT; Court SET for Status Check: Court's Decision in Chambers. TRIAL ENDS. 12/06/19 3:00 AM STATUS CHECK: COURT'S DECISION;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Decision Made;

Journal Entry Details:

DAY 4 APPEARANCES CONTINUED: Jeffrey Chauncey, present with Mr. Moore and Mr. Jayne. At the hour of 11:02 am, Plaintiff RESTED. Mr. Moore moved for judgment on partial findings pursuant to 52(c). Mr. Moore argued they should be entered because the complaint alleged breach of contract, breach of implied covenant of good faith and fair dealing, declaratory relief as it relates to damages suffered related to repair and maintenance issues. Mr. Lovato responded the Plaintiffs are no longer seeking damages for repair and maintenance are VOLUNTARILY DISMISSING that. COURT SO ORDERED. Mr. Moore argued that Plaintiffs have also failed to establish damages allegedly suffered related to the CAMS. Following response by Mr. Lovato and reply by Mr. Moore, COURT ORDERED, motion DENIED because part of the damages assessed in that type of claim relates to attorney's fees related to this litigation. Mr. Moore argued that this is not necessarily pled in the complaint but the Plaintiffs are arguing about this \$50,000 that Mark Van Aken paid. COURT NOTED this is not part of the complaint. Mr. Moore argued 52(c) relief is appropriate as it is being argued that the parties agreed reasonable market rent would be the basis for the option periods in 2007 lease modification; however, based on Exhibit 4 and the testimony of Jeff and Stuart Vincent, regarding repeated attempts to get the landlord to include the term fair market value in the determination of the basis for the options, this was repeatedly rejected and they admitted that, and they nevertheless proceeded to sign the 2007 lease modification with the rental increases language. COURT ORDERED, given Exhibit 7, motion DENIED. Mr. Moore further argued as to the issues on estoppel and part performance. Following response by Mr. Lovato and reply by Mr. Moore, COURT ORDERED, at the rule 52 standard the Court does not weigh credibility and cannot grant 52(c) relief. Defendant's case-in-chief commenced. Testimony and exhibits presented. (See worksheet.) LUNCH RECESS. Testimony and exhibits continued. COURT ORDERED, trial CONTINUED. EVENING RECESS. 11-22-19 9:15 AM BENCH TRIAL;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Decision Made;

Journal Entry Details:

DAY 3 APPEARANCES CONTINUED: Jeffrey Chauncey, present with Mr. Moore and Mr.

CASE SUMMARY

CASE NO. A-18-785311-B

Jayne. Testimony and exhibits presented. (See worksheet.) LUNCH RECESS. Testimony and exhibits continued. COURT ORDERED, trial CONTINUED. EVENING RECESS. 11-21-19 9:30 AM BENCH TRIAL;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Decision Made;

Journal Entry Details:

DAY 2 APPEARANCES CONTINUED: Jeffrey Chauncey, present with Mr. Moore and Mr. Jayne. Testimony and exhibits presented. (See worksheet.) LUNCH RECESS. Testimony and exhibits continued. COURT ORDERED, trial CONTINUED. EVENING RECESS. 11-20-19 9:30 AM BENCH TRIAL;

MINUTES

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Decision Made;

Journal Entry Details:

DAY 1 APPEARANCES CONTINUED: Mr. Iceman, present with Mr. Lovato; Jeffrey Chauncey, present with Mr. Moore and Mr. Jayne. With the Court's permission, ORDER GRANTING DEFENDANT'S MOTION IN LIMINE AND DENYING PLAINTIFF'S COUNTERMOTION FILED IN OPEN COURT and copies distributed to the parties. Colloquy regarding proposed exhibits. Opening statements. LUNCH RECESS. Proceeding resumed. COURT ADMITTED proposed exhibits per parties' stipulation. (See worksheet.) Testimony and exhibits presented. (See worksheet.) COURT ORDERED, trial CONTINUED. EVENING RECESS. 11-19-19 9:45 AM BENCH TRIAL;

12/06/2019



Status Check (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Status Check: Court's Decision

Matter Heard;

Journal Entry Details:

Decision filed.;

01/17/2020

Motion to Retax (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

01/17/2020, 01/27/2020

Defendant's Counter Claimant's Motion to Retax Costs

Hearing Set;

Granted;

Hearing Set;

Granted;

01/17/2020

Motion to Retax (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

01/17/2020, 01/27/2020

Plaintiff / Counterdefendants' Motion to Retax Costs

Hearing Set;

Granted;

Hearing Set;

Granted;

01/17/2020



All Pending Motions (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Minute Order - No Hearing Held;

Journal Entry Details:

PLAINTIFF / COUNTERDEFENDANTS' MOTION TO RETAX COSTS...DEFENDANT'S COUNTER CLAIMANT'S MOTION TO RETAX COSTS COURT ORDERED, the motions to retax and the motions for attorneys' fees (originally set on January 31, 2020) RESET on Monday, January 27, 2020 at 9 am to be heard with the motion to alter or amend. 1-27-20 9:00 AM PLAINTIFF / COUNTERDEFENDANTS' MOTION TO RETAX COSTS... ...DEFENDANT'S COUNTER CLAIMANT'S MOTION TO RETAX COSTS... ...DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION TO ALTER OR AMEND JUDGMENT... ...DEFENDANT/COUNTERCLAIMANT TROPICANA

CASE SUMMARY


CASE NO. A-18-785311-B

INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND COSTS... ..PLAINTIFF / COUNTERDEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS CLERK'S NOTE: A copy of this minute order was distributed to the parties via electronic mail. / dr 1-21-20;

01/27/2020 **Motion for Attorney Fees and Costs (9:00 AM)** (Judicial Officer: Gonzalez, Elizabeth)
Plaintiff / Counterdefendants' Motion for Attorney Fees and Costs
Granted;

01/27/2020 **Motion to Amend Judgment (9:00 AM)** (Judicial Officer: Gonzalez, Elizabeth)
Defendant/Counterclaimant Tropicana Investments, LLC's Motion to Alter or Amend Judgment
Denied;




01/27/2020 **Motion for Attorney Fees and Costs (9:00 AM)** (Judicial Officer: Gonzalez, Elizabeth)
01/27/2020, 01/31/2020, 02/07/2020, 02/13/2020
Defendant/Counterclaimant Tropicana Investments, LLC'S Motion for Attorneys' Fees and Costs
Granted; continued to chambers for reduction
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;
Granted; continued to chambers for reduction
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;
Granted; continued to chambers for reduction
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;
Granted; continued to chambers for reduction
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;

01/27/2020  **All Pending Motions (9:00 AM)** (Judicial Officer: Gonzalez, Elizabeth)
Matter Heard;
Journal Entry Details:
Colloquy regarding the prevailing party. Following arguments by counsel, COURT ORDERED as follows: DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION TO ALTER OR AMEND JUDGMENT: Motion to alter or amend DENIED. Court noted it was clear that the breach of the covenant of good faith and fair dealing was a mechanism by which the Plaintiffs could seek attorney's fees because of the nature of that claim, as the attorney's fees were expended as a result of the breach of the covenant. In addition, the Defendant is entitled to attorney's fees under paragraph 24 of the lease regardless of whether they are the prevailing parties. Mr. Moore inquired about the rent being miscalculated. Court disagreed. Mr. Moore directed the Court to page 17 of the motion to alter or amend. Mr. Lovato disagreed with the calculation on page 17; the Plaintiffs actually tendered payment of the net amount and the Defendants refused it and sent it back. Mr. Lovato further argued he could not find a reasoning for why the Court's determination was wrong. Court reiterated it is not inclined to grant the motion and referred counsel to paragraph 61 of the findings, although the Court was not looking at a filed copy, and to footnote 6 where the Court did the calculation. Mr. Moore respectfully disagreed with the calculation and argued further. Court further noted it was based on evidence admitted at trial and the Court's interpretation of the testimony given. PLAINTIFF / COUNTERDEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS: Motion GRANTED. After evaluating the Brunzell factors, the Plaintiff is AWARDED the attorney's fees requested of \$126,630. DEFENDANT'S COUNTER CLAIMANT'S MOTION TO RETAX COSTS...PLAINTIFF / COUNTERDEFENDANTS' MOTION TO RETAX COSTS: Both motions GRANTED; neither party is entitled to excess expert witness fees. Plaintiff is not entitled to any expenses for the bookkeeper entry. The Defendant is not entitled to any standing expenses. DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND COSTS: The Court will not award the full amount of the \$219,775 requested by the Defendants' counsel, because the Court does not believe it is appropriate to award for two attorneys for the trial.

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-18-785311-B

	<p><i>Counsel for Defendants to prepare a reduction of the second attorney's time for trial and send it to Mr. Lovato prior to submission to the Court. Court noted both sides have argued apportionment and the Court understands their positions, but everything was interrelated in this case. COURT DIRECTED each side to provide the Court with a revised judgment that includes whatever amount they won in trial plus attorney's fees and adjusted costs, and the Court will assume there will be a set-off between the two sides and someone will win when the math is done. 1-31-20 CHAMBERS DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND COSTS...STATUS CHECK: REDUCTION;</i></p>
01/31/2020	<p>Status Check (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth) 01/31/2020, 02/07/2020, 02/13/2020 <i>Status Check: Reduction</i> Matter Continued; Matter Continued; Minute Order - No Hearing Held; Matter Continued; Matter Continued; Minute Order - No Hearing Held; Matter Continued; Matter Continued; Minute Order - No Hearing Held;</p>
01/31/2020	<p> All Pending Motions (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Minute Order - No Hearing Held; Journal Entry Details: <i>STATUS CHECK: REDUCTION...DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND COSTS No additional information provided by Mr. Moore. COURT ORDERED, matter CONTINUED for one week. 2-7-20 CHAMBERS STATUS CHECK: REDUCTION...DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND COSTS CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 2-3-20 ;</i></p>
02/07/2020	<p> All Pending Motions (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Minute Order - No Hearing Held; Journal Entry Details: <i>DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND COSTS...STATUS CHECK: REDUCTION Court has not received the requested information by timekeeper. COURT ORDERED, matter CONTINUED for one week. CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 2-7-20 ;</i></p>
02/13/2020	<p> All Pending Motions (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Minute Order - No Hearing Held; Journal Entry Details: <i>DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND COSTS...STATUS CHECK: REDUCTION Matters ADVANCED from the February 14, 2020 chambers calendar. Court executed orders. CASE CLOSED. CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 2-13-20;</i></p>

DATE

FINANCIAL INFORMATION

Counter Claimant Tropicana Investments, LLC	
Total Charges	1,854.00
Total Payments and Credits	1,854.00
Balance Due as of 3/27/2020	0.00
Counter Defendant JSJBD Corp	
Total Charges	2,037.00
Total Payments and Credits	2,037.00
Balance Due as of 3/27/2020	0.00

CASE SUMMARY

CASE NO. A-18-785311-B

Counter Claimant Tropicana Investments, LLC
Appeal Bond Balance as of 3/27/2020

500.00

BUSINESS COURT CIVIL COVER SHEET

A-18-785311-B

Clerk County, Nevada
Case No. _____
(Assigned by Clerk's Office)

Department 11

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): <div style="text-align: center; padding: 5px;">JSJBD Corp</div>	Defendant(s) (name/address/phone): <div style="text-align: center; padding: 5px;">Tropicana Investments, LLC</div>
Attorney (name/address/phone): <div style="text-align: center; padding: 5px;">Mario P Lovato, 7465 W Lake Mead Blvd Ste 100 Las Vegas, NV 702-979-9047</div>	Attorney (name/address/phone): <div style="text-align: center; padding: 5px;">N/A</div>

II. Nature of Controversy (Please check the applicable boxes for both the civil case type and business court case type)

☐ Arbitration Requested

Civil Case Filing Types		Business Court Filing Types		
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Torts Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort	CLARK COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-89 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Mergers (NRS 92A) <input type="checkbox"/> Uniform Commercial Code (NRS 104) <input type="checkbox"/> Purchase/Sale of Stock, Assets, or Real Estate <input type="checkbox"/> Trademark or Trade Name (NRS 600) <input type="checkbox"/> Enhanced Case Management <input checked="" type="checkbox"/> Other Business Court Matters		
Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Civil Writs <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	WASHOE COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Investments (NRS 104 Art.8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademark/Trade Name (NRS 600) <input type="checkbox"/> Trade Secrets (NRS 600A) <input type="checkbox"/> Enhanced Case Management <input type="checkbox"/> Other Business Court Matters		
Judicial Review/Appeal/Other Civil Filing <table style="width: 100%;"> <tr> <td style="width: 50%;"> Judicial Review <input type="checkbox"/> Foreclosure Mediation Case Appeal Other <input type="checkbox"/> Appeal from Lower Court </td> <td style="width: 50%;"> Other Civil Filing <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters </td> </tr> </table>		Judicial Review <input type="checkbox"/> Foreclosure Mediation Case Appeal Other <input type="checkbox"/> Appeal from Lower Court	Other Civil Filing <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	
Judicial Review <input type="checkbox"/> Foreclosure Mediation Case Appeal Other <input type="checkbox"/> Appeal from Lower Court	Other Civil Filing <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters			

11/30/18
Date

[Signature] #7427
Signature of initiating party or representative

AMENDED BUSINESS COURT CIVIL COVER SHEET

Department 11

County, Nevada
 Case No. **Clark A-18-785311-B**
 (Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): JSJBD Corp.	Defendant(s) (name/address/phone): Tropicana Investments, LLC
Attorney (name/address/phone): Mario P. Lovato, Esq. 7465 W Lake Mead Blvd Ste 100 Las Vegas, NV 89128 702-979-9047	Attorney (name/address/phone): N/A

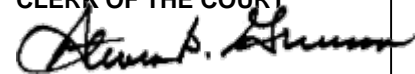
II. Nature of Controversy (Please check the applicable boxes for both the civil case type and business court case type)

☐ Arbitration Requested

Civil Case Filing Types		Business Court Filing Types		
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Torts Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort	CLARK COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-89 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Mergers (NRS 92A) <input type="checkbox"/> Uniform Commercial Code (NRS 104) <input type="checkbox"/> Purchase/Sale of Stock, Assets, or Real Estate <input type="checkbox"/> Trademark or Trade Name (NRS 600) <input type="checkbox"/> Enhanced Case Management <input checked="" type="checkbox"/> Other Business Court Matters		
Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input checked="" type="checkbox"/> Other Contract	Civil Writs <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	WASHOE COUNTY BUSINESS COURT <input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Investments (NRS 104 Art.8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademark/Trade Name (NRS 600) <input type="checkbox"/> Trade Secrets (NRS 600A) <input type="checkbox"/> Enhanced Case Management <input type="checkbox"/> Other Business Court Matters		
Judicial Review/Appeal/Other Civil Filing <table border="0"> <tr> <td> Judicial Review <input type="checkbox"/> Foreclosure Mediation Case Appeal Other <input type="checkbox"/> Appeal from Lower Court </td> <td> Other Civil Filing <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters </td> </tr> </table>		Judicial Review <input type="checkbox"/> Foreclosure Mediation Case Appeal Other <input type="checkbox"/> Appeal from Lower Court	Other Civil Filing <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	
Judicial Review <input type="checkbox"/> Foreclosure Mediation Case Appeal Other <input type="checkbox"/> Appeal from Lower Court	Other Civil Filing <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters			

12/03/18
 Date

[Signature] #7427
 Signature of initiating party or representative



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a California limited liability company,

Defendant.

Case No.: A-18-785311-B

Dept.: XI

AND RELATED CLAIMS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

52

This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez beginning on November 18, 2019, and continuing day to day, until its completion on November 22, 2019; Mario Lovato, Esq. appeared on behalf of Plaintiff/Counterdefendants ("Plaintiff") and Terry A. Moore, Esq. and Collin Jayne, Esq. appeared on behalf of Defendant/Counterclaimant Tropicana Investments, LLC ("Defendant"); the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the testimony of the witnesses called to testify and weighing their credibility;¹ having considered the oral and written arguments of counsel, and with the intent of

1 The Court previously entered orders binding the Plaintiff to the answers and testimony given during deposition by its NRCP 30(b)(6) representative and ordering that with respect to any "I don't know" or similar answers related to topics for which the NRCP 30(b)(6) witness testified. The Court also ruled that with respect to communications made by prior counsel, those communications were authorized to be sent by Plaintiff and the Plaintiff is bound by the representations made in those communications.

1 rendering a decision on all remaining claims² before the Court,³ pursuant to NRCP 52(a) and 58;
2 the Court makes the following findings of fact and conclusions of law:

3 FINDINGS OF FACT

4 1. Plaintiff JSJBD Corp ("JSJBD") is a Nevada corporation doing business in Clark
5 County, Nevada.

6 2. Defendant Tropicana Investments, LLC ("Tropicana Investments") is a California
7 limited liability company doing business in Clark County, Nevada.

8 3. JSJBD was formed on March 8, 2007.

9 4. JSJBD was formerly named JSJ, LLC that filed Articles of Conversion under NRS
10 92A.205 with the Nevada Secretary of State on March 6, 2014, which changed the name of the
11 entity and converted it to a corporation.

12 5. Tropicana Investments owns the commercial shopping center commonly referred
13 to as Tropicana Plaza located at 3430 East Tropicana Avenue, Las Vegas, Nevada, 89121.

14 6. JSJBD does business as Blue Dog's Pub, and owns and operates a tavern in Suites
15 27, 28, and 29 comprising a space of approximately 4,200 square feet ("Subject Premises") in
16 Tropicana Plaza.

17 7. On or about July 9, 1996, Walter L. Schwartz ("Schwartz"), as lessor, and Mark S.
18 Van Aken ("Van Aken"), as tenant, entered into a written Lease ("Lease") for the Subject
19 Premises.

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24 ² Plaintiff's Complaint asserts three causes of action: (1) declaratory relief, (2) breach of
25 contract, and (3) breach of implied covenant of good faith and fair dealing. Defendant's
26 Counterclaim asserts four causes of action: (1) declaratory judgment, (2) breach of lease
27 agreement, (3) breach of the implied covenant of good faith and fair dealing, and (4) execution
28 and issuance of writ of restitution.

³ Plaintiff voluntarily abandoned its claim of damages from repair and maintenance issues.

1 8. Tropicana Investments is the successor-in-interest and current landlord under the
2 Lease entered into on July 9, 1996, and various Amendments/Addenda, for the Subject Premises.

3 9. Plaintiff is the successor-in-interest and current tenant under the Lease, and
4 various Amendments/Addenda for the Subject Premises.

5 10. The Lease provided for a tenancy lasting for a term of five years and five months,
6 commencing April 1, 1996, and terminating on August 31, 2001.

7 11. During the initial term of the Lease, from April 1, 1996 to August 31, 2001, the
8 minimum monthly rent began at \$3,150 per month, and this monthly rent increased by \$210 at the
9 beginning of every year of the five-year and five month term.

10 12. The 1996 Lease referenced \$500 per month in "estimated" common area
11 maintenance ("CAM") charges, which were subject to the quarterly accounting of actual CAM
12 costs.

13 13. The CAM costs are defined in the Lease:

14 to include but not limited to all upgrading, general maintenance and repairs, resurfacing,
15 rubbish removal, painting, restripping, cleaning, sweeping and janitorial services, personnel
16 to implement such services including property management fees for the entire parcel and
17 to police the automobile parking and common areas: real and personal property taxes and
18 assessment thereon, Water.

19 Insurance, including but not limited to General Liability and Property Damages, Fire
20 Hazard on Demised Premises, Building.

21 Common Areas and Parking Lot. A reasonable allowance to Landlord for Landlord's
22 administrative expenses of said automobile parking and common areas no to excess in any
23 calendar year fifteen percent of the total of the aforementioned expenses for said calendar
24 year.

25 (various errors in original).

26 14. Under Paragraph 7 of the Lease, Landlord is obligated to keep "common areas in a
27 neat, clean, and orderly condition, properly lighted and landscaped, and shall improve and repair
28 any damage to the facilities. The Lease further states: "[A]ll expenses in connection with said

1 automobile parking and common areas shall be charged and prorated in the manner herein after
2 [sic] set forth.”

