IN THE SUPREME COURT OF THE STATE OF NEVADA

JSJBD CORP, d/b/a Blue Dogs Pub, a Nevada corporation, STUART VINCENT, JEFFREY VINCENT, and JEFF WHITE) Case No.: 80849) Electronically Filed Sep 04,2020 02:35 p.m.) (Dist. Ct. No. A-1 Elizabeth A. Brown) Clerk of Supreme Court
Appellants,)
)
VS.	
)
TROPICANA INVESTMENTS, LLC, a)
California limited liability company,)
Respondent.)))
AND CROSS-APPEAL.))

APPELLANTS' APPENDIX (VOL. 13)

MARIO P. LOVATO, ESQ. Nevada Bar No. 7427 LOVATO LAW FIRM, P.C. 7465 W. Lake Mead Blvd. Ste. 100 Las Vegas, Nevada 89128 (702) 979-9047 mpl@lovatolaw.com Attorney for Appellants JSJBD Corp., Stuart Vincent, Jeffrey Vincent, and Jeff White

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stand-alone Option Agreement was entered into by Landlord, Walter L. Schwartz, and Tenant, Mark S. Van Aken, but the date of said Option Agreement is unknown.

- 7. This answering Defendant generally and specifically denies the allegations of Paragraph 12 of the Complaint as stated. This answering Defendant further affirmatively alleges that the separate stand-alone Option Agreement specifically refers to only two (2) clearly identified option periods of five years each, commencing on September 1, 2001 and September 1, 2006 respectively, "at a market rental rate and terms as agreed by Landlord and Tenant.".
- 8. This answering Defendant generally and specifically denies each and every allegation in Paragraph 13 of the Complaint.
- 9. This answering Defendant generally and specifically denies each and every allegation in Paragraphs 14 and 15 of the Complaint, and further affirmatively alleges that the Lease dated July 9, 1996 speaks for itself and is the best evidence of its contents, terms and provisions.
- 10. Answering Paragraph 16 of the Complaint, this answering Defendant generally and specifically denies each and every allegation stated therein. Further, this answering Defendant affirmatively alleges that an Amendment was entered into in April or May, 2001, to the Lease dated July 9, 1996 between Landlord, Tropicana Investments, LLC and Tenant, Mark S. Van Aken, and that the terms, provisions and contents of said Amendment, are the best evidence of its contents.
- 11. Answering Paragraphs 17 and 18 of the Complaint on file herein, this answering Defendant generally and specifically denies each and every allegation set forth therein. This answering Defendant further affirmatively alleges that the allegations in Paragraphs 17 and 18 recite incomplete provisions taken out of context, and that the terms and provisions of the 2006 written Addendum are the best evidence of its contents which speak for themselves.
- 12. Answering Paragraph 19 of the Complaint, this answering Defendant generally and specifically denies the allegations set forth therein. This answering Defendant further affirmatively alleges, upon information and belief, that an Asset Purchase Agreement was Page 2 of 18

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entered into on or about March 1, 2007 between M.S.K.C. Inc. as Seller and Jeff White, an individual, and that the terms and provisions of said Asset Purchase Agreement are the best evidence of its contents.

- 13. Answering Paragraphs 20, 21, 22, 23(a) and 23(b) of the Complaint, this answering Defendant generally and specifically denies each and every allegation as set forth therein. This answering Defendant further affirmatively alleges that a Lease Assignment and Modification was executed by Tenant, Mark S. Van Aken, Landlord, Tropicana Investments, LLC, and Assignee, J.S.J., LLC, on various dates in June, 2007. Further, it is affirmatively alleged that the terms, contents and provisions of said Lease Assignment and Modification are set forth in the signed document, which speaks for itself, and is the best evidence of its contents.
- 14. Answering Paragraph 24 of the Complaint, this answering Defendant generally and specifically denies each and every allegation therein as stated, and affirmatively alleges that the terms and contents of Addendum II speak for themselves and are the best evidence of its contents.
- 15. Answering Paragraph 25 of the Complaint, this answering Defendant generally and specifically denies each and every allegation as set forth therein. This answering Defendant further affirmatively alleges that Plaintiff attempted to exercise its option, but that the attempts to exercise the option by Tenant are void or voidable, invalid and unenforceable.
- 16. Answering Paragraphs 26, 27 and 28 of the Complaint, this answering Defendant generally and specifically denies each and every allegation as set forth therein.
- 17. Answering 29, 30, 31, 32 and 33 of the Complaint, answering Defendant generally and specifically denies each and every allegation as set forth therein. This answering Defendant further affirmatively alleges that the written documents and emails referred to in said Paragraphs are the best evidence of the terms and provisions of said written documentation.
- 18. Answering Paragraphs 34, 35, 39, 40, 41, 42, 43, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58 and 59 of the Complaint, this answering Defendant generally and specifically denies each and every allegation as set forth therein.

- 19. Answering Paragraphs 36, 37 and 38 of the Complaint, this answering Defendant generally and specifically denies each and every allegation as set forth therein. This answering Defendant further affirmatively alleges that Plaintiff attempted to exercise its option, but that the attempts to exercise the option by Tenant are void or voidable, invalid and unenforceable.
- 20. Answering Paragraphs 44, 45 and 47 of the Complaint, this answering Defendant admits the allegations as set forth therein. This answering Defendant further affirmatively alleges that Landlord has no contractual or legal obligation whatsoever to the proposals referred to in Paragraphs 44, 45 or 47.

FIRST CLAIM FOR RELIEF

(Declaratory Relief)

- 21. This answering Defendant repeats and realleges and restates herein each of its responses to 1 though 60, inclusive of the Plaintiff's Complaint, as if set forth in full herein at this point.
- 22. Answering Paragraph 61 of the Complaint, this answering Defendant admits the same, and further affirmatively alleges that the provisions of NRS Chapter 30 and NRCP 57 speak for themselves.
- 23. Answering Paragraphs 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 and 79 of the Complaint, this answering Defendant generally and specifically denies each and every allegation set forth therein.
- 24. Answering Paragraph 66 of the Complaint on file herein, this answering Defendant generally and specifically denies each and every allegation set forth therein. This answering Defendant further affirmatively alleges that the specific option language clearly states that the Tenant's option rights are conditional, and are to be based on terms, including rental increases, but not decreases, to be negotiated.

SECOND CLAIM FOR RELIEF

(Breach of Contract)

25. This answering Defendant repeats, realleges and restates each and every one of its responses to 1 through 80 of the Plaintiff's Complaint, as if set forth in full herein at this point.

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26. This answering Defendant generally and specifically denies each and every allegation set forth in Paragraphs 81, 82, 83, 84, 85, 86, 87, 88, 89 and 90.

THIRD CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

- 27. This answering Defendant repeats, realleges and restates each and every one of its responses to 1 through 91 of the Plaintiff's Complaint, as if set forth in full herein at this point.
- 28. Answering Paragraph 92 of the Complaint, this answering Defendant admits the same.
- 29. This answering Defendant generally and specifically denies each and every allegation set forth in Paragraphs 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 and 107. Further, in answer to Paragraphs 96 and 97, this Defendant affirmatively alleges that Defendant pointed out only that there are different and alternate but rational, coherent and logical legal conclusions which can be reached based upon the same set of operative facts.

Wherefore, this answering Defendant requests that Plaintiff receive no relief as prayed for in its Complaint, and that Plaintiff's claims be dismissed with prejudice, with an award of costs and attorney fees granted to Defendant/Counterclaimant.

AFFIRMATIVE DEFENSES

- 1. Plaintiff's claims are barred by the doctrine of estoppel.
- 2. Plaintiff has waived any claims which it may have had against Defendant by virtue of its conduct.
- 3. Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted.
 - 4. Defendant fulfilled its duty to deal with Plaintiff in good faith.
 - 5. Plaintiff's claim is barred as a result of the failure to satisfy conditions precedent.
 - 6. Plaintiff's claims are barred by failure to satisfy conditions subsequent.
 - 7. Plaintiff has failed to mitigate its damages.
- 8. Defendant acted consistent with the law and with reasonableness in dealing with Plaintiff.

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- 10. Plaintiff's cause of action for breach of the covenant of good faith and fair dealing fails because Plaintiff breached its reciprocal covenant to deal with Defendant in good faith and with fair dealing.
 - 11. Plaintiff's claims are barred for failure to satisfy the statute of frauds.
 - 12. Plaintiff's claims are barred by the doctrine of ratification.
- 13. By virtue of Plaintiff's actions, voluntary conduct and performance, Defendant has been released from any and all claims of Plaintiff.
- 14. Pursuant to NRCP 11, as amended, all affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry, and, therefore, this Defendant reserves the right to amend its Answer to allege additional affirmative defenses.

Dated this 9th day of January, 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 Attorneys for Defendant/Counterclaimant, Tropicana Investments, LLC

COUNTERCLAIM

Comes now, Tropicana Investments, LLC, a California limited liability company, Counterclaimant herein, and for its claims for relief against Plaintiff and Counterdefendants, alleges as follows:

PARTIES

1. Tropicana Investments, LLC, Counterclaimant herein, is a California limited liability company which is authorized to do business in the state of Nevada. Counterclaimant is

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the owner of the Shopping Center commonly known as Tropicana Plaza, and generally located at 3430 East Tropicana Avenue, Las Vegas, Nevada.

- 2. JSJ, LLC was a Nevada limited liability company which was the original Assignee and party to a Lease Assignment and Modification dated June, 2007.
- 3. JSJBD Corp, Counterdefendant, is a Nevada corporation which was formed by Articles of Incorporation and Articles of Conversion on March 6, 2014, filed with the Nevada Secretary of State.
- 4. Upon information and belief, Counterdefendant Jeff White is a resident of Clark County, Nevada.
- 5. Upon information and belief, Counterdefendant Stuart Vincent is a resident of Clark County, Nevada.
- Upon information and belief, Counterdefendant Jeffrey Vincent is a resident of 6. Clark County, Nevada.

GENERAL FACTUAL ALLEGATIONS

- 7. On or about July 9, 1996, Lessor, Walter L. Schwartz, and Tenant, Mark S. Van Aken, entered into a written Lease (hereinafter the "Lease") for the premises located at 3430 East Tropicana Avenue, Las Vegas, Nevada, Units 27, 28 and 29, comprising a space of approximately 4,200 square feet, for a term of five (5) years and five (5) months, commencing April 1, 1996 and terminating on August 31, 2001. A true and accurate copy of the Lease dated July 9, 1996 is attached to this counterclaim as **Exhibit 1** and is incorporated herein by this reference.
 - 8. The Lease did not include a provision for options to extend the term of the Lease.
- 9. A separate and distinct, undated and stand-alone "Option Agreement" was executed by the original Landlord and Tenant of the Lease. The Option Agreement is attached to this Counterclaim as **Exhibit 2** and is incorporated herein by this reference.
- 10. The Option Agreement specifically refers to only two (2) discrete five (5) year option periods commencing in 2001 and 2006, "at a market rental rate and terms as agreed by Landlord and Tenant." By its own plain language, it is evident that the Option Agreement was Page 7 of 18

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not indefinite and was restricted to the two (2) defined five (5) year terms referred to on the face of the document.

- During the initial term of the Lease, from April 1, 1996 to August 31, 2001, every 11. minimum base monthly rent increase was in the amount of \$210.00 per month.
- 12. On or about April 16, 2001, Counterclaimant, Tropicana Investments, LLC, as Landlord, and Mark S. Van Aken, as Tenant entered into an Amendment to Retail Building Lease dated July 9, 1996 (the "Amendment"). The Amendment is attached hereto as **Exhibit 3**. The Amendment extended the Lease term for five (5) years, from September 1, 2001 through August 31, 2006. During the extended term, the base rent increased for each annual period in the amount of \$210.00 per month for each year.
- 13. On or about March 7, 2006, Counterclaimant, Tropicana Investments, LLC, and Mark S. Van Aken, as Tenant, entered into an Addendum to Retail Building Lease dated July 9, 1996 (the "Addendum"). The Addendum is attached hereto as Exhibit 4. Said Addendum establishes the extension term from September 1, 2006 through August 31, 2011. For each annual period during said extension term, minimum base rent increased in the amount of \$210.00 per month per annum.
- 14. During the term of the Lease, extended by virtue of the Addendum attached as Exhibit 4, Tropicana Investments, LLC, as Landlord, and Mark S. Van Aken, as Tenant, and JSJ, LLC, as Assignee, entered into a Lease Assignment and Modification agreement dated June, 2007. A true and accurate copy of the Lease Assignment and Modification is attached hereto and marked as **Exhibit 5** and is incorporated in full by this reference.
- 15. The Lease Assignment and Modification clearly states that it is the desire of all parties to allow Tenant to assign the Lease (Exhibit 1), the Lease Amendment (Exhibit 3) and Lease Addendum (Exhibit 4) to the Assignee, JSJ, LLC, under terms and conditions set forth in the Lease Assignment and Modification.
- 16. The Lease Assignment and Modification did not refer to or incorporate an assignment of the stand-alone and separate Option Agreement attached as Exhibit 2.

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17.	With respect to the Lea	se Assignment and	d Modification,	said agreement	provided
as follows at I	Paragraph 8 thereof:				

- "...Landlord agrees to conditionally grant Assignee, J.S.J., LLC, three (3) additional five (5) year options to renew the term of the Lease under terms and conditions, including but not limited to 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."
- 18. By its own terms, the three (3), five (5) year options were not absolute. The options to renew were expressly and unambiguously made conditional upon terms and conditions, including but not limited to rental increases to be negotiated.
- 19. The operative language regarding the three (3), five (5) year options does not refer to nor does it contemplate decreases in the minimum base rental to be paid by Tenant.
- 20. Likewise, the operative language of the three (3), five (5) year options unmistakably does not include as a component, the consideration of "market rental rate".
- 21. Concurrent with the execution of the Lease Assignment and Modification referred to hereinabove, and as attached as Exhibit 5, Counterdefendant Stuart Vincent executed and delivered a personal guaranty, dated June 26, 2007, a true and accurate copy is attached hereto as Exhibit 6.
- 22. Concurrent with the execution of the Lease Assignment and Modification referred to hereinabove, and as attached as Exhibit 5, Counterdefendant Jeff White executed and delivered a personal guaranty, dated June 26, 2007, a true and accurate copy is attached hereto as Exhibit 7.
- 23. Concurrent with the execution of the Lease Assignment and Modification referred to hereinabove, and as attached as Exhibit 5, Counterdefendant Jeffrey Vincent executed and delivered a personal guaranty, dated June 26, 2007, a true and accurate copy is attached hereto as Exhibit 8.
- 24. On or about February 22, 2011, Counterdefendant and Counterclaimant entered into a written Addendum II which changed the Commencement date of the Term to September 1, Page 9 of 18

2011 and the Expiration Date of the Term to August 31, 2016. A true and accurate copy of said Addendum II is attached as **Exhibit 9**.

25. According to Addendum II, each monthly rental increase was in the amount of \$210.00 per month during the five (5) year term from September 1, 2011, through August 31, 2016.

TENANT'S ATTEMPT TO EXERCISE THE FIRST FIVE YEAR OPTION

- 26. On or about February 26, 2016, approximately six months prior to the expiration of the Lease term on August 31, 2016, Counterdefendant JSJBD Corp, through Stuart Vincent, purported to exercise the first five (5) year option to commence on September 1, 2016. A true and accurate copy of the written notice to Counterclaimant is attached as **Exhibit 10**.
- 27. The purported exercise of the first, five (5) year option on February 26, 2016 ignored the express condition of the option language in the Lease Assignment and Modification (**Exhibit 5**) which was conditionally effective only with rental increases to be negotiated. Contrary to the express terms of the option, which definitively and concisely required rental increases, Counterdefendant JSJBD Corp demanded a \$2,500 reduction in rent.
- 28. Although no legal obligation existed to do so, in an attempt to mollify Counterdefendant JSJBD Corp's demand for a reduction in rent, Counterclaimant offered a compromise reduction in rent to Counterdefendant JSJBD Corp, which was summarily rejected by Counterdefendant.

TENANT'S EXERCISE OF THE FIRST, FIVE YEAR OPTION THROUGH ITS COUNSEL, AND COUNTERDEFENDANT'S PERFORMANCE THEREUNDER

- 29. On or about June 15, 2016, Counterclaimant's authorized agent, Commercial Investment Real Estate Services, on behalf of Counterclaimant, extended an offer in writing that, among other terms, proposed the amount of base rental for the initial year of the lease extension to remain the same as the previous year (September 1, 2015—August 31, 2016) which amounted to \$8,190.00 per month. A true and accurate copy is attached hereto as **Exhibit 11**.
- 30. On or about August 2, 2016, Lesley B. Miller, Esq. of the law firm of Kaempfer Crowell, notified Counterclaimant of its representation as counsel for Counterdefendant JSJBD Page 10 of 18

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Corp. A true and accurate copy of said law firm's written notification of its representation of Counterdefendant JSJBD Corp is attached hereto and marked as **Exhibit 12**.

- 31. In said correspondence, Ms. Miller states in pertinent part as follows: "JSJBD hereby exercises its option to renew the Lease pursuant to Section 8 of the Lease Assignment and Modification, dated June 26, 2007." Said letter also accepted the payment of base rent for the first year of the five (5) year renewal term to remain the same as the previous year (9/1/2015-8/31/2016), exactly as had been proposed and offered by Counterclaimant's authorized agent in the letter proposal dated June 15, 2016 (Exhibit 11).
- 32. Lesley B. Miller and the law firm of Kaempfer Crowell was the duly authorized agent and attorney of Counterdefendant JSJBD Corp.
- 33. For each and every monthly rental increase from the commencement of the initial Lease term, on April 1, 1996, through and including August, 2016, which amounted to more than 20 years, the minimum base rent always increased, and never decreased, in the amount of \$210.00 per month for every base rent increase.
- The foregoing pattern, and the contractual obligation to negotiate rental increases 34. as set forth in Section 8 of the Lease Assignment and Modification dated June 26, 2007 was recognized, acknowledged and agreed to by Counterdefendant JSJBD Corp's attorney and agent, who requested an increase in base rent for each subsequent year during the extended option term equal to the rate increase of \$210.00 per month, all as had been set forth in Addendum II to the Lease dated February 22, 2011 (Exhibit 9).
- 35. On August 31, 2016, the attorney and agent for Counterdefendant JSJBD Corp again reiterated the exercise of the option rights under the Lease to renew for an additional five year term. A true and accurate copy of correspondence dated August 31, 2016 from Kaempfer Crowell is attached hereto as **Exhibit 13**.
- 36. Although Counterdefendant's counsel had agreed that the initial year of the option period continue with the same base rent as the previous year (September 1, 2015 through August 31, 2016, which was the sum of \$8,190.00 per month), Counterdefendant JSJBD Corp inexplicably, voluntarily and without demand commenced the payment of \$8,400.00 per month

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(\$8,190.00 plus \$210.00 base rental increase per month), which sum was paid through August, 2017.

- 37. The monthly base rental payment amount of \$8,400.00 per month was paid voluntarily and continuously by Counterdefendant JSJBD Corp, for twelve (12) months from September 1, 2016, through August, 2017, without protest or reservation of rights by Counterdefendant.
- 38. Said monthly rental payments, as voluntarily made by Counterdefendant JSJBD Corp, were accepted by the Landlord/Counterclaimant, while Counterdefendant JSJBD Corp remained in possession of the premises.
- 39. Notwithstanding the reiteration of the attempt to exercise the option rights as set forth in the letter of August 31, 2016 and Counterdefendant JSJBD Corp's declination to go forward with a new Lease as proposed, Counterdefendant JSJBD Corp and Counterclaimant, through their respective counsel, spent the next twelve months, September 1, 2016 through August, 2017, negotiating a proposed new Lease, and exchanged drafts of said proposed Lease during such negotiations.
- 40. At no time during the foregoing twelve month period, was there ever an objection made to the amount of base rent being paid by the Tenant, to wit, \$8,400.00 per month, and at no time was the payment of increased rent made a disputed issue.
- 41. On or about August 7, 2017, counsel for Counterclaimant received correspondence from Lucas A. Grower, Esq., advising that Kaempfer Crowell had been relieved of its representation of Counterdefendant JSJBD Corp, and that in place and stead Lucas Grower, Esq. would be representing Counterdefendant JSJBD Corp. A true and accurate copy of correspondence dated August 7, 2017 from Lucas A. Grower is attached hereto as **Exhibit 14**.
- 42. On August 31, 2017, by letter from Lucas A. Grower, Esq., and for the first time, notwithstanding the prior twelve month period, the Tenant, through its new counsel, demanded that Lease negotiations continue for the base rent on the basis of "market rental rate and terms". During the entire, prior twelve month period, not once was such a position advanced or brought

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up by Counterdefendant JSJBD Corp's first counsel. A true and accurate copy of such correspondence is attached as **Exhibit 15.**

- 43. Instead, Counterdefendant JSJBD Corp paid \$8,400.00 a month in base rent, without objection, for the entire prior twelve months.
- 44. The demand by the Counterdefendant's second attorney, Lucas A. Grower, Esq., that rent be set at "market rental rate" is in direct violation of the clear-cut terms required to exercise the conditional option in Section 8 of the Lease Assignment and Modification, which required the negotiation of a rental increase, all of which was duly recognized and acknowledged by Counterdefendant JSJBD Corp's initial counsel, Kaempfer Crowell.

FIRST CLAIM FOR RELIEF (Declaratory Judgment)

- 45. Counterclaimant repeats and realleges Paragraphs 1-48 inclusive, as set forth hereinabove.
- 46. Nevada Revised Statutes Chapter 30 provides that courts of record have the power to declare the rights, status and other legal relations of parties. Further, declarations by the court may either be affirmative or negative in form and effect and shall have the force and effect of a final judgment or decree. Counterclaimant requests that this honorable Court enter a declaration regarding the legal relations, rights and status of the parties hereto as set forth hereinbelow.
- 47. This Court should declare that the purpose and effect of the Option Agreement marked as **Exhibit 2** extended only to the distinct two (2) option periods for 2001 and 2006 at a market rental rate, and that the effect thereof did not extend beyond such two (2) option periods.
- 48. The Court should further declare that the subsequent Amendments, Addendums, and the Lease Assignment and Modification agreement superseded said Option Agreement, marked as **Exhibit 2**, and that the Lease Assignment and Modification provides for three (3) conditional options, and that these three (3) conditional options were, among other things, dependent upon negotiation of rental increases.

49. That the Court should further declare that the Lease Assignment and Modification agreement and the conditional options therein did not contemplate or intend to allow for base rental decreases, or negotiation of rental increases or decreases based on "market rate".

- 50. The Court should further declare that the Counterdefendant's insistence upon negotiation or renegotiation of (1) a reduced base rental, and (2) a base rental to be determined by "market rental", is contrary to the operative and express language of the Lease Assignment and Modification, and constitutes an improper attempt to unilaterally rewrite, change and modify the plain and clear language of the conditional options with the improper purpose of superimposing the Counterdefendant's unjustifiable demands for reduced rental rates.
- 51. This honorable Court should further declare that the foregoing conduct and the attempts to change the plain and operative language of the Lease Assignment and Modification is a failure to satisfy the conditional nature of the options, which thereby renders any attempt at exercising the option void or voidable, and accordingly, Counterdefendant's legal status is that of a holdover and month-to-month Tenant.
- 52. The Court should further declare that in addition to the foregoing, and despite the February 26, 2016 attempt to exercise the option, Counterdefendant failed to negotiate in good faith a rental increase, as expressly provided for, is a failure to timely comply with the terms of the Lease Assignment Modification, and accordingly, the status of Counterdefendant is that of holdover Tenant on a month-to-month basis.
- 53. Further, said uncured default demonstrates Counterdefendant JSJBD Corp's failure to comply with all terms and conditions of the Lease (**Exhibit 1**) which renders any attempt to exercise the option as void or voidable, resulting in Counterdefendant JSJBD Corp holding the status of a holdover Tenant on a month-to-month basis.
- 54. In the alternative, in the event that this honorable Court does not rule that Counterdefendant JSJBD Corp's legal status is that of a holdover and month-to-month Tenant, then Counterclaimant requests that the Court rule and determine that Counterdefendant's authorized agent and attorney, Lesley B. Miller, Esq. of the law firm of Kaempfer Crowell, exercised the option to renew the Lease pursuant to Section 8 of the Lease Assignment and

Modification, upon the terms of payment of the base rental as set forth in the written proposal of Commercial Investment Real Estate Services dated June 15, 2016. Further, that said exercise of the option by Lesley B. Miller was confirmed and ratified in all respects, including the payment of rental increases at the rate of \$210.00 per month by Counterdefendant, which payments were made voluntarily, continuously and consistently, without protest or reservation, in the amount of \$8,400.00 per month base rent from September 1, 2016 through the August base rent of 2017.