3 15. Under paragraph 9 of the Lease, Roof expenses are carved-out and made the sole
4 obligation of the Landlord. The Lease states: “**Landlord shall at his sole cost and expense, keep**
5 **and maintain in good repair**, (excluding painting) of extension walls and **roof repairs . . .**”
6 (emphasis added).
7

8 16. Section 24 of the Lease contains an attorney’s fees provision.⁴

9 17. The Lease did not include any options to extend the term of the Lease. A separate
10 Option Agreement was executed by the original landlord and tenant (“1996 Option Agreement”).
11

12 18. The 1996 Option Agreement provided two (2) five-year options if the tenant was
13 in full compliance with the terms of the Lease. The first option provided that the tenant would be
14 entitled to renew the Lease for a five-year period commencing on September 1, 2001. The
15 second option provided that the tenant would be entitled to renew the Lease for a second five-year
16 period commencing on September 1, 2006.

17 19. The options provided by the 1996 Option Agreement were to be “at a market
18 rental rate and terms as agreed by Landlord and Tenant.”
19

20 20. On April 16, 2001, Van Aken exercised the first option under the 1996 Option
21 Agreement. As a result of the exercise of that Option, an Amendment to Retail Building Lease
22 Dated July 9, 1996 (“2001 Amendment”) was executed. The 2001 Amendment extended the
23 Lease term for five (5) years, from September 1, 2001 through August 31, 2006. During the
24 extended term, the parties agreed that the base rent would begin at \$5,670 per month, and that this
25

26 ⁴ That section states:

27 In the event the Landlord finds it necessary to retain an attorney in connection with the
28 default by the Tenant in any of the agreements or covenants contained in this Lease,
Tenant shall pay reasonable attorney’s fees to said attorney.

1 monthly rent would increase by \$210 at the beginning of every year, ending at \$6,510 per month
2 for the final year.

3 21. Paragraph 4 of the 2001 Amendment changed the documentation and accounting
4 for CAM expenses from quarterly to annual.

5 22. On March 7, 2006, Van Aken exercised the second option under the 1996 Option
6 Agreement. The Addendum to Retail Building Lease Dated July 9, 1996 ("2006 Addendum")
7 extended the tenancy for a term of five (5) years, from September 1, 2006 through August 31,
8 2011. During the extended term, it was agreed that the base rent would begin at \$6,720 per
9 month for the 2006–2007 year, and that this monthly rent would increase by \$210 at the
10 beginning of every year, ending at \$7,560 per month for the final year.

11 23. The 2006 Addendum gave Van Aken an option to extend the Lease term for "one
12 (1) final extension term of five (5) years," to begin on September 1, 2011, and provided that such
13 extension term would be "under terms and conditions to be negotiated."

14 24. In approximately 2007, Van Aken, sold the assets of his bar located in the Subject
15 Premises to JSJ, LLC.

16 25. Defendant, Van Aken, as assignor, and Plaintiff as assignee, entered into a Lease
17 Assignment and Modification agreement executed by all parties in June 2007 ("2007 Lease
18 Modification").

19 26. As part of the negotiations leading up to the 2007 Lease Modification, JSJ, LLC
20 attempted to add a term of "fair market value" for the rental rate in the Lease. The addition of
21 this term was rejected by Defendant.

22 27. After the Defendant rejected "fair market value" as a term, Plaintiff signed the
23 2007 Lease Modification with the wording requiring "rental increases."

1 28. The 2007 Lease Modification stated that it is the desire of all parties to allow Van
2 Aken to assign the Lease, the 2001 Amendment, and 2006 Addendum to the Assignee, Plaintiff,
3 under terms and conditions as set forth in the 2007 Lease Modification.

4 29. The 2007 Lease Modification provided a new provision conditionally granting the
5 Plaintiff three additional options to extend the Lease by five years at a time:
6

7 ...Landlord agrees to conditionally grant Assignee, J.S.J., LLC,
8 three (3) additional five (5) year options to renew the term of the
9 Lease under terms and conditions, including but not limited to
10 rental increases, to be negotiated. The conditional options shall
commence after August 31, 2016, provided Assignee has timely
complied with all terms and conditions of the Lease.

11 30. The 2007 Lease Modification regarding the three five-year options does not
12 include the term "fair market value."

13 31. The 2007 Lease Modification was entered into after the exercise of all prior
14 options by Plaintiff's predecessor in interest.

15 32. The 2007 Lease Modification changed the "estimated" CAM charge to \$1,176 per
16 month, but did not otherwise alter or change the accounting obligation of Defendant and/or the
17 other obligations of Defendant to properly charge for actual CAM expenses under the Lease.

18 33. The 2007 Lease Modification provided that Van Aken would pay Defendant ten
19 percent (10%) of the total sales price of the business as consideration for the Defendant offering
20 Plaintiff the three additional five-year options.
21

22 34. Concurrently with the execution of the 2007 Lease Modification, the three
23 managers of JSJ, LLC—Jeffrey Vincent, Stuart Vincent, and Jeff White—each executed a
24 personal guaranty of JSJ, LLC's obligations under the Lease.
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1 35. On or about February 22, 2011, Defendant and Plaintiff entered into a written
2 Addendum II to Retail Building Lease ("2011 Addendum") which gave effect to the option⁵
3 exercised by Plaintiff and set forth the amount of rent that was agreed upon for the term.

4 36. The 2011 Addendum extended the term of the Lease from September 1, 2011 to
5 August 31, 2016.
6

7 37. In the 2011 Addendum, Defendant and Plaintiff agreed that the monthly rent for
8 the first two years of the first option term (September 2011 through August 2012, and September
9 2012 through August 2013) would remain at the same rate as was paid the prior year (September
10 2010 through August 2011), and that the regular annual increases of monthly rent by \$210 would
11 resume thereafter at the beginning of each of the remaining three (3) years of the option (from
12 September 1, 2013, through August 31, 2016). Monthly rent remained at \$7,560 through August
13 31, 2013; increased by \$210 on September 1, 2013, to \$7,770; increased by \$210 on September 1,
14 2014 to \$7,980; and increased by \$210 on September 1, 2015 to \$8,190.
15

16 38. On February 26, 2016, Plaintiff notified Defendant that it was exercising its option
17 available under the 2007 Lease Modification, to commence on September 1, 2016.

18 39. During the negotiations on the terms of the modification to implement the option,
19 Plaintiff requested a \$2,500 reduction in monthly rent - a 30% reduction in the rental rate.
20

21 40. Defendant did not accept this request.

22 41. Defendant informed Plaintiff that, instead of exercising another addenda or
23 amendment as the parties had done in the past to effectuate the exercise of options, Defendant
24 preferred to execute an entirely new form of Lease to replace the outdated form of lease.
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27 ⁵ This option was the first of the three 5-year options granted under the 2007 Lease
28 Modification.

1 42. On June 15, 2016, Defendant's authorized agent, Commercial Investment Real
2 Estate Services, extended an offer in writing to Plaintiff that, among other terms, proposed the
3 amount of base rent for the initial year of the lease extension to remain the same as the previous
4 year (2015–2016), which amounted to \$8,190 per month with 3% annual increases thereafter.

5
6 43. On August 2, 2016, Lesley B. Miller, Esq. of the law firm Kaempfer Crowell,
7 notified Landlord that she represented Plaintiff. Miller requested that the payment of base rent
8 for the first year of the five-year renewal term would remain the same as the previous year
9 (9/1/2015–8/31/2016).

10 44. On August 31, 2016, Miller again reiterated the exercise of the option rights under
11 the Lease to renew for an additional five-year term. Miller attached a proposed amendment to the
12 Lease which provided for the following rent schedule:

13
14 09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum
15 09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum
16 09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum
17 09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum
18 09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum

19 45. On September 7, 2016, Defendant's counsel, John M. Sacco, Esq., sent
20 correspondence to Miller discussing several other issues including: parking, CAMs, security
21 patrols, and issues related to personal guaranties. No mention of rejecting the amount of rent was
22 set forth in Sacco's letter. He confirmed that the parking, CAMs, security patrols and guaranty-
23 related issues were the "final matters" that the parties were attempting to work through.

24 46. Sacco called Miller to let her know that the Defendant agreed with the rent
25 schedule as she had proposed in her August 31st addendum and he reiterated that he thought the
26 other issues set forth in his letter were the final matters that needed to be resolved.

27 47. Consistent with the parties' agreement, the Plaintiff began paying \$8,400 per
28 month in September 2016. The Plaintiff paid this sum through August 2017. These monthly

1 rental payments were accepted by the Defendant, and Plaintiff remains in possession of the
2 premises to date.

3 48. At no point during the first year of the Option Term (9/1/16 – 8/31/17) did the
4 Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the
5 Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it
6 was making such payments to preserve its rights under the option agreements.
7

8 49. Although the parties reached an agreement on the rent amounts for the option
9 term, and Plaintiff then paid consistent with that agreement, Plaintiff and Defendant, through their
10 respective counsel, exchanged drafts of a proposed updated standardized lease form during the
11 next twelve months in an attempt to update the remaining non-rent portions of the twenty-year old
12 Lease.
13

14 50. During that time frame, the parties' conduct was consistent with the parties having
15 agreed to the rent term of the Option, as Plaintiff paid the full amount of rent in accordance with
16 the agreement reached in September 2016, Plaintiff continuously occupied the Premises, and both
17 Plaintiff and Defendant performed their obligations under the Lease without protest or dispute.

18 51. On August 7, 2017, Plaintiff, through new counsel, Lucas A. Grower, Esq., sent
19 Defendant correspondence advising that Grower would be representing Plaintiff.
20

21 52. On August 31, 2017, the Plaintiff, through its new counsel, demanded that Lease
22 negotiations be restarted for the base rent on the basis of "market rental rate and terms".

23 53. Defendant's attorney disagreed with Plaintiff's new position, maintaining that the
24 parties had reached an agreement as to rent, and that the option did not provide for negotiations
25 based on market rental rate.
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1 54. Beginning in September of 2017, Plaintiff continued to pay monthly rent of
2 \$8,400. Payment of this amount was consistent with the second year of the rent schedule that had
3 been agreed upon by the parties.

4 55. At no point during the second year of the Option Term (9/1/17 – 8/31/18) did the
5 Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the
6 Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it
7 was making such payments to preserve its rights under the option agreements.

8 56. On November 30, 2018, 27 months after the Option term commenced, Plaintiff
9 filed the instant lawsuit.

10 57. At trial, Plaintiff presented an expert witness, Matthew Lubawy, who testified to
11 his opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was
12 \$1.05 per square foot per month, or monthly rent of \$4,410.

13 58. Defendant presented an expert witness, Charles E. Jack IV, who testified to his
14 opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was
15 \$1.75 per square foot per month, or monthly rent of \$7,350.

16 59. The Court determines that both expert witnesses provided credible testimony.
17 However, the Court finds that the comparables utilized by Jack were more applicable to the
18 conditions of the Subject Premises.

19 60. \$8,400 per month is not an unreasonable amount of rent for the option period, as
20 this comports with the terms of the option exercised by Plaintiff, as well as the understanding of
21 the parties that rent would increase during the option periods, and reflects the schedule Plaintiff's
22 attorneys proposed and Defendant accepted.

1 61. After receiving Jack's expert report that opined that \$1.75 per square foot per
2 month was the market rental rate, Plaintiff reduced the amount it was paying monthly from
3 August 2019 through November 2019, from \$8400 to \$5150.

4 62. Defendant did not present sufficient evidence that Plaintiff was previously
5 undercharged for its water usage within the Leased Premises. The Court finds that the
6 methodology utilized by Defendant in determining the amount of the Plaintiff's pro-rata water
7 usage was not reasonable, and not credible.

8 63. From the date of the assignment of the Lease in approximately 2007 to present,
9 Plaintiff has paid the "estimated" CAM of \$1,176 for each and every month.

10 64. Defendant did not present sufficient evidence that it incurred \$239,803 in CAM
11 expenses from 2012 through 2018 that were not previously assessed to the Plaintiff.

12 65. The list of items to be included in CAMS does not include the category used by
13 Defendant for "reserves".

14 66. Defendant has failed to provide a CAM accounting including the accounting of
15 the various "reserves" referenced in the annual Statements produced by Defendant in this case.

16 67. As a result of Defendants inclusion of "reserve" funds in the CAMS, Plaintiff has
17 overpaid the CAM expense and is entitled to reimbursement.

18 68. Defendant did not breach the Lease by failing to provide quarterly accounting
19 CAM costs as that provision was modified in writing by the 2001 Amendment to an annual
20 accounting.

21 69. Defendant has charged amounts in excess of the CAM charges, for which
22 restitution and reimbursement should be made to Plaintiff.

23 70. Defendant has not breached its obligation to repair and maintain the premises,
24 including the roof, the HVAC system, and other portions of the premises.
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1 71. The witnesses for Plaintiff were not credible. The testimony at deposition of the
2 NRCP 30(b)(6) representative presented by Plaintiff provided virtually no substantive
3 information, after motion practice before trial the Court permitted Plaintiff to inquire of the
4 witnesses subject to question by question challenge based upon the inconsistency with the NRCP
5 30(b)(6) representative testimony. The lack of credibility and general lack of knowledge of any
6 of Plaintiff's witnesses forces the Court to rely upon the documentary evidence admitted during
7 the proceedings.
8

9 72. If any findings of fact are properly conclusions of law, they shall be treated as if
10 appropriately identified and designated.
11

12 **CONCLUSIONS OF LAW**

13 73. A preponderance of the evidence supports the conclusion that Plaintiff's
14 predecessor in interest executed both options provided in the Option Agreement, extending the
15 Lease for two successive five-year periods. The exercise of these options is memorialized in the
16 2001 Amendment and the 2006 Addendum. As Plaintiff's predecessor in interest exercised these
17 options, the only option Plaintiff could have exercised in 2016 was an option provided in the 2007
18 Lease Modification.
19

20 74. The execution of the option in 2016 was timely. It was sent more than 90 days
21 prior to the August 31, 2016 expiration date of the Lease.
22

23 75. Although Defendant sought modification of the Lease, all terms and conditions of
24 the Lease were already in place, except for the rental rate.
25

26 76. Plaintiff continued paying the rent agreed to in the schedule proposed by its
27 counsel until August 2019.
28

 77. Plaintiff has by payment of such rent remained entitled to enforce its option rights.

 78. Beginning September 1, 2016, Plaintiff paid \$8,400 in base rent.

1 79. The elements of a claim for breach of contract are: (1) the parties entered into a
2 valid and existing contract; (2) Plaintiff performed or was excused from performance; (3)
3 Defendant breached; and (4) Plaintiff sustained damages as a result of the breach.

4 80. A contract must contain all essential terms to be enforceable, and rent is an
5 essential term of an option agreement.
6

7 81. Interpretation of a contract is a question of law. The Court looks at the plain
8 language in the contract.

9 82. Nevada has recognized an exception for a lease extension option containing all
10 terms except for rent, holding that such an option should be enforced at an agreed rent or at a
11 court-fixed reasonable rent. *Cassinari v. Mapès*, 91 Nev. 778, 781 (1975).
12

13 83. A commercial tenant may affirm the option rights and seek judicial determination
14 of the amount of rent where the parties have been unable to agree. *Cassinari* at 781.

15 84. The terms of the 2007 Lease Modification are plain and unambiguous and may be
16 interpreted as a matter of law. Under these clear terms, the five-year options were expressly and
17 unambiguously made conditional upon “terms and conditions, including but not limited to rental
18 increases, to be negotiated.”

19 85. The language in the 2007 Lease Modification related to rent after the execution of
20 the Option is unambiguous.
21

22 86. As the Plaintiff contends that the parties failed to come to an agreement as to the
23 amount of rent for the option period beginning September 1, 2016, the Court is empowered to
24 declare the amount of rent applicable to that option period. The evidence and the terms of the
25 2007 Lease Modification do not support Plaintiff’s position that the contract permits a lower “fair
26 market value” to be established.
27
28

1 87. While there is some evidence that the Plaintiff attempted to change the terms of
2 the proposed rent schedule in July 2017 to reduce the amount of rent for the first year, the
3 evidence shows that Plaintiff never actually paid this lower amount.

4 88. The language of the 2007 Lease Modification states that the rent for the option
5 period would be "under terms and conditions, including but not limited to rental increases to be
6 negotiated." The parties agree that all essential terms other than rent are provided elsewhere in
7 the 2007 Lease Modification, leaving only the rent to be negotiated. Thus, if no agreement was
8 reached as to rent, all essential terms of the option are present except the rental rate, and
9 *Cassinari* would apply to render the option enforceable based on a reasonable rental amount to be
10 determined by this Court.
11

12 89. Based on the facts presented, the Court determines that an agreement was reached
13 and that the reasonable rent is \$8,400 per month for the first two years of the second option term
14 under the 2007 Lease Modification increasing by \$210 every year starting on September 1, 2018.
15 The Plaintiff agreed to the 2007 Lease Modification option language which requires that any
16 options be based on "rental increases," so it would not be reasonable for rent to decrease.
17

18 90. The rent agreed to by the parties and reflected in this schedule based upon the
19 evidence before the Court, reflects a reasonable amount of rent under *Cassinari*.
20

21 91. After hearing and weighing the evidence the Court sets the rent as the schedule
22 agreed to and partially performed by the parties:

23 09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum
24 09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum
25 09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum
26 09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum
27 09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum
28

92. As Plaintiff deviated from this schedule from September 1, 2018 through November 2019, the Plaintiff has underpaid the rent due in the amount of \$13,000.⁶

93. This deviation is a breach of the Plaintiff's obligations under the Lease.

94. The Lease provision related to CAM expenses does not include the ability of Defendant to charge for "reserves".

95. The Defendant's charging of "reserves" as a CAM expense is a breach of contract.

96. Plaintiff has requested that an accounting be ordered as part of the relief in this matter.

97. In light of the Plaintiff disputing various CAM charges and its request to the Court to reevaluate the 2012 through 2018 CAM charges, the Court finds that Plaintiff has overpaid the CAM expenses.

98. As the evidence was presented at trial there is no need for an accounting and the Court orders reimbursement of the overpayment.⁷

⁶ The agreed upon rental rate was \$8400 per month. The reduced rental rate paid by Plaintiff was \$5150. The monthly deficiency of \$3250 accrued for 4 months yielding a total underpayment of \$13,000.

⁷ The Court disallows the line items for parking lot reserve and painting reserve from the annual CAM statements. The calculation for the breach of contract claim related to CAMS is to divide the revised "Total Operating Expense" by 115,671 square feet as represented in the Lease for a square footage rate and multiply by 4200 representing the square footage occupied by Plaintiff as represented in the Lease and to compare the pro rata share to estimated amounts advanced by Plaintiff pursuant to the 2007 Lease Modification on a monthly basis of \$1176.

Year	Operating Expense	Less Disallowed Reserve	Revised Operating Expense	Square Foot Rate	Plaintiffs Pro Rata Share	Less Payments Made	Difference
2015	385185	32500	352685	3.05	12810	14112	-1302
2016	389683	32500	357183	3.09	12978	14112	-1134
2017	398059	32500	365559	3.16	13272	14112	-840
2018	385363	32500	352863	3.05	12810	14112	-1302
Total							-4578

1 99. The elements of a claim for breach of the implied covenant of good faith and fair
2 dealing are: (1) Plaintiff and defendant were parties to a contract; (2) Defendant owed a duty of
3 good faith to plaintiff; (3) Defendant breached that duty by performance in a manner that was
4 unfaithful to the purpose of the contract; and (4) Plaintiff's justified expectations were thus
5 denied.

6
7 100. In every contract there is an implied promise of good faith and fair dealing.

8 101. Where the terms of a contract are literally complied with, but one party to the
9 contract deliberately contravenes the intention and spirit of the contract, that party can incur
10 liability for breach of the implied covenant of good faith and fair dealing.

11 102. When one party performs a contract in a manner that is unfaithful to the purpose of
12 the contract and the justified expectations of the other party are thus denied, damages may be
13 awarded against the party who does not act in good faith.

14
15 103. Whether the controlling party's actions fall outside the reasonable expectations of
16 the dependent party is determined by the various factors and special circumstances that shape
17 these expectations.

18 104. The use of reserves as part of the CAM expenses is a breach of the covenant of
19 good faith and fair dealing.

20
21 105. Substantial evidence was submitted establishing beyond a preponderance of the
22 evidence that, based on the contractual language negotiated and agreed to by the parties as part of
23 the 2007 Lease Modification, as well as the subsequent negotiations and conduct of the parties,
24 the appropriate rent applicable to the option period cannot be based on market rental rate or fair
25 market value.

26 106. The doctrines of part performance and/or estoppel preclude the Plaintiff from
27 arguing that no agreement existed. In general, principles of part performance and/or estoppel
28

1 prevent a party from taking a position contrary to a previously asserted position when another
2 party has relied upon the previous position.