55. That in addition to the above, Counterclaimant asks the Court to rule and determine that there is no further need to negotiate the base monthly rent as claimed by Counterdefendant, and that for the first option period, Counterdefendant is required to pay the sum of base rental as agreed by Counterdefendant's agent and attorney, with annual monthly increases in the amount of \$210.00 per month.

SECOND CLAIM FOR RELIEF (Breach of Lease Agreement)

- 56. Counterclaimant repeats and realleges Paragraphs 1–59 inclusive, as set forth hereinabove.
- 57. Counterclaimant and Counterdefendant's predecessor are parties to a Lease Assignment and Modification agreement dated on or about June, 2007.
- 58. Counterdefendant has failed and refused to pay the ongoing rental increases, and remains in possession of the premises.
- 59. That Counterdefendant has breached the Lease Assignment and Modification, and therefore, the underlying Lease, by virtue of its insistence that negotiations remain ongoing, based upon its claim that it is entitled to rental decreases based on "market rental", all of which is contrary to the express and clear-cut language of the Lease Assignment and Modification agreement.
- 60. By virtue of the above-referenced breaches and defaults, Counterclaimant has been damaged in an amount in excess of \$15,000.00, and Counterdefendant JSJBD Corp, and each Guarantor, Counterdefendants Jeff White, Jeffrey B. Vincent, and Stuart Vincent, are jointly and severally liable for Counterclaimant's losses and damages.

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61. The Lease (Exhibit 1) provides in Paragraph 24 that in the event the Landlord, Counterclaimant herein, finds it necessary to retain an attorney in connection with the default of Tenant, Counterdefendants herein, with respect to any of the agreements or covenants contained in the Lease, then Landlord shall be entitled to and Tenant shall pay reasonable attorney fees for Counterclaimant's counsel. Accordingly, Counterclaimant is entitled to an award of attorney fees and costs as provided for in the underlying Lease, and in accordance with Nevada statutes.

THIRD CLAIM FOR RELIEF (Breach of the Implied Covenant of Good Faith and Fair Dealing)

- 62. Counterclaimant repeats and realleges Paragraphs 1-65 inclusive, as set forth hereinabove.
- 63. Pursuant to Nevada law, parties to a contract, agreement or a lease are subject to an implied covenant of good faith and fair dealing.
- By virtue of its conduct and position, Counterdefendant has breached the 64. covenant of good faith and fair dealing.
- 65. As a result of Counterdefendant's breaches and defaults, Counterclaimant has been damaged in an amount in excess of \$10,000.00.

<u>FOURTH CAUSE OF ACTION</u> (Eviction and Issuance of Writ of Restitution)

- 66. Counterclaimant repeats and realleges Paragraphs 1-69 inclusive, as set forth hereinabove.
- 67. On or about November 15, 2018, Counterdefendant was served with a Thirty Day Notice to Quit the Premises pursuant to NRS 40.251. A true and accurate copy is attached hereto as Exhibit 16.
- 68. Notwithstanding the foregoing Notice to Quit the Premises, Counterdefendant remains in possession and occupation of the premises and continues to hold the same, notwithstanding its status as a holdover Tenant.
 - 69. Counterdefendant has refused to surrender possession of the premises.

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	70.	Counterdefendant	unlawfully	holds	over	and	continues	in	possession	of	the
premi	ses by v	irtue of the foregoir	ng defaults a	nd brea	aches,	and	remains in	pos	ssession with	out	the
permi	ssion of	Counterclaimant.									

71. Counterclaimant prays that the Court enter an order requiring restitution of the premises.

PRAYER FOR RELIEF

WHEREFORE, Counterclaimant prays for judgment against Counterdefendants for the following:

- For restitution of the premises; 1.
- 2. For damages against Counterdefendants, and each of them in an amount in excess of \$10,000.00 according to proof;
 - 3. For declaratory relief as prayed for in the Counterclaim; and
- 4. For an award of Court costs, according to law, and attorney fees as provided in the underlying Lease between the parties.

Dated this 9th day of January, 2019.

MARQUIS AURBACH COFFING

/s/ Terry A. Moore ByTerry A. Moore, Esq. Nevada Bar No. 7831 10001 Park Run Drive Las Vegas, Nevada 89145 Attorneys for Defendant/Counterclaimant, Tropicana Investments, LLC

MARQUIS AURBACH COFFING

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing <u>ANSWER AND COUNTERCLAIM</u> was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of January, 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

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A.

/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).

Exhibit 1

This Lease is made and entered into this 9th day of July 1996 between Walter L. Schwatz, Lessor and Mark S. Van Aken., Tenant,

- 1. USE: The landlord lease to Tenant and Tenant hires from Landlord the premises for use only as a bar and tavern the premises set forth. No other use shall be permitted.
- 2. PREMISES: The premises are 3430 East Tropicana, Las Vegas, Nevada Units 27, 28, and 29 in the Tropicana Pecos Shopping Center a space of approximately 4200 square feet.
- 3. TERM; The term of the leases shall be for five years commencing April 1,1996 and ending March 30, 2001.
- 4. RENT: The minimum rent shall be payable in advance on the 1st day of each and every month as follows.

April 1,1996 to August 31,1996 \$3150.00 per month. September 1,1996 to August 31,1997 \$3360.00 per month September 1,1997 to August 31,1998 \$3570.00 per month September 1,1998 to August 31,1999 \$3780.00 per month September 1,1999 to August 31,2000 \$3990.00 per month September 1,2000 to August 31,2001 \$4200.00 per month

Tenant shall be deemed in default of said lease after the '10th day of each month and will be assessed a late charge equal to ten percent of the monthly rent.

- 5. REAL ESTATE TAXES: Tenant agrees to pay all real estate taxes on the premises on a pro rata basis.
- 6. PERSONAL PROPERTY TAXES: Tenant shall pay personal property taxes levied on his personal property.
- 7. PARKING AND COMMON FACILITIES: Landlord shall keep automobile and common areas in a neat, clean, and orderly condition. properly lighted and landscaped, and shall improve and repair any damage to the facilities thereof, but all expenses in connection with said automobile parking and common areas shall be charged and prorated in the manner herein after set forth. It is understood and agreed that the phase "expenses in connection with said automobile parking and common areas" as used herein shall be construed to include but not limited to all upgrading, general maintenance and repairs, resurfacing, rubbish removal, painting, restripping, cleaning, sweeping and janitorial services, personel to implement such services including property management fees for the entire parcel and to police the automobile parking and common areas: real and personal property taxes and assessments thereon, Water. Insurance, including but not limited to General Liability and Property Damages, Fire Hazard on Demised Premises, Buildings. Common Areas and Parking Lot. A reasonable allowance to Landlord for Landlord's administrative expenses of said automobile parking and common areas no to exceed in any

calendar year fifteen percent of the total of the aforementioned expenses for said calendar year. Landlord may, however, cause any or all services to be performed by an independent contractor or contractors.

Throughout the term hereof, Tenant will pay to Landlord monthly in advance, in addition to minimum rent, that portion of expenses as herein defined. Tenant's pro rata share of total expenses shall be that portion of all such expenses which is equal to the proportion thereof which the number of square feet of gross floor area in the demised premises bears to the total number of square feet of gross floor area of all buildings in the shopping center (115,671 square feet) Measurements to be made from the outside of exterior walls and from the center of interior partitions. Quarterly tenant shall be given an accounting of expenses and the balance of the account shall be paid within 10 days. This estimated common area maintenance charge shall start at \$500.00 per month.

The tenant, in the use of said common and parking areas, agrees to comply with such rules and regulations as the Landlord may adopt from time to time for the orderly and proper operation of said common and parking areas. Such rules may include but are not limited to the following:

- 1. The restricting of employees to a limited designated areas; and
- 2. The regulation of the removal, storage, and disposal of Tenant's refuse and other rubbish at the sole cost and expense of tenant.
- 8. USES PROHIBITED: Tenant shall not use or permit said premises or any part thereof to be used for any purpose or purposes other than the purchase or purposes for which said premises are hereby leased and no use shall be made or permitted to be made of said premises nor acts done which will increase the existing rate of insurance upon the building of which said premises may be located (once said rate is established) or cause a cancellation of any insurance policy covering said building or any part thereof nor shall Tenant sell or permit to be kept, used, or sold in or about said premises any article which may be prohibited by standard form of insurance policies. Tenant shall, at his sole cost, comply with any and all requirements pertaining to the use of said premises, of any insurance organization to company necessary for the maintenance of reasonable fire and public liability insurance, covering said building and appurtenances, In the event Tenant's use of the premises, recited in Article 1. hereof, results in a rate increase for the building of which the demised premises are a part, Tenant shall pay annually on the anniversary date of this lease, as additional rent, a sum equal to that of the additional premium occasioned by said rate increase.

Tenant shall not do, permit or suffer anything to be done, or kept upon the Leased Property which will obstruct or interfere with the rights of other Tenants. Landlord or the patrons and customers of any of them, or which will annoy any of them or their patrons or customers by reason of unreasonable noise or otherwise, nor will Tenant commit or permit any nuisance on the Leased Property or commit or suffer any immoral or illegal act to be committed thereon.

9. MAINTENANCE AND REPAIR: Tenant shall at all times during the term hereof, and at Tenant's sole cost and expense, keep, maintain, and repair the building and other improvements upon the demised premises in good and sanitary order and condition (except as herein provided with respect to Landlord's obligation) including without limitation the maintenance and repair of any store front, doors, window casements, glazing, heating and air-conditioning system (if any), plumbing, pipes, electrical wiring and conduits. Tenant hereby waives all rights to repair at expense of Landlord as provided for in Civil Code of the State of Nevada and Tenant hereby waives all rights as provided by Civil Code. By entering into the demised premises Tenant shall be deemed to have accepted the demised premises as being in good and sanitary order, condition, and repair and Tenant agrees on the last day of said term or sooner termination of this lease to surrender the demised premises with appurtenances , in the same condition as when received, reasonable use and wear thereof and damage by fire, act of God, or by the elements excepted. Tenant shall sweep and clean the sidewalks adjacent to the demised premises, as and when needed.

Landlord shall at his sole cost and expense, keep and maintain in good repair, (excluding painting) of exterior walls and roof repairs provided, however, that anything to the contrary notwithstanding contained in this lease, the Landlord shall not be required to make any repairs to the exterior walls or roof repairs unless and until Tenant has notified Landlord in writing of the need for such repairs and Landlord shall have a reasonable period of time hereafter within which to commence and complete the repairs. Landlord agrees to use due diligence in the making of said repairs upon receipt of Tenant's notice with regards to.

10. COMPLIANCE WITH LAWS: Tenant shall, at his sole cost and expense, comply with all municipal, state, and federal authorities now in force or which may hereafter be in force pertaining to the use of said premises, and shall faithfully observe in said use all municipal ordinances and state and federal statutes now in force and which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant whether Landlord be a party there to or not, that Tenant has violated any such order or statute in said use shall be conclusive of that fact as between Landlord and Tenant

Tenant shall not commit or suffer to be committed, any waste upon the demised premises, or any nuisance or the act or thing

which may disturb the quiet enjoyment of any other Tenant in the building in which the demised premises may be located.

Tenant shall also comply with the Rules and

Regulations attached hereto as Exhibit "B".

11. INDEMNIFICATION OF LANDLORD-LIABILITY INSURANCE BY TENANT: Tenant as a material part of the consideration to be rendered to Landlord under this Lease hereby waivers all claims against Landlord for damage to goods, wares, and merchandise in, upon, or about said premises and for injuries in or about said premises, from any cause arising at any time, and Tenant will hold Landlord exempt and harmless from any damage or injury to any person, or the goods, wares, and merchandise of any person arising from the use of the premises by Tenant or from the failure of Tenant to keep the premises in good condition and repair, as herein provided.

During the entire term of this Lease, the Tenant, shall at the Tenant's sole cost and expense, but for the mutual benefit of Landlord and Tenant, maintain general public liability insurance against claims for personal liability, including property damage occurring in, upon or about the demised premises and on any sidewalks directly adjacent to the demised premises. The limitation of liability of such insurance shall be not less than One Million (1.000.000) Dollars in respect to injury or to property damage. All such policies of insurance shall be issued in the name of Tenant and Landlord and for the mutual and joint benefit and protection of the parties, and such policies of insurance or copies thereof shall be delivered to Landlord.

- 12. FREE FROM LIENS: Tenant shall keep the demised premises and property in which the demised premises are situated free from liens arising out of any work performed, material furnished, or obligations incurred by Tenant.
- 13. ABANDONMENT: Tenant shall not vacate or abandon the demised premises at any time during the term of this Lease and if Tenant shall abandon, vacate, or surrender the demised premises be dispossessed by process of law, or otherwise, or otherwise. any personal property belonging to Tenant and left in the demised property shall be deemed to be abandoned, at the option of Landlord except such property as may be mortgaged to Landlord.
- 14. SIGNS AND AUCTIONS: The Tenant may affix and maintain upon the plate glass panes and supports of the show windows and within twelve (12) inches of any window and upon exterior walls of the building only such signs, advertising placards, names, insignia, trademarks, and descriptive material as shall have first received the written approval of the Landlord as to size, type, color, location, copy, nature, and display qualities. Anything to the contrary in this lease notwithstanding, Tenant shall not affix any sign to the roof of the building within control of Tenant to be stored or

remain outside the defined exterior walls and permanent doorways of the premises. Tenant further agrees not to install any exterior lighting, amplifiers or similar devices or use in or about the premises any advertising medium which may be heard or seen outside the premises such as flashing lights, searchlights, loudspeakers, phonographs or radio broadcasts, No sign may be erected without the prior written consent of the Landlord.

- 15. UTILITIES: Tenant shall pay before delinquency all pro-rata charges for rubbish removal, water, gas, electricity, power, telephone service and all other services of utilities used in, upon, or about the demised premises by Tenant or any of its sub-tenants, licenses, or concessionaires during the term any any extension or rental of the term to this ease. This shall include pro-rata share of sewer fees and charges.
- 16. ENTRY AND INSPECTION: Tenant shall permit Landlord and his agents to enter into and upon the demised premises at all reasonable times for the purpose of inspecting the same or for the purpose of making repairs, alterations or addition to any the portion of said building including the erection and maintenance of such scaffolding, canopy, fences, and prop[s as may be required, or for the purpose of posting notices of nonliability for alterations, additions or usual or ordinary "For Rent" signs. Landlord shall be permitted to do any of the above without any rebate of rent and without liability to Tenant for any loss of occupation or quiet enjoyment of the premises thereby occasioned. Tenant shall permit Landlord, at any time within thirty (30) days prior to the expiration of this Lease, to place upon said premises any usual or ordinary "For Lease" signs and during such thirty (30) day period Landlord or his agents may, during normal business hours, enter upon said premises and exhibit same to prospective tenants.
- 18. ASSIGNMENT: Tenant shall not assign this Lease or any interest therein, and shall not sublet the demised premises or any part thereof, or any right or privilege appurtenant thereto or permit any other person (the agents and servants of Tenant excepted) to occupy or use the demised premises or any portion thereof, without first obtains the written consent of the Landlord. Consent by Landlord by the Landlord to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Consent to an assignment shall not release the original provisions on the part of Tenant to be kept and performed, unless Landlord specifically and in rating releases the original named Tenant from said liability. A assignment or subletting without the prior written consent of Landlord shall be null and void and shall, at the option of Landlord, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of Tenant, by operation of law, without the prior written consent of Landlord.

- 22. SALE: In the event of any sale of the demised premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in ore derived from this Lease arising out of any act occupation or omission occurring after the consummation of such sale: and the purchaser, at such sale of any subsequent sale of the demised premises shall be deemed without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all the covenants and obligations of the Landlord under this Lease.
- 24. ATTORNEY FEES: In the event the Landlord finds it necessary to retain an attorney in connection with the 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.
- 25. SECURITY DEPOSIT: Tenant contemporaneously with execution of the Lease, has deposited with Landlord the sum of \$4200.00 receipt of which is hereby acknowledged by Landlord and deposit being given to secure the faithful performance by the Tenant of all of the terms, covenants, and conditions of this Lease by the Tenant to be kept and performed during the term thereof. Tenant agrees that if the Tenant shall fail to pay the rent herein reserved promptly when due, said deposit may, at the option of the Landlord (but Landlord shall not be required to) be applied to any rent due and unpaid and if the Tenant violates any of the other terms, covenants, and conditions of this Lease said deposit may be applied to any damages suffered by Landlord as a result of Tenant's default top the extent of the amount of damages suffered.

Landlord shall have the right to commingle said security deposit with other funds of Landlord.

- 27. HOLDING OVER: Any holding over after the expiration of the term of this Lease, with consent of Landlord, shall be construed to be a tenancy from month to month cancelable upon thirty (30) written notice, at at a rental and upon terms and conditions as existed during the last year of the term thereof.
- 33. PARTIAL INVALIDITY: If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.
- 34. Tenant is allowed to have fifteen (15) gaming machines on premises and Tenant is allowed to sublease 1400 square feet of the premises for use as a restaurant.

36. SUBORDINATION, ATONEMENT: Upon request of the Landlord, Tenant will in writing subordinate its rights hereunder to the lien of any first mortgage or first deed of trust to any bank, insurance company or the lending institution, now or hereafter in force against the land and building of which the demised premises are a part, and upon any buildings hereafter placed upon the land of which demised premises are a part, and to all advances made or hereafter to be made upon the security thereof.

37. NO REPRESENTATIONS: Tenant acknowledges that there have been no representations made by Landlord, its agents, brokers or employees as to the present or future existence of any lease or leases with co-tenants of the shopping center or the occupancy by any co-tenant or co-ternants of any space within the shopping center except that which may be specifically set forth in writing in an exhibit attached hereto and executed by all parties in this Lease.

Landlord

Walter L. Schwartz

Tenant

Mark S. Van Aken

ach Stlen Ole

Exhibit 2

OPTION AGREEMENT

In the event Mark S. Van Aken has fully complied with all the terms, covenants condition of this lease and provided the Tenant gives the Landlord at least ninety (90) days notice in writing, in advance of the lease expiration the tenant shall have the option to renew this lease for a period of five years commencing September 1, 2001 at a market rental rate and terms as agreed by Landlord and Tenant.

In the event Mark S. Van Aken has fully complied with all the terms, covenants condition of this lease and provided the Tenant gives the Landlord at least ninety (90) days notice in writing, in advance of the lease expiration the tenant shall have the option to renew this lease for a period of five years commencing September 1, 2006 at a market rental rate and terms as agreed by Landlord and Tenant.

Lándlord

Walter L. Schwartz

Tenant

Mark S. Van Aken

Exhibit 3

AMENDMENT

TO RETAIL BUILDING LEASE

TO LEASE DATED JULY 9, 1996,

BETWEEN WALTER L. SCHWARTZ, ASSIGNED TO TROPICANA INVESTMENTS, A CALIFORNIA LLC, (LANDLORD)

AND MARK S. VAN AKEN, (TENANT)

THIS AMENDMENT is made this 16 th day of April, 2001, by and between Tropicana Investments, LLC, as Landlord, and Mark S. Van Aken, as Tenant.

WHEREAS, Landlord and Tenant are the parties to the above described Lease for the Premises at Tropicana Plaza located at 3430 E. Tropicana Ave., Suites 27, 28, & 29, Las Vegas, Nevada 89121; and

WHEREAS, the parties desire to amend said Lease.

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the adequacy and sufficiency of which is hereby acknowledged, Landlord and Tenant contract and agree as follows:

The following changes shall become effective on September 1, 2001.

- 1. Pursuant to Section 3, Term, Commencement Date shall change from April 1, 1996 to September 1, 2001.
- Pursuant to Section 3, Term, Expiration Date shall changed from March 30, 2001 to August 31, 2006.
- 3. Pursuant to Article 4, Rent:

The Base rent shall be changed and paid in accordance with the following schedule:

09/01/2001 - 08/31/2002 @ \$5,670.00 per month, \$68,040.00 per annum

09/01/2002 - 08/31/2003 @ \$5,880.00 per month, \$70,565.00 per annum

09/01/2003 - 08/31/2004 @ \$6,090.00 per month, \$73,080.00 per annum

09/01/2004 - 08/31/2005 @ \$6,300.00 per month, \$75,600.00 per annum

09/01/2005 - 08/31/2006 @ \$6,510.00 per month, \$78,120.00 per annum

4. Pursuant to Article 7, Parking and Common Facilities:

Annually Tenant shall be given an accounting of expenses and the balance of the account shall be paid within ten (10) days. This estimated common area maintenance expenses shall change from Five Hundred Dollars (\$500.00) per month to Seven Hundred Fifty Six Dollars (\$756.00) per month or eighteen cents (\$0.18) per square foot per month, and such estimated expenses are subject to increase based upon the actual operating expenses of the Center.

6. Pursuant to Section 25, Security Deposit:

Security Deposit, shall change from Four Thousand Two Hundred Dollars (\$4,200.00) to Seven Thousand Dollars (\$7,000.00). Tenant agrees to pay Landlord an additional Security Deposit of Two Thousand Eight Hundred Dollars (\$2,800.00) in six (6) monthly payments in the amount of Four Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$466.67) beginning May 1st, 2001 in addition to monthly rental payment and Common Area Maintenance (C.A.M.) expenses.

7. ADDITIONAL REPRESENTATIONS:

- A. Where any of the provisions set forth herein conflict with the printed portion of the Lease, the provisions of this Amendment shall govern. All of the terms, convenants, provisions, and agreements of the lease not conflicting with this Amendment shall remain in full force and effect.
- B. This Amendment is not an offer to lease until executed by Landlord, and shall become binding only upon execution by both parties.

8. AGENCY DISCLOSURE:

Pursuant to Nevada Real Estate Division rules, Commercial Investment Real Estate Services advises that it represents only the Landlord in this transaction and does not act on behalf of or represent Mark S. Van Aken (Tenant.)

TENANT:

ACKNOWLEDGED AND AGREED:

LANDLORD:

Tropicana Investments, LLC	Mark 5. Vall Ak
By the I	By: Maile
Jeffrey Chaunce, Building Manager	Mark S. Van Ak
5-10-01	Date: 5//

Exhibit 4

ADDENDUM

TO RETAIL BUILDING LEASE

TO LEASE DATED JULY 9, 1996

THIS ADDENDUM is made this 7th day of March, 2006, by and between Tropicana Investments, a California LLC, as Landlord, and Mark S. Van Aken, as Tenant.

WHEREAS, Landlord and Tenant are the parties to the above described Lease for the Premises at Tropicana Plaza located at 3430 E. Tropicana Ave., Suites 27, 28, & 29, Las Vegas, Nevada 89121; and

WHEREAS, the parties desire to amend said Lease.

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the adequacy and sufficiency of which is hereby acknowledged, Landlord and Tenant contract and agree as follows:

- Pursuant to Section 3, Term, Commencement Date shall change from September 1, 2001 to September 1, 2006.
- 2. Pursuant to Section 3, Term, Expiration Date shall changed from August 31, 2006 to August 31, 2011.

3. Pursuant to Article 4, Rent:

The Base rent shall be changed and paid in accordance with the following schedule: 09/01/2006 - 08/31/2007 @ \$6,720.00 per month, \$80,640.00 per annum 09/01/2007 - 08/31/2008 @ \$6,930.00 per month, \$83,160.00 per annum 09/01/2008 - 08/31/2009 @ \$7,140.00 per month, \$85,680.00 per annum 09/01/2009 - 08/31/2010 @ \$7,350.00 per month, \$88,200.00 per annum 09/01/2010 - 08/31/2011 @ \$7,560.00 per month, \$90,720.00 per annum

4. Option to Extend Lease Term:

Provided Tenant is in compliance with each and every term, covenant and condition hereof on it's part to be performed during the extension term of the lease (9/1/2006-8/31/2011), Tenant shall have the option to extend the lease term for one (1) final extension term of five (5) years, commencing on the expiration date hereof. Said option shall be exercised by giving Landlord notice in writing of such election at least six (6) months prior to the expiration of the lease extension term. Such extension term shall be under terms and conditions to be negotiated. Time is of the essence.

5. Pursuant to Article 7, Parking and Common Facilities:

The estimated common area maintenance expenses due and payable from Tenant to Landlord as of the date of this Addendum (March 7, 2006) is One Thousand One Hundred Seventy-Six Dollars & 00/100 (\$1,176.00) per month, and such estimated expenses are subject to increase based upon the actual operating expenses of the Center.

6. Pursuant to Article 15, Utilities:

Tenant agrees to reimburse Landlord for all sewer fees and charges from Clark County Sanitation District. Tenant reimbursement payment to Landlord for sewer fees shall be paid by Tenant within ten (10) days of invoice from Landlord.

Landlord Paitial
Tenant Ma

7. Additional Representations:

- A. Where any of the provisions set forth herein conflict with the printed portion of the Lease, the provisions of this Addendum shall govern. All of the terms, covenants, provisions, and agreements of the lease not conflicting with this Amendment shall remain in full force and effect.
- B. This Addendum is not an offer to lease until executed by Landlord, and shall become binding only upon execution by both parties.

8. Agency Disclosure:

Pursuant to Nevada Real Estate Division rules, Commercial Investment Real Estate Services advises that it represents only the Landlord in this transaction and does not act on behalf of or represent Mark S. Van Aken (Tenant.).

ACKNOWLEDGED AND AGREED:

LANDLORD:

Tropicana Investments, LLC

Jeffrey Chauncey, Building Manager

Date: 3-22-06

TENANT:

Mark S. Van Aken

Mark S. Van Aker

Date: 3/20/8

LEASE ASSIGNMENT AND MODIFICATION

This Lease Assignment and Modification is made and entered into by and between TROPICANA INVESTMENTS, LLC ("Landlord"), MARK S. VAN AKEN ("Tenant"), and J.S.J., LLC ("Assignee").

RECITALS

WHEREAS Mark S. Van Aken ("Tenant") desires to assign all of its rights, title, and interests in the lease unto J.S.J., LLC ("Assignee"), for the premises located at 3430 East Tropicana Avenue, Suites 27, 28 & 29, Las Vegas, NV 89121 ("Premises"), as further described in said Lease.

WHEREAS it is the desire of all parties to allow Tenant to assign the lease to Assignee, and Assignee desires to assume the rights, duties and liabilities of Tenant under the terms and conditions set forth in this Lease Assignment and Modification and the Lease Agreement dated March 9, 1996 ("Premises");

WHEREAS on April 16, 2001, a Amendment to retail lease was executed (the "Lease Amendment");

WHEREAS on January 20, 2006, a Lease Renewal Addendum to the lease agreement was executed (the "Lease Addendum");

WHEREAS, there are no defaults or notices of default outstanding and/or uncured under the Lease Agreement, Lease Amendment or the Lease Addendum (collectively, the "Lease");

WHEREAS it is the desire of all parties to allow Tenant to assign the Lease Agreement,

Lease Amendment and Lease Addendum to Assignee under the terms and conditions set forth in this

Lease Assignment and Modification.



NOW THEREFORE in consideration of the mutual promises, covenants and agreements between the parties, it is hereby agreed as follows:

- Term of the Lease. The initial lease term shall be for the period September 1, 2006 through August 31, 2011 (existing lease term).
- 2. Rental Payment. The monthly rental payments shall be as set forth in the Lease Addendum.
- 3. Additional Rental (Operating Expenses & Taxes): The project operating expenses shall be as set forth in the Lease Agreement dated March 9, 1996.
- 4. Assignment to Assignee. On close of escrow of the sale of business currently conducted by Tenant at the Premises (the "Closing"), the Lease shall be assigned by Tenant to Assignee. Assignee shall assume all rights and obligations under the term of the Lease and this Lease Assignment and Modification. Effective April 30, 2009, MARK S. VAN AKEN shall be released from any obligations, payments, claims or demands by the Landlord pursuant to the Lease. Effective as of the Closing, Landlord agrees to this novation only as set forth above, and the substitution of Assignee.
- 5. Security Deposit. Landlord shall return Tenant's (Mark S. Van Aken) Security Deposit two (2) years from the date of the Closing. Assignee shall deposit with Landlord a Security Deposit in the amount of \$8,000.00 on or before the Closing, which shall be held by Landlord for the term of the lease and any renewal or extension.



- Payment of Rent. On the Closing, Assignee shall pay to the Landlord, Base Rent in the amount of \$6,720.00, estimated Operating Expenses and Taxes in the amount of \$1,176.00.
- 7. Inspection and Review. The Landlord represents it has fully reviewed all financial information regarding Assignee and agrees to accept Assignee under the terms of the Lease Agreement, Lease Amendment, Lease Addendum in the place of MARK S. VAN AKEN with no right, claim or demand regarding any obligation reserved except as otherwise set forth herein. Assignee acknowledges having had the opportunity to inspect the Premises and perform its own due diligence, and is taking the same in an "As Is" and "Where-Is" condition; provided, however, Landlord is not aware of and has not received notice of: (a) any violation or alleged violation of any municipal, state or federal law; (b) any structural damage or defect relating to the Premises; or (c) any announced or proposed renovation, construction, repair or other capital improvement project related to the Premises. This Lease Assignment and Modification Agreement constitutes the entire agreement of the parties and no oral modifications or understandings are incorporated or intended to be relied upon by any party. Assignee shall at Assignee's sole expense, comply with all Clark County code requirements and any other municipal, state or federal laws or regulations now in effect, or which may be in effect in the future, which are necessary to operate a bar and tavern within the county governmental jurisdiction.
- 8. Additional Terms. Tenant agrees to pay Landlord (Tropicana Investments, LLC)

 Ten Percent (10%) of the total sales price of said business sales transaction upon the



Closing. Upon Tenant's sale of it's business to Assignee and Mark S. Van Aken's full payment to Landlord (Tropicana Investments, LLC) in the amount of ten percent (10 %) of the total sale price on or before the Closing, Landlord agrees to conditionally grant Assignee, J.S.J., LLC, three (3) additional five (5) year options to renew the term of the Lease under terms and conditions, including but not limited to 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.

9. Landlord agrees to allow Assignee at Assignee's sole cost and expense to install exterior signage on the south west side of the existing pyramid feature located outside the premises. The exterior signage to be installed on the pyramid feature shall be permitted for installation upon Landlord's prior written approval of signage renderings, where said approval shall not be unreasonably withheld.

Assignee: J.S.J., LLC

DATED this /5 day of Dune, 2007.

Tenant:	Mark	S Van	Aken

DATED this 1911 day of JUNE, 2007.

Landlord: Tropicana Investments, LLC

day of level

GUARANTY

DESCRIPTION OF LEASE:

General Retail Lease

DATE:

June 25, 2007

LANDLORD:

Tropicana Investments, a California Limited Liability

Company

TENANT:

J.S.J., LLC

PREMISES:

3430 E. Tropicana Avenue, Suite 27-29, Las Vegas, NV

89121

GUARANTY OF LEASE dated 6-26-07 by and between <u>Tropicana Investments</u>. <u>LLC</u> as Landlord and <u>Stuart Vincent</u>Guarantor.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned Guarantor hereby unconditionally and irrevocable guarantees the full and faithful performance by Tenant of all the terms, covenants and conditions of the above-referenced Lease, including, but not limited to, the payment of all rent when and as the same shall become due. This Guaranty shall remain in full force and effect regardless of any amendment, modification, extension, compromise or release of any term, covenant or condition of the Lease or of any party thereto, as the case may be. The undersigned agrees to indemnify Landlord against any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys' fees, litigation, judgements, damages, claims and demands of any kind whatsoever in connection with arising out of or by reason of the assertion by Tenant of any defense to its obligations under the Lease or the assertion by Guarantor of any defense to its obligations hereunder. Guarantor waives any right or claim of right to cause a marshaling of Tenant's assets or to proceed against Guarantor or Tenant or any security for the Lease or this Guaranty in any particular order and Guarantor agrees that any payments or performance required to be made hereunder shall become due upon demand in accordance with the terms hereof immediately upon the happening of a default under the Lease, whether or not Guarantor has been given notice of such default, and Guarantor hereby expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors, including, but not limited to, notice of demand, notice of default, any failure to pursue Tenant or its property, any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation. and any defense arising by reason of any defense of Tenant or by reason of the cessation of the liability of Tenant or any defense by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the said Lease, or by reason of summary or other proceedings against Tenant.

No delay on Landlord's part in exercising any right, power or privilege under this Guaranty or any other document executed in connection herewith shall operate as a waiver of any such privilege, power or right.

Guarantor agrees that any judgment rendered against Tenant for monies or performance due Landlord shall in every and all respects bind and be conclusive against Guarantor to the same extent as if Guarantor had appeared in any such proceeding and judgment therein had been rendered against Guarantor.

Guarantor subordinates to Tenant's obligations to Landlord all indebtedness of Tenant to Guarantor, whether now existing or hereafter contracted, whether direct or indirect, contingent or determined. With respect to any such indebtedness of Tenant to Guarantor, Guarantor further agrees to make no claim therefor until any and all obligations of Tenant to Landlord shall have been discharged in full and Guarantor further covenants and agrees not to assign all or any part of such indebtedness while this Guaranty remains in effect.

Initials
Landlord
Guarantor

Guaranty - Cont.

The terms, covenants and conditions contained in this Guaranty shall apply to and bind the successors and assigns of the undersigned.

The terms, covenants and conditions contained in this Guaranty shall inure to the benefit of the successors and assigns of Landlord.

If any term, covenant or condition of this Guaranty, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Guaranty, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

In this Guaranty, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

This Guaranty shall be construed in accordance with its intent and without regard to any presumption or other rule requiring construction against the party causing the same to be drafted.

The laws of the state in which the leased premises are located shall govern the validity, construction, performance and effect of this Guaranty.

Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder.

DATED this 26th day of June	, 20 <u>07</u>
Guarantor: Stewart Vincent	
The arm of the same was a second	141 - 5 - 5 - 5 - 5 - 5 - 5 - 5 - 5 - 5 -
Social Security Number: 458-27-6156	
Residence Address: 11261 Playa Caribe Av	¢

Initials
Landlord ____
Guarantor ____

CUARANTY

DESCRIPTION OF LEASE:

General Retail Lease

DATE:

June 25, 2007

LANDLORD:

Tropicana Investments, a California Limited Liability

Company

TENANT:

J.S.J., LLC

PREMISES:

3430 E. Tropicana Avenue, Suite 27-29, Las Vegas, NV

89121

GUARANTY OF LEASE dated 6/26/07 by and between Tropicana Investments.

LLC as Landlord and Tell Life Guarantor.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned Guarantor hereby unconditionally and irrevocable guarantees the full and faithful performance by Tenant of all the terms, covenants and conditions of the above-referenced Lease, including, but not limited to, the payment of all rent when and as the same shall become due. This Guaranty shall remain in full force and effect regardless of any amendment, modification, extension, compromise or release of any term, covenant or condition of the Lease or of any party thereto, as the case may be. The undersigned agrees to indemnify Landlord against any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys' fees, lingation, judgements, damages, claims and demands of any kind whatsoever in connection with arising out of or by reason of the assertion by Tenant of any defense to its obligations under the Lease or the assertion by Guarantor of any defense to its obligations hereunder. Guarantor waives any right or claim of right to cause a marshaling of Tenant's assets or to proceed against Guarantor or Tenant or any security for the Lease or this Guaranty in any particular order and Guarantor agrees that any payments or performance required to be made hereunder shall become due upon demand in accordance with the terms hereof immediately upon the happening of a default under the Lease, whether or not Guarantor has been given notice of such default, and Guarantor hereby expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors, including, but not limited to, notice of demand, notice of default, any failure to pursue Tenant or its property, any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation, and any defense arising by reason of any defense of Tenant or by reason of the cessation of the liability of Tenant or any defense by reason of the assertion by Landford against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the said Lease, or by reason of summary or other proceedings against Tenant.

No delay on Landlord's part in exercising any right, power or privilege under this Guaranty or any other document executed in connection herewith shall operate as a waiver of any such privilege, power or right.

Guarantor agrees that any judgment rendered against Tenant for monies or performance due Landlord shall in every and all respects bind and be conclusive against Guarantor to the same extern as if Guarantor had appeared in any such proceeding and judgment therein had been rendered against Guarantor.

Guarantor subordinates to Tenant's obligations to Landlord all indebtedness of Tenant to Guarantor, whether now existing or bereafter contracted, whether direct or indirect, contingent or determined. With respect to any such indebtedness of Tenant to Guarantor, Guarantor further agrees to make no claim therefor until any and all obligations of Tenant to Landlord shall have been discharged in full and Guarantor further covenants and agrees not to assign all or any part of such indebtedness while this Guaranty remains in effect.

Page I of 2

Laudiord Guarantos

Guaranty - Cont.

The terms, covenants and conditions contained in this Guaranty shall apply to and bind the successors and assigns of the undersigned.

The terms, covenants and conditions contained in this Guaranty shall inure to the benefit of the successors and assigns of Landlord.

If any term, covenant or condition of this Guaranty, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Guaranty, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

in this Guaranty, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

This Guaranty shall be construed in accordance with its intent and without regard to any presumption or other rule requiring construction against the party causing the same to be drafted.

The laws of the state in which the leased premises are located shall govern the validity, construction, performance and effect of this Guaranty.

Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder.

Social Security Number: 457-45-7/4

Residence Address:

Page 2 of 2

GUARANTY

DESCRIPTION OF LEASE:

General Retail Lease

DATE:

June 25, 2007

LANDLORD:

Tropicana Investments, a California Limited Liability

Company

TENANT:

J.S.J., LLC

PREMISES:

3430 E. Tropicana Avenue, Suite 27-29, Las Vegas, NV

89121

GUARANTY OF LEASE dated June 26, 2007 by and between Tropicana Investments, LLC as Landlord and Veffrey Vincent Guarantor.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned Guarantor hereby unconditionally and irrevocable guarantees the full and faithful performance by Tenant of all the terms, covenants and conditions of the above-referenced Lease, including, but not limited to, the payment of all rent when and as the same shall become due. This Guaranty shall remain in full force and effect regardless of any amendment, modification, extension, compromise or release of any term, covenant or condition of the Lease or of any party thereto, as the case may be. The undersigned agrees to indemnify Landlord against any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys' fees, litigation, judgements, damages, claims and demands of any kind whatsoever in connection with arising out of or by reason of the assertion by Tenant of any defense to its obligations under the Lease or the assertion by Guarantor of any defense to its obligations hereunder. Guarantor waives any right or claim of right to cause a marshaling of Tenant's assets or to proceed against Guarantor or Tenant or any security for the Lease or this Guaranty in any particular order and Guarantor agrees that any payments or performance required to be made hereunder shall become due upon demand in accordance with the terms hereof immediately upon the happening of a default under the Lease, whether or not Guarantor has been given notice of such default, and Guarantor hereby expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors, including, but not limited to, notice of demand, notice of default, any failure to pursue Tenant or its property, any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation, and any defense arising by reason of any defense of Tenant or by reason of the cessation of the liability of Tenant or any defense by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the said Lease, or by reason of summary or other proceedings against Tenant.

No delay on Landlord's part in exercising any right, power or privilege under this Guaranty or any other document executed in connection herewith shall operate as a waiver of any such privilege, power or right.

Guarantor agrees that any judgment rendered against Tenant for monies or performance due Landlord shall in every and all respects bind and be conclusive against Guarantor to the same extent as if Guarantor had appeared in any such proceeding and judgment therein had been rendered against Guarantor.

Guarantor subordinates to Tenant's obligations to Landlord all indebtedness of Tenant to Guarantor, whether now existing or hereafter contracted, whether direct or indirect, contingent or determined. With respect to any such indebtedness of Tenant to Guarantor, Guarantor further agrees to make no claim therefor until any and all obligations of Tenant to Landlord shall have been discharged in full and Guarantor further covenants and agrees not to assign all or any part of such indebtedness while this Guaranty remains in effect.

Initials
Landlord
Guarantor

Guaranty - Cont.

The terms, covenants and conditions contained in this Guaranty shall apply to and bind the successors and assigns of the undersigned.

The terms, covenants and conditions contained in this Guaranty shall inure to the benefit of the successors and assigns of Landlord.

If any term, covenant or condition of this Guaranty, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Guaranty, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

In this Guaranty, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

This Guaranty shall be construed in accordance with its intent and without regard to any presumption or other rule requiring construction against the party causing the same to be drafted.

The laws of the state in which the leased premises are located shall govern the validity, construction, performance and effect of this Guaranty.

Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder.

DATED this 26 7/1 day of June ,2007

Guarantor: 💋

Social Security Number: 458-77-880

Residence Address: 20 Chateau Whistler CT

Landlord Landlord Guarantor

ADDENDUM II

TO RETAIL BUILDING LEASE

TO LEASE DATED JULY 9, 1996

THIS ADDENDUM is made this 22nd day of February, 2011, by and between Tropicana Investments, LLC, as Landlord, and Mark S. Van Aken, as Tenant. <u>J.S.J. LLC DBA BLUE</u> <u>DOGS PUB</u>, is the successor in interest to MARK S. VAN AKEN, as Tenant, with respect to the above referenced lease.

WHEREAS, Landlord and Tenant are the parties to the above described Lease for the Premises at Tropicana Plaza located at 3430 E. Tropicana Ave., Suites 27, 28, & 29, Las Vegas, Nevada 89121; and

WHEREAS, the parties desire to amend said Lease.

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the adequacy and sufficiency of which is hereby acknowledged, Landlord and Tenant contract and agree as follows:

- 1. Pursuant to Section 3, Term, Commencement Date shall change from September 1, 2006 to September 1, 2011.
- 2. Pursuant to Section 3, Term, Expiration Date shall changed from August 31, 2011 to August 31, 2016.
- 3. Pursuant to Article 4, Rent:

The Base rent shall be changed and paid in accordance with the following schedule:

09/01/2011 - 08/31/2012 @ \$7,560.00 per month, \$90,720.00 per annum

09/01/2012 - 08/31/2013 @ \$7,560.00 per month, \$90,720.00 per annum

09/01/2013 - 08/31/2014 @ \$7,770.00 per month, \$93,240.00 per annum

09/01/2014 - 08/31/2015 @ \$7,980.00 per month, \$95,760.00 per annum

09/01/2015 - 08/31/2016 @ \$8,190.00 per month, \$98,280.00 per annum

4. Additional Representations:

A. Where any of the provisions set forth herein conflict with the printed portion of the Lease, the provisions of this Addendum shall govern. All of the terms, covenants, provisions and agreements of the Lease not conflicting with this Addendum shall remain in full force and effect.

Initial

Landlord Tenant

B. This Addendum is not an offer to lease until executed by Landlord, and shall become binding only upon execution by both parties.

5. Agency Disclosure:

Pursuant to Nevada Real Estate Division rules, Commercial Investment Real Estate Services makes the following disclosure:

Pursuant to Nevada Real Estate Division rules, Commercial Investment Real Estate Services advises that it represents only the Landlord in this transaction and does not act on behalf of or represent J.S.J. LLC dba Blue Dogs Pub (Tenant.).

ACKNOWLEDGED AND AGREED:

LANDLORD:	IENANI:
Tropicana Investments, LLC	J.S.J. LLC dba Blue Dogs Pub
By:	By:
Jeffrey Chauncey, Building Manager	Jeff A. White
7 7 1	2 114

Jeff Chauncey,

Sent on Feb. 26, 2016

This letter is to notify you we intend to exercise our five year option beginning September 1st 2016.

There are some issues we have discussed with Joe and Dan Velarde. These include rental rate, designated parking during Layla's functions, sewer odor in alley and repair of leaking roof.

Rental rate for five year option

Blue Dogs took over the property in April of 2008. Business opened in June of 2008. This opening was followed by the national recession.

Blue Dogs, in addition to the \$400,000 note to Van Aken, borrowed an additional \$400,000 for renovation and capital from Nevada Commerce Bank. Initially, business was slow and required further capital investments from the owners. Business improved by 2011 and we were nearly able to achieve positive cash flow.

In 2012 and 2013 Blue Dogs had marginal profits, which were used to reduce some of the debt. During this time our slot operator ETT went into Bankruptcy and in January of 2014 we switched slot operators to JETT. Subsequently, Blue Dogs revenue has decreased significantly.

We attribute this reduced revenue to several factors:

- 1) Competition in immediate area and their aggressive marketing
- 2) Quality and size of tavern clientele has diminished throughout Las Vegas but especially in the local area.
- 3) Increase in food & alcohol costs are not offset by revenue increased.
- 4) Many of our patrons have informed us that they have stopped coming on the weekends because of the parking issues when Layla has events.
- 5) Change in slot machines associated with new slot operator.

Attached are the profit & loss for 2013, 2014, and 2015 through November. The primary revenue source for Blue Dogs is slot revenue. Nearly all of the bar revenue and food sales are offset by comps. Therefore we will concentrate on the slot revenue.

In 2013 slot revenue was \$665,450. It fell \$133,466 (20%) to \$531,984 in 2014. The profit & loss for 2015 is through November. Annualized it would be \$475,694. This is a reduction of an additional \$56,890 or 10.7%.

In order to manage this revenue loss Blue Dogs has taken extreme steps to reduce expenses. They have gone from \$761,699.79 in 2013 to \$699,124.74 in 2014 and \$623,513.40 for 2015 on an annualized basis. This resulted in a loss of \$37,466.72 in 2014, and a YTD loss of \$33,713.63 through November 2015.

These cash flow shortfalls have been covered by capital contributions from owners, bank loans and credit card loans. Stuart Vincent, Blue Dogs part owner/manager, has a salary of \$25,000 per year. He has declined to take this marginal salary several months when cash flow is critical.

No owner has ever taken any distribution. In fact in 2014 the owners infused \$200,000 to pay off one of the loans and reduce Blue Dogs monthly principle and interest payments.

Our experience is that the tavern / bar business in Las Vegas is not what it was ten years ago. Revenues are significantly lower and costs have continued to increase. In order for us to have a long term viable relationship it is absolutely necessary to get a concession on our rent.

During the past eight years rents in Las Vegas have declined as a result of the recession. Blue Dogs rent increased during this period, resulting in a rental rate that is significantly above current market rates and unaffordable.

We have been a loyal tenant. We have always tried to pay our rent on time, even in some very difficult financial times. In order for us to remain in business Blue Dogs needs a \$2,500 a month reduction in rent.

After reviewing this information please contact us. We will provide other information upon request.

Stuart Vincent

Cc: Joe Velarde

Dan Velarde

Begin forwarded message:

From: Joe Velarde < joe@cilv.com > Date: June 15, 2016 at 5:49:39 PM EDT

To: "Stuart Vincent (<u>stuartvincent77@yahoo.com</u>)" <<u>stuartvincent77@yahoo.com</u>>
Cc: "<u>jbvin1@msn.com</u>" <<u>jbvin1@msn.com</u>>, Danny Velarde <<u>dvelarde@cilv.com</u>>

Subject: Letter dated 6-15-16

Hello Stuart, Danny forwarded Jeff's email to the Landlord last week. The Landlord asked us to prepare the attached letter on his behalf.

Please review a when have some time and email us with any questions or comments. Thank you

Regards,

Joe Velarde Broker Salesman



June 15, 2016

Mr. Stuart Vincent Blue Dogs Pub 3430 E. Tropicana Ave., Suites # 27-29 Las Vegas, NV 89121

Hello Stuart,

The Landlord is requiring a new lease document for Blue Dogs Pub due to the fact that you have changed your business entity name without Landlord approval. Please review your existing lease agreement and you will see it clearly states in Section 18. Assignment, "this lease shall not, nor shall any interest therein, be assignable as to the interest of Tenant by operation of law, without the prior written consent of Landlord."

In order for the Landlord to move forward with approving a lease extension they will require a new lease document/agreement to be drafted for JSJBD Corp., a Nevada Corporation which shall include the following terms and conditions:

- The base rental total for the initial year of the lease extension shall remain the same as the previous year, with a three percent (3 %) annual base rental increase each subsequent year thereafter (Years 2 5).
- Include two (2) remaining five (5) year options (after this lease renewal).

In addition the Landlord is requesting JSJBD Corp., a Nevada Corporation provide documentation showing the percentage of ownership of each individual, as well as updated credit reports and financial statement for all individuals in the corporation. Attached is a credit authorization form should you need it (credit reports are \$25 per report). If you have a current credit report please submit for the Landlord's review.

Upon receiving the requested information, the Landlord will have the new lease agreement document prepared for your review and approval.

Sincerely,

Commercial Investment

Real Estate Services

Danny Velarde

Bröker

cc: Tropicana Investments, LLC

CREDIT REPORT AUTHORIZATION

I/we authorize Commercial Investment Real Estate Services to obtain my/our consumer credit report. I/we understand that the purpose of this credit report is to check my/our credit history.

APPLICANT	CO-APPLICANT	
Name (Please Print)	Name (Please Print)	
Social Security Number	Social Security Number	
Date of Birth	Date of Birth	
Current Street Address	Current Street Address	
City / State / Zip	City / State / Zip	
Previous Street Address	Previous Street Address	
City / State / Zip	City / State / Zip	
Signature	Signature	
	is not responsible for information contained in the bility of the consumer to contact the appropriate by inaccuracies contained in the report.	
Experian	1-888-397-3742 1-800-658-1111	

KAEMPFER Crowell

ATTORNEYS AT LAW

LAS VEGAS OFFICE

LESLEY B. MILLER |miller@kcnvlaw.com 702.792.7000

LAS VEGAS OFFICE 1980 Festival Plaza Drive Suite 650 Las Vegas, NV 89135 Tel: 702.792.7000 Fax: 702.796.7181

RENO OFFICE 50 West Liberty Street Suite 700 Reno, NV 89501 Tel: 775.852.3900 Fax: 775.327.2011

CARSON CITY OFFICE 510 West Fourth Street Carson City, NV 89703 Tel: 775.884.8300 Fax: 775.882.0257

August 2, 2016

Jeffrey Chauncey Tropicana Investments, LLC P.O. BOX 50170 Lighthouse Point, FL 33074

Re: Blue Dogs Pub Lease - 3430 East Tropicana Avenue, Suites 27, 28 & 29

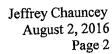
Dear Mr. Chauncey:

Please be advised that this firm is counsel to JSJBD Corp, a Nevada corporation ("JSJBD"), and are in receipt of your letter dated June 15, 2016, concerning the Blue Dogs Pub lease, dated July 9, 1996, as amended (the "Lease"). JSJBD hereby exercises its option to renew the Lease pursuant to Section 8 of the Lease Assignment and Modification, dated June 26, 2007.