3 107. At the time Plaintiff began paying rent in September 2016, Plaintiff was apprised
4 of all relevant facts. Plaintiff's conduct of paying this amount of rent was designed to be relied
5 upon, in that Plaintiff intended for Defendant to accept the full amount of rent as payment under
6 the Lease, in exchange for being allowed to continue to occupy the Premises. Plaintiff's
7 significant delay in asserting any dispute or protest as to the amounts being paid demonstrate the
8 Defendant had no idea of Plaintiff's purported hidden understanding that it did not agree to the
9 rent. Defendant detrimentally relied on Plaintiff's position, as Defendant kept the property off the
10 market instead of attempting to find a new tenant willing to pay full rent. The Plaintiff is estopped
11 from now taking a contrary position as to the amount of rent that Plaintiff offered, agreed to, and
12 did, in fact, perform.

13
14
15 108. As there were good faith disputes related to the amount of rent for the option
16 period presented for determination to the Court, the Court finds that there has been no breach of
17 the implied covenant of good faith and fair dealing on that issue.

18 109. Judgment in Defendant's favor is appropriate on Defendant's counterclaim for
19 breach of Lease, as Plaintiff's failure to pay the agreed-upon amount of rent from August 2019
20 through November 2019 constituted a breach of Plaintiff's obligations under the Lease and
21 Counterdefendants' obligations under the Guaranties.

22
23 110. If any conclusions of law are properly findings of fact, they shall be treated as if
24 appropriately identified and designated.

25 Based upon the foregoing Findings of Fact and Conclusions of Law

26 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
27 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,
28

1 LLC, on the First Claim for Relief for Declaratory Judgment establishing a reasonable rent
2 schedule as :

3 09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum
4 09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum
5 09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum
6 09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum
7 09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum

8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
9 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,
10 LLC, on the Second Claim for Relief for Breach of Contract in the amount of \$4,578.

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
12 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,
13 LLC, on the Third Claim for Relief for Breach of the Implied Covenant of Good Faith and Fair
14 Dealing in the amount of the attorney's fees and costs related to the CAM expense portion of the
15 litigation only.

16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
17 hereby entered in favor of Defendant Tropicana Investments, LLC, and against Plaintiff JSJBD
18 Corp, on all other claims for relief contained in the Complaint.

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
20 hereby entered in favor of Counterclaimant Tropicana Investments, LLC, and against
21 Counterdefendant JSJBD Corp, and all other Counterdefendants on the Second Claim for Relief
22 for Breach of Lease Agreement for the underpayment of rent according to the schedule in the
23 amount of \$13,000.

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
25 hereby entered in favor of Counterdefendant JSJBD Corp, and all other Counterdefendants, and
26 against Counterclaimant Tropicana Investments, LLC, on all other claims for relief contained in
27
28

1 the Counterclaim.

2 In light of the awards on both the Complaint and Counterclaim, the issue of attorney's
3 fees as sought in both the Complaint and Counterclaim is reserved for post-trial motion practice.
4

5
6 DATED this 5th day of December, 2019.

7
8 
9 Elizabeth Gonzalez, District Court Judge

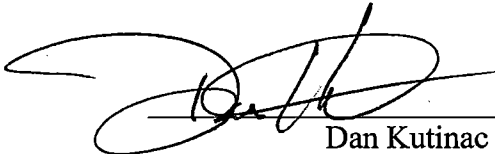
10 Certificate of Service

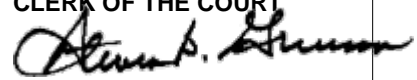
11 I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of
12 Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth
13 Judicial District Court Electronic Filing Program.

14 *If indicated below, a copy of the foregoing Scheduling Order was also:*

15 ☐ Placed in the Attorney(s) Folder on the 1st Floor of the RJC for;

16 ☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at
17 their last known address(es):

18
19 
20 Dan Kutinac

**Marquis Aurbach Coffing**

Terry A. Moore, Esq.

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Las Vegas, Nevada 89145

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Facsimile: (702) 382-5816

tmoore@maclaw.com

Attorneys for Tropicana Investments, LLC

DISTRICT COURT**CLARK COUNTY, NEVADA**JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

Case No.: A-18-785311-B

Dept. No.: XI

**NOTICE OF ENTRY OF FINDINGS OF
FACT AND CONCLUSIONS OF LAW**TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT, an individual;
JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

Please take notice that Findings of Fact and Conclusions of Law was entered in the above-captioned matter on the 5th day of December, 2019, a copy of which is attached hereto.

Dated this 27th day of December, 2019.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore
Terry A. Moore, Esq.
Nevada Bar No. 7831
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney for Tropicana Investments, LLC

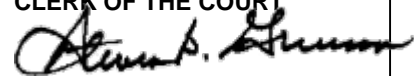
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 27th day of December, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Mario Lovato: mpl@lovatolaw.com

/s/ Cally Hatfield
an employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

Case No.: A-18-785311-B

Dept.: XI

AND RELATED CLAIMS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

52

This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez beginning on November 18, 2019, and continuing day to day, until its completion on November 22, 2019; Mario Lovato, Esq. appeared on behalf of Plaintiff/Counterdefendants ("Plaintiff") and Terry A. Moore, Esq. and Collin Jayne, Esq. appeared on behalf of Defendant/Counterclaimant Tropicana Investments, LLC ("Defendant"); the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the testimony of the witnesses called to testify and weighing their credibility;¹ having considered the oral and written arguments of counsel, and with the intent of

1 The Court previously entered orders binding the Plaintiff to the answers and testimony given during deposition by its NRCP 30(b)(6) representative and ordering that with respect to any "I don't know" or similar answers related to topics for which the NRCP 30(b)(6) witness testified. The Court also ruled that with respect to communications made by prior counsel, those communications were authorized to be sent by Plaintiff and the Plaintiff is bound by the representations made in those communications.

1 rendering a decision on all remaining claims² before the Court,³ pursuant to NRCP 52(a) and 58;
2 the Court makes the following findings of fact and conclusions of law:

3 FINDINGS OF FACT

4 1. Plaintiff JSJBD Corp ("JSJBD") is a Nevada corporation doing business in Clark
5 County, Nevada.

6 2. Defendant Tropicana Investments, LLC ("Tropicana Investments") is a California
7 limited liability company doing business in Clark County, Nevada.

8 3. JSJBD was formed on March 8, 2007.

9 4. JSJBD was formerly named JSJ, LLC that filed Articles of Conversion under NRS
10 92A.205 with the Nevada Secretary of State on March 6, 2014, which changed the name of the
11 entity and converted it to a corporation.

12 5. Tropicana Investments owns the commercial shopping center commonly referred
13 to as Tropicana Plaza located at 3430 East Tropicana Avenue, Las Vegas, Nevada, 89121.

14 6. JSJBD does business as Blue Dog's Pub, and owns and operates a tavern in Suites
15 27, 28, and 29 comprising a space of approximately 4,200 square feet ("Subject Premises") in
16 Tropicana Plaza.

17 7. On or about July 9, 1996, Walter L. Schwartz ("Schwartz"), as lessor, and Mark S.
18 Van Aken ("Van Aken"), as tenant, entered into a written Lease ("Lease") for the Subject
19 Premises.

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23
24 ² Plaintiff's Complaint asserts three causes of action: (1) declaratory relief, (2) breach of
25 contract, and (3) breach of implied covenant of good faith and fair dealing. Defendant's
26 Counterclaim asserts four causes of action: (1) declaratory judgment, (2) breach of lease
27 agreement, (3) breach of the implied covenant of good faith and fair dealing, and (4) execution
28 and issuance of writ of restitution.

³ Plaintiff voluntarily abandoned its claim of damages from repair and maintenance issues.

1 8. Tropicana Investments is the successor-in-interest and current landlord under the
2 Lease entered into on July 9, 1996, and various Amendments/Addenda, for the Subject Premises.

3 9. Plaintiff is the successor-in-interest and current tenant under the Lease, and
4 various Amendments/Addenda for the Subject Premises.

5 10. The Lease provided for a tenancy lasting for a term of five years and five months,
6 commencing April 1, 1996, and terminating on August 31, 2001.

7 11. During the initial term of the Lease, from April 1, 1996 to August 31, 2001, the
8 minimum monthly rent began at \$3,150 per month, and this monthly rent increased by \$210 at the
9 beginning of every year of the five-year and five month term.

10 12. The 1996 Lease referenced \$500 per month in "estimated" common area
11 maintenance ("CAM") charges, which were subject to the quarterly accounting of actual CAM
12 costs.

13 13. The CAM costs are defined in the Lease:

14 to include but not limited to all upgrading, general maintenance and repairs, resurfacing,
15 rubbish removal, painting, restripping, cleaning, sweeping and janitorial services, personnel
16 to implement such services including property management fees for the entire parcel and
17 to police the automobile parking and common areas: real and personal property taxes and
18 assessment thereon, Water.

19 Insurance, including but not limited to General Liability and Property Damages, Fire
20 Hazard on Demised Premises, Building.

21 Common Areas and Parking Lot. A reasonable allowance to Landlord for Landlord's
22 administrative expenses of said automobile parking and common areas no to excess in any
23 calendar year fifteen percent of the total of the aforementioned expenses for said calendar
24 year.

25 (various errors in original).

26 14. Under Paragraph 7 of the Lease, Landlord is obligated to keep "common areas in a
27 neat, clean, and orderly condition, properly lighted and landscaped, and shall improve and repair
28 any damage to the facilities. The Lease further states: "[A]ll expenses in connection with said

1 automobile parking and common areas shall be charged and prorated in the manner herein after
2 [sic] set forth.”

3 15. Under paragraph 9 of the Lease, Roof expenses are carved-out and made the sole
4 obligation of the Landlord. The Lease states: “**Landlord shall at his sole cost and expense, keep**
5 **and maintain in good repair**, (excluding painting) of extension walls and **roof repairs . . .**”
6 (emphasis added).
7

8 16. Section 24 of the Lease contains an attorney’s fees provision.⁴

9 17. The Lease did not include any options to extend the term of the Lease. A separate
10 Option Agreement was executed by the original landlord and tenant (“1996 Option Agreement”).
11

12 18. The 1996 Option Agreement provided two (2) five-year options if the tenant was
13 in full compliance with the terms of the Lease. The first option provided that the tenant would be
14 entitled to renew the Lease for a five-year period commencing on September 1, 2001. The
15 second option provided that the tenant would be entitled to renew the Lease for a second five-year
16 period commencing on September 1, 2006.

17 19. The options provided by the 1996 Option Agreement were to be “at a market
18 rental rate and terms as agreed by Landlord and Tenant.”
19

20 20. On April 16, 2001, Van Aken exercised the first option under the 1996 Option
21 Agreement. As a result of the exercise of that Option, an Amendment to Retail Building Lease
22 Dated July 9, 1996 (“2001 Amendment”) was executed. The 2001 Amendment extended the
23 Lease term for five (5) years, from September 1, 2001 through August 31, 2006. During the
24 extended term, the parties agreed that the base rent would begin at \$5,670 per month, and that this
25

26 ⁴ That section states:

27 In the event the Landlord finds it necessary to retain an attorney in connection with the
28 default by the Tenant in any of the agreements or covenants contained in this Lease,
Tenant shall pay reasonable attorney’s fees to said attorney.

1 monthly rent would increase by \$210 at the beginning of every year, ending at \$6,510 per month
2 for the final year.

3 21. Paragraph 4 of the 2001 Amendment changed the documentation and accounting
4 for CAM expenses from quarterly to annual.

5 22. On March 7, 2006, Van Aken exercised the second option under the 1996 Option
6 Agreement. The Addendum to Retail Building Lease Dated July 9, 1996 ("2006 Addendum")
7 extended the tenancy for a term of five (5) years, from September 1, 2006 through August 31,
8 2011. During the extended term, it was agreed that the base rent would begin at \$6,720 per
9 month for the 2006–2007 year, and that this monthly rent would increase by \$210 at the
10 beginning of every year, ending at \$7,560 per month for the final year.

11 23. The 2006 Addendum gave Van Aken an option to extend the Lease term for "one
12 (1) final extension term of five (5) years," to begin on September 1, 2011, and provided that such
13 extension term would be "under terms and conditions to be negotiated."

14 24. In approximately 2007, Van Aken, sold the assets of his bar located in the Subject
15 Premises to JSJ, LLC.

16 25. Defendant, Van Aken, as assignor, and Plaintiff as assignee, entered into a Lease
17 Assignment and Modification agreement executed by all parties in June 2007 ("2007 Lease
18 Modification").

19 26. As part of the negotiations leading up to the 2007 Lease Modification, JSJ, LLC
20 attempted to add a term of "fair market value" for the rental rate in the Lease. The addition of
21 this term was rejected by Defendant.

22 27. After the Defendant rejected "fair market value" as a term, Plaintiff signed the
23 2007 Lease Modification with the wording requiring "rental increases."

1 28. The 2007 Lease Modification stated that it is the desire of all parties to allow Van
2 Aken to assign the Lease, the 2001 Amendment, and 2006 Addendum to the Assignee, Plaintiff,
3 under terms and conditions as set forth in the 2007 Lease Modification.

4 29. The 2007 Lease Modification provided a new provision conditionally granting the
5 Plaintiff three additional options to extend the Lease by five years at a time:
6

7 ...Landlord agrees to conditionally grant Assignee, J.S.J., LLC,
8 three (3) additional five (5) year options to renew the term of the
9 Lease under terms and conditions, including but not limited to
10 rental increases, to be negotiated. The conditional options shall
commence after August 31, 2016, provided Assignee has timely
complied with all terms and conditions of the Lease.

11 30. The 2007 Lease Modification regarding the three five-year options does not
12 include the term "fair market value."

13 31. The 2007 Lease Modification was entered into after the exercise of all prior
14 options by Plaintiff's predecessor in interest.

15 32. The 2007 Lease Modification changed the "estimated" CAM charge to \$1,176 per
16 month, but did not otherwise alter or change the accounting obligation of Defendant and/or the
17 other obligations of Defendant to properly charge for actual CAM expenses under the Lease.

18 33. The 2007 Lease Modification provided that Van Aken would pay Defendant ten
19 percent (10%) of the total sales price of the business as consideration for the Defendant offering
20 Plaintiff the three additional five-year options.
21

22 34. Concurrently with the execution of the 2007 Lease Modification, the three
23 managers of JSJ, LLC—Jeffrey Vincent, Stuart Vincent, and Jeff White—each executed a
24 personal guaranty of JSJ, LLC's obligations under the Lease.
25
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1 35. On or about February 22, 2011, Defendant and Plaintiff entered into a written
2 Addendum II to Retail Building Lease ("2011 Addendum") which gave effect to the option⁵
3 exercised by Plaintiff and set forth the amount of rent that was agreed upon for the term.

4 36. The 2011 Addendum extended the term of the Lease from September 1, 2011 to
5 August 31, 2016.

6 37. In the 2011 Addendum, Defendant and Plaintiff agreed that the monthly rent for
7 the first two years of the first option term (September 2011 through August 2012, and September
8 2012 through August 2013) would remain at the same rate as was paid the prior year (September
9 2010 through August 2011), and that the regular annual increases of monthly rent by \$210 would
10 resume thereafter at the beginning of each of the remaining three (3) years of the option (from
11 September 1, 2013, through August 31, 2016). Monthly rent remained at \$7,560 through August
12 31, 2013; increased by \$210 on September 1, 2013, to \$7,770; increased by \$210 on September 1,
13 2014 to \$7,980; and increased by \$210 on September 1, 2015 to \$8,190.

14 38. On February 26, 2016, Plaintiff notified Defendant that it was exercising its option
15 available under the 2007 Lease Modification, to commence on September 1, 2016.

16 39. During the negotiations on the terms of the modification to implement the option,
17 Plaintiff requested a \$2,500 reduction in monthly rent - a 30% reduction in the rental rate.

18 40. Defendant did not accept this request.

19 41. Defendant informed Plaintiff that, instead of exercising another addenda or
20 amendment as the parties had done in the past to effectuate the exercise of options, Defendant
21 preferred to execute an entirely new form of Lease to replace the outdated form of lease.

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27 ⁵ This option was the first of the three 5-year options granted under the 2007 Lease
28 Modification.

1 42. On June 15, 2016, Defendant's authorized agent, Commercial Investment Real
2 Estate Services, extended an offer in writing to Plaintiff that, among other terms, proposed the
3 amount of base rent for the initial year of the lease extension to remain the same as the previous
4 year (2015–2016), which amounted to \$8,190 per month with 3% annual increases thereafter.

5
6 43. On August 2, 2016, Lesley B. Miller, Esq. of the law firm Kaempfer Crowell,
7 notified Landlord that she represented Plaintiff. Miller requested that the payment of base rent
8 for the first year of the five-year renewal term would remain the same as the previous year
9 (9/1/2015–8/31/2016).

10 44. On August 31, 2016, Miller again reiterated the exercise of the option rights under
11 the Lease to renew for an additional five-year term. Miller attached a proposed amendment to the
12 Lease which provided for the following rent schedule:

13
14 09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum
15 09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum
16 09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum
17 09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum
18 09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum

19 45. On September 7, 2016, Defendant's counsel, John M. Sacco, Esq., sent
20 correspondence to Miller discussing several other issues including: parking, CAMs, security
21 patrols, and issues related to personal guaranties. No mention of rejecting the amount of rent was
22 set forth in Sacco's letter. He confirmed that the parking, CAMs, security patrols and guaranty-
23 related issues were the "final matters" that the parties were attempting to work through.

24 46. Sacco called Miller to let her know that the Defendant agreed with the rent
25 schedule as she had proposed in her August 31st addendum and he reiterated that he thought the
26 other issues set forth in his letter were the final matters that needed to be resolved.

27 47. Consistent with the parties' agreement, the Plaintiff began paying \$8,400 per
28 month in September 2016. The Plaintiff paid this sum through August 2017. These monthly

1 rental payments were accepted by the Defendant, and Plaintiff remains in possession of the
2 premises to date.

3 48. At no point during the first year of the Option Term (9/1/16 – 8/31/17) did the
4 Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the
5 Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it
6 was making such payments to preserve its rights under the option agreements.
7

8 49. Although the parties reached an agreement on the rent amounts for the option
9 term, and Plaintiff then paid consistent with that agreement, Plaintiff and Defendant, through their
10 respective counsel, exchanged drafts of a proposed updated standardized lease form during the
11 next twelve months in an attempt to update the remaining non-rent portions of the twenty-year old
12 Lease.
13

14 50. During that time frame, the parties' conduct was consistent with the parties having
15 agreed to the rent term of the Option, as Plaintiff paid the full amount of rent in accordance with
16 the agreement reached in September 2016, Plaintiff continuously occupied the Premises, and both
17 Plaintiff and Defendant performed their obligations under the Lease without protest or dispute.

18 51. On August 7, 2017, Plaintiff, through new counsel, Lucas A. Grower, Esq., sent
19 Defendant correspondence advising that Grower would be representing Plaintiff.
20

21 52. On August 31, 2017, the Plaintiff, through its new counsel, demanded that Lease
22 negotiations be restarted for the base rent on the basis of "market rental rate and terms".

23 53. Defendant's attorney disagreed with Plaintiff's new position, maintaining that the
24 parties had reached an agreement as to rent, and that the option did not provide for negotiations
25 based on market rental rate.
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1 54. Beginning in September of 2017, Plaintiff continued to pay monthly rent of
2 \$8,400. Payment of this amount was consistent with the second year of the rent schedule that had
3 been agreed upon by the parties.

4 55. At no point during the second year of the Option Term (9/1/17 – 8/31/18) did the
5 Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the
6 Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it
7 was making such payments to preserve its rights under the option agreements.

8 56. On November 30, 2018, 27 months after the Option term commenced, Plaintiff
9 filed the instant lawsuit.

10 57. At trial, Plaintiff presented an expert witness, Matthew Lubawy, who testified to
11 his opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was
12 \$1.05 per square foot per month, or monthly rent of \$4,410.

13 58. Defendant presented an expert witness, Charles E. Jack IV, who testified to his
14 opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was
15 \$1.75 per square foot per month, or monthly rent of \$7,350.

16 59. The Court determines that both expert witnesses provided credible testimony.
17 However, the Court finds that the comparables utilized by Jack were more applicable to the
18 conditions of the Subject Premises.

19 60. \$8,400 per month is not an unreasonable amount of rent for the option period, as
20 this comports with the terms of the option exercised by Plaintiff, as well as the understanding of
21 the parties that rent would increase during the option periods, and reflects the schedule Plaintiff's
22 attorneys proposed and Defendant accepted.

1 61. After receiving Jack's expert report that opined that \$1.75 per square foot per
2 month was the market rental rate, Plaintiff reduced the amount it was paying monthly from
3 August 2019 through November 2019, from \$8400 to \$5150.

4 62. Defendant did not present sufficient evidence that Plaintiff was previously
5 undercharged for its water usage within the Leased Premises. The Court finds that the
6 methodology utilized by Defendant in determining the amount of the Plaintiff's pro-rata water
7 usage was not reasonable, and not credible.

8 63. From the date of the assignment of the Lease in approximately 2007 to present,
9 Plaintiff has paid the "estimated" CAM of \$1,176 for each and every month.

10 64. Defendant did not present sufficient evidence that it incurred \$239,803 in CAM
11 expenses from 2012 through 2018 that were not previously assessed to the Plaintiff.

12 65. The list of items to be included in CAMS does not include the category used by
13 Defendant for "reserves".

14 66. Defendant has failed to provide a CAM accounting including the accounting of
15 the various "reserves" referenced in the annual Statements produced by Defendant in this case.

16 67. As a result of Defendants inclusion of "reserve" funds in the CAMS, Plaintiff has
17 overpaid the CAM expense and is entitled to reimbursement.

18 68. Defendant did not breach the Lease by failing to provide quarterly accounting
19 CAM costs as that provision was modified in writing by the 2001 Amendment to an annual
20 accounting.

21 69. Defendant has charged amounts in excess of the CAM charges, for which
22 restitution and reimbursement should be made to Plaintiff.

23 70. Defendant has not breached its obligation to repair and maintain the premises,
24 including the roof, the HVAC system, and other portions of the premises.
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1 71. The witnesses for Plaintiff were not credible. The testimony at deposition of the
2 NRCP 30(b)(6) representative presented by Plaintiff provided virtually no substantive
3 information, after motion practice before trial the Court permitted Plaintiff to inquire of the
4 witnesses subject to question by question challenge based upon the inconsistency with the NRCP
5 30(b)(6) representative testimony. The lack of credibility and general lack of knowledge of any
6 of Plaintiff's witnesses forces the Court to rely upon the documentary evidence admitted during
7 the proceedings.
8

9 72. If any findings of fact are properly conclusions of law, they shall be treated as if
10 appropriately identified and designated.
11

12 **CONCLUSIONS OF LAW**

13 73. A preponderance of the evidence supports the conclusion that Plaintiff's
14 predecessor in interest executed both options provided in the Option Agreement, extending the
15 Lease for two successive five-year periods. The exercise of these options is memorialized in the
16 2001 Amendment and the 2006 Addendum. As Plaintiff's predecessor in interest exercised these
17 options, the only option Plaintiff could have exercised in 2016 was an option provided in the 2007
18 Lease Modification.
19

20 74. The execution of the option in 2016 was timely. It was sent more than 90 days
21 prior to the August 31, 2016 expiration date of the Lease.
22

23 75. Although Defendant sought modification of the Lease, all terms and conditions of
24 the Lease were already in place, except for the rental rate.
25

26 76. Plaintiff continued paying the rent agreed to in the schedule proposed by its
27 counsel until August 2019.
28

 77. Plaintiff has by payment of such rent remained entitled to enforce its option rights.

 78. Beginning September 1, 2016, Plaintiff paid \$8,400 in base rent.

1 79. The elements of a claim for breach of contract are: (1) the parties entered into a
2 valid and existing contract; (2) Plaintiff performed or was excused from performance; (3)
3 Defendant breached; and (4) Plaintiff sustained damages as a result of the breach.

4 80. A contract must contain all essential terms to be enforceable, and rent is an
5 essential term of an option agreement.
6

7 81. Interpretation of a contract is a question of law. The Court looks at the plain
8 language in the contract.

9 82. Nevada has recognized an exception for a lease extension option containing all
10 terms except for rent, holding that such an option should be enforced at an agreed rent or at a
11 court-fixed reasonable rent. *Cassinari v. Mapès*, 91 Nev. 778, 781 (1975).
12

13 83. A commercial tenant may affirm the option rights and seek judicial determination
14 of the amount of rent where the parties have been unable to agree. *Cassinari* at 781.

15 84. The terms of the 2007 Lease Modification are plain and unambiguous and may be
16 interpreted as a matter of law. Under these clear terms, the five-year options were expressly and
17 unambiguously made conditional upon “terms and conditions, including but not limited to rental
18 increases, to be negotiated.”

19 85. The language in the 2007 Lease Modification related to rent after the execution of
20 the Option is unambiguous.
21

22 86. As the Plaintiff contends that the parties failed to come to an agreement as to the
23 amount of rent for the option period beginning September 1, 2016, the Court is empowered to
24 declare the amount of rent applicable to that option period. The evidence and the terms of the
25 2007 Lease Modification do not support Plaintiff’s position that the contract permits a lower “fair
26 market value” to be established.
27
28

1 87. While there is some evidence that the Plaintiff attempted to change the terms of
2 the proposed rent schedule in July 2017 to reduce the amount of rent for the first year, the
3 evidence shows that Plaintiff never actually paid this lower amount.

4 88. The language of the 2007 Lease Modification states that the rent for the option
5 period would be "under terms and conditions, including but not limited to rental increases to be
6 negotiated." The parties agree that all essential terms other than rent are provided elsewhere in
7 the 2007 Lease Modification, leaving only the rent to be negotiated. Thus, if no agreement was
8 reached as to rent, all essential terms of the option are present except the rental rate, and
9 *Cassinari* would apply to render the option enforceable based on a reasonable rental amount to be
10 determined by this Court.

11 89. Based on the facts presented, the Court determines that an agreement was reached
12 and that the reasonable rent is \$8,400 per month for the first two years of the second option term
13 under the 2007 Lease Modification increasing by \$210 every year starting on September 1, 2018.
14 The Plaintiff agreed to the 2007 Lease Modification option language which requires that any
15 options be based on "rental increases," so it would not be reasonable for rent to decrease.

16 90. The rent agreed to by the parties and reflected in this schedule based upon the
17 evidence before the Court, reflects a reasonable amount of rent under *Cassinari*.

18 91. After hearing and weighing the evidence the Court sets the rent as the schedule
19 agreed to and partially performed by the parties:

20 09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum
21 09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum
22 09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum
23 09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum
24 09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum
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27
28

92. As Plaintiff deviated from this schedule from September 1, 2018 through November 2019, the Plaintiff has underpaid the rent due in the amount of \$13,000.⁶

93. This deviation is a breach of the Plaintiff's obligations under the Lease.

94. The Lease provision related to CAM expenses does not include the ability of Defendant to charge for "reserves".

95. The Defendant's charging of "reserves" as a CAM expense is a breach of contract.

96. Plaintiff has requested that an accounting be ordered as part of the relief in this matter.

97. In light of the Plaintiff disputing various CAM charges and its request to the Court to reevaluate the 2012 through 2018 CAM charges, the Court finds that Plaintiff has overpaid the CAM expenses.

98. As the evidence was presented at trial there is no need for an accounting and the Court orders reimbursement of the overpayment.⁷

⁶ The agreed upon rental rate was \$8400 per month. The reduced rental rate paid by Plaintiff was \$5150. The monthly deficiency of \$3250 accrued for 4 months yielding a total underpayment of \$13,000.

⁷ The Court disallows the line items for parking lot reserve and painting reserve from the annual CAM statements. The calculation for the breach of contract claim related to CAMS is to divide the revised "Total Operating Expense" by 115,671 square feet as represented in the Lease for a square footage rate and multiply by 4200 representing the square footage occupied by Plaintiff as represented in the Lease and to compare the pro rata share to estimated amounts advanced by Plaintiff pursuant to the 2007 Lease Modification on a monthly basis of \$1176.

Year	Operating Expense	Less Disallowed Reserve	Revised Operating Expense	Square Foot Rate	Plaintiffs Pro Rata Share	Less Payments Made	Difference
2015	385185	32500	352685	3.05	12810	14112	-1302
2016	389683	32500	357183	3.09	12978	14112	-1134
2017	398059	32500	365559	3.16	13272	14112	-840
2018	385363	32500	352863	3.05	12810	14112	-1302
Total							-4578

1 99. The elements of a claim for breach of the implied covenant of good faith and fair
2 dealing are: (1) Plaintiff and defendant were parties to a contract; (2) Defendant owed a duty of
3 good faith to plaintiff; (3) Defendant breached that duty by performance in a manner that was
4 unfaithful to the purpose of the contract; and (4) Plaintiff's justified expectations were thus
5 denied.

6
7 100. In every contract there is an implied promise of good faith and fair dealing.

8 101. Where the terms of a contract are literally complied with, but one party to the
9 contract deliberately contravenes the intention and spirit of the contract, that party can incur
10 liability for breach of the implied covenant of good faith and fair dealing.

11 102. When one party performs a contract in a manner that is unfaithful to the purpose of
12 the contract and the justified expectations of the other party are thus denied, damages may be
13 awarded against the party who does not act in good faith.

14
15 103. Whether the controlling party's actions fall outside the reasonable expectations of
16 the dependent party is determined by the various factors and special circumstances that shape
17 these expectations.

18 104. The use of reserves as part of the CAM expenses is a breach of the covenant of
19 good faith and fair dealing.

20 105. Substantial evidence was submitted establishing beyond a preponderance of the
21 evidence that, based on the contractual language negotiated and agreed to by the parties as part of
22 the 2007 Lease Modification, as well as the subsequent negotiations and conduct of the parties,
23 the appropriate rent applicable to the option period cannot be based on market rental rate or fair
24 market value.

25
26 106. The doctrines of part performance and/or estoppel preclude the Plaintiff from
27 arguing that no agreement existed. In general, principles of part performance and/or estoppel
28

1 prevent a party from taking a position contrary to a previously asserted position when another
2 party has relied upon the previous position.

3 107. At the time Plaintiff began paying rent in September 2016, Plaintiff was apprised
4 of all relevant facts. Plaintiff's conduct of paying this amount of rent was designed to be relied
5 upon, in that Plaintiff intended for Defendant to accept the full amount of rent as payment under
6 the Lease, in exchange for being allowed to continue to occupy the Premises. Plaintiff's
7 significant delay in asserting any dispute or protest as to the amounts being paid demonstrate the
8 Defendant had no idea of Plaintiff's purported hidden understanding that it did not agree to the
9 rent. Defendant detrimentally relied on Plaintiff's position, as Defendant kept the property off the
10 market instead of attempting to find a new tenant willing to pay full rent. The Plaintiff is estopped
11 from now taking a contrary position as to the amount of rent that Plaintiff offered, agreed to, and
12 did, in fact, perform.

13 108. As there were good faith disputes related to the amount of rent for the option
14 period presented for determination to the Court, the Court finds that there has been no breach of
15 the implied covenant of good faith and fair dealing on that issue.

16 109. Judgment in Defendant's favor is appropriate on Defendant's counterclaim for
17 breach of Lease, as Plaintiff's failure to pay the agreed-upon amount of rent from August 2019
18 through November 2019 constituted a breach of Plaintiff's obligations under the Lease and
19 Counterdefendants' obligations under the Guaranties.

20 110. If any conclusions of law are properly findings of fact, they shall be treated as if
21 appropriately identified and designated.

22 Based upon the foregoing Findings of Fact and Conclusions of Law

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
24 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,
25
26
27
28

1 LLC, on the First Claim for Relief for Declaratory Judgment establishing a reasonable rent
2 schedule as :

3 09/01/16 to 08/31/17 - \$8,400 per month, \$100,500 per annum
4 09/01/17 to 08/31/18 - \$8,400 per month, \$100,500 per annum
5 09/01/18 to 08/31/19 - \$8,610 per month, \$103,320 per annum
6 09/01/19 to 08/31/20 - \$8,820 per month, \$105,840 per annum
7 09/01/20 to 08/31/21 - \$9,030 per month, \$108,360 per annum

8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
9 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,
10 LLC, on the Second Claim for Relief for Breach of Contract in the amount of \$4,578.

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
12 hereby entered in favor of Plaintiff JSJBD Corp, and against Defendant Tropicana Investments,
13 LLC, on the Third Claim for Relief for Breach of the Implied Covenant of Good Faith and Fair
14 Dealing in the amount of the attorney's fees and costs related to the CAM expense portion of the
15 litigation only.

16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
17 hereby entered in favor of Defendant Tropicana Investments, LLC, and against Plaintiff JSJBD
18 Corp, on all other claims for relief contained in the Complaint.

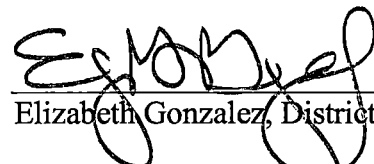
19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
20 hereby entered in favor of Counterclaimant Tropicana Investments, LLC, and against
21 Counterdefendant JSJBD Corp, and all other Counterdefendants on the Second Claim for Relief
22 for Breach of Lease Agreement for the underpayment of rent according to the schedule in the
23 amount of \$13,000.

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
25 hereby entered in favor of Counterdefendant JSJBD Corp, and all other Counterdefendants, and
26 against Counterclaimant Tropicana Investments, LLC, on all other claims for relief contained in
27
28

1 the Counterclaim.

2 In light of the awards on both the Complaint and Counterclaim, the issue of attorney's
3 fees as sought in both the Complaint and Counterclaim is reserved for post-trial motion practice.
4

5
6 DATED this 5th day of December, 2019.

7
8 
9 Elizabeth Gonzalez, District Court Judge

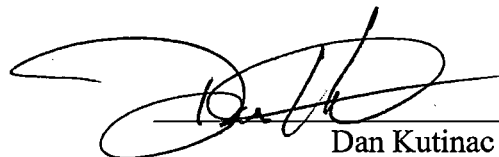
10 Certificate of Service

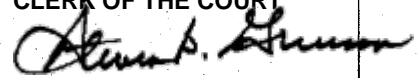
11 I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of
12 Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth
13 Judicial District Court Electronic Filing Program.

14 *If indicated below, a copy of the foregoing Scheduling Order was also:*

15 ☐ Placed in the Attorney(s) Folder on the 1st Floor of the RJC for;

16 ☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at
17 their last known address(es):

18
19 
20 Dan Kutinac



Marquis Aurbach Coffing
Terry A. Moore, Esq.
Nevada Bar No. 7831
Collin M. Jayne, Esq.
Nevada Bar No. 13899
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
tmoore@maclaw.com
cjayne@maclaw.com
Attorneys for Tropicana Investments, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT, an individual;
JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B

Dept. No.: XI

Date of Hearing: January 27, 2020

Time of Hearing: 9:00 a.m.

ORDER DENYING DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT

This matter having come before the Court on January 27, 2020 for a hearing regarding Defendant/Counterclaimant Tropicana Investments, LLC's Motion to Alter or Amend Judgment, with Terry A. Moore Esq. and Collin M. Jayne, Esq. of the law firm of Marquis Aurbach Coffing appearing for Defendant/Counterclaimant Tropicana Investments, LLC; and Mario P. Lovato,

MARQUIS AURBACH COFFING

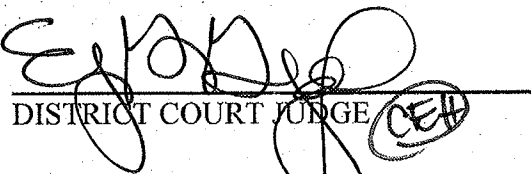

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 Esq. of Lovato Law Firm, P.C. appearing for Plaintiff/Counterdefendants JSJBD Corp, Stuart
2 Vincent, Jeffrey Vincent, and Jeff White; and the Court, having entertained the arguments of
3 counsel, and for good cause appearing,

4 IT IS HEREBY ORDERED that Defendant's Motion to Alter or Amend Judgment is
5 DENIED.

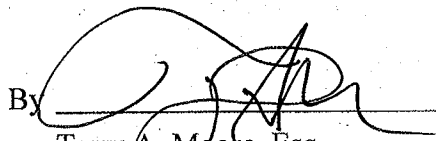
6 Dated this 21 day of February, 2020.

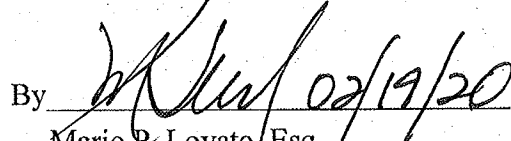
7 THE HONORABLE ELIZABETH GONZALEZ

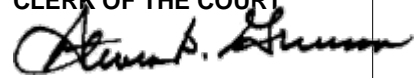
8
9
10 
DISTRICT COURT JUDGE 

11 Respectfully submitted by:
12 MARQUIS AURBACH COFFING

Approved as to form:
LOVATO LAW FIRM, P.C.

13
14 By 
15 Terry A. Moore, Esq.
16 Nevada Bar No. 7831
17 Collin M. Jayne, Esq.
18 Nevada Bar No. 13899
19 10001 Park Run Drive
20 Las Vegas, Nevada 89145
21 Attorneys for Defendant/Counterclaimant
22 Tropicana Investments, LLC

By 
Mario P. Lovato, Esq.
Nevada Bar No. 7407
7465 W. Lake Mead Blvd., #100
Las Vegas, Nevada 89128
Attorney for Plaintiff JSJBD and
Counterdefendants

**Marquis Aurbach Coffing**

Terry A. Moore, Esq.

Nevada Bar No. 7831

10001 Park Run Drive

Las Vegas, Nevada 89145

Telephone: (702) 382-0711

Facsimile: (702) 382-5816

tmoore@maclaw.com

Attorneys for Tropicana Investments, LLC

DISTRICT COURT**CLARK COUNTY, NEVADA**JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

Case No.: A-18-785311-B

Dept. No.: XI

NOTICE OF ENTRY OF ORDERTROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT, an individual;
JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

NOTICE OF ENTRY OF ORDER

Please take notice that an Order Denying Defendant's Motion to Alter or Amend Judgment was entered in the above-captioned matter on the 24th day of February, 2020, a copy of which is attached hereto.

Dated this 25th day of February, 2020.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore
Terry A. Moore, Esq.
Nevada Bar No. 7831
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney for Tropicana Investments, LLC

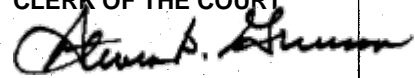
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 25th day of February, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Mario Lovato: mpl@lovatolaw.com

/s/ Cally Hatfield
an employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



Marquis Aurbach Coffing
Terry A. Moore, Esq.
Nevada Bar No. 7831
Collin M. Jayne, Esq.
Nevada Bar No. 13899
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
tmoore@maclaw.com
cjayne@maclaw.com
Attorneys for Tropicana Investments, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a California limited liability company,

Defendant.

TROPICANA INVESTMENTS, LLC, a California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation; STUART VINCENT, an individual; JEFFREY B. VINCENT, an individual; JEFF WHITE, an individual; JOHN DOES I-X; and ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B

Dept. No.: XI

Date of Hearing: January 27, 2020

Time of Hearing: 9:00 a.m.

ORDER DENYING DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT

This matter having come before the Court on January 27, 2020 for a hearing regarding Defendant/Counterclaimant Tropicana Investments, LLC's Motion to Alter or Amend Judgment, with Terry A. Moore Esq. and Collin M. Jayne, Esq. of the law firm of Marquis Aurbach Coffing appearing for Defendant/Counterclaimant Tropicana Investments, LLC; and Mario P. Lovato,

MARQUIS AURBACH COFFING

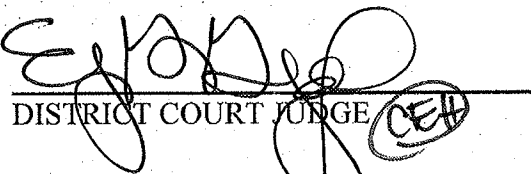

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 Esq. of Lovato Law Firm, P.C. appearing for Plaintiff/Counterdefendants JSJBD Corp, Stuart
2 Vincent, Jeffrey Vincent, and Jeff White; and the Court, having entertained the arguments of
3 counsel, and for good cause appearing,

4 IT IS HEREBY ORDERED that Defendant's Motion to Alter or Amend Judgment is
5 DENIED.

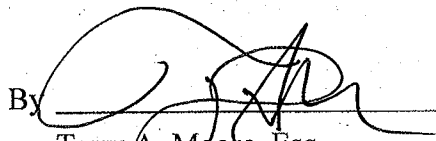
6 Dated this 21 day of February, 2020.