As a preliminary matter, to provide clarification on the concerns presented in your letter regarding the entity change, JSJBD would like to offer reassurance that the tenant of the Lease did not change; rather, JSJ, LLC converted into JSJBD. Ownership of the entity remained the same, as reflected in the Articles of Conversion filed with the Nevada Secretary of State, enclosed herewith. No notice of an entity name change is required under the Lease, and JSJBD did not assign or otherwise transfer the Lease and merely converted from a limited liability company into a corporation, with ownership of the entity remaining the same.

Concerning terms of the lease renewal, JSJBD requests that the rent for the first year of the five (5) year renewal term remain the same as the previous year (09/01/2015 – 08/31/2016), as set forth in your letter, with an increase each subsequent year thereafter equal to the current rate of increase of \$210.00 per year, as set forth in Addendum II to the Lease, dated February 22, 2011.

JSJBD is in full compliance with the Lease and, given that status, rather than enter into a new lease agreement, instead requests that the terms of the Lease be kept in full force and effect, with only the rent amounts being revised as set forth herein.





We look forward to working with you towards an expedient and cooperative resolution to this matter.

Sincerely,

KAEMPFER CROWELL

Lesley B. Miller

Copy mailed to:

Dan Velarde COMMERCIAL INVESTMENT REAL ESTATE SERVICES 1399 Galleria Drive Suite 110 Henderson, NV 89014



ATTORNEYS AT LAW

LAS VEGAS OFFICE

LESLEY B. MILLER Imilier@kcnvlaw.com 702.792.7000

LAS VEGAS OFFICE 1980 Festival Plaza Drive Suite 650 Las Vegas, NV 89135 Tei: 702.792.7000 Fax: 702.796.7181

RENO OFFICE 50 West Liberty Street Suite 700 Reno, NV 89501 Tel: 775,852,3900 Fax: 775,327,2011

CARSON CITY OFFICE 510 West Fourth Street Carson City, NV 89703 Tel: 775.884.8300 Fax: 775.882.0257

August 31, 2016

Via U.S. Mail and email: jbchauncey@outlook.com

Jeffrey Chauncey TROPICANA INVESTMENTS LLC P.O. Box 50170 Lighthouse Point, FL 33074

Re: Blue Dogs Pub-Proposed Amendment to Lease

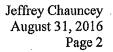
Dear Jeff:

We appreciate your continued attention to and cooperation in the ongoing discussions and negotiations concerning the Blue Dogs Pub lease (the "Lease"). Enclosed herewith for your review and comment is a proposed amendment to the existing Lease.

As you are aware, J.S.J. LLC converted into JSJBD Corp ("JSJBD") in March 2014. In accordance with Nevada law, the conversion into JSJBD operated as a continuation of the existence of J.S.J. LLC. See NRS 92A.250(3)(b). The conversion by no means operated as a dissolution of J.S.J. LLC; rather, JSJBD is the continuation of J.S.J. LLC in accordance with Nevada law. See NRS 92A.250(3)(h).

Accordingly, the entity conversion did not operate as an assignment under the terms of the Lease. Because JSJBD is the legal continuation of J.S.J. LLC, the same party is the interest-holder under the Lease and the same party occupies the premises. JSJBD remains in full compliance with the terms of the Lease and has made all payments due thereunder in a timely manner, which Tropicana Investments has accepted since the conversion occurred in March 2014. As a result of the foregoing, JSJBD declines to go forward with a new lease as proposed, and hereby again exercises its valid option rights under the Lease to renew for an additional five (5) year term.

Further, the principals of JSJBD are willing to sign guaranties of the Lease to the extent of and in proportion to each principal's respective ownership interest in JSJBD for the total base rental amount of \$1.00/square feet (in accordance with the current advertised rate of the shopping center), plus a 25% premium on that amount. If you are interested in exploring this option further, please so advise.





Thank you for your time and attention to this matter, and we look forward to reaching an amenable resolution to these continued discussions.

Sincerely,

KAEMPFER CROWELL

Lesley B. Miller

LBM/RLS

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE ("<u>Amendment</u>") is made and entered into as of the day of August, 2016 ("<u>Effective Date</u>"), by and between TROPICANA INVESTMENTS, LLC A CALIFORNIA LIMITED LIABILITY COMPANY ("<u>Landlord</u>"), and JSJBD CORP, a Nevada corporation, dba Blue Dogs Pub ("<u>Tenant</u>" and together with Landlord, collectively, the "<u>Parties</u>" and individually, a "<u>Party</u>").

RECITALS

WHEREAS, Landlord and Tenant are the parties to that certain Lease dated July 9, 1996 (together with any and all addendums and attachments, collectively, the "Lease"), wherein Landlord leased to Tenant, and Tenant leased from Landlord that certain real property located in Clark County, Nevada, commonly known as 3430 E. Tropicana Ave., Suites 27, 28, & 29, Las Vegas, Nevada 89121 ("Premises"), as more fully defined in the Lease;

WHEREAS, Tenant currently operates the Premises as a tavern known as Blue Dogs Pub ("Business"); and

WHEREAS, the Parties have agreed to amend some of the terms of the Lease as set forth below, and now deem it to be in their respective best interests to enter into this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are hereby incorporated herein by this reference, the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

- 1. <u>Interpretation</u>. Except as expressly modified hereby, the terms and conditions of the Lease shall remain in full force and effect. In the event of a conflict between the terms of the Lease and the terms of this Amendment, this Amendment shall govern and control. Initially capitalized terms used herein (including in the above Recitals) but not defined herein shall have the meanings set forth in the Lease.
- 2. <u>Acknowledgment</u>. Tenant hereby acknowledges that it converted from a limited liability company (J.S.J. LLC) into a corporation (JSJBD Corp) in 2014. All of Tenant's obligations under the Lease remain in force and effect. Landlord hereby acknowledges this entity conversion of Tenant.
- 3. Option. In exercising Tenant's option under the Lease, the term of the Lease shall be extended for an additional five (5) years, and the Expiration Date shall hereby be amended to August 31, 2021.
- 4. Operation and Cooperation. On and after the Effective Date until the Expiration Date, Tenant shall continue to operate the Business on the Premises and shall use its best efforts to promote and operate the Business. Without limiting the generality of this Section 4, Tenant

hereby covenants and to keep and maintain all licenses necessary to continue the Business, including, but not limited to, liquor and gaming licenses, through the Expiration Date.

5. Rent. The minimum rent amounts set forth in Section 4 of the Lease shall be amended as follows:

"09/01/2016 to 08/31/2017 - \$8,400.00 per month, \$100,800.00 per annum 09/01/2017 to 08/31/2018 - \$8,400.00 per month, \$100,800.00 per annum 09/01/2018 to 08/31/2019 - \$8,610.00 per month, \$103,320.00 per annum 09/01/2019 to 08/31/2020 - \$8,820.00 per month, \$105,840.00 per annum 09/01/2020 to 08/31/2021 - \$9,030.00 per month, \$108,360.00 per annum"

6. Parking. Section 7 of the Lease shall be amended to add the following thereto

"Tenant shall be given twelve (12) dedicated parking spaces exclusively for the use of Tenant and its patrons, including the six (6) spaces located directly in front of the Premises and an additional six (6) spaces in close proximity to the Premises."

7. Common Area Maintenance Charges. Per Section 7 of the Lease, Landlord shall provide to Tenant a quarterly written report of the common area maintenance charges, which shall be subject to review and audit by Tenant. In addition to the foregoing, Section 7 of the Lease shall be amended to provide that if the results of any audit show Tenant has underpaid for the applicable period, Tenant shall pay the additional amount owing to Landlord. If the results of an audit show that Tenant has overpaid for the applicable period, the amount of said overpayment shall either be i) credited by Landlord to Tenant's next payments of Tenant's pro rata share of common area maintenance charges becoming due and payable, or ii) refunded to Tenant within thirty (30) days following determination of the overpayment if the Lease has terminated, less any amounts payable by Tenant to Landlord.

Landlord and Tenant shall further remain in compliance with their respective obligations set forth in Section 7, including, without limitation, the obligations of Landlord to "police the automobile parking and common areas" of the center and to keep the parking and common areas "properly lighted".

8. <u>Compliance with Gaming Laws</u>. Section 22 of the Lease shall be amended to add the following thereto:

"Landlord shall provide Tenant at least thirty (30) days notice before any sale of the Premises occurs. Both Landlord and Tenant agree to comply with all applicable state and local laws, regulations and ordinances concerning bars/taverns and gaming/gaming establishments with respect to all provisions contained in this Lease, including, without limitation, any sale of the Premises."

9. <u>Repairs</u>. Pursuant to the obligations set forth in Section 9 of the Lease, Landlord shall repair all damages resulting from the previous repairs Landlord conducted at the Premises, which damages Tenant has previously detailed in writing to Joe Velarde, as the representative of Landlord, in that certain electronic correspondence dated May 1, 2016.

according to the fair meaning of its terms. Time is of the essence. All exhibits and schedules attached hereto are hereby incorporated herein by this reference.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the Effective Date.

LANDLORD:	TENANT:	
Tropicana Investments, LLC, a California limited liability company	JSJBD Corp, a Nevada corporation	
Ву:	By:	
Name: Jeffrey Chauncey	Name: Stuart R. Vincent	
Its: Manager	Its: President	



August 7, 2017

John M. Sacco, Esq. Marquis Aurbach Coffing 10001 Park Run Dr. Las Vegas, NV 89145

re: Blue Dogs Pub and Tropicana Investments, LLC

Dear Mr. Sacco:

Please be advised that I have been retained to represent Blue Dogs Pub. Please direct all future correspondence regarding Blue Dogs Pub to my office. My client has provided me with the most recent draft of the Lease Agreement, and I am in the process of reviewing it. I look forward to working with you to amicably resolve this matter. Thank you in advance for your time and courtesy.

Sincerely,

Lucas A. Grower, Esq.

Exhibit 15



August 31, 2017

John M. Sacco, Esq. Marquis Aurbach Coffing 10001 Park Run Dr. Las Vegas, NV 89145

re: Blue Dogs Pub and Tropicana Investments, LLC

Dear Mr. Sacco:

I have spoken with my client at length regarding the current status of negotiations and terms proposed in the most recent Lease Agreement that you forwarded to me on August 18, 2017. First and foremost, I think it is important to emphasize my client's position regarding negotiations in general. My client purchased the \$50,000 option based upon the understanding that doing so would grant my client the right to participate in negotiations regarding the terms and conditions of the new Lease Agreement. There is no language in any Lease Agreement or Addendum that explicitly or implicitly limits the parameters of those negotiations. There is also no language stating that subsequent agreements must conform to the format, terms and conditions set forth by the lender to Tropicana Investments, LLC.

Please refer to the attached Option Agreement executed by Walter Schwartz as Landlord and Mark S. Van Aken as Tenant as part of the 1996 Lease. The Option Agreement provides that "...tenant shall have the option to renew this lease for a period of five years commencing September 1, 2001 at a market rental rate and terms as agreed by Landlord and Tenant." This language helps to clarify the basis for my client's position that the amount of monthly base rent is negotiable and must reflect the current condition of the subject property.

At this time, my client is offering to pay base rent in the amount of \$1.45/ft². My client asserts that this price accurately reflects the rental value of the property in light of the current condition of the subject property. The community surrounding the Plaza has deteriorated, and there was a murder on the premises. The lack of security officers in the Plaza is a major concern. Additionally, several storefronts continue to remain vacant and present an eyesore. My client believes that the rental price demanded by your client is unfairly inflated to compensate for the financial shortfall caused by this lack of rent-paying tenants. Further, my client believe that their rental price is unreasonably greater than the rent paid by other Plaza occupants.

My client is also requesting a detailed accounting of the CAM costs set forth in the 2015 and 2016 reports you provided. There are serious concerns regarding how your client has appropriated those costs. For example, the 2015 report states an expense of \$108,531 for "Property Management 10% of Gross." The 2016 report states an expense of \$76,704 for "Property Management 6% of Gross" and a new expense of

\$26,400 for "Property Management, onsight" that was not included in the 2015 report. My client does not know who the property manager is or how this expense was applied. It would be much appreciated if your client would provide the on-site property manager's identity, address, and contact information. A more detailed accounting of the expenses outlined in these reports is also requested.

Another specific issue that I would like to raise is the amount of the late fee that would be applied to any future late rent payments. The amount stated in the current draft of the proposed Lease Agreement is 10% of the base rent. This amount is extremely high and would present an unreasonable financial burden. My client proposes a late fee of 3% instead.

My client reviewed and redlined the most recent Lease Agreement from August 18, 2017. I would prefer to send you a redline from me to ensure that I do not unwittingly disclose any attorney-client privileged communications. I will send you that redline by no later than Tuesday, September 5, 2017.

Finally, I would like to emphasize that my client remains committed to resolving these differences and negotiating a lease that is acceptable to both parties. There are some additional issues with the language of the Lease Agreement that will be more appropriately addressed in my forthcoming redline. However, the issues outlined above appear to be the most critical to continuing negotiations and reaching a consensus.

Thank you again for your time and continued courtesy in this matter.

Sincerely,

Lucas A. Grower, Esq.

Exhibit 16

THIRTY DAY NOTICE TO QUIT THE PREMISES [NRS 40.251]

TQ:

JSJBD CORP, J.S.J, LLC; AND ANY SUBTENANTS, ASSIGNEES AND OCCUPANTS

PREMISES:

3430 EAST TROPICANA AVENUE, SUITES 27, 28, & 29

LAS VEGAS, NV 89121

PLEASE TAKE NOTICE that your tenancy at the above Premises ("Premises") is hereby terminated. You must vacate within thirty (30) days from the date of service of this Notice the Premises commonly described as:

3430 EAST TROPICANA AVENUE, SUITES 27, 28, & 29 LAS VEGAS, NV 89121

PLEASE TAKE FURTHER NOTICE that you are hereby required to vacate the Premises within thirty (30) calendar days following the Date of Service of this notice. If you do not comply with this notice, your possession of the Premises will be unlawful (called "unlawful detainer"), and your Landlord may initiate an eviction against you by either serving you with a Five Day Notice to Quit for Unlawful Detainer or a Summons and Complaint for Unlawful Detainer. If the court determines that you are guilty of an unlawful detainer, the court may issue a summary order for your removal or an order providing for your nonadmittance, directing the sheriff or constable to remove you within twenty-four (24) hours after receipt of the order.

PLEASE BE ADVISED that if you are sixty (60) years of age or older, or if you have a physical or mental disability and your tenancy is not week-to-week, you may make a written request to your Landlord to be allowed to continue in possession of the rental Premises for an additional thirty (30) days past the expiration of this notice pursuant. You must provide your Landlord with proof of your age or disability with your written request. If your Landlord rejects your request, you have the right to petition the court to continue possession of the Premises for an additional thirty (30) days.

PLEASE BE ADVISED that pursuant to NRS 118A.390, you may seek relief if a Landlord unlawfully removes you from the Premises, or excludes you by blocking or attempting to block your entry upon the Premises, or willfully interrupts or causes or permits the interruption of an essential service required by the rental agreement or chapter 118A of the Nevada Revised Statutes¹.

PLEASE BE ADVISED THAT YOU CAN OBTAIN INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the Civil Law Self-Help Center, which is located on the first floor of the Regional Justice Center in downtown Las Vegas, or on its website, www.CivilLawSelfHelpCenter.org.

DATE: 11/14//8

TROPICANA INVESTMENTS, LLC, OWNER/LANDLORD,

Terry A. Moore, Esq. Nevada Bar No. 7831

MARQUIS AURBACH COFFING P.C.

10001 Park Run Drive Las Vegas, Nevada 89145 Attorneys for Owner/Landlord

(702) 382-0711

¹ This statute is only applicable as described and included for ease of reference.

1 2 3 4 5 6	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	Electronically Filed 12/26/2019 11:53 PM Steven D. Grierson CLERK OF THE COURT
7	DISTRICT CO	OURT
8	CLARK COUNTY	, NEVADA
9	JSJBD CORP dba Blue Dogs Pub, a Nevada corporation,) CASE NO. A-18-785311-B
10	Plaintiff,	DEPT 11
11		
12	VS.))
13	TROPICANA INVESTMENTS, LLC, a California) limited liability company,	
14	Defendant.	HEARING REQUESTED
15]
16	PLAINTIFF / COUNTER MOTION FOR ATTORNEY	
17 18	Plaintiff JSJBD Corp. and Counterdefenda	ents, through counsel, move for an Order
19	awarding to them, and against Defendant Tropicana	Investments, LLC, attorney fees and costs as
20	prevailing parties, plus additional fees and costs as m	ay be incurred.
21	This Motion is based on the pleadings and p	papers on file, the attached Memorandum of
22	Points and Authorities, the attached exhibits, and any	oral argument that may be heard.
23	1	LOVATO LAW FIRM, P.C.
24	 	/s/ Mario Lovato MARIO P. LOVATO
25		Nevada Bar No. 7427
26		Attorney for Plaintiff JSJBD Corp dba Blue Dogs Pub and Counterdefendants
27		

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff and Counterdefendants are the prevailing parties in this case. Plaintiff-Tenant Blue Dogs Pub was served with a Thirty-Day Notice to Quit prior on November 14, 2018. See, e.g., Thirty-Day Notice, attached as **Ex. 1**. That 30-Day Notice disavowed any option to extend the Lease, treating the Blue Dogs Pub as being a holdover who only had a month-to-month lease that could supposedly be terminated on 1-month's notice.

Having been served with a Notice to Terminate its Lease, Blue Dogs Pub filed suit before the end of the month to affirm its five-year option right and to have rent set by the Court, which are the substantial matters in the case on which Blue Dogs Pub clearly prevailed.

Tropicana Investments never gave up on its attempt disavow the Lease and evict Blue Dogs

Pub. It continued asserting its Counterclaim for Eviction to the end of trial.

Further, Tropicana Investments took the unusual step of not only asserting a Counterclaim against its tenant, Blue Dogs Pub; rather, it chose to assert Counterclaims against third parties (Jeff White, Stuart Vincent, and Jeff Vincent). Those claims failed, with the claims being adjudged in favor of the Counterdefendants.

Plaintiff Blue Dogs Pub is the prevailing party, as it was required to file suit to affirm its option rights. It obtained a favorable result in Plaintiff having its option rights affirmed and declaratory relief granted. Further, Counterdefendants prevailing on all Counterclaims asserted against them. A party prevails "if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608 (2015), *quoting Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted).

Plaintiff and Counterdefendants are the prevailing parties in succeeding on the significant issue—which was having the option rights confirmed and declaratory relief granted.

Further, Plaintiff Blue Dogs Pub prevailed as a party under NRS 18.020 who was

required to assert claims to confirm its possessory right to real property under its Lease, and fiveyear options to extend such lease.

NRS 18.010(2)(a) states in pertinent part:

- 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
- (a) When the prevailing party has not recovered more than \$20,000...

In addition, "[The] Sandy Valley [case] discussed three scenarios in which attorney fees as special damages may be appropriate." *Pardee Homes of Nevada v. Wolfram*, 444 P.3d 423, 426, 135 Nev. Adv. Op. 22 (2019), *citing Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 957-58, 960, 35 P.3d 964, 970 (2001) (*receded from on other grounds by Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007), and *Liu v. Christopher Homes*, *LLC*, 130 Nev. 147, 321 P.3d 875 (2014)).

"First, 'cases when a plaintiff becomes involved in a third-party legal dispute as a result of a breach of contract or tortious conduct by the defendant." *Pardee Homes*, 44 P.3d at 426 n.3, *citing Sandy Valley*, 117 Nev. at 957, 35 P.3d at 970. This provides clear basis for the Counterdefendants to recover attorney fees since Defendant / Landlord brought each of them into a dispute that resulted from Landlord's own breach.

Second, "cases in which a party incurred the fees *in recovering real or personal property* acquired through the wrongful conduct of the defendant or in clarifying or removing a cloud upon the title to property." Pardee Homes, 44 P.3d at 426 n.3, citing Sandy Valley, 117 Nev. at 957, 35 P.3d at 970 (partially abrogated by Horgan, 123 Nev. at 586, 170 P.3d at 988 (clarifying that "attorney fees [in actions to clear a clouded title] are now only available as special damages in slander of title actions"). While this basis references "slander of title," such a case is very similar

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to a case where a Landlord is attempting to evict a commercial tenant by refusing to recognize enforceable option rights that entitle the tenant to continued possession of the real property.

Generally, an action to clarify or remove a cloud on title is either an action in equity or an action for declaratory relief. See MacDonald v. Krause, 77 Nev. 312, 317–18, 362 P.2d 724, 727 (1961) (identifying actions to quiet title and to remove clouds on title as actions in equity); Kress v. Corey, 65 Nev. 1, 25–26, 189 P.2d 352, 363-64 (1948) (stating that a cloud on title may be removed by a declaratory judgment). Hence, when discussing the recovery of attorney fees as damages that arose from actions to clarify or remove a cloud on title, the Horgan court was not concluding that a slander of title claim is a prerequisite to recovering attorney fees as special damages in all civil actions that relate to title to real property. See 123 Nev. at 579, 583-86, 170 P.3d at 983, 986-88. Rather, as revealed by its language and the authorities it relied on, the Horgan court held that slander of title is a prerequisite to a party's recovery of attorney fees that were amassed in asserting claims to clarify or remove a cloud on title, such as declaratory or equitable relief claims. Id.

In explaining its analysis and conclusions, the Horgan court stated that when a plaintiff incurs attorney fees as a result of a defendant's intentional effort to cloud title, the plaintiff deserves the fees because he or she had no choice but to litigate. Id. at 585–86, 170 P.3d at 987–88. Otherwise, absent slander of title, the plaintiff shoulders the debt for the attorney fees that he or she risked accruing when deciding to clarify or remove a cloud on title by suing the defendant. See id.

Liu v. Christopher Homes, LLC, 130 Nev. 147, 154, 321 P.3d 875, 879 (2014) (emphasis added).

"Third, injunctive or *declaratory relief actions compelled 'by the opposing party's bad faith conduct.*" *Pardee Homes*, 44 P.3d at 426 n.3, *citing Sandy Valley*, 117 Nev. at 958, 35 P.3d at 970. Here, "bad faith conduct" is shown by, inter alia, Landlord's disavowing of any right to lease the property at all, disavowing the five-year options, as well as failure to properly account for CAM costs.

"These narrow exceptions in which attorney fees as special damages may be warranted are well established in Nevada's jurisprudence." *Pardee Homes*, 44 P.3d at 426 n.3, *citing Michelsen* v. *Harvey*, 110 Nev. 27, 29, 866 P.2d 1141, 1142 (1994) ("As an exception to the general rule, it

is well-settled in Nevada that attorney's fees are considered an element of damages in slander of title actions."), receded from in Horgan, 123 Nev. 577, 170 P.3d 982; Lowden Inv. Co. v. Gen. Elec. Credit Co., 103 Nev. 374, 380, 741 P.2d 806, 809 (1987) (providing that "attorney's fees attributable to plaintiff's litigation with other parties may be recovered as damages when defendant's conduct caused the litigation"); Von Ehrensmann v. Lee, 98 Nev. 335, 337-38, 647 P.2d 377, 378-79 (1982) ("Where equitable relief is sought, an award of attorneys' fees is proper if awarded as an item of damages.").

Approximately one-third of the fees and costs are attributable to litigating CAM issues, including issues in the case as a whole that affect CAM issues. Since CAM issues were inextricably intertwined with many general issues, it is difficult to specifically separate CAM issues.

All services rendered and expenses incurred for which compensation or reimbursement is requested were performed or incurred for or on behalf of Plaintiff and Counterdefendants from shortly before the case was filed to present. The services described in this Motion are actual, necessary services and the compensation requested for those services is reasonable.

This Motion for Attorneys' Fees and Costs seeks amounts for such fees and costs for the period dating to the present. There are various amounts that have not been captured from approximately November 1, 2019 to present, which may be provided by amendment or supplementation.