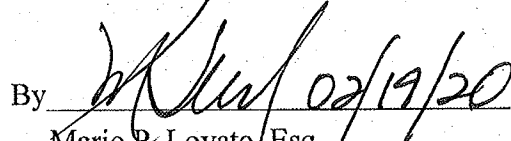
7 THE HONORABLE ELIZABETH GONZALEZ

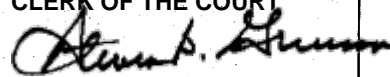
8
9
10 
DISTRICT COURT JUDGE 

11 Respectfully submitted by:
12 MARQUIS AURBACH COFFING

Approved as to form:
LOVATO LAW FIRM, P.C.

13
14 By 
15 Terry A. Moore, Esq.
16 Nevada Bar No. 7831
17 Collin M. Jayne, Esq.
18 Nevada Bar No. 13899
19 10001 Park Run Drive
20 Las Vegas, Nevada 89145
21 Attorneys for Defendant/Counterclaimant
22 Tropicana Investments, LLC

By  02/19/20
Mario P. Lovato, Esq.
Nevada Bar No. 7407
7465 W. Lake Mead Blvd., #100
Las Vegas, Nevada 89128
Attorney for Plaintiff JSJBD and
Counterdefendants



MARIO P. LOVATO
Nevada Bar No. 7427
LOVATO LAW FIRM, P.C.
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T: (702) 979-9047
mpl@lovatolaw.com
Attorney for Plaintiff JSJBD Corp
dba Blue Dogs Pub and Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP dba Blue Dogs Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a California
limited liability company,

Defendant.

CASE NO. A-18-785311-B
DEPT 11

TROPICANA INVESTMENTS, LLC, a California
limited liability company,

Counterclaimant,

vs.

JSJBD CORP. dba Blue Dogs Pub, a Nevada
corporation; STUART VINCENT; JEFFREY B.
VINCENT; and JEFF WHITE,

Counterdefendants.

**ORDER GRANTING PLAINTIFF / COUNTERDEFENDANTS'
MOTION FOR ATTORNEY FEES AND COSTS**

On January 27, 2020, a hearing took place for Plaintiff / Counterdefendants' Motion for Attorney Fees and Costs, the parties appearing through their respective counsel of record and parties / party-representatives Stuart Vincent and Bruce Eisman also appearing, the Court, having reviewing the briefing and arguments of counsel, and good cause appearing:

02-20-20P02:59 RCVD

1 THE COURT HEREBY FINDS that:

2
3 1. Plaintiff JSJBD Corp was, and is, the prevailing party in this matter as pertains to
4 the claims in the Complaint filed by JSJBD Corp and as determined in the Court's Findings of
5 Fact and Conclusions of Law entered herein on December 5, 2019.

6 2. Under *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969), when
7 courts determine the appropriate fee to award in civil cases, they must consider various factors: (1)
8 the qualities of the advocate: his ability, his training, education, experience, professional standing
9 and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time
10 and skill required, the responsibility imposed and the prominence and character of the parties
11 where they affect the importance of the litigation; (3) the work actually performed by the lawyer:
12 the skill, time and attention given to the work; (4) the result: whether the attorney was successful
13 and what benefits were derived.

14
15 3. The *Brunzell* factors support the award of attorney fees. Mr. Lovato is a business
16 litigator who has appeared before the Court on numerous occasions, has worked at reputable law
17 firms in Las Vegas, Nevada, has charged a reasonable billing rate in this matter; the character of
18 the work involved the filing of motions and related pleadings, appearance at hearings, appearance
19 at trial, the drafting and service of written discovery and related work, which is commensurate
20 with the requested billable rate; the work performed by such counsel, was reasonable; and the
21 result obtained supports the fees.


22
23 4. The following attorney fees and costs of Plaintiff JSJBD Corp and
24 Counterdefendants should be, and are, approved as being reasonable, and being necessarily and
25 actually incurred in the litigation of this matter from its inception up to December 26, 2019 (the
26 date of filing of the motion for attorney fees and costs: (a) attorney fees in the amount of
27 \$126,630.00; and (b) costs in the amount stated in, and separately addressed by, the Order
28 addressing Defendant / Counterclaimant's Motion to Retax Costs.

1
2 5. Judgment should be entered in favor of Plaintiff JSJBD Corp. and against
3 Defendant / Counterclaimant Tropicana Investments, LLC, as further stated below, based upon the
4 Findings and Fact and Conclusions of Law entered on December 5, 2019 and for the amounts
5 granted herein for the Motion for Attorney Fees and Costs.

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff /
7 Counterdefendants' Motion for Attorney Fees and Costs is GRANTED such that Plaintiff JSJBD
8 Corp is granted attorney fees in the amount of the attorney fee figure of One-Hundred Twenty-Six
9 Thousand Six-Hundred Thirty Dollars (\$126,630.00).
10

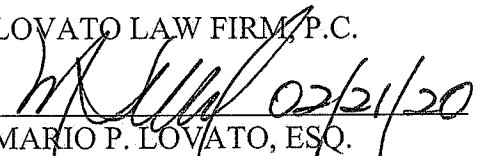
11 Dated: February 21, 2020.

12 THE HONORABLE ELIZABETH GONZALEZ

13 
14 DISTRICT COURT JUDGE

15 Submitted by:

16 LOVATO LAW FIRM, P.C.

17  02/21/20
18 MARIO P. LOVATO, ESQ.

19 Nevada Bar No. 7427

20 Attorney for Plaintiff JSJBD Corp. and
21 Counterdefendants

22 Approved as to form:

23 MARQUIS AURBACH COFFING

24 
25 TERRY A. MOORE, ESQ.

26 Nevada Bar NO. 7831

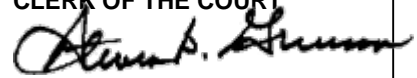
27 COLLIN M. JAYNE, ESQ.

28 Nevada Bar No. 13899

10001 Park Run Dr.

Las Vegas, NV 89145

Attorneys for Defendant / Counterclaimant
Tropicana Investments, LLC



MARIO P. LOVATO, ESQ.
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Las Vegas, Nevada 89128
TEL: (702) 979-9047
mpl@lovatolaw.com
Attorney for Plaintiff / Counterdefendant
JSJBD Corp dba Blue Dogs Pub and
the individual Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP, d/b/a Blue Dogs Pub, a Nevada corporation,)	Case No.: A-18-785311-B
)	
Plaintiff,)	
)	BUSINESS COURT
vs.)	
)	
TROPICANA INVESTMENTS, LLC, a California limited liability company,)	
)	
Defendant.)	
)	
AND COUNTERCLAIMS.)	
)	

NOTICE OF ENTRY OF ORDER

TAKE NOTICE that an Order was entered by the Court in the above-referenced case on February 24, 2020, a copy of which is attached.

LOVATO LAW FIRM, P.C.

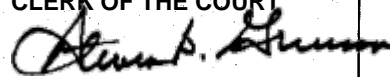
/s/ Mario Lovato
MARIO P. LOVATO
Nevada Bar No. 7427
Attorney for Plaintiff / Counterdefendant
JSJBD Corp dba Blue Dogs Pub and
the individual Counterdefendants

1 **CERTIFICATE OF SERVICE**

2 IT IS HEREBY CERTIFIED that, on February 25, 2020, the above and foregoing
3 **NOTICE OF ENTRY OF ORDER** was served via the Court's system of electronic service on
4 all parties registered and listed for such service, including upon by the following:
5

6
7 Terry A. Moore
8 Marquis Aurbach Coffing
9 10001 Park Run Dr.
10 Las Vegas, NV 89145
11 Attorneys for Defendant / Counterclaimant
12 Tropicana Investments, LLC
13
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28

_____/s/ Mario Lovato



MARIO P. LOVATO
Nevada Bar No. 7427
LOVATO LAW FIRM, P.C.
7465 W. Lake Mead Blvd. Ste. 100
Las Vegas, Nevada 89128
T: (702) 979-9047
mpl@lovatolaw.com
Attorney for Plaintiff JSJBD Corp
dba Blue Dogs Pub and Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP dba Blue Dogs Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a California
limited liability company,

Defendant.

CASE NO. A-18-785311-B
DEPT 11

TROPICANA INVESTMENTS, LLC, a California
limited liability company,

Counterclaimant,

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corporation; STUART VINCENT; JEFFREY B.
VINCENT; and JEFF WHITE,

Counterdefendants.

**ORDER GRANTING PLAINTIFF / COUNTERDEFENDANTS'
MOTION FOR ATTORNEY FEES AND COSTS**

On January 27, 2020, a hearing took place for Plaintiff / Counterdefendants' Motion for Attorney Fees and Costs, the parties appearing through their respective counsel of record and parties / party-representatives Stuart Vincent and Bruce Eisman also appearing, the Court, having reviewing the briefing and arguments of counsel, and good cause appearing:

02-20-20P02:59 RCVD

1 THE COURT HEREBY FINDS that:

2
3 1. Plaintiff JSJBD Corp was, and is, the prevailing party in this matter as pertains to
4 the claims in the Complaint filed by JSJBD Corp and as determined in the Court's Findings of
5 Fact and Conclusions of Law entered herein on December 5, 2019.

6 2. Under *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969), when
7 courts determine the appropriate fee to award in civil cases, they must consider various factors: (1)
8 the qualities of the advocate: his ability, his training, education, experience, professional standing
9 and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time
10 and skill required, the responsibility imposed and the prominence and character of the parties
11 where they affect the importance of the litigation; (3) the work actually performed by the lawyer:
12 the skill, time and attention given to the work; (4) the result: whether the attorney was successful
13 and what benefits were derived.

14
15 3. The *Brunzell* factors support the award of attorney fees. Mr. Lovato is a business
16 litigator who has appeared before the Court on numerous occasions, has worked at reputable law
17 firms in Las Vegas, Nevada, has charged a reasonable billing rate in this matter; the character of
18 the work involved the filing of motions and related pleadings, appearance at hearings, appearance
19 at trial, the drafting and service of written discovery and related work, which is commensurate
20 with the requested billable rate; the work performed by such counsel, was reasonable; and the
21 result obtained supports the fees.

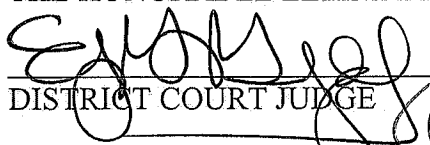

22
23 4. The following attorney fees and costs of Plaintiff JSJBD Corp and
24 Counterdefendants should be, and are, approved as being reasonable, and being necessarily and
25 actually incurred in the litigation of this matter from its inception up to December 26, 2019 (the
26 date of filing of the motion for attorney fees and costs: (a) attorney fees in the amount of
27 \$126,630.00; and (b) costs in the amount stated in, and separately addressed by, the Order
28 addressing Defendant / Counterclaimant's Motion to Retax Costs.

1
2 5. Judgment should be entered in favor of Plaintiff JSJBD Corp. and against
3 Defendant / Counterclaimant Tropicana Investments, LLC, as further stated below, based upon the
4 Findings and Fact and Conclusions of Law entered on December 5, 2019 and for the amounts
5 granted herein for the Motion for Attorney Fees and Costs.

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff /
7 Counterdefendants' Motion for Attorney Fees and Costs is GRANTED such that Plaintiff JSJBD
8 Corp is granted attorney fees in the amount of the attorney fee figure of One-Hundred Twenty-Six
9 Thousand Six-Hundred Thirty Dollars (\$126,630.00).
10

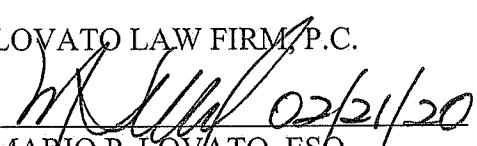
11 Dated: February 21, 2020.

12 THE HONORABLE ELIZABETH GONZALEZ

13 
14 DISTRICT COURT JUDGE 

15 Submitted by:

16 LOVATO LAW FIRM, P.C.

17 
18 MARIO P. LOVATO, ESQ.

19 Nevada Bar No. 7427

20 Attorney for Plaintiff JSJBD Corp. and
21 Counterdefendants

22 Approved as to form:

23 MARQUIS AURBACH COFFING

24 
25 TERRY A. MOORE, ESQ.

26 Nevada Bar NO. 7831

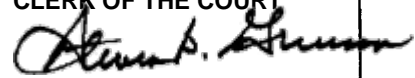
27 COLLIN M. JAYNE, ESQ.

28 Nevada Bar No. 13899

10001 Park Run Dr.

Las Vegas, NV 89145

Attorneys for Defendant / Counterclaimant
Tropicana Investments, LLC



Marquis Aurbach Coffing
Terry A. Moore, Esq.
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cjayne@maclaw.com
Attorneys for Tropicana Investments, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT, an individual;
JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B
Dept. No.: XI

Date of Hearing: January 27, 2020
Time of Hearing: 9:00 a.m.

**ORDER GRANTING IN PART DEFENDANT'S MOTION TO FOR ATTORNEYS'
FEES AND COSTS**

This matter having come before the Court on January 27, 2020 for a hearing regarding
Defendant/Counterclaimant Tropicana Investments, LLC's Motion for Attorneys' Fees and
Costs, with Terry A. Moore Esq. and Collin M. Jayne, Esq. of the law firm of Marquis Aurbach

1 Coffing appearing for Defendant/Counterclaimant Tropicana Investments, LLC ("Defendant");
2 and Mario P. Lovato, Esq. of Lovato Law Firm, P.C. appearing for Plaintiff/Counterdefendants
3 JSJBD Corp, Stuart Vincent, Jeffrey Vincent, and Jeff White (collectively, "Plaintiff"); and the
4 Court, having entertained the arguments of counsel, considered the points and authorities thereof,
5 and for good cause appearing, hereby finds and orders that Defendant's Motion for Attorneys'
6 Fees and Costs is granted in part and denied in part, as follows:

7 The Court finds that Defendant is entitled to recover its reasonable attorneys' fees
8 incurred in this litigation, regardless of whether Defendant is a prevailing party, under Section 24
9 of the Lease which provides that "In the event the Landlord finds it necessary to retain an
10 attorney in connection with the default by the Tenant in any of the agreements or covenants
11 contained in this Lease, Tenant shall pay reasonable attorney's fees to said attorney." Defendant
12 asserted a counterclaim for breach of the Lease, and this Court found in Defendant's favor on
13 this claim, concluding that Plaintiff breached the Lease. Thus, Defendant is entitled to recover
14 reasonable attorneys' fees.

15 After weighing the factors provided in *Brunzell v. Golden Gate National Bank*, 85 Nev.
16 345, 349-50, 455 P.2d 31, 33 (1969), the Court finds that Defendant's requested attorneys' fees
17 are reasonable, except for the fees related to a second attorney attending trial. The second
18 attorney's time at trial amounts to fees of \$10,807.50, and thus Defendant is entitled to all
19 requested fees, less this amount. Defendant is therefore awarded attorneys' fees of \$208,967.50.

20 Finally, the Court finds that Defendant was a prevailing party, and thus Defendant is
21 entitled to recover costs under NRS 18.020. As stated in this Court's order Granting Plaintiff's
22 Motion to Retax, Defendant has not established that the circumstances surrounding its expert's
23 testimony were of such necessity as to require fees beyond the \$1,500 cap provided by NRS
24 18.005(5), so Defendant's requested expert fees will be reduced to \$1,500. *Frazier v. Drake*,
25 131 Nev. 632, 357 P.3d 365 (Nev. App. 2015). Additionally, Defendant has not established that
26 its requested costs for scanning charges were reasonable and necessary, so this cost is not
27 recoverable. Defendant has properly established that all other requested costs were reasonable,
28 necessary, and actually incurred in this action. *Cadle Company v. Woods & Erickson LLP*, 131

MARQUIS AURBACH COFFING

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(702) 382-0711 FAX: (702) 382-5816

1 Nev. 114, 120-121, 345 P.3d 1049, 1054 (2015). In sum, Defendant will be awarded costs
2 totaling \$13,835.50.

3 Therefore,

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion
5 for Attorneys' Fees and Costs is GRANTED IN PART and DENIED IN PART. Defendant is
6 awarded attorneys' fees totaling \$208,967.50, and costs totaling \$13,835.50.


7 Dated this 11 day of February, 2020.

8 THE HONORABLE ELIZABETH GONZALEZ

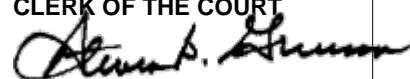
9
10 
11 DISTRICT COURT JUDGE 

12 Respectfully submitted by:
13 MARQUIS AURBACH COFFING

Approved as to form:
LOVATO LAW FIRM, P.C.

14
15 By 
16 Terry A. Moore, Esq.
17 Nevada Bar No. 7831
18 Collin M. Jayne, Esq.
19 Nevada Bar No. 13899
20 10001 Park Run Drive
21 Las Vegas, Nevada 89145
22 Attorneys for Defendant/Counterclaimant
23 Tropicana Investments, LLC

By _____
Mario P. Lovato, Esq.
Nevada Bar No. 7407
7465 W. Lake Mead Blvd., #100
Las Vegas, Nevada 89128
Attorney for Plaintiff JSJD and
Counterdefendants

**Marquis Aurbach Coffing**

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Facsimile: (702) 382-5816
tmoore@maclaw.com

Attorneys for Tropicana Investments, LLC

DISTRICT COURT**CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

Case No.: A-18-785311-B
Dept. No.: XI

NOTICE OF ENTRY OF ORDER

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT, an individual;
JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

NOTICE OF ENTRY OF ORDER

Please take notice that an Order Granting in Part Defendant's Motion for Attorneys' Fees and Costs was entered in the above-captioned matter on the 13th day of February, 2020, a copy of which is attached hereto.

Dated this 13th day of February, 2020.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore
Terry A. Moore, Esq.
Nevada Bar No. 7831
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney for Tropicana Investments, LLC

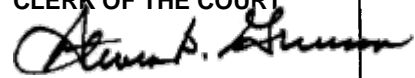
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 13th day of February, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Mario Lovato: mpl@lovatolaw.com

/s/ Cally Hatfield
an employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



Marquis Aurbach Coffing
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tmoore@maclaw.com
cjayne@maclaw.com
Attorneys for Tropicana Investments, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT, an individual;
JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B
Dept. No.: XI

Date of Hearing: January 27, 2020
Time of Hearing: 9:00 a.m.

**ORDER GRANTING IN PART DEFENDANT'S MOTION TO FOR ATTORNEYS'
FEES AND COSTS**

This matter having come before the Court on January 27, 2020 for a hearing regarding
Defendant/Counterclaimant Tropicana Investments, LLC's Motion for Attorneys' Fees and
Costs, with Terry A. Moore Esq. and Collin M. Jayne, Esq. of the law firm of Marquis Aurbach

1 Coffing appearing for Defendant/Counterclaimant Tropicana Investments, LLC ("Defendant");
2 and Mario P. Lovato, Esq. of Lovato Law Firm, P.C. appearing for Plaintiff/Counterdefendants
3 JSJBD Corp, Stuart Vincent, Jeffrey Vincent, and Jeff White (collectively, "Plaintiff"); and the
4 Court, having entertained the arguments of counsel, considered the points and authorities thereof,
5 and for good cause appearing, hereby finds and orders that Defendant's Motion for Attorneys'
6 Fees and Costs is granted in part and denied in part, as follows:

7 The Court finds that Defendant is entitled to recover its reasonable attorneys' fees
8 incurred in this litigation, regardless of whether Defendant is a prevailing party, under Section 24
9 of the Lease which provides that "In the event the Landlord finds it necessary to retain an
10 attorney in connection with the default by the Tenant in any of the agreements or covenants
11 contained in this Lease, Tenant shall pay reasonable attorney's fees to said attorney." Defendant
12 asserted a counterclaim for breach of the Lease, and this Court found in Defendant's favor on
13 this claim, concluding that Plaintiff breached the Lease. Thus, Defendant is entitled to recover
14 reasonable attorneys' fees.

15 After weighing the factors provided in *Brunzell v. Golden Gate National Bank*, 85 Nev.
16 345, 349-50, 455 P.2d 31, 33 (1969), the Court finds that Defendant's requested attorneys' fees
17 are reasonable, except for the fees related to a second attorney attending trial. The second
18 attorney's time at trial amounts to fees of \$10,807.50, and thus Defendant is entitled to all
19 requested fees, less this amount. Defendant is therefore awarded attorneys' fees of \$208,967.50.

20 Finally, the Court finds that Defendant was a prevailing party, and thus Defendant is
21 entitled to recover costs under NRS 18.020. As stated in this Court's order Granting Plaintiff's
22 Motion to Retax, Defendant has not established that the circumstances surrounding its expert's
23 testimony were of such necessity as to require fees beyond the \$1,500 cap provided by NRS
24 18.005(5), so Defendant's requested expert fees will be reduced to \$1,500. *Frazier v. Drake*,
25 131 Nev. 632, 357 P.3d 365 (Nev. App. 2015). Additionally, Defendant has not established that
26 its requested costs for scanning charges were reasonable and necessary, so this cost is not
27 recoverable. Defendant has properly established that all other requested costs were reasonable,
28 necessary, and actually incurred in this action. *Cadle Company v. Woods & Erickson LLP*, 131

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1 Nev. 114, 120-121, 345 P.3d 1049, 1054 (2015). In sum, Defendant will be awarded costs
2 totaling \$13,835.50.

3 Therefore,

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion
5 for Attorneys' Fees and Costs is GRANTED IN PART and DENIED IN PART. Defendant is
6 awarded attorneys' fees totaling \$208,967.50, and costs totaling \$13,835.50.


7 Dated this 11 day of February, 2020.

8 THE HONORABLE ELIZABETH GONZALEZ

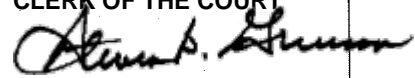
9
10 
11 DISTRICT COURT JUDGE 

12 Respectfully submitted by:
13 MARQUIS AURBACH COFFING

Approved as to form:
LOVATO LAW FIRM, P.C.

14
15 By 
16 Terry A. Moore, Esq.
17 Nevada Bar No. 7831
18 Collin M. Jayne, Esq.
19 Nevada Bar No. 13899
20 10001 Park Run Drive
21 Las Vegas, Nevada 89145
22 Attorneys for Defendant/Counterclaimant
23 Tropicana Investments, LLC

By _____
Mario P. Lovato, Esq.
Nevada Bar No. 7407
7465 W. Lake Mead Blvd., #100
Las Vegas, Nevada 89128
Attorney for Plaintiff JSJD and
Counterdefendants



1 **Marquis Aurbach Coffing**
2 Terry A. Moore, Esq.
3 Nevada Bar No. 7831
4 Collin M. Jayne, Esq.
5 Nevada Bar No. 13899
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8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 tmoore@maclaw.com
11 cjayne@maclaw.com
12 Attorneys for Tropicana Investments, LLC

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
16 corporation,

17 Plaintiff,

18 vs.

19 TROPICANA INVESTMENTS, LLC, a
20 California limited liability company,

21 Defendant.

22 TROPICANA INVESTMENTS, LLC, a
23 California limited liability company,

24 Counterclaimant,

25 vs.

26 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
27 corporation; STUART VINCENT, an individual;
28 JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B

Dept. No.: XI

FINAL JUDGMENT

Date of Hearing: January 27, 2020

Time of Hearing: 9:00 a.m.

FINAL JUDGMENT

Whereas, the above matter having been tried to the Court, and good cause appearing.

JUDGMENT IS HEREBY ENTERED in favor of Defendant/Counterclaimant Tropicana Investments, LLC and against Counterdefendants JSJBD Corp., Stuart Vincent, Jeffrey Vincent, and Jeff White ("Counterdefendants"), jointly and severally, as follows:

1. JSJBD Corp. is awarded \$4,578.00 against Tropicana Investments, LLC, representing compensatory damages for overpaid CAMs;
2. JSJBD Corp. is awarded pre-judgment interest accruing from December 6, 2018, through December 5, 2019, against Tropicana Investments, LLC, in the amount of \$342.41;
3. JSJBD Corp. is awarded attorneys' fees in the amount of \$126,630.00 against Tropicana Investments, LLC;
4. JSJBD Corp. is awarded costs of suit against Tropicana Investments, LLC, in the amount of \$7,124.97;
5. Tropicana Investments, LLC is awarded \$13,000 against the Counterdefendants, representing compensatory damages for unpaid rent under the subject lease;
6. Tropicana Investments, LLC is awarded pre-judgment interest accruing from January 9, 2019, through December 5, 2019, against the Counterdefendants, in the amount of \$878.84;
7. Tropicana Investments, LLC is awarded costs of suit against the Counterdefendants, in the amount of \$13,835.50; and
8. Tropicana Investments, LLC is awarded its attorneys' fees totaling \$208,967.50 against the Counterdefendants.
9. After offsetting the amount awarded to JSJBD Corp. this Final Judgment is entered in favor of Tropicana Investments, LLC and against JSJBD Corp., Stuart Vincent, Jeffrey

MARQUIS AURBACH COFFING


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1 10. Vincent, and Jeff White, jointly and severally in the amount of \$98,006.46, with interest
2 accruing at the rate of 6.75% per annum until paid in full.

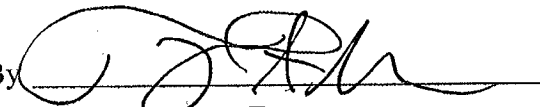
3 IT IS SO ORDERED.

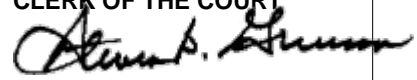
4 Dated this 11 day of February, 2020.

5 THE HONORABLE ELIZABETH GONZALEZ

6
7 
8 DISTRICT COURT JUDGE
9 A-18-785311-B
JSJBD v. Tropicana

10 Respectfully submitted by:
11 MARQUIS AURBACH COFFING

12
13 By 
14 Terry A. Moore, Esq.
15 Nevada Bar No. 7831
16 Collin M. Jayne, Esq.
17 Nevada Bar No. 13899
18 10001 Park Run Drive
19 Las Vegas, Nevada 89145
20 Attorneys for Defendant/Counterclaimant
21 Tropicana Investments, LLC
22
23
24
25
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27
28

**Marquis Aurbach Coffing**

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tmoore@maclaw.com

Attorneys for Tropicana Investments, LLC

DISTRICT COURT**CLARK COUNTY, NEVADA**JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation,

Plaintiff,

vs.

TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Defendant.

Case No.: A-18-785311-B

Dept. No.: XI

**NOTICE OF ENTRY OF FINAL
JUDGMENT**TROPICANA INVESTMENTS, LLC, a
California limited liability company,

Counterclaimant,

vs.

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
corporation; STUART VINCENT, an individual;
JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

NOTICE OF ENTRY OF FINAL JUDGMENT

Please take notice that a Final Judgment was entered in the above-captioned matter on the 25th day of February, 2020, a copy of which is attached hereto.

Dated this 25th day of February, 2020.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore
Terry A. Moore, Esq.
Nevada Bar No. 7831
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney for Tropicana Investments, LLC

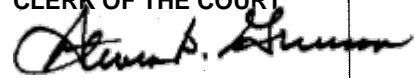
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF FINAL JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 25th day of February, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Mario Lovato: mpl@lovatolaw.com

/s/ Cally Hatfield
an employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



1 **Marquis Aurbach Coffing**
2 Terry A. Moore, Esq.
3 Nevada Bar No. 7831
4 Collin M. Jayne, Esq.
5 Nevada Bar No. 13899
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 tmoore@maclaw.com
11 cjayne@maclaw.com
12 Attorneys for Tropicana Investments, LLC

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
16 corporation,

17 Plaintiff,

18 vs.

19 TROPICANA INVESTMENTS, LLC, a
20 California limited liability company,

21 Defendant.

22 TROPICANA INVESTMENTS, LLC, a
23 California limited liability company,

24 Counterclaimant,

25 vs.

26 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada
27 corporation; STUART VINCENT, an individual;
28 JEFFREY B. VINCENT, an individual; JEFF
WHITE, an individual; JOHN DOES I-X; and
ROE CORPORATIONS,

Counterdefendants.

Case No.: A-18-785311-B

Dept. No.: XI

FINAL JUDGMENT

Date of Hearing: January 27, 2020

Time of Hearing: 9:00 a.m.

FINAL JUDGMENT

Whereas, the above matter having been tried to the Court, and good cause appearing.

JUDGMENT IS HEREBY ENTERED in favor of Defendant/Counterclaimant Tropicana Investments, LLC and against Counterdefendants JSJBD Corp., Stuart Vincent, Jeffrey Vincent, and Jeff White ("Counterdefendants"), jointly and severally, as follows:

1. JSJBD Corp. is awarded \$4,578.00 against Tropicana Investments, LLC, representing compensatory damages for overpaid CAMs;
2. JSJBD Corp. is awarded pre-judgment interest accruing from December 6, 2018, through December 5, 2019, against Tropicana Investments, LLC, in the amount of \$342.41;
3. JSJBD Corp. is awarded attorneys' fees in the amount of \$126,630.00 against Tropicana Investments, LLC;
4. JSJBD Corp. is awarded costs of suit against Tropicana Investments, LLC, in the amount of \$7,124.97;
5. Tropicana Investments, LLC is awarded \$13,000 against the Counterdefendants, representing compensatory damages for unpaid rent under the subject lease;
6. Tropicana Investments, LLC is awarded pre-judgment interest accruing from January 9, 2019, through December 5, 2019, against the Counterdefendants, in the amount of \$878.84;
7. Tropicana Investments, LLC is awarded costs of suit against the Counterdefendants, in the amount of \$13,835.50; and
8. Tropicana Investments, LLC is awarded its attorneys' fees totaling \$208,967.50 against the Counterdefendants.
9. After offsetting the amount awarded to JSJBD Corp. this Final Judgment is entered in favor of Tropicana Investments, LLC and against JSJBD Corp., Stuart Vincent, Jeffrey

MARQUIS AURBACH COFFING



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(702) 382-0711 FAX: (702) 382-5816

1 10. Vincent, and Jeff White, jointly and severally in the amount of \$98,006.46, with interest
2 accruing at the rate of 6.75% per annum until paid in full.

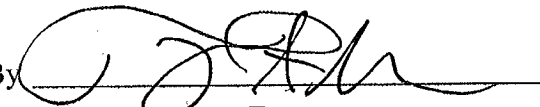
3 IT IS SO ORDERED.

4 Dated this 11 day of February, 2020.

5 THE HONORABLE ELIZABETH GONZALEZ

6
7 
8 DISTRICT COURT JUDGE
9 A-18-785311-B
JSJBD v. Tropicana 

10 Respectfully submitted by:
11 MARQUIS AURBACH COFFING

12
13 By 
14 Terry A. Moore, Esq.
15 Nevada Bar No. 7831
16 Collin M. Jayne, Esq.
17 Nevada Bar No. 13899
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20 Attorneys for Defendant/Counterclaimant
21 Tropicana Investments, LLC
22
23
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 28, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

**January 28, 2019 9:00 AM Mandatory Rule 16
Conference**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Lovato, Mario P. Attorney
Moore, Terry A, ESQ Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Bruce Iceman and Stewart Vincent, Client Representatives for the Plaintiff.

Per parties' agreement, COURT ORDERED, today is the Joint Case Conference and the filing of the Joint Case Conference Report (JCCR) is WAIVED. Initial disclosures to be made within 30 days. Counsel advised they are not aware of any ESI and confidentiality issues; there is an issue of accounting.

COURT ORDERED as follows:

Initial expert disclosures where a party bears the burden of proof DUE June 14, 2019;

Rebuttal expert disclosures where a party does not bear the burden of proof DUE July 26, 2019;

Discovery cut-off SET for September 6, 2019;

Motions TO BE FILED by September 27, 2019;

Matter SET for a Bench Trial on the stack beginning on November 18, 2019.

Per the parties' request, matter REFERRED to Judge Denton for a settlement conference on March 22, 2019. Counsel to contact Judge Denton's Executive Assistant if their clients have any issues with this date.

Court inquired as to whether the lease agreement includes an attorney's fees provision. Mr. Lovato stated it does. Court inquired of Mr. Moore as to how much the attorney's fees will be up to / before trial. Mr. Moore advised \$40,000 to \$50,000. Court encouraged counsel, that if the parties are not able to settle at the settlement conference, to file an offer of judgment which is the highest amount the party is willing to pay since there is an agreement that is one-sided. At Mr. Lovato's inquiry, Court confirmed depositing monies in dispute with the Court would require an order; however, this account would not have any interest; parties can also do a court-blocked account from which withdrawals cannot be made without court approval, and that would get interest. Mr. Moore stated his hesitation is that they have been paying their lease. Court NOTED it has not ordered anything; Mr. Lovato was just asking a question; if the parties cannot reach a stipulation, counsel can file a motion.

Finally, Mr. Lovato advised that there is a counter claim against Jeff White, who is no longer with the company; he does not know how serious these counter claims are but there is a guaranty of an additional \$210 per month, and he is making a request that Mr. White be dropped. Court stated it will let the parties work this out amongst themselves.

3-22-19 9:30 AM SETTLEMENT CONFERENCE (DEPT XIII - Denton)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

March 22, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

March 22, 2019 9:30 AM Settlement Conference

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT:	Lovato, Mario P.	Attorney
	Moore, Terry A, ESQ	Attorney
	Vincent, Jeffrey	Counter Defendant
	Vincent, Stuart	Counter Defendant

JOURNAL ENTRIES

- Jeff Chauncey, Representative of Tropicana Investments, LLC, present. Bruno Mark and Bruce Eisman, Representatives of Blue Dog's Pub, also present.

Following several caucuses back and forth between the parties, Court advised the matter has not resolved; however, it will not terminate the Settlement Conference at this time. COURT ORDERED, matter SET for Status Check in 90 days regarding resumption of settlement conference. Counsel to appear at the Status Check and advise if resumption is warranted.

6/20/19 9:00 AM STATUS CHECK: RESUMPTION OF SETTLEMENT CONFERENCE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 20, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

June 20, 2019 9:00 AM Status Check

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- No appearance. Court noted no status has been reported regarding resumption of the Settlement Conference and apparently there is no interest in the same. COURT ORDERED, Settlement Conference TERMINATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

July 08, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

July 08, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Lovato, Mario P. Attorney
Moore, Terry A, ESQ Attorney
Vincent, Jeffrey Counter Defendant
Vincent, Stuart Counter Defendant

JOURNAL ENTRIES

- MOTION FOR SUMMARY JUDGMENT...PLAINTIFF JSJBD CORP DBA BLUE DOGS PUB'S
OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT AND COUNTERMOTION
FOR PARTIAL SUMMARY ADJUDICATION

APPEARANCES CONTINUED: Bruce Iceman, Client Representative for the Plaintiff.

Following arguments by counsel as to commercial lease dispute, COURT ORDERED, countermotion GRANTED IN PART. The option under the 2007 agreement was properly executed; however, since the option does not include an amount of rent, the Court will need to make a determination at an evidentiary hearing or bench trial related to the appropriate amount of that rent, including whether the tenant waived any claim for lower rent and whether market conditions should influence the Court's determination of rent and whether partial performance has waived a claim to lower rent. Motion for summary judgment DENIED.

Counsel for Plaintiff to draft today's order.

9-9-19	9:00 AM	STATUS CHECK: TRIAL READINESS
11-12-19	9:30 AM	CALENDAR CALL
11-18-19	1:30 PM	BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 09, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

**September 09, 2019 9:00 AM Status Check: Trial
Readiness**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Lovato, Mario P. Attorney
Moore, Terry A, ESQ Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, counsel advised the pub is called the Blue Dog's Pub. Mr. Moore advised there is discovery to finish and the parties are working on that. Mr. Lovato advised they have agreed on deposition dates, and that is a minor issue; however, he asked for CAM (Common Area Maintenance) documents in July and still has not received a response; he also sent an email. Court noted that it typically grants an issue such as this when addressed in a motion. Court further noted a "secret subpoena" that was served. Mr. Lovato stated his objection. Mr. Moore advised his secretary served the subpoena on the deponent and forgot to serve it on Mr. Lovato; if the parties cannot work it out, he will understand; however, the deponent is agreeing to appear. Mr. Lovato advised the deponent has changed that and is no longer agreeing to appear. Mr. Moore stated he will file a motion if they cannot resolve the issue.

11-12-19 9:30 AM CALENDAR CALL

11-18-19 1:30 PM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 19, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

September 19, 2019 1:18 PM Telephonic Conference

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Lovato, Mario P. Attorney
Moore, Terry A, ESQ Attorney

JOURNAL ENTRIES

- Following arguments by counsel regarding the 30(b)(6) designee's communications with the landlord, particularly with respect to a 2016 letter that was the subject of a motion for summary judgment that was filed by the Defendant, COURT ORDERED, to the extent Mr. Moore is asking the 30(b)(6) witness if Ms. Miller was authorized to send the letter the witness will answer yes, or no; however, the substance of the communications with Mr. Miller remain privileged.

Mr. Moore requested clarification about another question: did you, or any other member of the company ever communicate to the landlord whether or not Mr. Miller was authorized or not authorized to make that representation? Court NOTED that is a different issue and is not privileged. Court FURTHER NOTED that it is concerned about Mr. Lovato's relevance objection; while it understands the nature of the issue, the Court ruled on summary judgment, but that does not eliminate the letter from the discovery process; Mr. Moore to only ask yes or no questions and rephrase to keep them shorter.

11-12-19 9:30 AM CALENDAR CALL

A-18-785311-B

11-18-19 1:30 PM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 02, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

October 02, 2019 9:00 AM Motion to Compel \$1,000 attorney's fees
awarded

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Lovato, Mario P.	Attorney
	Moore, Terry A, ESQ	Attorney
	Vincent, Jeffrey	Counter Defendant
	Vincent, Stuart	Counter Defendant

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Bruce Eisman, Client Representative for Plaintiff.

Following arguments by counsel, COURT ORDERED, within one (1) week or by close of business next Wednesday, October 9, 2019, Mr. Moore's client will COMPLY full with requests for production 2, 3, 4, 7, 8, 9, 10, and 11. \$1,000 in attorney's fees AWARDED. If Mr. Moore's client cannot find the records a certification of efforts needs TO BE PROVIDED as to what the client did and why he could not find the information.

Mr. Lovato to prepare today's order and run it by Mr. Moore prior to submission.

10-9-19 9:00 AM COUNTERCLAIMANT'S MOTION TO CORRECT ORDER OF THE
COURT ON ORDER SHORTENING TIME...DEFENDANT/COUNTERCLAIMANT TROPINANA
INVESTMENTS LLC'S MOTION FOR SANCTIONS FOR (I) JSJBD CORP'S FAILURE TO PRESENT
A KNOWLEDGEABLE DESIGNEE AND (II) FOR LEAVE TO TAKE DEPOSITION ON ORDER

SHORTENING TIME

11-4-19 9:00 AM DEFENDANT/COUNTERCLAIMANT TROPICANA
INVESTMENTS, LLC'S MOTION IN LIMINE TO PRECLUDE TESTIMONY OF EXPERTS WHOSE
OPINIONS WERE NOT TIMELY DISCLOSED

11-12-19 9:30 AM CALENDAR CALL

11-18-19 1:30 PM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 09, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

October 09, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Jayne, Collin Attorney
 Lovato, Mario P. Attorney
 Moore, Terry A, ESQ Attorney

JOURNAL ENTRIES

- COUNTERCLAIMANT'S MOTION TO CORRECT ORDER OF THE COURT ON ORDER SHORTENING TIME...DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS LLC'S MOTION FOR SANCTIONS FOR (I) JSJBD CORP'S FAILURE TO PRESENT A KNOWLEDGEABLE DESIGNEE AND (II) FOR LEAVE TO TAKE DEPOSITION ON ORDER SHORTENING TIME

Proposed order from previous hearing signed in open court and returned to Mr. Lovato for filing.

COUNTERCLAIMANT'S MOTION TO CORRECT ORDER OF THE COURT ON ORDER SHORTENING TIME: Mr. Moore advised he did not get a chance to file a reply because he got the opposition yesterday, but he is asking the Court not to change its mind and that the order should reflect what the Court said. Court read the transcript and NOTED that it understands that there could be some confusion, and, if there was not a system where the judge handles the case from beginning to end it might be an issue; however, those are the things that they are trying. Today the Court has discussed the contents of the order with counsel; the Court does not believe the order needs to be modified, but the Court understands counsel's position and has clarified the issues they will deal with at trial given the limited granting of the counter motion. Mr. Moore does not need to prepare an

order, but if he wants to he can do one and will need to run it by Mr. Lovato. Court further noted that today's motion is not denied; the Court had a discussion with counsel, and the Court does not believe a correction needs to occur.

DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS LLC'S MOTION FOR SANCTIONS FOR (I) JSJBD CORP'S FAILURE TO PRESENT A KNOWLEDGEABLE DESIGNEE AND (II) FOR LEAVE TO TAKE DEPOSITION ON ORDER SHORTENING TIME: Following arguments by Mr. Moore and Mr. Lovato, COURT ORDERED, motion GRANTED IN PART. With respect to any answer related to a communication for which the answer was "I don't know", the communication sent by JSJBD's lawyers were duly authorized to be sent by JSJBD and JSJBD is bound by the representations made in those communications. The Court will NOT GRANT court reporter's expenses related to the no-shows as those can be taxable at the end of the case. COURT ORDERED, \$2,000 in attorney's fees are AWARDED to be paid in ten (10) days from entry of the order.

11-4-19 9:00 AM DEFENDANT/COUNTERCLAIMANT TROPICANA
INVESTMENTS, LLC'S MOTION IN LIMINE TO PRECLUDE TESTIMONY OF EXPERTS WHOSE
OPINIONS WERE NOT TIMELY DISCLOSED

11-12-19 9:30 AM CALENDAR CALL

11-18-19 1:30 PM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 04, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

November 04, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Lovato, Mario P.	Attorney
	Moore, Terry A, ESQ	Attorney
	Vincent, Jeffrey	Counter Defendant
	Vincent, Stuart	Counter Defendant

JOURNAL ENTRIES

- DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION IN LIMINE TO PRECLUDE TESTIMONY OF EXPERTS WHOSE OPINIONS WERE NOT TIMELY DISCLOSED...PLAINTIFF JSJBD CORP'S OPPOSITION TO MOTION TO PRECLUDE TESTIMONY OF EXPERTS WHOSE OPINIONS WERE NOT TIMELY DISCLOSED AND ALTERNATIVELY, COUNTERMOTION IN LIMINE TO EXCLUDE DEFENDANT S UNTIMELY EXPERT REPORT AND TESTIMONY, AND ALLOW PLAINTIFF'S TIMELY INITIAL EXPERT REPORT AND TESTIMONY

Following arguments by counsel, COURT ORDERED, motion in limine GRANTED. Counter Motion DENIED. However, the denial of the counter motion does not permit the expert from criticizing the information contained in the other report, including factual allegations that are inaccurate.

Mr. Moore to prepare the order and run it by Mr. Lovato prior to submission to the Court.

A-18-785311-B

11-12-19 9:30 AM CALENDAR CALL

11-18-19 1:30 PM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 12, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

November 12, 2019 9:30 AM Calendar Call

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Lovato, Mario P. Attorney
Moore, Terry A, ESQ Attorney

JOURNAL ENTRIES

- Per the parties' agreement, COURT ORDERED, bench trial SET to commence on Monday, November 18 at 10 am. Proposed findings of fact and conclusions of law in Microsoft Word format to be emailed to the Department by 9 am on November 18.

11-18-19 9:00 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 18, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

November 18, 2019 10:00 AM Bench Trial

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Jayne, Collin	Attorney
	Lovato, Mario P.	Attorney
	Moore, Terry A, ESQ	Attorney
	Vincent, Jeffrey	Counter Defendant
	Vincent, Stuart	Counter Defendant

JOURNAL ENTRIES

- DAY 1

APPEARANCES CONTINUED: Mr. Iceman, present with Mr. Lovato; Jeffrey Chauncey, present with Mr. Moore and Mr. Jayne.

With the Court's permission, ORDER GRANTING DEFENDANT'S MOTION IN LIMINE AND DENYING PLAINTIFF'S COUNTERMOTION FILED IN OPEN COURT and copies distributed to the parties.

Colloquy regarding proposed exhibits. Opening statements. LUNCH RECESS.

Proceeding resumed. COURT ADMITTED proposed exhibits per parties' stipulation. (See worksheet.)

Testimony and exhibits presented. (See worksheet.)

COURT ORDERED, trial CONTINUED. EVENING RECESS.

11-19-19 9:45 AM BENCH TRIAL

November 19, 2019

Minutes Date: January 28, 2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 20, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

November 20, 2019 9:30 AM Bench Trial

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Jayne, Collin	Attorney
	Lovato, Mario P.	Attorney
	Moore, Terry A, ESQ	Attorney
	Vincent, Jeffrey	Counter Defendant
	Vincent, Stuart	Counter Defendant

JOURNAL ENTRIES

- DAY 3

APPEARANCES CONTINUED: Jeffrey Chauncey, present with Mr. Moore and Mr. Jayne.

Testimony and exhibits presented. (See worksheet.) LUNCH RECESS.

Testimony and exhibits continued.

COURT ORDERED, trial CONTINUED. EVENING RECESS.

11-21-19 9:30 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 21, 2019

A-18-785311-B	JSJBD Corp, Plaintiff(s)
	vs.
	Tropicana Investments, LLC, Defendant(s)

November 21, 2019 9:30 AM Bench Trial

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Jayne, Collin	Attorney
	Lovato, Mario P.	Attorney
	Moore, Terry A, ESQ	Attorney
	Vincent, Jeffrey	Counter Defendant
	Vincent, Stuart	Counter Defendant

JOURNAL ENTRIES

- DAY 4

APPEARANCES CONTINUED: Jeffrey Chauncey, present with Mr. Moore and Mr. Jayne.

At the hour of 11:02 am, Plaintiff RESTED.

Mr. Moore moved for judgment on partial findings pursuant to 52(c). Mr. Moore argued they should be entered because the complaint alleged breach of contract, breach of implied covenant of good faith and fair dealing, declaratory relief as it relates to damages suffered related to repair and maintenance issues. Mr. Lovato responded the Plaintiffs are no longer seeking damages for repair and maintenance are VOLUNTARILY DISMISSING that. COURT SO ORDERED.

Mr. Moore argued that Plaintiffs have also failed to establish damages allegedly suffered related to the CAMS. Following response by Mr. Lovato and reply by Mr. Moore, COURT ORDERED, motion

DENIED because part of the damages assessed in that type of claim relates to attorney's fees related to this litigation.

Mr. Moore argued that this is not necessarily pled in the complaint but the Plaintiffs are arguing about this \$50,000 that Mark Van Aken paid. COURT NOTED this is not part of the complaint.

Mr. Moore argued 52(c) relief is appropriate as it is being argued that the parties agreed reasonable market rent would be the basis for the option periods in 2007 lease modification; however, based on Exhibit 4 and the testimony of Jeff and Stuart Vincent, regarding repeated attempts to get the landlord to include the term fair market value in the determination of the basis for the options, this was repeatedly rejected and they admitted that, and they nevertheless proceeded to sign the 2007 lease modification with the rental increases language. COURT ORDERED, given Exhibit 7, motion DENIED.

Mr. Moore further argued as to the issues on estoppel and part performance. Following response by Mr. Lovato and reply by Mr. Moore, COURT ORDERED, at the rule 52 standard the Court does not weigh credibility and cannot grant 52(c) relief.

Defendant's case-in-chief commenced. Testimony and exhibits presented. (See worksheet.) LUNCH RECESS.

Testimony and exhibits continued.

COURT ORDERED, trial CONTINUED. EVENING RECESS.

11-22-19 9:15 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 22, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

November 22, 2019 9:15 AM Bench Trial

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Lauren Kidd

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Jayne, Collin	Attorney
	Lovato, Mario P.	Attorney
	Moore, Terry A, ESQ	Attorney

JOURNAL ENTRIES

- Jeffrey Chauncey, Client Representative for the Defendant, also present.

Testimony and Exhibits provided (see worksheets). Mr. Moore renewed Defendant's 56(c) Motions. Upon counsel's inquiry, Court advised the Court would rule on the "any reasonable fact finder" standard. Arguments by counsel with regard to Defendant's 56(c) Motions. COURT ORDERED, motions DENIED. Closing arguments by counsel. COURT FURTHER ORDERED, matter taken UNDER ADVISEMENT; Court SET for Status Check: Court's Decision in Chambers.

TRIAL ENDS.

12/06/19 3:00 AM STATUS CHECK: COURT'S DECISION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 06, 2019

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

December 06, 2019 3:00 AM Status Check

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Natalie Ortega

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Decision filed.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 17, 2020

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

January 17, 2020 3:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- PLAINTIFF / COUNTERDEFENDANTS' MOTION TO RETAX COSTS...DEFENDANT'S
COUNTER CLAIMANT'S MOTION TO RETAX COSTS

COURT ORDERED, the motions to retax and the motions for attorneys' fees (originally set on January 31, 2020) RESET on Monday, January 27, 2020 at 9 am to be heard with the motion to alter or amend.

1-27-20 9:00 AM PLAINTIFF / COUNTERDEFENDANTS' MOTION TO RETAX
COSTS...
...DEFENDANT'S COUNTER CLAIMANT'S MOTION TO RETAX COSTS...
...DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION TO ALTER
OR AMEND JUDGMENT...
...DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION FOR
ATTORNEYS' FEES AND COSTS...
...PLAINTIFF / COUNTERDEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS

CLERK'S NOTE: A copy of this minute order was distributed to the parties via electronic mail. / dr 1-21-20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 27, 2020

A-18-785311-B	JSJBD Corp, Plaintiff(s)
	vs.
	Tropicana Investments, LLC, Defendant(s)

January 27, 2020 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Jayne, Collin	Attorney
	Lovato, Mario P.	Attorney
	Moore, Terry A, ESQ	Attorney

JOURNAL ENTRIES

- Colloquy regarding the prevailing party. Following arguments by counsel, COURT ORDERED as follows:

DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION TO ALTER OR AMEND JUDGMENT: Motion to alter or amend DENIED. Court noted it was clear that the breach of the covenant of good faith and fair dealing was a mechanism by which the Plaintiffs could seek attorney's fees because of the nature of that claim, as the attorney's fees were expended as a result of the breach of the covenant. In addition, the Defendant is entitled to attorney's fees under paragraph 24 of the lease regardless of whether they are the prevailing parties.

Mr. Moore inquired about the rent being miscalculated. Court disagreed. Mr. Moore directed the Court to page 17 of the motion to alter or amend. Mr. Lovato disagreed with the calculation on page 17; the Plaintiffs actually tendered payment of the net amount and the Defendants refused it and sent it back. Mr. Lovato further argued he could not find a reasoning for why the Court's determination was wrong. Court reiterated it is not inclined to grant the motion and referred counsel to paragraph 61 of the findings, although the Court was not looking at a filed copy, and to footnote 6 where the

Court did the calculation. Mr. Moore respectfully disagreed with the calculation and argued further. Court further noted it was based on evidence admitted at trial and the Court's interpretation of the testimony given.

PLAINTIFF / COUNTERDEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS: Motion GRANTED. After evaluating the Brunzell factors, the Plaintiff is AWARDED the attorney's fees requested of \$126,630.

DEFENDANT'S COUNTER CLAIMANT'S MOTION TO RETAX COSTS...PLAINTIFF / COUNTERDEFENDANTS' MOTION TO RETAX COSTS: Both motions GRANTED; neither party is entitled to excess expert witness fees. Plaintiff is not entitled to any expenses for the bookkeeper entry. The Defendant is not entitled to any standing expenses.

DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND COSTS: The Court will not award the full amount of the \$219,775 requested by the Defendants' counsel, because the Court does not believe it is appropriate to award for two attorneys for the trial. Counsel for Defendants to prepare a reduction of the second attorney's time for trial and send it to Mr. Lovato prior to submission to the Court.

Court noted both sides have argued apportionment and the Court understands their positions, but everything was interrelated in this case.

COURT DIRECTED each side to provide the Court with a revised judgment that includes whatever amount they won in trial plus attorney's fees and adjusted costs, and the Court will assume there will be a set-off between the two sides and someone will win when the math is done.

1-31-20 CHAMBERS DEFENDANT/COUNTERCLAIMANT TROPICANA
INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND COSTS...STATUS CHECK:
REDUCTION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 31, 2020

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

January 31, 2020 3:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- STATUS CHECK: REDUCTION...DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND COSTS

No additional information provided by Mr. Moore. COURT ORDERED, matter CONTINUED for one week.

2-7-20 CHAMBERS STATUS CHECK:
REDUCTION...DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S
MOTION FOR ATTORNEYS' FEES AND COSTS

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 2-3-20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

February 07, 2020

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

February 07, 2020 3:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND COSTS...STATUS CHECK: REDUCTION

Court has not received the requested information by timekeeper. COURT ORDERED, matter CONTINUED for one week.

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 2-7-20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

February 13, 2020

A-18-785311-B JSJBD Corp, Plaintiff(s)
vs.
Tropicana Investments, LLC, Defendant(s)

February 13, 2020 3:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLCS MOTION FOR ATTORNEYS' FEES AND COSTS...STATUS CHECK: REDUCTION

Matters ADVANCED from the February 14, 2020 chambers calendar.

Court executed orders. CASE CLOSED.

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 2-13-20

CASE NO. A785311

EPT NO. 11

JSJBD CORP dba Blue Dogs Pub,

PLAINTIFF,

VS

TROPICANA INVESTMENTS, LLC

DEFENDANT.

TRIAL DATE: November 18, 2019

JUDGE: HON. ELIZABETH GONZALEZ

CLERK: DULCE ROMEA

RECORDER: JILL HAWKINS

MARIO P. LOVATO, ESQ.

COUNSEL FOR PLAINTIFF

TERRY MOORE, ESQ.

COUNSEL FOR DEFENDANT

PLAINTIFF'S EXHIBITS

No.	Bates Nos.		Date Offered	Obj	Date Admitted	
1	BDP 1-8	Lease (dated 07/09/96) with Option Agreement	11-18-19	NO	11-18-19	WA
2	BDP 9-10	Amendment to Retail Building Lease (dated 04/16/01)				WA
3	BDP 11-12	Addendum to Retail Building Lease (made 03/07/06)				WA
4	BDP 13-16	Lease Assignment & Modification (signed June 2007)				WA
5	BDP 17-18	Addendum II to Retail Building Lease (made 02/22/11)				WA
6	BDP 19-20	Letter from Stuart Vincent to Jeff Chauncey (no date)	11-18-19	NO	11-18-19	WA
7	BDP 21	Email from Joe Velarde to Jeff White (dated 06/06/07)	11-18-19	OBJ	11-19-19	WA
8	BDP 22	Email from Joe Velarde to Jeff Vincent dated 02/17/16 (and earlier email)	11-18-19	NO	11-18-19	WA
9	BDP 23	Email from Joe Velarde to Jeff Vincent dated 02/17/16 (and earlier emails)	11-18-19	NO	11-18-19	WA
10	BDP 24-26	Addendum to Retail Building Lease (made 04/06/16) (unsigned)	11/22/19	OBJ	11/22/19	WA
11	BDP 28-29	Letter titled "Response to Lease Amendment" (dated 04/26/16)	11-19-19	OBJ	11-19-19	WA
12	BDP 30	Letter from Tropicana Investment, LLC to Stuart Vincent (dated 04/28/16) (Trop 98 has email showing it was sent)	11-18-19	NO	11-18-19	WA
13	BDP 31	Letter from Joe Velarde to Jeff Vincent (dated 05/19/16)				WA
14	BDP 32	Email from Jeff Vincent to Joe Velarde and others (dated 05/26/16)				WA
15	BDP 33	Letter from Danny Velarde to Stuart Vincent (dated 06/15/16)				WA
16	BDP 34-35	Letter from Lesley Miller to Jeffrey Chauncey (dated 08/02/16)				WA
17	BDP 36	Email from Jeff Chauncey to Lesley Miller (dated 08/03/16)	11-18-19	NO	11-18-19	WA
18	BDP 37-38	Letter from Lesley Miller to Jeffrey Chauncey (dated 08/31/16)				
19	BDP 39-42	Letter from John Sacco to Lesley Miller (dated 09/07/16)				
20	BDP 43-44	Email from Rachel Sully to John Sacco (dated 11/22/16) with earlier emails	11-18-19	NO	11-18-19	WA
21	BDP 45	Email from Jeff Chauncey to Jeff Vincent dated 08/03/17	11-19-19	OBJ	11-19-19	WA

22	BDP 46	Letter from John Sacco to Lucas Grower dated 08/09/17	11-18-19	NO	11-18-19	WA
23	BDP 47	Email from Jeff Vincent to Jeff Chauncey and Roni Chauncey dated 08/10/17	11-18-19	NO	11-18-19	WA
24	BDP 48	Email from Jeff Chauncey to Jeff Vincent dated 08/15/17	11-18-19	NO	11-18-19	WA
25	BDP 49-50	Email from John Sacco to Lucas Grower dated 08/18/17 and earlier email				
26	BDP 51	Email from John Sacco to Lucas Grower dated 08/25/17	11-18-19	NO	11-18-19	WA
27	BDP 52	Email from John Sacco to Lucas Grower dated 08/25/17	11-18-19	NO	11-18-19	WA
28	BDP 53-55	Letter from Lucas Grower to John Sacco dated 08/31/17	11-18-19	NO	11-18-19	WA
29	BDP 56	Email from John Sacco to Lucas Grower dated 09/06/17 and earlier email	11-18-19			WA
30	BDP 57-63	Letter from John Sacco to Lucas Grower dated 09/06/17				
31	BDP 66-68	Letter from John Sacco to Lucas Grower dated 12/29/17	11-18-19	NO	11-18-19	WA
32	BDP 69	Letter from Danny Velarde to Jeff Vincent dated 09/06/18	11-18-19	NO	11-18-19	WA
33	BDP 70-71	Email from Mario Lovato to Terry Moore dated 10/08/18 and earlier email				
34	BDP 72-73	Letter from Mario Lovato to John Sacco dated 11/08/18				
35	BDP 74-174	Letter from Mario Lovato to John Sacco dated 11/16/18 with attached appraisal	11-20-19	OBJ		WA
36	NA	Email from John Sacco to Mario Lovato dated 11/19/18				
37	BDP 199-203	Articles of Conversion (Pursuant to NRS 92A.205) dated / filed 03/06/14	11-19-19	NO	11-19-19	WA
38	BDP 219-221	Printout re Tropicana Plaza Shopping Center				
39	BDP 222	Bill of Sale dated 06/06/07	11-19-19	OBJ		WA
40	BDP 240-65	Asset Purchase Agreement dated 03/07/07	11-19-19	OBJ		WA
41	BDP 279	Email from Danny Velarde to Valerie Bussey (cc'd to others) dated 04/15/08	11-18-19	NO	11-18-19	WA
42	BDP 315	Trop. Invest. Operating Expenses 2015	11-18-19	NO	11-18-19	WA
43	BDP 314	Tropicana Investments Operating Expenses 2015 (ref Trop 865)	11-18-19	NO	11-18-19	WA
44	BDP 313	Tropicana Investments Operating Expenses 2016	11-18-19	NO	11-18-19	WA
45	BDP 312	Tropicana Investments Operating Expenses 2016 (ref. Trop 863)	11-18-19	NO	11-18-19	WA
46	BDP 333	Letter from Danny Velarde to Stuart Vincent dated 06/15/16				
47	BDP 334-35	Property Line Properties for Review				
48	BDP 389-93	CIRES Featured Listings	11-18-19	OBJ	SUST	WA
49	BDP 400-03	3430 E. Tropicana Ave Listing				
50	BDP 404-06	CIRES Listing—3430 E Trop. Ave.				
51	BDP 419	Email from Jeff Vincent to Joe Velarde (and others) dated 05/26/16				
52	BDP 422	Email from Jeff Chauncey to Stuart Vincent dated 01/10/18	11-18-19	NO	11-18-19	WA
53	BDP 433-37	Letter from Thomas Harper to Joe Velarde dated 06/24/09				
54	BDP 430-32	Fax and Letter from John Sacco to Thomas Harper dated 07/24/09				
55	BDP 482-84	Letter from Thomas Harper to John Sacco dated 08/06/09				

59D - Photos req.