The Declaration of Mario Lovato attests to fees of \$126,630.00, costs of \$21,748.97, for a total of \$148,378,97. *See* Lovato Declaration (detailing both fees and costs), attached as **Ex. 2**; Memorandum of Costs (previously filed and attaching receipts); Amendment to Memorandum of Costs (previously filed and attaching receipts).

The billing rate set forth in this Motion and attached Declarations are the normal hourly rates of counsel. The hourly rate remained the same throughout the case. Such rate has been approved by courts in other matters where Mr. Lovato was counsel and his client was entitled to fees and costs.

The attached Declarations address the *Brunzell* and related factors, which are satisfied.

The billings are recorded contemporaneously. the billings are generally drafted so as to avoid "lumping," allowing billings to be traceable to specific tasks.

The costs are reasonable, were necessarily incurred, and nearly all appear on the Court docket or are costs that must have been incurred in litigating the case, especially as shown by the dates the costs were incurred.

CONCLUSION

Plaintiff and Counterdefendants request entry of an Order granting fees and costs in the amount of fees of \$148,378,97, costs of \$21,748.97, equaling a total of **\$148,378,97**. In addition, appropriate interest should be awarded as well.

LOVATO LAW FIRM, P.C.

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

EXHIBIT 1

THIRTY DAY NOTICE TO QUIT THE PRIMISES [NRS 40.251]

TO:

JSJBD CORP, J.S.J, LLC; AND ANY SUBTENANTS, ASSIGNEES AND OCCUPANTS

PREMISES:

3430 EAST TROPICANA AVENUE, SUITES 27, 28, & 29

LAS VEGÁS, NV 89121

PLEASE TAKE NOTICE that your tenancy at the above Premises ("Premises") is hereby terminated. You must vacate within thirty (30) days from the date of service of this Notice the Premises commonly described as:

3430 EAST TROPICANA AVENUE, SUITES 27, 28, & 29 LAS VEGAS, NV 89121

PLEASE TAKE FURTHER NOTICE that you are hereby required to vacate the Premises within thirty (30) calendar days following the Date of Service of this notice. If you do not comply with this notice, your possession of the Premises will be unlawful (called "unlawful detainer"), and your Landlord may initiate an eviction against you by either serving you with a Five Day Notice to Quit for Unlawful Detainer or a Summons and Complaint for Unlawful Detainer. If the court determines that you are guilty of an unlawful detainer, the court may issue a summary order for your removal or an order providing for your nonadmittance, directing the sheriff or constable to remove you within twenty-four (24) hours after receipt of the order.

PLEASE BE ADVISED that if you are sixty (60) years of age or older, or if you have a physical or mental disability and your tenancy is not week-to-week, you may make a written request to your Landlord to be allowed to continue in possession of the rental Premises for an additional thirty (30) days past the expiration of this notice pursuant. You must provide your Landlord with proof of your age or disability with your written request. If your Landlord rejects your request, you have the right to petition the court to continue possession of the Premises for an additional thirty (30) days.

PLEASE BE ADVISED that pursuant to NRS 118A.390, you may seek relief if a Landlord unlawfully removes you from the Premises, or excludes you by blocking or attempting to block your entry upon the Premises, or willfully interrupts or causes or permits the interruption of an essential service required by the rental agreement or chapter 118A of the Nevada Revised Statutes¹.

PLEASE BE ADVISED THAT YOU CAN OBTAIN INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the Civil Law Self-Help Center, which is located on the first floor of the Regional Justice Center in downtown Las Vegas, or on its website, www.CivilLawSelfHelpCenter.org.

DATE: 11/14//8

TROPICANA INVESTMENTS, LLC, OWNER/LANDLORD,

Terry A. Moore, Esq. Nevada Bar No. 7831

MAROUIS AURBACH COFFING P.C.

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for Owner/Landlord

(702) 382-0711

¹ This statute is only applicable as described and included for ease of reference.

EXHIBIT 2

DECLARATION OF MARIO P. LOVATO

MARIO P. LOVATO states under penalty of perjury:

- 1. I am an attorney licensed to practice law in the State of Nevada. I work in the law firm of Lovato Law Firm, P.C. The statements in this Declaration are stated with personal knowledge, and if called upon, I would be competent to testify regarding the same.
- 2. The services described in this herein are actual, necessary services and the compensation requested for those services is reasonable.
- 3. All services rendered and expenses incurred for which compensation or reimbursement is requested were performed or incurred in the case of *JSJBD Corp v. Tropicana Investments, LLC et al.*, Case No. A-18-785311-B of the Eighth Judicial District Court, Clark County, Nevada, in providing services for Plaintiff JSJBD Corp and Counterdefendants. The services described in this Declaration, and in the filing to which this Declaration is attached, were and are actual, necessary services that were incurred for the period up to December 26, 2019, although various amounts since approximately November 1, 2019 to present might not yet have been captured and billed.
- 4. I am a business litigator and trial attorney who has practiced in Nevada since the year 2000. I am licensed in both Nevada and California (currently inactive). I graduated with a B.A. from the University of California, Santa Barbara. I then attended McGeorge School of Law, University of the Pacific, graduating "with great distinction" with one of the highest rankings in my graduating class, and garnering various awards based on law school performance and for interlaw school competitions. Prior to graduation, I accepted a position at Lionel Sawyer & Collins where I practiced as a business litigation for several years. Thereafter, I worked with James Jimmerson until 2010, as a business litigator. I practice in the arena of business litigation, as I have my entire career.

- 5. Since early 2010, I have practiced in my own law firm. I have numerous corporate and other business clients. My hourly rate has been \$350.00 per hour since prior to the inception of this case. The vast majority of my practice is dedicated to assisting business clients who pay my fees on this hourly basis. I have litigated inter alia, numerous business litigation matters, prior motions to expunge lien, and the defense of numerous class action and collective action cases from the time I first began working as an attorney to present. I have handled many hearings, appellate hearings, evidentiary hearings, and trials, including jury trials.
- 6. I have a substantial litigation practice, and I have litigated extensively in both state and federal court. Over the last several years, I have had numerous pending matters before the United States District Court—District of Nevada, before the Ninth Circuit Court of Appeals, before federal courts in California, Pennsylvania, Florida, Georgia, and New York. I have also practiced before all levels of state courts in Nevada, including the Nevada Supreme Court. I have presented argument in both state and federal appellate courts, including the Nevada Supreme Court and the Ninth Circuit Court of Appeals. I have also practiced in California state courts where I am licensed (which, I recently placed on inactive status), and before state courts in yet other states (e.g., Arizona and New York) on a pro hac vice basis.
- 7. The filing to which this declaration is attached seeks amounts for such fees incurred in moving to expunge a frivolous or excessive lien. The following fees and costs were kept contemporaneously, were sent as part of monthly billing statements to the client, which I send monthly to every client in every case that I handle.
- 8. The respective fees for Plaintiff JSJBD Corp and Counterdefendants were incurred in the above-referenced action for the pertinent time period, from inception of the case (shortly before it was filed) to December 26, 2019—with the earlier dates being in 2018 below, and then following with dates from 2019—and are as follows:

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ا '	DATE		DESCRIPTION	HRS
6	07/17	MPL	Tel. call with Lucas Grower re new matter. Review email and documents sent by Grower.	.5
7	07/23	MPL	Exchange correspondence with Grower about possible conf. call and initial consultation with clients.	.5
	07/24	MPL	Tel. conf. with clients re potential matter.	.3
8	07/24	MPL	Exchange emails with Grower re tel. conf.	.2
	07/25	MPL	Initial consultation meeting with clients.	1.0
9	07/25	MPL	Draft and send email to Grower re meeting.	.2
	07/25	MPL	Draft and send retainer agreement to potential client.	.5
10	07/27	MPL	Draft and send finalized retainer agreement to client. Draft and send email to	0
			Grower re status. Review email from client re retainer agreement and retainer	
11			check.	
	07/30	MPL	Exchange emails with Grower re delivery of file.	.2
12	07/31	MPL	Review email from Grower re electronic files that will be delivered.	.2
	08/01	MPL	Exchange emails with Lucas Grower re time for drop off of file.	.1
13	08/20	MPL	Draft letter to send to opp. counsel.	2.2
10	08/20	MPL	Draft and send email to client for review and approval of draft. Review	.2
14	00/20	IVII L	responding email from Grower re same.	.2
1'	08/21	MPL	Review email from client re changes to be made to the letter to Sacco.	.2
15	09/04	MPL	Draft and revise letter to be sent to opp. counsel re status of the case and breaches	.4
15	09/04	WII L	committed by Landlord. Draft and send email to client re same.	.7
16	09/04	MPL	Draft and send email to prior counsel re client contact information. Tel. call to client discussing letter.	.2
17	09/10	MPL	Draft and send email to client re clearance to send letter to opp. counsel.	.1
17	09/10	MPL	Review responding email from client re possible appraisal process.	.1
10	09/21	MPL	Review email from client re date of possible appraisal.	.1
18	09/21	MPL	Review letter forwarded by client from Landlord making demands re rent.	.3
	07/24	WII L	Review additional email re same. Draft and send email re appraisal issues.	.5
19	09/25	MPL	Draft and send email to client re letter to go out. Review and revise letter, and	.3
		WILL	send to opp. counsel. Draft and send email to client re same.	.5
20	10/05	MPL	Review correspondence from opp. counsel re rent demands and analysis.	.5
	10/05	MPL	Draft and send email to client re correspondence from opp. counsel, and brief	.8
21	10/03	WII L	analysis re same.	.0
	10/08	MPL	Tel. call to opp. counsel, leave voicemail.	.1
22	10/08	MPL	Draft and send email to opp. counsel re possible alternative and reasonable	.5
	10,00	2	methods for resolving issues regarding rent. Draft and send email to client re	
23			status.	
	10/08	MPL	Tel. call from opp. counsel (Moore) re methods of resolving rent issue.	.3
24	10/08	MPL	Draft and send email confirming tel. call and the proposals made by client.	.5
	10/08	MPL	Draft and send email to client re status.	.2
25	10/08	MPL	Exchange emails with client re various rental issues and setting up date / time for	.2
	10/00	WII L	tel. conf.	.2
26	10/09	MPL	Exchange emails with client re date / time for tel. conf.	.2
20	10/09	MPL	Review email from client re rental value, etc.	.1
27	10/09	MPL	Review appraisal forwarded by client. Review voicemail from client.	.3
27	10/12	MPL	Draft and send email to client re same.	.2
30	10/12	MPL		.6
28	10/1/	WIPL	Review correspondence from opp. counsel purporting yet again to set rent at \$8,400 and threatening existion. Draft and send email to client re-same	.0
	10/17	MPL	\$8,400 and threatening eviction. Draft and send email to client re same. Draft and revise Complaint.	.5
	10/1/	IVIFL	Dian and iterise Complaint.	.3
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1	10/18	MPL	Draft and send email to client re the next steps in the case. Review responding	.3
2	10/19	MPL	email from client re same. Review email from client re payments being made, and setting up meeting. Draft	.3
	10/24	MDI	and send responding email re same.	1.0
3	10/24 10/26	MPL MPL	Mtg with client to discuss possible case filing, etc. Review email from client with photo of attic space and issues re evaporative	1.0 .2
4			cooler.	
	10/31	MPL	Exchange emails with client re rent issues and arranging for tel. conf. by end of the week.	.2
5	11/06	MPL	Research and review law re enforceability of lease where rent amount is not stated. Draft memorandum re same.	3.0
6	11/06	MPL	Draft and send email to client re same.	.2
7	11/08	MPL	Review October 17 letter sent by Landlord's counsel. Draft and send detailed letter responding to same.	1.2
	11/08	MPL	Draft and send email to client re same.	.2
8	11/08	MPL	Draft and revise Complaint in accordance with letter and legal research conducted.	2.0
9	11/15	MPL	Review email from client re period of unavailability of client.	.1
	11/15	MPL	Research and review law re open term re rent. Draft and revise complaint.	2.5
10	11/16	MPL	Draft and send correspondence to opp. counsel with copy of appraisal obtained by client.	.2
11	11/16	MPL	Research and review NRS Chapter 118C statutes re repairs, rent, and other issues.	1.2
	11/19	MPL	Draft and send additional email to opp. counsel with copy of appraisal obtained by client, in light of possible issue with email service.	.2
12	11/19	MPL	Review responding email from opp. counsel that the prior email was received.	.1
12	11/20	MPL	Draft and send email updating client on status of service of appraisal.	.1
13	11/21	MPL	Research and review law re open term re rent. Revise complaint.	1.5
14	11/27	MPL	Review email from client re issues re next month's rent check.	.1
14	11/28	MPL	Revise complaint. Draft and send email to client re status.	.5
15	11/29	MPL	Tel. conf. with client re status of case and impending filing of complaint.	.3
13	11/30	MPL	Draft, revise and file Complaint in Business Court.	2.0
16	11/30	MPL	Draft and send email to client re same.	.1
10	12/03	MPL	Review file-stamped copy of Complaint.	.1
17	12/03	MPL	Draft and send email to client re judge assignment and next steps.	.6
1/	12/03	MPL	Review detailed email from client re allegations of Complaint	.4
18	12/03	MPL	Tel. call with client re Complaint and whether to amend allegations.	.3
10	12/03	MPL	Review email from clerk's office. Tel. call with clerk's office re same.	.3
19	12/03	MPL	Draft and submit amended Business Court cover sheet, as requested by clerk's office.	.2
_	12/04	MPL	Draft and submit Summons for approval by court clerk.	.3
20	12/05	MPL	Review Summons accepted and signed by court clerk.	.2 .2
21	12/05	MPL	Draft and send email to opp. counsel with copy of the Complaint and Summons and inquiring whether counsel would be willing to sign an Acceptance of Service of same.	.2
22	12/05	MPL	Draft and send email to client updating client on the status of the Complaint and Summons and possible service of same.	.2
23	12/06	MPL	Arrange for service of process of Complaint and Summons. Tel. call with runner	.4
	12/06	MPL	re completed service. Draft and send email to client re service of Complaint and Summons.	2
24	12/06	MPL	Draft affidavit of service for signature / completion by process server.	.2
25	12/11	MPL	Draft and file summons with affidavit of service.	.2 .2 .3
25	12/18	MPL	Review email from opp. counsel requesting extension. Draft and send responding	.2
26	12/18	MPL	email granting requested extension. Review email from client re rent issues. Draft and send detailed email re same	.4
27			and providing status update re case.	
- '	12/27	MPL	Review email from client re landlord's visit to property and sign issue.	.1
28	01/02	MPL	Review email from client re sign issues. Draft and send responding email re same.	.2
-	01/02	MPL	Review email from client re landlord's request for tenant estoppel certificate. Draft and send email to client re same.	.2
	01/03	MPL	Review email from client, forwarding landlord email.	.2
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1	01/03	MPL	Tel. call with client re same.	.3				
1	01/03	MPL	Review additional email, and attachment, from client re sign issues.	.2				
ا ا	01/04	MPL	Draft and send detailed email to client re possible settlement discussions.					
2	01/04	MPL	Review responding email re same.	.5 .2 .2				
	01/07	MPL						
3	01/07	MPL	riew email from client re settlement and negotiation issues. ft and send email to opp. counsel re extension required from opp. counsel and					
	01/0/	WII L	the date when a response will be due from Defendant.	.2				
4	01/09	MPL	Review answer and counterclaim filed by landlord.	.8				
	01/09	MPL	Draft and send detailed email to client re same.	.5				
5	01/10	MPL	Review email from client re possible discussion or meeting. Draft and send email	.2				
	01/10	WII L	to client setting up tel. conf.	.2				
6	01/11	MPL	Tel. conf. with client.	.5				
	01/11	MPL	Review email sent by landlord to client re various issues.	.2				
7	01/17	MPL	Review voicemail from opp. counsel re settlement issues.	.1				
	01/17	MPL	Draft and send detailed email to client re voicemail and re approach to settlement	.5				
8	01/1/	2	issues.	.5				
Ĭ	01/23	MPL	Review business court order setting initial case conference hearing.	.5				
9	01/23	MPL	Draft and send detailed email to client re same.	.4				
	01/23	MPL	Legal research re favorable case law in Nevada re enforceability of option.	.5				
10	01/24	MPL	Draft and revise memorandum re enforceability of option where rent not	1.0				
10	01/2	1,112	determined.	1.0				
11	01/24	MPL	Draft memorandum re Defendant's admissions in the Answer.	.5				
11	01/25	MPL	Tel. call with client re issue concerning additional counterdefendants.	.5				
12	01/25	MPL	Tel. call with Jeff White, discussing non-representation and the issues in the case.	.5				
12	01/25	MPL	Draft and send detailed email to Jeff White confirming non-representation and	.2				
12	0.0.00		other issues.					
13	01/25	MPL	Draft reply to Counterclaim.	1.5				
14	01/28	MPL	Tel. call with client discussing initial case conference.	.3				
14	01/28	MPL	Draft and send detailed email re same.	.3				
ا ۽ ا	01/28	MPL	Review email from Plaintiffs' counsel re his being late to hearing.	.1				
15	01/28	MPL	Research and review rules governing deposit of monies with Court where	.6				
			allegedly in dispute.					
16	01/29	MPL	Prepare for, and attend, initial case conference with judge. Meet with client	3.0				
			representatives at hearing.					
17	01/29	MPL	Draft and send email re case conference hearing to Jeff White. Review	.2				
			responding email re same.					
18	01/31	MPL	Draft, revise and file answer to counterclaim.	1.2				
	02/05	MPL	Draft, revise and file reply to counterclaim.	2.2				
19	02/05	MPL	Draft and send email to client re filing of reply.					
	02/05	MPL	Review business court order setting discovery and trial dates.	.2 .3				
20	02/12	MPL	Exchange emails with client re CAM issues and re a meeting in preparation for	.3				
			settlement conference.					
21	02/25	MPL	Review documents served by Defendant. Review roof video served by	1.5				
			Defendant. Review additional initial disclosures.					
22	02/27	MPL	Review Defendant's initial disclosures.	.2				
	03/11	MPL	Review supplemental production of discovery by Defendant / Counterclaimant in	.3				
23			the case.					
	03/15	MPL	Review various documents and deadlines in the case. Draft and send email to	2.4				
24			client re same. Begin drafting settlement conference brief. Review additional					
			email from client.					
25	03/18	MPL	Meeting with clients in preparation for settlement conference.	1.2				
	03/21	MPL	Finalize settlement conference brief.	3.5				
26	03/21	MPL	Tel. call to court re drop-off of brief.	.1				
-5	03/21	MPL	Draft and send email to client re settlement conference.	.2				
27	03/22	MPL	Prepare for, and attend, settlement conference with Judge Denton, client	3.5				
- '	0.475.5	3	representatives and opposing counsel.					
28	04/09	MPL	Review email from client re tel. conf.	.1				
20	04/09	MPL	Review email from Jeff White re status.	.1				
	04/10	MPL	Draft and send email to client re possible tel. conf. Review responding email re	.2				
			same.					

1	04/11	MPL	Review email from Jeff White re service of Counterclaim.	.1
1	04/11	MPL	Tel. call to Jeff White re same.	.6
2	04/15	MPL	Review affidavit of service filed by Defendant.	.1
4	04/23	MPL	Review email from Jeff White re Counterclaim.	.2
2	04/23	MPL	Review email from Stuart Vincent re Counterclaim served upon him.	.2
3	04/23	MPL	Draft and send email to Stuart Vincent re Counterclaim.	.2
	04/26	MPL	Draft and send emails to Jeff White re representation and possible reply to	.6
4			counterclaim. Review additional emails from Jeff White re same.	
_	05/02	MPL	Review affidavit of attempted service re Jeff Vincent.	.1
5	05/06	MPL	Review email from client re possible meeting.	.1
	05/07	MPL	Draft and send email to client with possible meeting, and discussing various	.2
6			filings to be made.	
	05/07	MPL	Draft reply to counterclaim for Counterdefendants. File same. Draft and send	1.2
7			detailed email to clients re same.	
	05/07	MPL	Research and review law re responses to arguments about enforceability of option,	3.5
8			of "including but not limited to" terminology, re other provisions of Lease	
			documents. Draft memorandum for use in dispositive motion practice.	
9	05/08	MPL	Meeting with clients to discuss litigation strategy, etc.	1.5
	05/08	MPL	Draft, revise and file reply to counterclaim.	.3
10	05/08	MPL	Review possible bases for using offer of judgment procedure to support motion	1.0
			for attorney fees.	
11	05/08	MPL	Draft arguments in support of possible motion for summary judgment. Research	1.3
11			and review law in support of same.	
12	05/22	MPL	Draft and send email to client re facts that we are looking to establish in support	.3
12			of opposition and countermotion.	
13	05/22	MPL	Draft and send additional email to client re tel. conf. Review responding email re	.1
13			same.	
14	05/22	MPL	Review Defendant's motion for partial summary judgment.	.5
14	05/23	MPL	Draft and send email to client re tel. conf. Attend tel. conf. with client re drafting	.5
1.5			of opposition and countermotion.	
15	05/23	MPL	Draft arguments in support of a countermotion for partial summary judgment.	1.5
1.0			Research and review law re real property options to extend / renew.	
16	05/24	MPL	Review emails sent by client for possible use in opposition and countermotion.	.6
	05/24	MPL	Research and review law re interpretations of various Lease provisions.	1.4
17	05/28	MPL	Review email from client re date of meeting with witness. Tel. call with client re	.5
			same.	
18	06/04	MPL	Review email from client from Joe Velarde.	.1
	06/04	MPL	Draft opposition to MSJ.	.5
19	06/04	MPL	Meeting with client, meeting with witness. Draft declaration of Van Aken.	4.0
	06/05	MPL	Draft and send correspondence requesting extension of time for filing of	.2
20			opposition brief. Review responding email re same. Review responding email re	
			same.	
21	06/05	MPL	Review documents sent by client. Draft and send email inquiring about attorney	.5
			letter that has no signature from several years ago.	
22	06/05	MPL	Review additional documents sent by client.	.2
	06/06	MPL	Draft and send email to client re formatting of documents for use in litigation.	.1
23	06/07	MPL	Review Tom Harper correspondence with opp. side in years past.	.1
	06/10	MPL	Draft and send email to client re status of hearing and brief.	.2
24	06/10	MPL	Draft and revise opposition and countermotion.	2.5
	06/10	MPL	Draft and send email to opp. counsel re two day extension.	.1
25	06/10	MPL	Review correspondence sent by client involving Chauncey and others.	.8
	06/10	MPL	Review correspondence form opp. counsel re changes to scheduling order.	.2
26	06/11	MPL	Draft and revise opposition and countermotion.	3.0
-	06/11	MPL	review email from opp. counsel re possibly moving various deadlines.	.1
27	06/12	MPL	Exchange emails with client re documents being sent.	.2
- '	06/12	MPL	Review historical correspondence between the parties. Draft and send email to	.5
28	0.011.2	1 (5.	client re documents needed.	
20	06/12	MPL	Research and review case law dealing with amending lease situation, including	1.5
	06/12) (DI	McLane v. Prudential. Draft and send email to client re same.	2
	06/12	MPL	Exchange numerous emails with clients re documents, exhibits, etc. Review	.3
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1			additional documents sent by client. Draft and send email to client re change of	
1			hearing date.	
2	06/12	MPL	Draft and revise oppn MSJ	3.2
-	06/13	MPL	Review additional emails forwarded by client.	.2
3	06/13	MPL	Review draft Stipulation and Order.	.2
	06/13	MPL	Draft and revise oppn MSJ.	1.0
4	06/14	MPL	Exchange emails with opp. counsel re stipulation, etc.	.2
١.	06/14	MPL	Review email from opp. counsel about status of various items in case.	.1
5	06/14	MPL	Draft and revise oppn MSJ.	4.5
	06/18 06/18	MPL MPL	Draft and revise oppn and countermotion. Draft and revise stipulation and order to continue hearing.	3.0
6	06/18	MPL	Tel. call to law clerk re oppn and countermotion, and re incoming stipulation to	.2 .2
	00/10	WII L	continue hearing.	.2
7	06/18	MPL	Review additional documents sent by opp. party.	.3
	06/17	MPL	Draft oppn and countermotion	3.0
8	06/19	MPL	Draft and send email to client re declaration and opposition.	.4
	06/19	MPL	Draft and send email to client with revised version of declaration.	.2
9	06/19	MPL	Draft and send email to opp. counsel with copy of opposition and countermotion.	.2
	06/19	MPL	Draft, revise and file opp. to motion for summary judgment.	1.0
10	06/19	MPL	Exchange emails with opp. counsel re stipulation and order not signed by court.	.2
			Review email from court re same.	
11	06/19	MPL	Exchange emails with opp. counsel re splitting stipulation and order into two	.2
			parts. Review and revise stipulations.	
12	06/20	MPL	Draft and send detailed email to client re opposition and countermotion, date and	.4
	0.610.0		preparation for hearing, and re discovery to disclose and produce.	_
13	06/20	MPL	Exchange additional emails with client re discovery to be produced.	.7
	06/20	MPL	Review email from court re stipulation ready for pickup.	.2
14	06/20 06/21	MPL MPL	Tel. call with client re status of the case and discovery issues.	.3
	06/21	MPL	File Order. Draft and file notice of entry of order. Review email from client re discovery issues.	.2 .2
15	06/24	MPL	Draft initial list of witnesses and documents.	.8
	06/25	MPL	Review email from client re fire at shopping center location.	.1
16	06/26	MPL	Draft and send email to client re article in newspaper about fire.	.2
	06/27	MPL	Exchange emails with opp. counsel re judge's non-agreement re stipulation.	.2
17	07/01	MPL	Review email from opp. counsel re rebuttal reports and discovery issues. Draft	.2
			and send responding email re same.	
18	07/01	MPL	Draft Van Aken Declaration. Draft and send email to client re same.	.5
	07/01	MPL	Review reply brief filed by Defendant. Draft notes for use in reply to	2.0
19			counterclaim.	
20	07/01	MPL	Draft and send detailed email to client re same.	.3
20	07/01	MPL	Revise Jeff Vincent declaration. Draft and send email to client re same.	.2
2.1	07/02	MPL	Review voicemail from client re Aken declaration. Draft and send responding	.3
21	07/02	MPL	email re methods for obtaining possible signature.	2
22	07/02 07/03	MPL	Draft and send additional emails to clients re possible declarations. Draft, revise and file reply in support of counterclaim.	.3 5.5
22	07/03	MPL	Draft and send email to clients re reply brief, copy of same, and preparations for	.5 .5
22	01/03	WII L	hearing.	.5
23	07/08	MPL	Prepare for, and attend, hearing for competing motions for summary judgment.	3.5
24	07/08	MPL	Draft and send email to prior counsel re hearing in light of comments made at	.4
24		·	hearing re attorney.	
25	07/08	MPL	Tel. call to prior counsel re comments at hearing and possible attempt by defense	.1
25			counsel to depose.	
26	07/09	MPL	Draft and send email for transcripts, etc.	.1
26	07/09	MPL	Draft and send detailed email to Jeff White re status of the case.	.4
27	07/09	MPL	Draft and send detailed email to clients re litigation strategy and next steps in case.	.4
41	07/09	MPL	Exchange emails with client re tel. conf.	.1
28	07/10	MPL	Exchange emails with client re tel. conf.	.1
20	07/10	MPL	Prepare for, and attend tel. conf. with clients.	1.0
	07/10	MPL	Review email from clients re potential offer of judgment.	.2 .5
	07/11	MPL	Tel. conf. with clients re status of the case and next steps, etc.	.5

1	07/16	MPL	Review email from client re rebuttal report.	.2				
1	07/18	MPL	Review expert witness designation from opp. counsel.	.4				
2	07/22	MPL	Draft and revise Order denying Landlord's motion for partial summary judgment	1.0				
-			and granting countermotion for partial summary judgment.					
3	07/22	MPL	Tel. call to expert witness re report, etc.	.4 .3				
١ -	07/22	MPL	ew report drafted and served by Landlord.					
4	07/22	MPL	Draft offer of judgment.	.2				
١.	07/22	MPL	Draft request for production of documents re CAMs	1.0				
5	07/22	MPL	Draft list of witnesses and documents.	1.2				
	07/23 07/23	MPL MPL	Draft and send detailed email re future rental payments. Draft and revise proposed Order for the Court. Deliver to Court.	.6 .5				
6	07/23	MPL	Review Order entered by court. Draft and send detailed email to client re	.3				
	07/24	IVII L	additional interlineation by Court.	.5				
7	07/24	MPL	Review email from opp. counsel inquiring about Order.	.1				
	07/24	MPL	Draft and send responding email re Order.	.1				
8	07/24	MPL	Tel. call with expert re drafting of report.	.4				
	07/24	MPL	Draft and send email to clients re setting up a tel. conf. with expert.	.1				
9	07/24	MPL	Draft and send email to clients re possible expert on accounting issues.	.1				
	07/24	MPL	Review detailed email from client re errors in opp. party's expert report.	.2				
10	07/24	MPL	Draft and file notice of entry of order.	.1				
	07/24	MPL	Review CV and testimony log from expert.	.1				
11	07/25	MPL	Review email from court reporter re availability of transcripts.	.1				
	07/25	MPL	Review email from client re additional errors in Landlord's expert report.	.2				
12	07/26	MPL	Draft and send responding email to court reporter re transcripts.	.1				
	07/26	MPL	Draft and send email to client re tel. conf.	.1				
13	07/26	MPL	Draft and serve initial disclosures and productions.	.5				
	07/26 07/26	MPL MPL	Draft and serve document requests on Landlord. Draft and send detailed email to client re discovery that has been served.	.6 .3				
14	07/26	MPL	Draft and send detailed chian to cheft be discovery that has been served. Draft and send email to client re availability in early August.	.3 .1				
	07/26	MPL	Review Landlord's document requests and interrogatories. Draft initial response	1.0				
15	07720	WII L	and notes re same.	1.0				
	07/26	MPL	Review Landlord's request for admissions. Draft initial response to same.	1.0				
16	07/29	MPL	Draft and serve email to client re additional documents to be sent by client to this	.2				
			attorney's office.					
17	07/29	MPL	Tel. call with prior counsel. Draft and send detailed email to attorney re status of	.4				
10			case and possible effort by opp. counsel to depose.					
18	07/29	MPL	Draft and send detailed email to clients re discovery received from opp. counsel	.3				
10			and the responses we need to provide thereto.					
19	07/29	MPL	Tel. call with client.	.3				
20	07/31	MPL	Draft and send proposed language to clients relating to correspondence. Draft	.5				
20	07/21	MDI	and send detailed email re same.	2				
21	07/31 08/01	MPL MPL	Review supplemental list of witnesses and documents provided by Landlord. Review Defendant's 2d supplemental list of witnesses and documents. Review	.2 1.0				
21	00/01	WII L	documents Trop 827-70.	1.0				
22	08/01	MPL	Review numerous documents re expert report and rebutting pertinent items in	.8				
~~	00/01	WII L	same.	.0				
23	08/01	MPL	Exchange emails with client re document disclosures, rent issue, and other	.5				
23			matters.					
24	08/01	MPL	Exchange emails with client re additional document to provide and produce,	.6				
24			comparables, etc.					
25	08/01	MPL	Review emails from client re inconsistent CAM charges. Review additional email	.4				
23			and documents re same.					
26	08/08	MPL	Review letter re rent payment.	.4				
20	08/09	MPL	Review email re transcript, and review transcript, re dispositive motion hearing.	.6				
27	08/14	MPL	Exchange emails with clients re rent issue and correspondence. Review various	.5				
~ '	00/15	MDI	additional correspondences from client re comp issues.	2				
28	08/15	MPL	Review various notices of deposition served by Defendant.	.2				
_	08/15 08/20	MPL MPL	Exchange emails with clients re depositions.	.3 2.2				
	08/20	MPL	Prepare for tel. conf. Tel. call with expert re expert report issues. Draft responses to requests for admission.	1.8				
	00/22	1V11 L	Draft responses to requests for admission.	1.0				

1	08/22	MPL	Review numerous documents and arrange same for production.	1.4
2	08/22	MPL	Tel. calls with client re expert issues. Draft and send email to client re tel. conf. Review responding email re same.	1.5
-	08/22	MPL	Draft and send email to defense counsel re depositions and dates.	.2
3	08/22	MPL	Exchange emails with clients re roof issues. Exchange additional emails re discovery issues re same. Review additional emails from client re rent issues and prior rent correspondence.	1.0
4	08/23	MPL	Draft, revise and serve response to requests for admissions.	.7
ا ہ	08/25	MPL	Review email from client re additional documents for possible production.	.3
5	08/26	MPL	Review and arrange numerous documents for production.	1.4
_	08/26	MPL	Draft and serve requests for production of documents.	1.2
6	08/26	MPL	Draft and send emails to client re discovery produced in the case and explaining same.	.6
7	08/26	MPL	Draft and send email to Jeff White re status and discovery responses.	.5
8	08/27 08/27	MPL MPL	Review email from expert re issues relating to possible report.	.3 .2
0	08/27	MPL	Review vague email from defense counsel. Review voicemail re same. Draft 1st supplemental list of witnesses and documents. Arrange various	1.0
9	00/27	WII L	documents being produced.	1.0
	08/27	MPL	Draft and send email to client re supplemental production and explaining same.	.6
10	08/28	MPL	Exchange emails with expert re various issues.	.3
	08/28	MPL	Exchange emails with client re rent payment issues.	.4
11	08/28	MPL	Draft and send detailed email addressing tender, acceptance, and various other matters.	1.0
12	08/30	MPL	Review notices of continued deposition.	.3
	08/30	MPL	Exchange numerous emails with defense counsel re his improper noticing of	1.0
13			depositions, and even his complete failure to even serve notices / subpoenas.	
			Research and review prior correspondence and disclosures to verify that no proper	
14	08/30	MPL	service provided by defense counsel. Tel. calls inquiring about possible service of subpoenas, etc. on third parties.	.8
	08/30	MPL	Tel. calls with clients re issues relating to defense counsel's improper service on	.6 .5
15	00/30	WII L	third parties of subpoenas, etc.	.5
	08/30	MPL	Exchange emails with clients re rent issues.	.3
16	08/30	MPL	Exchange emails with attorney re third party subpoena and related issues.	.5
17	09/03	MPL	Draft responses to document requests.	1.0
17	09/04	MPL	Draft responses to interrogatories. Draft verifications re same. Draft and send email to client re same.	2.0
18	09/05	MPL	Draft, revise and serve answers to interrogatories.	1.0
10	09/05		Draft and serve counterdefendants' answers to interrogatories.	.8
19	09/05	MPL	Draft and send email to defense counsel re various discovery Reponses. Draft and send email to defense counsel re deposition scheduling issues.	.3
20	09/06	MPL	Draft, revise and serve responses to document requests.	.4
21	09/06 09/06	MPL MPL	Draft, revise and serve counterdefendants' response to document requests. Draft and send detailed email to clients re discovery responses and explaining	.4 1.0
21	09/00	MIL	various issues re same.	1.0
22	09/09	MPL	Prepare for, and attend, status check hearing.	3.5
	09/09	MPL	Review subpoena re Eisman and notice of deposition re same.	.2
23	09/09	MPL	Exchange emails with defense counsel re deposition and related issues.	.4
	09/09	MPL	Draft and send detailed email re hearing and various related issues being impacted	.6
24			in the case.	
	09/09	MPL	Draft and send email to attorney re third party subpoena issues.	.3
25	09/09	MPL	Exchange emails with client re depositions, scheduling, and re damages	1.0
	09/10	MPL	discovery. Draft and send email to clients to verify expert report issues.	.4
26	09/10	MPL	Tel. calls with client re expert report issues. Tel. call with expert re rebuttal report.	1.5
_	09/10	MPL	Review voicemail re expert issues. Draft and send email to clients re expert issues	1.0
27		· 	and related voicemail. Review responding email re same. Draft and send email	
20			in response to same.	
28	09/13	MPL	Review amended notice of deposition.	.1
	09/13	MPL	Exchange emails with client re new deposition dates.	.3
	09/16	MPL	Exchange emails with clients re meeting. Tel. call re same.	.6
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1	09/17	MPL	Review rebuttal expert report. Draft and serve 2d supplemental list of witnesses and documents.	.8
2	09/17	MPL	Exchange emails with defense counsel re improper scheduling and deposition issues.	.6
3	09/17	MPL	Prepare for meeting, and mtg, with client-representative re deposition and case.	2.0
٦	09/17	MPL	Begin drafting motion to compel production of documents.	.5
4	09/17	MPL	Research and review law re alleged agency nature of attorney client relationship in transactional settings. Review various other case law.	1.2
5	09/18 09/18	MPL MPL	Prepare for, and attend and defend, deposition of Bruce Eisman. Exchange emails with defense counsel re yet more improper scheduling, failure	3.5 .8
6	09/18	MPL	to notice, and various other improper deposition issues. Draft and send detailed email to Jeff White re status of the case, discovery and	.5
7	09/18	MPL	other issues. Prepare for, and attend and defend, deposition of Rule 30b6.	5.2
´	09/19	MPL	Draft and send email to clients re additional discovery to obtain and produce.	.4
8	09/20	MPL	Prepare for meeting, and mtg, with client re various matters.	1.0
Ϋ́Ι	09/20	MPL	Review correspondence from defense counsel. Draft responding correspondence.	.4
9	09/20	MPL	Review documents sent by clients.	.5
	09/23	MPL	Draft and revise response to defense correspondence.	.2
10	09/23	MPL	Draft and send email, and attached correspondence, to defense counsel	.3
11	09/23	MPL	responding to September 19 letter. Draft and send email to clients updating on status of various matters re deposition,	.8
	00/04		etc.	
12	09/24	MPL	Research and review, and draft memo re same, re claims and counterclaims.	1.5
	09/25	MPL	Draft and revise motion to compel production of documents.	2.2
13	09/25	MPL	Exchange emails with clients re status of various matters, need to produce additional discovery.	.7
14	09/25	MPL	Draft 3d supplemental list of witnesses and docs and serve same.	1.0
	09/26	MPL	Draft possible objections to various defense documents.	.8
15	09/26	MPL	Review voicemail re signed OST. Arrange for pickup. File motion to compel with signed OST. Draft and file notice of entry of order re same.	.5
16	09/26	MPL	Draft various arguments for lack of merit re counterclaims.	.5
	09/26	MPL	Draft and send detailed email updating clients on OST and motion to compel, as	.6
17	09/27	MPL	well as hearing for same. Exchange emails with client arranging meeting. Review emails from client attaching various documents for possible production.	.4
18	09/30	MPL	Prepare for meeting, and mtg, with client re various matters.	1.5
	09/30	MPL		.5
19	09/30	MPL	Review Defendant's opposition re motion to compel.	.6
	09/30	MPL	Review Defendant's 3d supplemental list of witnesses and documents.	.5
20	09/30	MPL	Review numerous documents served by Defendant.	.4
21	09/30	MPL	Draft and send detailed email to clients re motion filed, and various other items relating to litigation strategy in the case.	.8
22	09/30	MPL	Draft and send email to client re discovery disputes and document purportedly being produced by Defendant.	.5
	10/01	MPL	Draft, revise and file reply in support of motion to compel.	1.2
23	10/01	MPL	Review rent correspondence. Exchange emails with client re same.	.6
	10/02	MPL	Review correspondence from defense counsel rent issue.	.2
24	10/02	MPL	Prepare for, and attend, hearing for motion to compel production of documents.	2.8
	10/02	MPL	Draft and send email to clients re additional motion to amend or correct.	.4
25	10/02	MPL	Review Defendant's motion for sanctions. Draft response. Draft and send email to clients re same.	1.5
26	10/02	MPL	Review Defendant's motion to amend or correct order. Begin drafting response.	1.0
	10/03	MPL	Exchange emails with clients re preparations for hearing.	.5
27	10/04	MPL	Draft order re motion to compel. Draft and send email to defense counsel re same.	.8
- '	10/04	MPL	Draft oppn mot. amend or correct order.	1.3
28	10/04	MPL	Review various emails from defense counsel re order and other matters.	.5
20	10/07	MPL	Draft opposition motion amend or correct order. Draft opposition to motion for	1.0
	10/08	MPL	sanctions. Draft and revise order re motion to compel.	.5

1	10/08	MPL	Draft, revise and file opposition to motion to amend or correct order.	.3
2	10/08	MPL	Draft and submit correspondence re order. Draft and send email to defense counsel re same.	.4
-	10/08	MPL	Draft, revise and file opposition to motion for sanctions.	1.0
3	10/08	MPL	Draft and send email to clients re various submissions and filings.	1.0
4	10/08	MPL	Review email from court re proposed order. Draft and send email to defense counsel re correspondence from court and innocuous misstatements in same.	.4
	10/09	MPL	Draft and revise order. Review correspondence from defense counsel re same. Tel. call re signed order. File same. Draft and file notice of entry of order.	.3
5	10/09	MPL	Draft and send detailed email to clients re hearing and numerous additional issues in the case.	.4
6	10/09	MPL	Review numerous documents served re CAMs.	.8
_	10/09	MPL	File signed order. Draft and file notice of entry of order.	.2
7	10/09	MPL	Review email from client re roof and related issues.	.4
	10/09	MPL	Prepare for, and attend, hearing for Defendant's motion to amend or correct order.	2.0
8	10/11	MPL	Draft and send email to defense counsel re extension.	.1
	10/11	MPL	Review email from clients re Defendant' noncompliance with discovery order in	.3
9	10/14	MPL	various respects. Review correspondence from client re numerous errors in defense expert report.	.4
10	10/14	MPL	Draft oppn to motion to strike expert report.	1.5
10	10/15	MPL	Draft, revise and file oppn to motion to strike expert report, prepare declaration	.8
11	10/16	MPL	and exhibits to same. Draft and send email to clients re same. Review email from client re possible meeting and various issues.	.3
12	10/10	MPL	Review voicemail from client re rent and other issues. Draft and send email to	.3
12	10/21	WII L	clients re same.	.5
13	10/22	MPL	Draft and send email, and attached correspondence, to defense counsel re payment	.4
			issues. Review responding email from defense counsel re his client's payment of sanctions.	
14	10/22	MPL	Review Defendant's pretrial disclosures.	1.0
15	10/22	MPL	Review correspondence from defense counsel re rent issue. Review correspondence from JSJBD to landlord.	.3
1.	10/22	MPL	Review Defendant's 4th supplemental disclosures.	.5
16	10/22	MPL	Review correspondence to Defendant.	.2
17	10/22	MPL	Review proposed order sent by defense counsel.	.4
1/	10/29	MPL	Review Defendant's reply in support of motion in limine re expert report.	.5
18	10/29	MPL	Draft reply in support of countermotion re expert report.	1.0
10	10/30 10/30	MPL MPL	Draft, revise and file reply in support of countermotion. Draft and send correspondence to clients re reply brief and various additional	.4 .8
19	10/30	WILL	issues.	.0
_	10/31	MPL	Research and review case law re CAM issues and litigation.	.5
20	10/31	MPL	Tel. call with client re litigation.	.5
21	10/31	MPL	Review proposed order. Draft changes to same. Draft and send email to defense counsel explaining changes to proposed order.	1.0
	10/31	MPL	Review email from client re meeting with expert.	.2
22	11/01	MPL	Draft memo re CAM language in lease and related documents.	1.0
	11/01 11/04	MPL MPL	Draft and send transcript request. Draft and send email to witness re trial date.	.1 .2
23	11/04	MPL	Review email from defense counsel re proposed order. Draft and revise proposed	.8
24	11704	WII L	order consistent with prior proposed order. Draft and send email with Plaintiff's proposed order.	.0
25	11/04	MPL	Prepare for, and attend, hearing for Landlord's motion in limine.	2.5
25	11/06	MPL	Draft and file pretrial disclosures.	2.0
26	11/11	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and emails preparing for trial.	1.5
	11/12	MPL	Prepare for, and attend, calendar call hearing.	2.2
27	11/12	MPL	Draft and send email to witness updating re trial date.	.3
	11/12	MPL	Review order re defendant's motion for sanctions.	.5
28	11/12	MPL	Review Defendant's individual pretrial memorandum.	.6
	11/12	MPL	Review proposed order from defense counsel. Draft and send email re revisions to be made pending receipt of transcripts.	.5
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1	11/12	MPL	Tel. calls with clients re trial date, witnesses, documents, etc.	1.8
	11/12	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and emails preparing for trial.	4.0
2	11/13	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and	7.0
3			emails preparing for trial.	
]	11/14	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and	6.0
4			emails preparing for trial. Exchange emails with defense counsel re his improper numbering, etc. Exchange emails re proposed order and various other trial	
_ [matters. Draft and send email to law clerk re same. Tel. calls with clients re trial	
5			preparations. Draft and send various emails with exhibits, lists, etc. to clients.	
6	11/17) (DI	Draft and send email to Jeff White re status of trial and other matters.	5.0
ا	11/15	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and emails preparing for trial.	5.0
7	11/16	MPL	Prepare for mtg with client representatives. Prepare for trial. Mtg with client	3.0
	11/10		representatives in preparation for trial, trial testimony, etc.	2.0
8	11/17	MPL	Draft and revise proposed findings of fact and conclusions of law and related	3.5
	11/10) (DI	items. Draft and revise EDCR pretrial memorandum.	5.0
9	11/18	MPL	Finalize, revise and submit proposed findings of fact, conclusions of law, exhibits list and various other items. Exchange emails with law clerk re same. Review	5.0
10			emails from defense counsel re same. Revise and file EDCR pretrial	
10			memorandum.	
11	11/18	MPL	Prepare for, attend, and conduct trial.	7.0
	11/19	MPL	Prepare for, attend, and conduct trial.	8.5
12	11/20	MPL	Prepare for, attend, and conduct trial.	7.0
	11/21	MPL	Prepare for, attend, and conduct trial.	7.0
13	11/22	MPL	Prepare for, attend, and conduct trial.	6.0
	11/22	MPL	Review notice of entry of order filed by Defendant.	.l
14	11/26 11/27	MPL MPL	Review report re bookkeeping review of CAMs. Tel. calls with client re same.	1.6 .2
	11/27	MPL	Review rent correspondence. Research and review various arguments for attorney fee motion. Draft memo re	2.5
15	11/2/	WII L	same for future use.	2.3
1.0	12/05	MPL	Review FFCL. Exchange various emails with client. Tel. calls with client re	3.5
16			same.	
17	12/05	MPL	Research and review "part performance" case law.	.8
1/	12/09	MPL	Review correspondence from defense counsel rent issues.	.2
18	12/10	MPL	Draft and file memorandum of costs.	2.0
10	12/10	MPL	Review Defendant's memorandum of costs. Draft notes for motion to retax.	1.0
19	12/12 12/12	MPL MPL	Review rent correspondence from client. Draft and file amendment to memorandum of costs. Tel. calls with client re same.	.2 1.8
17	12/12	MPL	Draft motion to retax costs.	2.0
20	12/13	MPL	Review Defendant's motion to retax costs.	.4
20	12/16	MPL	Review notice of hearing re motion to retax.	.1
21	12/16	MPL	Draft motion for attorney fees and revise related memo re same.	2.0
	12/26	MPL	Review order to statistically close case.	.1
22	12/26	MPL	Draft motion for attorney fees.	5.0
			TOTAL	361.8
23				
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9. Accordingly, the total, combined, number of hours multiplied by the hourly rate of \$350.00, results in an initial attorney fee figure of **\$126,630.00**.

10. The following costs were incurred in representing the Plaintiff and Counterdefendants from the inception of this case through December 26, 2019, with a few items that might not have been tallied from November 1, 2019 to present.

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	Trans. Date	Amount	Description Description
4	11/30/18	1,579.40	Filing fee. Business Court Complaint.
ا ہ	11/30/18	130.88	Westlaw legal research. 11/15, 11/21.
5	12/04/18	3.50	Filing fee. Request for issuance of Summons.
_	12/06/18	30.00	Runner charge. Serve Complaint and Summons upon registered agent.
6	12/11/18	3.50	Filing fee. Summons with Declaration of Service.
	01/28/19	24.00	Douglas Parking. Parking for hearing.
7	01/31/19	3.50	Filing fee. Reply / Response to Counterclaim.
	01/31/19 03/22/19	142.69	Westlaw legal research. 01/23, 01/28.
8	03/22/19	21.00 5.58	Douglas Parking. Parking for settlement conference.
	05/07/19	294.99	Westlaw legal research. 03/22 Filing fee. Reply to Counterclaim plus initial appearance fee.
9	05/07/19	1,260.00	Filing fee. Correction from clerk's office re business court fee.
	05/31/19	166.90	Westlaw legal research. 05/08, 05/23
10	06/19/19	209.50	Filing fee. Opposition and countermotion for partial summ. judgment.
	06/20/19	30.00	Runner charge. Drop off opposition and countermotion with court.
11	06/21/19	30.00	Runner charge. Pick up stipulation and related.
	07/03/19	3.50	Filing fee. Reply countermotion for partial summary judgment.
12	07/03/19	30.00	Runner charge. Drop off reply countermotion partial summary judgment.
	07/08/19	15.00	Douglas Parking. Parking for hearing.
13	07/24/19	3.50	Filing fee. Order.
	07/24/19	3.50	Filing fee. Notice of entry of order.
14	07/25/19	64.60	Florence Hoyt. Transcript for hearing.
	07/25/19	40.00	Clark County Treasurer. Transcript of hearing.
15	07/31/19	184.76	Westlaw legal research. 07/02.
	08/31/19	45.09	Westlaw legal research. 08/26.
16	09/26/19	3.50	Filing Fee. Motion to Compel
	09/26/19	3.50	Filing Fee. Entry of Order
17	10/01/19	3.50	Filing Fee. Reply
	10/02/19	9.00	Douglas Parking. Parking for Hearing
18	10/08/19	3.50	Filing Fee. Opposition Correct Order to Court
	10/08/19	3.50	Filing Fee. Opposition Motions for Sanctions Douglas Parking. Parking for Hearing
19	10/09/19 10/09/19	12.00 3.50	Filing Fee. Entry of Order
	10/09/19	3.50	Filing Fee. Order
20	10/16/19	3.50	Filing Fee. Opposition and Countermotion
	10/28/19	30.00	Runner Charge. Drop off Opposition and Countermotion
21	10/30/19	3.50	Filing Fee. Reply
_	10/30/19	30.00	Runner Charge. Drop off Countermotion
22	10/31/19	119.79	Westlaw Legal Research, 10/16, 10/30, 10/31
_	11/01/19	71.12	Kleer-Fax. Copy costs, Labels/Sidetabs for Binders.
23	11/04/19	6.00	Douglas Parking. Parking for hearing.
	11/06/19	3.50	Filing Fee for Pre trial Disclosures.
24	11/12/19	9.00	Douglas Parking. Parking for hearing.
	11/13/19	101.16	Kleer-Fax. Copy costs, Labels/Sidetabs for Binders.
25	11/13/19	64.92	Triple Best. Copy costs, Color Ink for Binders / copies.
	11/13/19	175.20	Linkyo Corp. Copy costs, Ink for Binders.
26	11/13/19	30.00	Runner charge. Drop off payment for hearing Transcripts.
	11/18/19	24.00	Douglas Parking. Parking for hearing.
27	11/19/19	24.00	Douglas Parking. Parking for hearing.
	11/20/19	24.00	Douglas Parking. Parking for hearing.
28	11/21/19	24.00	Douglas Parking. Parking for hearing.
	11/22/19	24.00	Douglas Parking. Parking for hearing.
	11/25/19	262.00	Gomez. Copy services prepare trial binders (292.00 – 30.00 run).

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11/30/19 11/30/19 11/30/19	600.00 12,024.00	Westlaw Legal Research 11/26,11/27. BHI Bookkeeping. 11/05. Valbridge. Expert appraisal (various invoice / payment dates)
12/19/19	3,500.00	Deposit for trial transcripts.
	21,748,97	

11. Thus, the pertinent costs are: \$21,748.97. These are all shown in the Memorandum of Costs, and amendment thereto, already filed—with the exception of the last item for \$3,500.00 which was recently incurred. These are actually incurred amounts, including the Westlaw legal

research, which is a pro rata share of the amount actually charged by West for each given month.

- 12. The filing fees show on the Court docket. The transcript costs are charged by Court personnel. The parking structure next to the Court is well known, and charges a maximum amount of \$24 once a certain number of hours is reached, which occurred at each of the three hearings in this case. Further attached as an exhibit are true and correct receipts for many of the costs referenced above for which there would have been a receipt.
- 13. Thus, the total attorney fees and costs equals \$148,378,97 plus additional fees and costs as may be incurred in finalizing this case.
- 14. Approximately one-third of this is attributable to litigating CAM issues, including issues in the case as a whole that affect CAM issues. Since CAM issues were inextricably intertwined with many general issues, it is difficult to specifically separate CAM issues.
- 15. There are additional fees and costs that have been incurred since this Declaration was first drafted, and there are expected to be additional fees and costs in responding to fully and final accounting, and this may be supplemented in the future to show the same.
- 16. I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

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DATED: December 26, 2019.

/s/ Mario Lovato
MARIO P. LOVATO, ESQ.

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DISTRICT COURT			
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<u>IOTION</u>			

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Defendant/Counterclaimant, TROPICANA INVESTMENTS, LLC, by and through its attorneys of record, the law firm of Marquis Aurbach Coffing, hereby submits its Motion for Attorneys' Fees and Costs in the above entitled matter.

This Motion is based upon the attached Memorandum of Points and Authorities, the exhibits attached hereto, the pleadings and papers on file, and any oral argument the Court may entertain at the date and time of hearing in this matter.

Dated this 27th day of December, 2019.

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 Defendant/Counterclaimant,
Tropicana Investments, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. <u>INTRODUCTION</u>

Defendant/Counterclaimant Tropicana Investments, LLC ("Plaintiff" or "Landlord") prevailed at trial on its Breach of Contract counterclaim, it prevailed on the most significant issue litigated during the trial, i.e., the existence of the agreement and the amount of rent to be paid during the option term, and it prevailed against the Tenant's claims pertaining to repairs and maintenance. As the Court will recall, Plaintiff/Counterdefendants ("Tenant") alleged that the parties never agreed on what rent would apply to the option period and that they should only be required to pay "market rental rate," while Landlord maintained that an agreement was in fact

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reached and ratified by the Tenant paying the agreed-upon amounts without objection or dispute, and that Tenant had subsequently ceased paying the agreed-upon rental rate in 2018. Finally, Tenant also asserted a claim that Landlord failed to comply with maintenance and repair obligations, but this claim was abandoned in response to Landlord's NRCP 52(c) Motion at the conclusion of the Plaintiff's case.

The trial in this matter revealed that the ever-shifting positions taken by Tenant and the 3 personal guarantors were not only contrary to the established facts and documents in the case, they were contrary to their own undisputed actions and conduct that occurred during the 2 years prior to their filing of the lawsuit. These incredibly disingenuous positions and arguments were particularly highlighted by the deposition testimony of the Tenant's NRCP 30(b)(6) witness and the corresponding lack of credibility of all of the Tenant's witnesses at trial, that resulted therefrom.

At trial, the evidence unequivocally proved that the Tenant breached the underlying Lease by knowingly and intentionally failing to pay the amount of rent that was agreed upon and the Court so found as part of its Findings of Fact and Conclusions of Law. The Court saw through Tenant's ever-changing contentions and agreed with virtually every argument advanced by Landlord that pertained to the rent, the Tenant's breach of the Lease, and to the Tenant's claims about the Landlord's alleged failure to maintain and repair the premises.

After prevailing at trial on the foregoing issues, Landlord now requests its attorney's fees and costs by way of this pleading. There exist two independent bases for an award of fees and costs to Landlord. First, Section 24 of the parties' Lease specifically entitles Landlord to an award of its attorney's fees in this action. Second, Landlord is entitled to its attorney's fees and costs as Landlord recovered less than \$20,000 as provided for in NRS 18.010 For these reasons, and those set forth, the Court should award Tropicana Investments \$219,7750 in attorney fees and \$20,188.00 in costs¹.

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¹ The issue of costs has already been briefed and submitted in Landlord's Memorandum of Costs filed on December 10, 2019 and the arguments related thereto are expressly incorporated and made a part herein.

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II. STATEMENT OF FACTS

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The Court's Findings of Fact and Conclusions of Law ("FFCL") set forth a detailed recitation of the pertinent facts, however, the following are relevant to the consideration of this Motion.

FACTS RELEVANT TO LANDLORD'S CLAIM FOR UNPAID RENT.

- In connection with Landlord's position that an agreement was reached as to the 1. rent applicable to the option period beginning in September 2016, Landlord asserted a breach of lease claim based on Tenant's failure to pay the full rent amount to which the parties agreed. See Answer & Countercl. ¶¶ 58–60.
- In the FFCL, the Court made the following findings and conclusions relevant to 2. Landlord's claim for unpaid rent:
 - An agreement was reached by the parties as to a rent schedule for the fiveyear option period beginning on September 1, 2016, which provided for monthly rent of \$8,400 for the first two years, which would increase to \$8,610 starting September 1, 2018; \$8,820 starting September 1, 2019; and \$9,030 starting September 1, 2020. Findings of Fact and Conclusions of Law, at ¶ 89.
 - Consistent with the parties' agreement, Tenant began paying \$8,400 per b. month in September 2016, and continued paying in accordance with the agreement in September 2017, and through August 2018. *Id.* ¶¶ 47, 54, 92.
 - In September 2018, Tenant continued paying \$8,400 per month, despite the parties' agreement that rent would increase to \$8,610 per month on September 1, 2018. Id. ¶¶ 91–92.
 - Tenant failed to pay rent according to the agreed-upon rent schedule from d. that date through November 2019, including the most recent payment at the time of trial. *Id.* ¶ 92.
 - Tenant paid a reduced rent rate of \$5,150 for four months. *Id.* ¶ 92, n.6. e.
 - Therefore, Tenant's underpayment totals \$13,000. Id. f.

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- Based on these findings, the Court entered judgment on Landlord's breach of 3. lease claim in Landlord's favor, in the amount of \$13,000.2
- The Court also made a specific Finding of Fact confirming that Section 24 of the 4. Lease contained an attorney's fee provision that provides:

In the event the Landlord finds it necessary to retain an attorney in connection with the 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.

FACTS RELEVANT TO DECLARATORY RELIEF CLAIMS. В.

- The Court issued relevant findings and conclusions as follows: 5.
- The 1996 Option Agreement provided two options that entitled the Tenant a. to renew the lease on September 1, 2001 and September 1, 2006, respectively, "at a market rental rate and terms as agreed by Landlord and Tenant." Findings of Fact and Conclusions of Law at ¶¶ 18–19.
- During negotiations leading up to the 2007 Lease Modification, Tenant b. attempted to add a "fair market value" term to the rental rate in the Lease, which was rejected by Landlord. Id. ¶ 26.
- The 2007 Lease modification was entered into after the exercise of all c. prior options by Tenant's predecessors-in-interest. Id. ¶¶ 31, 73.
- Tenant timely exercised the option in 2016, for which all terms and d. conditions were in place except for the rental rate. *Id.* ¶¶ 74–75.
- The parties reached an agreement on the rent amounts for the option term e. beginning September 1, 2016, and Tenant acted consistent with that agreement by paying the full amount of rent without protest or dispute. *Id.* ¶¶ 49–50.
- The evidence and the terms of the 2007 Lease Modification do not support f. Tenant's position that the contract permits a lower "fair market value" rent to be

² However, based on the numbers and dates in the Court's findings, the correct calculation of underpaid rent is \$16,780 as noted in the concurrently filed Motion to Alter or Amend Judgment.

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established, when it states that rent for the option period would be "under terms and conditions, including but not limited to rental increases to be negotiated." Id. ¶¶ 86, 88.

- \$8,400 per month, the amount that was agreed to between the parties, is g. not an unreasonable amount of rent for the option period, as this comports with the terms of the option exercised by Tenant, as well as the understanding of the parties that rent would increase during the option periods, and reflects the schedule Tenant's attorney proposed and Defendant accepted. Id. ¶¶ 60, 89.
- Substantial evidence was submitted establishing beyond a preponderance h. of the evidence that, based on the contractual language negotiated and agreed to by the parties as part of the 2007 Lease Modification, as well as the subsequent negotiations and conduct of the parties, the appropriate rent applicable to the option period cannot be based on market rental rate or fair market value. Id. ¶ 105.
- Tenant's failure to pay the agreed-upon amount of rent from August 2019 through November 2019 constituted a breach of Tenant's obligations under the Lease and the Counterdefendants' obligations under the guaranties.
- Based on these findings and conclusions, the Court agreed with Landlord's 6. arguments and entered judgment establishing a reasonable rent schedule matching the amount proposed by Tenant's attorney, beginning at \$8,400 per month for the first two years and increasing by \$210 per month every year thereafter. Id. at 17:26-18:6.

III. LEGAL ARGUMENT

This Court should award Tropicana Investments the attorney's fees and costs it incurred in this action for any of two reasons. First, as the FFCL thoroughly document, Tropicana Investments prevailed on virtually all of the issues presented at trial as the Court agreed with nearly every argument Tropicana Investments advanced. Specifically, the Court agreed with all of Tropicana Investments' arguments concerning the rent amounts for the option period. See FFCL paragraphs 26-31, 33-55, 59-61, 70-71, 73-93, 105-109. More importantly, the Court also specifically found that Tropicana Investments prevailed at trial on its counterclaim for Breach of Contract with the Court expressly finding that the Counterclaimants' defaulted and breached the

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Lease by failing to pay the amounts of rent they agreed to pay in 2016. See FFCL ¶ 92-93 & 106-109. Additionally, Tropicana Investments also prevailed at trial against all of the Plaintiff's claims concerning maintenance and repair related matters. Id., fn 3. Tropicana Investments is thus entitled to attorney fees and costs under the Lease's attorney's fee provision. Second, the amount awarded by the Court to Tropicana Investments was less than \$20,000 thereby also justifying an award of fees under NRS 18.010.

TROPICANA INVESTMENTS IS ENTITLED TO ITS ATTORNEY'S FEES AS IT WAS THE PREVAILING PARTY UNDER THE LEASE.

Nevada law authorizes an award of attorney fees whenever authorized by statute, contract or rule. Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd., 124 Nev. 1206, 1220, 197 P.3d 1051, 1060 (2008) (district courts entitled to award fees if authorized "by statute, rule, or contract.").

The Attorney's Fee Provision of the Lease Applies. 1.

Here, the Court has already determined that the Lease is a valid and binding contract by and between Tropicana Investments and JSJBD, Corp.3 The Lease includes an attorney fee provision. Under that provision, the Landlord was entitled to recover its reasonable attorney's fees from the Tenant. See Plaintiff's Trial Exhibit 1 at § 24. That provision specifically provides as follows:

ATTORNEY FEES: In the event the Landlord finds it necessary to retain an attorney in connection with the 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.

Id.

There is no question that the counterclaim for Breach of Contract stems from the Lease. There is also no question that the Court found that JSJBD defaulted and breached the Lease. See FFCL ¶ 109. Consequently, there is no dispute that Tropicana Investments it entitled to recover its attorney's fees under Section 24 of the Lease.

³ <u>See</u> FFCL ¶¶ 7-9.

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Tropicana Investments Prevailed. 2.

As noted above, the FFCL set forth precisely why Tropicana Investments prevailed on its counterclaim for breach of the Lease and why it prevailed on the central issue in the entire case the determination of the amount of rent to be paid by the Tenant for the option period. A party prevails "if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." Valley Elec. Ass'n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (internal quotations omitted). To be a prevailing party, a party need not succeed on every issue. See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (observing that "a plaintiff [can be] deemed 'prevailing' even though he succeeded on only some of his claims for relief"). The Nevada Supreme Court has specifically stated that the term "prevailing party" is not limited to the individual initiating the suit. Friedman v. Friedman, 128 Nev. 897, 381 P.3d 613 (2012).

Tropicana Investments unquestionably prevailed on nearly every issue that was actually tried in this case. First, the FFCL ratifies and adopts, nearly verbatim, each of the arguments advanced by Tropicana Investments concerning the rent amounts for the option period. Moreover, the FFCL affirm and ratify the reasonableness of the position that the Landlord took from the very beginning of this dispute - i.e., that the parties had an agreement, the Tenant ratified the agreement by paying consistently therewith, and the Tenant never once disputed or contended otherwise, thereby precluding it from subsequently trying to renege on the agreement and negotiate for something (market rent) that it was not entitled to and which the contractual documents did not provide for. See FFCL ¶¶ 45-55, 89-93, & 105-107.

Based on the above, the Court ruled that JSJBD defaulted and breached the Lease by failing to pay the amounts it agreed to pay. FFCL ¶109. Consequently, Tropicana Investments is entitled to its attorney's fees under § 24 of the Lease. The Court should, therefore, award Tropicana Investments \$219,775.00 in attorney's fees.

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TROPICANA INVESTMENTS IS ALSO ENTITLED TO ITS ATTORNEY В. **FEES UNDER NRS 18.010(2)(A).**

In addition to the express terms of the Lease entitling it to an award of its attorney's fees, Tropicana Investments is also entitled to recover its attorney's fees under NRS 18.010 because it recovered less than \$20,000 on its breach of contract claim.

1. NRS 18.010(2)(a).

NRS 18.010(2) provides, in pertinent part, as follows:

NRS 18.010 Award of attorney's fees.

- 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
 - (a) When the prevailing party has not recovered more than \$20,000;

Tropicana Investments was Awarded Less than \$20,000. 2.

The Court expressly found that the Counterclaimants breached the Lease by failing to pay the agreed upon amounts of rent. FFCL ¶ 109. In doing so, the Court ruled that Tropicana Investments was entitled to recover \$13,000 in past due rent. FFCL ¶ 92.4

Consequently, because Tropicana Investments recovered less than \$20,000 in this matter, an award of its reasonable attorney's fees is justified given the Court's Decision.

C. THE BRUNZELL ANALYSIS.

When determining the reasonable value of attorney services, a court should consider the following factors:

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficult, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the important of the litigation; (3) the work actually performed by the lawyer: the skill time and attention given to the work; and (4) the result: whether the attorney was successful and what benefits were derived.

⁴ Although the correction of this amount is subject to the pending Motion to Alter or Amend Judgment, the amount that is being sought to be amended is still less than \$20,000.

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Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969). As set forth herein, and in the declaration of Terry A. Moore, Esq., Exhibit A, the fees requested are reasonable and each of the Brunzell factors weigh in favor of awarding attorney fees.

1. Qualities of the Advocate.

The Court, itself, is in the best position to know of counsels' abilities relative to the handling of this matter. Lead trial counsel, Terry A. Moore, Esq., is a shareholder at the firm of Marquis Aurbach Coffing. See Declaration of Mr. Moore, Esq. ¶ 5, Exhibit A. He has tried numerous bench and jury trials in both federal and state court throughout his 18-year career as an attorney in Nevada. Id. ¶ 6. He has been recognized as a leading real estate attorney in Nevada by his peers on multiple occasions. He is an AV rated attorney and has been recognized by his peers as a Mountain States Super Lawyer. Id. He is also a Lead Counsel rated attorney and has been recognized by his peers as one of MyVegas Magazine's Top 100 Lawyers in Las Vegas. Id. As the Court also knows, he was also trial and appellate co-counsel in Countrywide v. Thitchener, the case which essentially set the punitive damages standard in Nevada. Id.

Second chair trial counsel, Collin Jayne, Esq., is an associate at the firm of Marquis Aurbach Coffing. Id. ¶ 7. Mr. Jayne has been a member of the State Bar of Nevada since 2015. In that time, he has earned a stellar reputation amongst his peers who have recognized him as one of the best Up and Coming lawyers according to Nevada Business Magazine in 2019. Id. Prior to joining MAC, Mr. Jayne, Esq. had the distinct honor of serving as a law clerk to the Honorable Judge Adriana Escobar. Id.

John M. Sacco, Esq. is Of Counsel at the firm of Marquis Aurbach Coffing. Id. ¶ 8. Mr. Sacco is an AV rated lawyer who has been a practicing attorney in Nevada since 1977. Id. He has tried dozens of jury and bench civil trials, and has handled numerous published appellate decisions. Id. He is a founding member of the Pillars of Justice and past member of the Board of Governors of the Nevada Trial Lawyers Association (now the Nevada Justice Association). Id.

Alexander Caraway, Esq., Ms. Leah Dell, Carrie Roberts, Dawn Irving, Ida Sedlock and Mr. Taylor Fong are attorneys and paralegals that assisted throughout this case. See, e.g., Page 10 of 14

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LVMPD v. Yeghiazarian, 129 Nev. Adv. Op. 81, 312 P.3d 503, 510 (2013) (noting that the word attorney fees include attorneys, paralegals and law clerks); and see id. ¶ 11. In conformity with Golden Road Motor Inn, Inc. v. Islam, 132 Nev. Adv. Op. 49, 376 P.2d 151 (2016), the redacted billing entries for this matter are included as **Exhibit B**.

The Character of the Work to be Done. 2.

The character of the work to be done in this matter was of critical importance. In contravention of the express terms of the parties' contractual documents and their own conduct, the Tenant filed this action seeking to cut the amount of rent they were paying by 47.5% and to recover other damages, which, if they would have prevailed would have exceeded \$240,000. In addition, the nature of the allegations required an intensive defense. Following the firing of their first lawyer (Kaempfer Crowell), Tenant attempted to renege on its agreement and began to accuse Landlord of failing to negotiate in good faith, despite the fact that it was the Tenant that was attempting to repudiate the agreement that had previously been reached by the parties. Moreover, despite making the issue of maintenance and repairs a significant issue throughout the entire case, which forced Landlord to have to litigate that issue through the trial, Tenant subsequently abandoned that meritless claim in response to Landlord's NRCP 52(c) motion at the conclusion of their case.

Furthermore, the issues pertaining to the NRCP 30(b)(6) deposition along with the attendant consequences necessitated an exceptional amount of work to achieve the result obtained. Accordingly, the character of the work was of critical importance.

3. The Work Actually Performed.

As set forth in counsel's declaration, Exhibit A, the hours expended were reasonable. Id. ¶ 11. Marquis Aurbach Coffing expended 584.7 hours in this matter. Id. Mr. Moore was lead counsel and handled the case from its inception. The reasonable hourly rate for Mr. Moore, Esq. is \$425/hr, an amount normally and customarily charged in this jurisdiction for attorneys of Mr. Moore, Esq.'s abilities and experience. Id. Mr. Jayne, Esq.'s reasonable hourly rate for Mr. is \$275/hr, an amount normally and customarily charged in this jurisdiction for attorneys of Mr. The reasonable hourly rate for Mr. Sacco, Esq. is Jayne's skill and abilities. Id. ¶ 12. Page 11 of 14

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\$500.00/hr. Id. ¶ 15. This is an amount customarily charged in this jurisdiction for attorney's Mr. Sacco's skills, ability and experience in litigation matters. Mr. Calaway, Esq. is \$250/hr, an amount normally and customarily charged in this jurisdiction for attorneys of his skill and experience. Id. ¶ 13. Ms. Carrie Roberts, Ms. Dawn Irving, Ms. Leah Dell, Ms. Ida Sedlock and Mr. Taylor Fong are paralegals at Marquis Aurbach Coffing. Id. ¶ 14. Reasonable hourly rates for paralegals of their skill and experience is \$175/hr, which is also the amount reasonably and customarily charged within this jurisdiction. <u>Id.</u>

All of the hours billed were reasonably and necessarily incurred in this matter, in which Tenant sought to renege on its agreement to pay rent which could have cost Landlord in excess of \$240,000 in damages. Prudent billing judgment was exercised throughout the matter. Id. ¶ 16. The amounts set forth do not include time entries for the preparation of the instant motion, accompany exhibits and cost memorandum. The right to submit these entries is expressly reserved.

4. The Result.

The result of the foregoing work is clear. The Court agreed with the arguments of Landlord pertaining to (1) the amount of rent that was agreed upon by the parties for the option period, (2) that market rent was not and is not a consideration based on the parties' contractual documents and conduct, (3) that the Tenant failed to prove its claims concerning Landlord's purported failure to repair and maintain the premises, and (4) that Tenant and the personal guarantors breached the Lease.

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IV. <u>CONCLUSION</u>

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For the foregoing reasons, the Court should grant the instant motion and award Tropicana Investments \$219,775.00 in fees and \$20,188.00 in costs.

Dated this 27th day of December, 2019.

MARQUIS AURBACH COFFING

By

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

Facsimile: (702) 382-583 tmoore@maclaw.com cjayne@maclaw.com

Attorneys for Defendant/Counterclaimant,

Tropicana Investments, LLC

MARQUIS AURBACH COFFING 0001 Park Run Drive

Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

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CERTIFICATE OF SERVICE

that the foregoing DEFENDANT/COUNTERCLAIMANT hereby certify TROPICANA INVESTMENTS, LLC'S MOTION FOR ATTORNEYS' FEES AND **COSTS** 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:5

Mario Lovato

mpl@lovatolaw.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Cally Hatfield an employee of Marquis Aurbach Coffing

⁵ 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

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DECLARATION OF TERRY A. MOORE, ESQ.

Terry A. Moore, Esq., declares as follows:

- 1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.
- I am counsel of record for the Defendant/Counterclaimant in the instant matter, 2. and have been so since the inception of this matter.
- I submit the instant declaration in support of Defendant/Counterclaimant 3. Tropicana Investments, LLC's ("Landlord") Motion for Attorney's Fees and Costs.

BRUNZELL ANALYSIS

Qualities of the Advocate. 1.

- The Court, itself, is in the best position to know of counsels' abilities relative to 4. the handling of this matter.
- I served as lead trial counsel in this matter from its inception through trial. I am a 5. shareholder at the firm of Marquis Aurbach Coffing ("MAC"), a Nevada law firm established in 1972. MAC is an AV-Rated, full service Nevada firm whose focus is on understanding and meeting the needs and expectations of its clients in a prompt, professional and personal manner. U.S. News recognized MAC amongst the best real estate litigation firms for real estate disputes in 2019, as it had so recognized in the past. MAC has more than 30 attorneys.
- I have tried numerous bench and jury trials in both federal and state courts throughout my 18 year career as an attorney in Nevada. I have been recognized as a leading real estate attorney in Nevada by my peers on multiple occasions. I am an AV rated attorney according to Martindale-Hubbell. I have also been recognized as a Mountain States Super Lawyer. I am a Lead Counsel rated attorney and was recognized by MyVegas Magazine as one of the Top 100 Lawyers in Las Vegas, Nevada. I served as trial co-counsel and appellate cocounsel in Countrywide v. Thitchener, the case which essentially set the punitive damages standard in Nevada.

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- 7. Second chair trial counsel, Collin Jayne, Esq., is an associate attorney at the firm of Marquis Aurbach Coffing. He has been licensed with the State Bar of Nevada since 2015. His peers have recently recognized him in Nevada Business Magazine as one of the best Up and Coming Lawyers in Las Vegas in 2019. Prior to joining MAC, Mr. Jayne, Esq. had the distinct honor of serving as a law clerk to the Honorable Judge Adriana Escobar.
- John M. Sacco, Esq. is Of Counsel at the firm of Marquis Aurbach Coffing. He is 8. an AV rated attorney and has been practicing in Nevada since 1977. He has tried dozens of jury and bench civil trials. He is a founding member of the Pillars of Justice and past member of the Board of Governors of the Nevada Trial Lawyers Association (now the Nevada Justice Association).
- Alexander Calaway, Esq. assisted when necessary. He is an associate attorney at 9. MAC and is a highly skilled, and capable associate at the time he performed legal services on this matter.
- Ms. Leah Dell, Ms. Ida Sedlock, Ms. Dawn Irving, Mr. Taylor Fong, and Ms. 10. Carrie Roberts are paralegals that assisted throughout this case.

The Work Actually Performed. 2.

- The hours expended were reasonable. MAC expended 584.7 hours in this matter. 11. I served as lead counsel and handled the case from its inception. My reasonable hourly rate is \$425/hr, an amount normally and customarily charged in this jurisdiction for attorneys of my abilities and experience.
- Mr. Jayne, Esq.'s reasonable hourly rate is \$275/hr, an amount normally and 12. customarily charged in this jurisdiction for attorneys of Mr. Jayne's skill and abilities.
- The reasonable hourly rate for Mr. Calaway, Esq. is \$250/hr, an amount normally 13. and customarily charged in this jurisdiction for attorneys of his skill and experience.
- Ms. Leah Dell, Ms. Irving, Mr. Fong, Ms. Sedlock and Ms. Carrie Roberts are 14. paralegals at the firm. Reasonable hourly rates for paralegals of their skill and experience is \$175/hr, which is also the amount reasonably and customarily charged within this jurisdiction.

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- Mr. Sacco, Esq.'s reasonable hourly rate is \$500/hr. This amount is 15. commensurate with attorneys in this jurisdiction with equivalent skill and experience.
- All of the hours billed were reasonably and necessarily incurred in this matter, in 16. which the Tenant sought to alter the parties' agreement and contractual documents, and also sought restitution of rent amounts and other damages, all of which could have exceeded \$240,000. I and the attorneys in my firm exercised prudent billing judgment in this manner and the hours, fees, and hours incurred as set forth were reasonably and necessarily incurred.
- All of the amounts of fees set forth herein do not include the amount of time or 17. cost it required to prepare the motion for attorney fees or memorandum of costs. We expressly reserve the right to submit those billings for this Court's review.
 - The redacted billing entries for this matter are attached as Exhibit B. 18.
- Based upon the foregoing hourly rates and the work performed, Landlord incurred 19. \$219,775.00 in fees and \$20,188.00 in costs.

Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 27 day of December, 2019.

Exhibit B

MARQUIS AURBACH COFFING

ATTORNEYS AT LAW

10001 PARK RUN DRIVE LAS VEGAS, NEVADA 89145 Telephone 702-382-0711 Fax 702-382-5816

Tropicana Investments, LLC ATTN: Roni Chauncey email: Ronic@bellsouth.net

Invoice 359445 December 12, 2019

ID: 8732-032 - TAM RE: JSJBD Corp. adv.

For Services Rendered Through December 10, 2019

Current Fees

219,775.00

Tropicana Investments, LLC	December 12, 2019
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	angu.	Fees		
Date	Atty	Description	Hours	Amount
12/06/18	JMS	Commence preparation of chronological synopsis of facts and documents.	2.50	1,250.00
12/06/18	TAM	Assess, analyze and review lawsuit; discussion with Mr. Sacco regarding legal research on additional issues.	1.00	425.00
12/07/18	JMS	Continued work and finalization of synopsis of facts.	2.00	1,000.00
12/07/18	TAM	Exchange emails with Mr. Chauncey regarding assess, analyze and review numerous emails from Mr. Chauncey regarding	0.40	170.00
12/10/18	LAD	Assess, analyze, and organize universe of documents relating to Tropicana Investments lease with Blue Dogs Pub in preparation for litigation in District Court.	3.00	525.00
12/10/18	TAM	Telephone conference with Mr. Chauncey regarding meeting.	0.30	127.50
12/11/18	TAM	Assess, analyze and review email from Mr. Chauncey with comments on timeline.	0.40	170.00
12/11/18	JMS	Telephone conference call with Mr. Chauncey and Mr. Moore.	1.10	550.00
12/12/18	DMI	Prepare and process request for entity records from Nevada Secretary of State.	0.40	70.00
12/13/18	CMJ	Assess, analyze and review memo from JMS and TAM; legal research regarding enforceability of contract terms and applicability of estoppel to negotiations and conduct.	0.60	165.00
12/14/18	TAM	Assess, analyze and review secretary of state documents relating to conversion; assess, analyze and review numerous emails and documents from clients and Velardes; discussions with Mr. Sacco regarding same.	1.50	637.50
12/14/18	CMJ	Continue research re enforceability of contract terms by conduct and draft legal research memorandum.	2.90	797.50
12/14/18	JMS	Review additional emails and documents from Joe Velarde and client; prepare first draft of answer to allegations of complaint.	3.50	1,750.00
12/17/18	DMI	Receipt and check-in filed entity documents order for JSJBD Corp; scan to central filing system; forward to supervising attorney.	0.20	35.00
12/17/18	TAM	Numerous discussions with Mr. Sacco regarding guaranties and related issues for counterclaim.	0.40	170.00
12/17/18	CMJ	Continue legal research and draft research memo.	5.90	1,622.50
12/17/18	JMS	Prepare draft and revisions to affirmative defenses to complaint.	1.50	750.00
12/17/18	JMS	Commence preparation of draft counterclaim.	1.50	750.00
12/18/18	TAM	pleading.	0.20	85.00
12/18/18	CMJ	Revise legal research memorandum regarding terms of option contract.	4.30	1,182.50
12/18/18	JMS	Continued preparation and revision of general allegations of counterclaim.	2.60	1,300.00
12/19/18	TAM	Discussion with Mr. Sacco regarding allegations in counterclaim and review of applicable documents relating to same.	0.60	255.00

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Date	Atty	Description	Hours	Amount
12/19/18	JMS	Continued drafting and revision of counterclaim.	3.00	1,500.00
12/20/18	JMS	Additional changes to proposed counterclaim.	1.50	750.00
12/26/18	TAM	Assess, analyze and review additional emails from Mr. Chauncey regarding further discussions of historical background.	0.20	85.00
12/28/18	TAM	Revise answer and counterclaim.	0.90	382.50
12/30/18	JMS	Review and respond to multiple emails from client.	0.90	450.00
12/31/18	TAM	Exchange numerous emails with Mr. Chauney regarding his comments/review of the answer and counterclaim and revisions thereto.	0.60	255.00
12/31/18	JMS	Review and respond to multiple repetitive emails from client.	0.90	450.00
01/02/19	TAM	Assess, analyze and review additional emails from Mr. Chauncey regarding	0.20	85.00
01/02/19	JMS	Review multiple emails from client comprising Joe Velarde's files.	1.20	600.00
01/04/19	JMS	Prepare revisions to answer and counterclaim.	1.10	550.00
01/07/19	TAM	Review emails from Mr. Chauncey and Mr. Velarde relating to underlying lease communications.	1.00	425.00
01/08/19	TAM	Conference call with Mr. Chauncey.	0.30	127.50
01/08/19	JMS	Revise finalized answer and counterclaim and prepare exhibits.	1.00	500.00
01/09/19	JMS	Telephone conference with client.	0.30	150.00
01/16/19	JMS	Review email from client; discussion with Mr. Moore regarding strategy for contacting opposing counsel; respond to multiple emails from client.	0.40	200.00
01/17/19	TAM	Assess, analyze and review emails from Mr. Chauncey; telephone call and leave message for opposing counsel regarding whether his client wants to sit down and try and resolve the matter.	0.20	85.00
01/23/19	TAM	Assess, analyze and review business court order; email same to Mr. Chauncey; telephone conference with Mr. Chauncey regarding same.	0.40	170.00
01/23/19	JMS	Review business court order and discuss with Mr. Moore.	0.20	100.00
01/23/19	JMS	Telephone conference with Mr. Moore and client.	0.20	100.0
01/25/19	JMS	Review and respond to email from client.	0.40	200.00
01/25/19	TAM	Telephone conference with Mr. Chauncey; assess, analyze and review several emails from Mr. Chauncey.	0.30	127.50
01/28/19	TAM	Prepare for and attend case conference hearing at court; draft email to Mr. Chauncey regarding update; discuss update with Mr. Sacco.	3.20	1,360.00
01/29/19	TAM	Draft email to Mr. Chauncey with update.	0.20	85.0
01/30/19	TAM	settlement date; forward same to Mr. Chauncey.	0.10	42.5
01/30/19	TAM	Assess, analyze and review email from Mr. Chauncey regarding review lease; exchange emails with Mr. Chauncey regarding same.	0.50	212.50
01/31/19	TAM	Exchange emails with Mr. Chauncey regarding	0.20	85.0
02/01/19	JMS	Review of JSJBD Corp's reply to counterclaim.	0.30	150.0
02/01/19	LAD	Prepare index of proposed documents for disclosure to opposing counsel.	1.20	210.00

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Date	Atty	Description	Hours	Amount
02/05/19	•	Review Business Court scheduling order and order setting civil bench trial and calendar call.	0.10	50.00
02/12/19	TAM	Telephone conference with Mr. Chauncey regarding; review CAM documents; discussion with Mr. Sacco regarding update on same and drafting discovery requests.	1.00	425.00
02/12/19	JMS	Review email from client .	0.40	200.00
02/12/19	JMS	Review and revise proposed document list for disclosure.	0.60	300.00
02/13/19	TAM	Assess, analyze and review email from Mr. Chauncey regarding	0.10	42.50
02/14/19	LAD	Begin gathering universe of selected documents for 16.1 disclosure.	4.70	822.50
02/19/19	LAD	Finish gathering universe of selected documents for 16.1 disclosure.	3.40	595.00
02/21/19	LAD	Begin preparing initial 16.1 disclosures.	0.50	87.50
02/21/19	TAM	Revise initial list of witnesses and documents; review documents and finalize same for production.	1.40	595,00
02/25/19	LAD	Complete index of all bates stamped documents for Tropicana's initial disclosures; prepare video copies on CD; prepare electronic copy of disclosure documents on CD.	4.60	805.00
02/26/19	TAM	Final review of initial disclosures.	0.30	127,50
02/27/19	LAD	Finalize and serve Tropicana's 16.1 initial disclosures.	0.30	52.50
03/18/19		Exchange emails with Mr. Chauncey regarding mediation discussion.	0.30	127.50
03/18/19		Exchange emails with Mr. Chauncey regarding mediation preparation.	0.30	127.50
03/19/19		Draft mediation brief; telephone conference with Mr. Chauncey regarding	3.10	1,317.50
03/19/19	JMS	Draft sections of mediation brief; review, revise and edit mediation brief for Judge Denton.	1.50	750.00
03/19/19	TAM	Revise mediation brief to incorporate JMS changes; email same to Mr. Chauncey; several calls with Mr. Chauncey regarding revisions.	0.60	255.00
03/20/19	LAD	Compile exhibits for confidential settlement brief; finalize brief and prepare two bound copies.	0.60	105.00
03/20/19	JMS	Review, revise and edit final draft mediation brief for Judge Denton.	0.60	300.0
03/22/19	TAM	Prepare for and attend mediation with Mr. Chauncey.	4.50	1,912.5
03/25/19	TAM	Strategize regarding issues with litigation with Mr. Sacco.	2.00	850.0
03/25/19	TAM	judgment motion.	0.50	212.5
03/25/19	CMR	Research Jeff White and locate possible addresses; prepare summons for Mr. Moore's signature; file for issuance; draft letter for Mr. Moore's review; exchange emails with Mr. Lovato.	1.40	245.0
03/25/19	CMJ	Research re enforceability of partial contract agreement.	0.50	137.5
03/25/19		Meeting with Terry Moore, Esq. to strategize regarding discovery, possible	2.00	1,000.0

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Date	Atty	Description	Hours	Amount
		offers of judgment, and partial motion for summary judgment.		
03/25/19	JMS	Meeting with Terry Moore, Esq. and Colin Jayne, Esq. regarding points to include in partial motion for summary judgment.	0.50	250.00
03/27/19	CMJ	Draft motion for partial summary judgment.	6.40	1,760.00
03/28/19	TAM	Research potential expert witnesses.	0.30	127.50
03/28/19	CMJ	Revise motion for partial summary judgment.	4.00	1,100.00
03/28/19	CMR	Exchange emails with process server regarding bad address; office meeting with Mr. Moore to authorize skip trace and attempt to serve out of state.	0.30	52.50
04/03/19	CMR	Exchange emails with process server regarding service of process for Jeff White.	0.20	35.0
04/03/19	CMJ	Begin drafting requests for admissions, requests for production of documents, and interrogatories.	4.30	1,182.5
04/16/19	CMR	Assess, analyze and review returned affidavit of service; prepare copy for filing; update filesite; office meeting with Mr. Moore regarding service on remaining parties; review universe of documents for pertinent information for service; coordinate with process server for service of process of answer and counterclaims with summons to all remaining parties.	0.70	122.5
04/25/19	CMJ	Revise motion for partial summary judgment.	3.60	990.0
04/26/19	CMR	Review returned affidavit and invoice for service; update file site and process invoice.	0.10	17.5
05/02/19	CMR	Assess, analyze and review returned affidavit of attempted service; prepare filing copy; file and serve; update filesite.	0.30	52.5
05/08/19	TAM	Revise motion for summary judgment.	0.50	212.5
05/08/19	JMS	Review counterdefendants, Stuart Vincent, Jeffrey Vincent, and Jeff White's reply to counterclaim.	0.40	200.0
05/09/19	TAM	Assess, analyze and review email from Mr. Chauncey; revise draft of motion for summary judgment; conduct additional legal research.	2.00	850,0
05/09/19	JMS	Review and revise points and authorities in support of motion for partial summary judgment.	1.80	900.0
05/10/19	JMS	Further analysis and development of legal and factual theories for motion for partial summary Judgment; emails to client.	1.40	700.0
05/20/19	TAM	Chauncey.	4.20	1,785.0
05/21/19	JMS	Continued revisions to motion for partial summary judgment; discuss final version with co-counsel, Terry Moore.	1.80	900.0
05/22/19	TAM		1.20	510.0
05/22/19	CMR	exhibits and prepare for filing; draft first supplemental disclosures; review and bates new disclosures; prepare copies for service.	2.10	367.5
06/10/19	TAM	Telephone conference with Mr. Chauncey regarding expert witness.	0.20	85.

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Date	Atty	Description	Hours	Amoun
06/10/19	•	Telephone conference with expert witness.	0.80	340.0
06/10/19	TAM	Exchange emails with opposing counsel regarding extensions.	0.20	85.0
06/11/19	TAM	Exchange emails with opposing counsel regarding extending deadlines.	0.30	127.5
06/11/19	TAM	Exchange emails with expert and Mr. Chauncey.	0.40	170.0
06/12/19	TAM	Exchange emails with Mr. Chauncey.	0.20	85.0
06/13/19	TAM	Revise stipulation and order to continue deadlines; exchange emails with opposing counsel.	0.30	127.5
06/14/19	CMR	Coordinate with runner for pick up of signed stipulation and order; review signed stipulation and order to ensure all pages are present.	0.20	35.0
06/19/19	CMR	Update stipulation and order as per office meeting with Mr. Moore; coordinate with runner to pick up original signatures	0.30	52.5
06/24/19	JMS	Review opposition to motion for partial summary judgment and counermotion for partial summary judgment, declarations and multiple exhibits; review	1.70	850.0
06/26/19	TAM	Telephone conference with Mr. Chauncey regarding	0.20	85.0
06/27/19	CMJ	Assess, analyze and review opposition to motion for summary judgment; draft reply in support of motion for summary judgment.	7.60	2,090.0
06/28/19	CMJ	Revise and finalize reply in support of motion for partial summary judgment.	0.90	247.
06/28/19		Revise reply and opposition.	2.60	1,105.
07/01/19	JMS	Review, edit, modify and finalize reply points and authorities in support of motion for summary judgment and in opposition to countermotion for partial summary adjudication.	1.60	800.
07/05/19	JMS	Review and analysis of plaintiff's reply in support of countermotion; email to client and co-counsel.	1.40	700.
07/05/19	CMJ	Assess, analyze and review reply in support of countermotion; strategize for oral argument.	1.00	275.
07/07/19	TAM	Review reply filed by opposing counsel; prepare for hearing.	2.00	850.
07/08/19	TAM	Attend hearing on cross motions for summary judgment.	2.20	935.
07/08/19	TAM	Telephone conference with appraiser regarding preparing report.	0.50	212.
07/10/19	TAM	Telephone conference with Mr. Chauncey regarding update.	0.40	170.
07/10/19	TAM		0.40	170.
07/10/19	JMS	Confer and strategize with co-counsel Terry Moore following hearing.	0.70	350.
07/11/19	JMS	Review files containing correspondence.	0.60	300.
07/11/19	TAM		0.40	170.
07/11/19	TAM	checks.	0.40	170.
07/11/19	TÀM	more information and documents.	0.30	127.
07/15/19) JMS	Review of deposit checks of Tropicana Investments for 2016 through	0.30	150.

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Date	Atty	Description	Hours	Amount
07/17/19	TAM	2019, including monthly payments from Blue Dogs. Review checks provided by Mr. Chauncey; organize and exchange emails with Mr. Chauncey regarding missing checks. Instruct Ms. Dell to prepare supplemental production.	0.10	42.50
07/17/19	LAD	Prepare redacted copies of Blue Dogs' monthly payment checks for production; prepare index for same.	2.20	385.00
07/22/19	JMS	Review market rent analysis with exhibits.	0.60	300.00
07/26/19		Telephone conference with Jeff regarding getting copies of checks.	0.10	42.50
07/26/19		Revise and finalize interrogatories, requests for production of documents and requests for admissions.	2.40	1,020.00
07/26/19	TAM	Assess, analyze and review initial production of documents from plaintiff (without exhibits); assess, analyze and review first requests for production from plaintiff.	0.50	212.50
07/29/19	JMS	Review discovery served on plaintiff/counterdefendants; review plaintiff/counterdefendant's list of witnesses and experts, and request for production of documents.	0.50	250.0
07/31/19	TAM	Revise second supplemental disclosure of documents.	0.50	212.5
07/31/19	ITS	Prepare, bate stamp, finalize, and file defendant's second supplemental 16.1 disclosures.	2.00	350.0
08/01/19	JMS	Review second supplemental disclosures of witnesses and documents pursuant to NRCP 16.	0.20	100.0
08/02/19	TAM	Assess, analyze and review email from Mr. Chauncey regarding letter from tenants; telephone conference with Mr. Chauncey regarding same.	0.40	170.0
08/12/19	TAM	Exchange emails with Mr. Chauncey.	0.20	85.0
08/20/19	TAM	Telephone conference with Leslie Miller regarding her deposition.	0.30	127.5
08/21/19	TAM	Research regarding privilege issues associated with deposition of Leslie Miller.	1.00	425.0
08/22/19	JMS	Prepare deposition or trial cross-examination questions of Lesley Miller, Esq.; review supreme court case of Club Vista Financial Services vs. Eighth Judicial District Court, 128 Nev. 224 regarding protective orders for past counsel being called to testify.	3.00	1,500.0
08/27/19	TAM	Telephone call and leave message and draft follow up email to opposing counsel.	0.10	42.5
08/27/19	TAM	Telephone conference with counsel for Leslie Miller; exchange emails with counsel for Leslie Miller regarding her deposition.	0.50	212.5
08/29/19	TAM	Draft deposition questions and assemble exhibits for deposition of Bruce Eisman.	6.80	2,890.0
08/30/19	TAM	Finish preparing for deposition of Bruce Eisman.	1.00	425.0
08/30/19	TAM	appearance.	0.60	255.0
08/30/19	TAM	Assess, analyze and review responses to requests for admissions.	0.40	170.

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	Atty	Description	Hours	Amount	
08/30/19 T	•	Review 400 pages of supplemental production of documents sent by opposing counsel.	1.80	765.00	
08/30/19	TAM	Discussion with client regarding update.	0.50	212.50	
08/30/19			0.20	85.00	
08/30/19	ТАМ	Exchange emails with opposing counsel regarding depositions.	0.50	212.50	
09/05/19	TAM	Assess, analyze and review emails from Jeff regarding	0.20	85.00	
09/06/19	TAM	Exchange numerous emails with Mr. Chauncey; telephone conference with Mr. Chauncey.	0.70	297.50	
09/06/19	TAM	Revise responses to RFP; exchange emails with opposing counsel.	1.00	425.00	
09/09/19	TAM	Travel to and attend hearing on trial readiness.	2.30	977.50	
09/09/19	TAM	Exchange emails with opposing counsel regarding discussions about deposition scheduling.	0.30	127.50	
09/10/19	JMS	Telephone conference with client and Mr. Moore.	0.50	250.00	
09/10/19 .	JMS	Review counterdefendant's response to request for production of documents.	0.20	100.00	
09/10/19	JMS	Review JSJBD's response to request for production of documents.	0.30	150.00	
09/17/19	TAM	Prepare for 30b6 deposition of JSJBD.	3.10	1,317.50	
09/17/19	TAM	Attend deposition of 30(b)(6) designee for JSJBD; start deposition for certificate of non-appearance due to failure to appear.	0.50	212.50	
09/17/19	TAM	Exchange emails with Mario Lovato regarding failure to appear for deposition again.	0.50	212.50	
09/18/19	TAM	Exchange emails with opposing counsel regarding deposition scheduling issues.	0.40	170.00	
09/18/19	TAM	Take deposition of Bruce Eisman.	0.60	255.00	
09/18/19	JMS	Telephone conference with client; strategize with Mr. Moore regarding deposition of Bruce Eisman; review and revise proposed deposition questions for taking deposition of PMK of JSJBD Corp.	1.70	850,00	
09/19/19	TAM	Take deposition of 30(b)(6) designee.	5.30	2,252.50	
09/19/19	JMS	Telephone conference with client and Mr. Moore.	0.40	200.00	
09/19/19	JMS	Multiple discussions strategizing with Mr. Moore regarding deposition of PMK.	0.80	400.00	
09/20/19	TAM	Strategize regarding motion to file based on failure to provide proper 30(b)(6) designee.	0.50	212.50	
09/20/19	TAM	Telephone conference with Mr. Chauncey regarding update.	0.30	127.50	
09/20/19	JMS	Telephone calls with client; review NRCO 60(a); prepare draft of motion seeking court to correct, amend and supplement written order dated July 24, 2019, and to make order consistent with the requirements of NRCP 56(d).	2.40	1,200.00	
09/26/19	CMJ	Draft motion in limine regarding undisclosed or late disclosure of experts; conduct legal research regarding same.	2.90	797.50	

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Date	Atty	Description	Hours	Amount
09/26/19	TAM	Telephone conference with Mr. Chauncey; review documentation relating to CAMs.	0.60	255.00
09/26/19	TAM	Review deposition transcript of Jeff Vincent, 30(b)(6) designee of JSJBD.	3.10	1,317.50
09/27/19	TAM	Draft motion for sanctions for failure to present a knowledgeable designee and for failure to appear.	4.60	1,955.00
09/27/19	TAM	Revise motion for clarification.	1.60	680.00
09/27/19	TAM	Review and revise motion in limine.	1.20	510.00
09/27/19	JMS	Review motion to compel production of documents.	0.40	200.00
09/27/19	JMS	Review plaintiff's supplemental NRCP 16.1 list of witnesses and documents.	0.20	100.00
09/30/19	TAM	Finish drafting motion for sanctions.	4.10	1,742.50
09/30/19	TAM	Draft opposition to motion to compel.	1.40	595.00
09/30/19	TAM	Draft supplemental production of witnesses and documents.	1.20	510.00
09/30/19	JMS	Review and edit motion for sanctions and other relief related to deposition of NRCP 30(b)(6) designee of plaintiff JSJBD.	1.00	500.00
10/02/19	TAM	Prepare for and appear at hearing on motion to compel.	1.