56	BDP 439-40	Fax and Letter from John Sacco to Tom Harper dated 08/11/09			
57	BDP 443	Letter from Tropicana Investments to Stuart Vincent dated 04/28/16			
58	BDP 444	Letter from Tropicana Investments to Stuart Vincent dated 05/10/16	11-19-19	NO	11-19-19 WA
59A	BDP 511	Photo swamp cooler removed			
59B	BDP 518	Photo Pooling of water on roof	11-19-19	OBJ	11-19-19 WA
59C	BDP 519	Photo Leaked water on floor	11-19-19	OBJ	11-19-19 WA
60	BDP 605-07	Blue Dogs Pub Rent and CAM Payments 2012-Present	11-18-19	NO	11-18-19 WA
61	BDP 608-15	Blue Dogs Pub Rent Checks	11-18-19	NO	11-18-19 WA
62	TROP 828-58	Blue Dogs Pub Rent Checks—produced by Trop. Invests.	11-18-19	NO	11-18-19 WA
63	NA	JSJBD's Req. Prod. Docs.—served 07/26/19			
64	NA	Trop. Invest's Resp. Req. Prod. Docs.—served 09/06/19			
65	TROP 859-70	Trop Invest documents claimed to be responsive re CAM costs	11-18-19	NO	11-18-19 WA
66	TROP 4215	RJC Property Group—Statement of Management Fee Due—11/30/15			11-18-19 WA
67	TROP 2009	RJC Property Group—Statement of Management Fee Due—12/31/18			11-18-19 WA
68	TROP 875-900	Trop Invest 2016 Gen. Ledger			11-18-19 WA
69	TROP 1320-43	Trop Invest 2017 Gen. Ledger			11-18-19 WA
70	TROP 1674-98	Trop Invest 2018 Gen. Ledger	11-18-19	NO	11-18-19 WA
71	NA	Letter S. Vincent to Landlord re Sept 2019 rent	11-18-19	OBJ	11-18-19 WA
72	NA	Emails S. Vincent to Landlord, and response, 09/06/19	11-19-19	OBJ	WA
73	NA	Letter S. Vincent to Landlord re Oct. 2019 rent	11-19-19	OBJ	WA
74	NA	Letter S. Vincent to Landlord re Nov. 2019 rent			
75	NA	Trop. Invest. Thirty Day Notice to Quit—11/14/19	11-19-19	OBJ	11-19-19 WA
76	NA	Summary re Trop Invest CAM charges, overpayments			
77					
78					
79					

See next page

* **ELECTRONIC** *
NOT USED; RETURNED TO COUNSEL *

101	NA	2012 Electronic Copy of Trop. Invest. General Ledger			
102	NA	2013 Electronic Copy of Trop. Invest. General Ledger			
103	NA	2014 Electronic Copy of Trop. Invest. General Ledger			
104	NA	2015 Electronic Copy of Trop. Invest. General Ledger			
105	NA	2016 Electronic Copy of Trop. Invest. General Ledger			
106	NA	2017 Electronic Copy of Trop. Invest. General Ledger			
107	NA	2018 Electronic Copy of Trop. Invest. General Ledger			
108	Trop 875-1319	2016 General Ledger & Invoices			
109	Trop	2017 Trop. Invest. General Ledger & Invoices			

	1320-1673				
110	Trop 1674-2068	2018 Trop. Invest. General Ledger & Invoices			
111	Trop 2069-2786	2012 Trop. Invest. CAM Documents			
112	Trop 2787-3476	2013 Trop. Invest. CAM Documents			
113	Trop 3477-3821	2014 Trop. Invest. CAM Documents			
114	Trop 3822-4288	2015 Trop. Invest. CAM Documents			

WA	38. 66A	TROP 865- 866, 3822- 4288	2015 CAM Documentation			
				11-18-19	NO	11-18-19
WA	37. 68A	TROP 863- 864, 875- 1319	2016 General Ledger and Invoices			
				11-18-19	NO	11-18-19
WA	38. 69A	TROP 861- 862, 1320- 1673	2017 General Ledger and Invoices			
				11-18-19	NO	11-18-19
WA	39. 67A	TROP 859- 860, 1674- 2068	2018 General Ledger and Invoices			
				11-18-19	NO	11-18-19

DEFENDANT'S EXHIBITS LIST

A-18-785311-B JSJBD Corp. v. Tropicana Investments, LLC

Case No.: **A-18-785311-B**

Trial Date: November 18, 2019 at 10:00 a.m.

Dept. No.: **XI**

Judge: Elizabeth Gonzalez

Court Clerk: Dulce Romea

PLAINTIFF: **JSJBD CORP dba Blue Dogs Pub;**
COUNTERDEFENDANTS: **JSJBD CORP dba**
Blue Dogs Pub; Stuart Vincent; Jeffrey B.
Vincent; and Jeff White

Recorder: Jill Hawkins

Counsel for Plaintiff: Mario P. Lovato, Esq.

vs.

DEFENDANT/ COUNTERCLAIMANT:
TROPICANA INVESTMENTS, LLC

Counsel for Defendant: Terry A. Moore, Esq.

Collin M. Jayne, Esq.

TRIAL BEFORE THE COURT

DEFENDANT'S EXHIBITS

Exhibit Number	Bates Numbers(s)	Exhibit Description	Date Offered	Objection	Date Admitted
A.	TROP 013-014	Assignment and Assumption of Lease (M.S.K.C. Inc. and Jeff White)			
B.	TROP 015-016	Asset Purchase Agreement (M.S.K.C. Inc. and Jeff White)			
C.	TROP 021-022	Guaranty – Stuart Vincent	11-18-19	NO	11-18-19 <i>WY</i>
D.	TROP 023-024	Guaranty – Jeffrey Vincent	11-18-19	NO	11-18-19 <i>WY</i>
E.	TROP 025-026	Guaranty – Jeff White	11-18-19	NO	11-18-19 <i>WY</i>
F.	TROP 027	Addendum for Lease Agreement (Tropicana and J.S.J., LLC)	11-19-19	OBJ	<i>WY</i>
G.	TROP 032-034	Email from Danny Velarde to Jeff Chauncey Forwarding Invoice #1224 from Let It Rain Roofing for Roof Repair dated 3/24/2106.	11-21-19	NO	11-21-19 <i>WY</i>
H.	TROP 035-038	Email from Joe Velarde to Jeff Chauncey Forwarding Invoice #15754-01 from J&J Enterprises Services, Inc. for Parking Lot dated 3/29/2016.	11-18-19	NO	11-18-19 <i>WY</i>
I.	TROP 039-041	Email from Danny Velarde to Jeff Chauncey Forwarding Revised Invoice #1224 from Let It Rain Roofing for Roof Repair dated 3/26/2016.	11-18-19	NO	11-18-19 <i>WY</i>

DEFENDANT'S EXHIBITS LIST

A-18-785311-B JSJBD Corp. v. Tropicana Investments, LLC

J.	TROP 042-061	Email from Joe Velarde to Jeff Chauncey with Proposed Addendum and Proposed Base Rent Amount dated 4/6/2016.	11-18-19	NO	11-18-19	wa
K.	TROP 069-093	Email from Danny Velarde to Jeff Chauncey with Photos of Roof dated 4/19/2016.				
L.	TROP 094	Email from Joe Velarde to Stuart Vincent Regarding Landlord's Lease Addendum and Lease Guaranties dated 4/20/2016.	11-19-19	NO	11-19-19	wa
M.	TROP 096-097	Email from Joe Velarde to Jeff Chauncey Attaching Stuart Vincent's April 26, 2016 Response to Lease Addendum dated 4/27/2016.	11-21-19	OBJ	11-21-19	wa
N.	TROP 103, 105-114	Email from Danny Velarde to Jeff Chauncey with Video of Roof and Additional Photos dated 5/10/2016.				
O.	TROP 118-122	Email from Joe Velarde to Stuart Vincent Attaching April 28, 2016; May 10, 2016; and May 19, 2016 Letters from Landlord dated 5/19/2016.	11-19-19	NO	11-19-19	wa
P.	TROP 132-133	Email from Rachel Sully (Kaempfer Crowell) to Jeff Chauncey Regarding Corporate Conversion and Exercise of September 1, 2016 Five-Year Option on Lease dated 8/11/2016.	11-18-19	NO	11-18-19	wa
Q.	TROP 136	Email from Rachel Sully (Kaempfer Crowell) to Jeff Chauncey Regarding Lease Guaranties dated 9/2/2016.	11-18-19	NO	11-18-19	wa
R.	TROP 142-144	Letter from Lesley Miller (Kaempfer Crowell) to John Sacco Regarding Proposed Lease Amendment with Redlined Lease Language Insert dated 9/16/2016.	11/22/19	NO	11/22/19	wa
S.	TROP 145-185	Letter from John Sacco to Lesley Miller (Kaempfer Crowell) Enclosing Execution Copy of New Lease and Separate Copy of Rules and Regulations dated 9/23/2016.	11/22/19	NO	11/22/19	wa
T.	TROP 188-189	Email from Lesley Miller (Kaempfer Crowell) Requesting Copy of September 23, 2016 Letter dated 10/18/2016.	11/22/19	NO	11/22/19	wa
U.	TROP 190	Email from Leah Dell to Lesley Miller (Kaempfer Crowell) Forwarding Copy of September 23, 2016 Letter dated 10/18/2016.	11/22/19	NO	11/22/19	wa
V.	TROP 191	Email from Rachel Sully (Kaempfer Crowell) to John Sacco Regarding Anticipated Response dated 11/7/2016.	11/22/19	NO	11/22/19	wa
W.	TROP 194	Email from John Sacco to Rachel Sully (Kaempfer Crowell) Requesting Status dated 3/24/2017.	11/22/19	NO	11/22/19	wa
X.	TROP 195-197	Email from Rachel Sully (Kaempfer Crowell) to John Sacco with Tenant's Lease Revisions dated 3/30/2107.	11/22/19	NO	11/22/19	wa
Y.	TROP 232-236	Email Chain Between John Sacco and Rachel Sully (Kaempfer Crowell) Requesting/Promising Revisions in Word dated 4/4/2017.	11/22/19	NO	11/22/19	wa

DEFENDANT'S EXHIBITS LIST

A-18-785311-B JSJBD Corp. v. Tropicana Investments, LLC

Z.	TROP 237	Email from John Sacco to Rachel Sully (Kaempfer Crowell) Requesting Status of Revisions in Word dated 5/31/2017.	11/22/19	NO	11/22/19	wa
AA.	TROP 238-287	Email from Rachel Sully (Kaempfer Crowell) to John Sacco with Revisions in Word dated 6/26/2017.	11/22/19	NO	11/22/19	wa
BB.	TROP 288-380	Email from John Sacco to Rachel Sully (Kaempfer Crowell) with Lease Revisions dated 7/3/2017.	11/22/19	NO	11/22/19	wa
CC.	TROP 383-477	Email from John Sacco to Lucas Grower Forwarding the July Lease Revisions dated 8/18/2017.	11/22/19	NO	11/22/19	wa
DD.	TROP 562-563	Email Chain Between John Sacco and Lucas Grower Regarding Lease Revisions and CAM Reports dated 8/21/2017.	11/22/19	NO	11/22/19	wa
EE.	TROP 579	Email dated 9/19/2017 from Lucas Grower to John Sacco Regarding Expected Response to September 6, 2017 Letter	11/22/19	NO	11/22/19	wa
FF.	TROP 580	Email from John Sacco to Lucas Grower Regarding Status of Lease Negotiations dated 9/25/2017.	11/22/19	NO	11/22/19	wa
GG.	TROP 581-583	Email Chain Between John Sacco and Lucas Grower Regarding Status of Lease Negotiations dated 10/3/2017.	11/22/19	NO	11/22/19	wa
HH.	TROP 584	Email from John Sacco to Lucas Grower Regarding Rent Shortfall dated 10/5/2017.				
II.	TROP 585-586	Email Chain Between John Sacco and Lucas Grower Regarding Rent Shortfall/Payment dated 10/5/2017.				
JJ.	TROP 588-589	Letter from Lucas Grower to John Sacco Requesting CAM Report and Claiming Month to Month Tenancy dated 12/20/2017.	11/22/19	NO	11/22/19	wa
KK.	TROP 828-858	Payment Checks from Blue Dogs to Tropicana Investments (account number redacted)				
LL.	TROP 859-870	Tropicana Investment LLC. Operating Expenses from 2013 to 2018				
MM.	TROP 871	April 20, 2016 email from Let it Rain Roofing to J. Chauncey				
NN.	TROP 873-874	Common Area Maintenance Fee Comp Report	11-21-19	OBJ	11-21-19	VA
OO.	TROP4289-4293	Email from William Van Aken to Joe Velarde Regarding Lease Assignment and Modification dated 4/23/2007.	11-21-19	OBJ SUST		wa
PP. DDD	TROP4294-4295	Email from Joe Velarde to Jeff Chauncey Regarding JSJ Lease Addendum dated 6/13/2007.	11-19-19	NO	11-19-19	VA
QQ. EEE	TROP 706-827	Market Rent Analysis, Curriculum Vitae, List of Cases				

DEFENDANT PROPOSED EXHIBITS CONTINUED

(A-18-785311-B) JSJBD Corp v. Tropicana Investments, LLC

se No.: **A-18-785311-B**

Trial Date: November 18, 2019 at 10:00 a.m.

Dept. No.: **XI**

Judge: Elizabeth Gonzalez

Court Clerk: Dulce Romea

PLAINTIFF: JSJBD CORP dba Blue Dogs Pub;
COUNTERDEFENDANTS: JSJBD CORP dba
Blue Dogs Pub; Stuart Vincent; Jeffrey B.
Vincent; and Jeff White

Recorder: Jill Hawkins

Counsel for Plaintiff: Mario P. Lovato, Esq.

vs.

DEFENDANT/ COUNTERCLAIMANT:
TROPICANA INVESTMENTS, LLC

Counsel for Defendant: Terry A. Moore, Esq.

Collin M. Jayne, Esq.

TRIAL BEFORE THE COURT

DEFENDANT'S PROPOSED EXHIBITS CONTINUED

Exhibit Number	Bates Numbers(s)	Exhibit Description	Date Offered	Objection	Date Admitted
1.	TROP 001-007	Lease Agreement dated July 9, 1996 (Schwartz and Van Aken)			
2.	TROP 008	1996 Option Agreement (Schwartz and Van Aken)			
3.	TROP 009-010	2001 Amendment (Schwartz and Van Aken) dated 4/16/2001.			
4.	TROP 011-012	2006 Addendum (Tropicana and Van Aken) dated 3/7/2006.			
5.	TROP 017-020	2007 Lease Assignment and Modification dated June 2007 (Tropicana, Van Aken, and J.S.J., LLC)			
6.	TROP 028-029	2011 Addendum II (Tropicana and J.S.J. LLC) dated 2/22/2011.			
7.	TROP 030-031	Letter from Stuart Vincent to Jeff Chauncey Regarding Exercise of Lease Option (undated).			
8.	TROP 098-099	Letter from Landlord to Stuart Vincent Regarding Roofing Issues and Lease Discussion dated 4/28/2016.			
PP.	TROP 115-116	Letter from Landlord to Stuart Vincent Regarding Roof Water Issues Enclosing HVAC Invoice dated 5/10/2016.	11-19-19	NO	11-19-19
10.	TROP 117	Letter from Joe Velarde to Jeff Vincent Regarding Lease Negotiation and Requesting Financials of New Members dated 5/19/2016.			

DEFENDANT PROPOSED EXHIBITS CONTINUED

(A-18-785311-B) JSJBD Corp v. Tropicana Investments, LLC

11.	TROP 123	Email from Jeff Vincent to Joe Velarde Regarding Exercising Lease Renewal and Continued Roof Claims dated 5/26/2016.			
12.	TROP 124-126	Email from Danny Velarde to Stuart Vincent with Letter Regarding New Lease dated 6/15/2106.			
13.	TROP 128-129	Letter from Lesley Miller (Kaempfer Crowell) to Jeff Chauncey Regarding Corporate Conversion and Exercise of September 1, 2016 Five-Year Option on Lease dated 8/2/2016.			
14.	TROP 130-131	Email Response from Jeff Chauncey to Lesley Miller Regarding Corporate Conversion, Exercise of Option and Rent Increase, and Request for Additional Owner Financials dated 8/3/2016.			
QQ	TROP 700-705	Letter from Lesley Miller (Kaempfer Crowell) to Jeff Chauncey Regarding Corporate Conversion and Exercise of September 1, 2016 Five-Year Option on Lease dated 8/31/2016.	11-20-19	NO	11-20-19 WA
RR	TROP 137-141	Email from John Sacco to Lesley Miller with Attached Correspondence Regarding Lease Amendment dated 9/7/2016.	11-20-19	NO	11-20-19 WA
17.	TROP 192-193	Email from Rachel Sully (Kaempfer Crowell) to John Sacco Regarding Review and Anticipated Response dated 11/22/2106.			
SS	TROP 381	Letter from Lucas Grower to John Sacco Advising of Change in Counsel dated 8/7/2017.	11/22/19	No	11/22/19 WA
19.	TROP 382	Letter from John Sacco to Lucas Grower in Response to Change of Counsel dated 8/9/2017.			
TT	TROP 478-558	Email from John Sacco to Lucas Grower dated 8/18/2017.	11/22/19	No	11/22/19 WA
21.	TROP 564	Email from John Sacco to Lucas Grower Regarding Rent dated 8/25/2017.			
22.	TROP 565	Email from John Sacco to Lucas Grower Regarding Conditional Base Rent Incentive dated 8/25/2017.			
23.	TROP 566-568	Letter from Lucas Grower to John Sacco Regarding Rent with 1996 Option Agreement dated 8/31/2017.			
UU	TROP 569-578	Letter from John Sacco to Lucas Grower Regarding Rent and History of Lease Negotiations with 1996 Option Agreement, 2006 Lease Addendum, and August 2, 2016 Exercise of Option Letter from Lesley Miller dated 9/6/2017.	11/22/19	No	11/22/19 WA

DEFENDANT PROPOSED EXHIBITS CONTINUED

(A-18-785311-B) JSJBD Corp v. Tropicana Investments, LLC

25.	TROP 591 - 593	Letter from John Sacco to Lucas Grower dated 12/29/2017 in Response to December 20, 2017 Letter.			
26.	TROP 609	Letter from Danny Velarde to Jeff Vincent with Offer to Resolve Rent Dispute dated 9/6/2018.			
27.	BDP 47	Email from Jeff Vincent to Jeff Chauncey and Roni Chauncey Regarding Lease Negotiations dated 8/10/2017.			
28.	BDP 48	Email from Jeff Chauncey to jbv1@msn.com Regarding Lease Negotiations dated 8/15/2017.			
VV	BDP 480-81	Letter from Tropicana Investments to Stuart Vincent Regarding Sewer Charges dated 7/12/2018.	11-19-19	NO	11-19-19 WA
WW	BDP 580	Letter from Tropicana Investments to Jeff Vincent Regarding Sewer Fees 2014/2015 dated 8/4/2014.	11-19-19	NO	11-19-19 WA
XX	BDP 581	Letter from Tropicana Investments to Jeff Vincent Regarding Sewer Fees 2013/2014 dated 8/6/2013.	11-19-19	NO	11-19-19 WA
YY	BDP 585-586	Letter from Tropicana Investments to Jeff Vincent Regarding Sewer Charges dated 8/6/2012.	11-19-19	NO	11-19-19 WA
FFF	TROP2069-2786	2012 CAM Documentation			
GGG	TROP 869-870, 2787-3476	2013 CAM Documentation			
HHH	TROP 867-868, 3477-3821	2014 CAM Documentation			
66A	TROP 865-866, 3822-4288	2015 CAM Documentation			
68A	TROP 863-864, 875-1319	2016 General Ledger and Invoices			
69A	TROP 861-862, 1320-1673	2017 General Ledger and Invoices			
67A	TROP 859-860, 1674-2068	2018 General Ledger and Invoices			
ZZ.		2012 General Ledger			
AAA.		2013 General Ledger			
BBB		2014 General Ledger			
CCC		2015 General Ledger			



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

TERRY A. MOORE, ESQ.
10001 PARK RUN DR.
LAS VEGAS, NV 89145

DATE: March 27, 2020
CASE: A-18-785311-B

RE CASE: JSJBD CORP. dba BLUE DOGS PUB vs. TROPICANA INVESTMENTS, LLC

NOTICE OF APPEAL FILED: March 25, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF CROSS-APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; BUSINESS COURT CIVIL COVER SHEET; AMENDED BUSINESS COURT CIVIL COVER SHEET; FINDINGS OF FACT AND CONCLUSIONS OF LAW; NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW; ORDER DENYING DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT; NOTICE OF ENTRY OF ORDER; ORDER GRANTING PLAINTIFF / COUNTERDEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS; NOTICE OF ENTRY OF ORDER; ORDER GRANTING IN PART DEFENDANT'S MOTION TO FOR ATTORNEYS' FEES AND COSTS; NOTICE OF ENTRY OF ORDER; FINAL JUDGMENT; NOTICE OF ENTRY OF FINAL JUDGMENT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

JSJBD CORP. dba BLUE DOGS PUB,

Plaintiff(s),

vs.

TROPICANA INVESTMENTS, LLC,

Defendant(s),

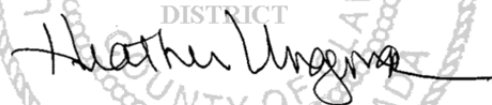
Case No: A-18-785311-B

Dept No: XI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 27 day of March 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk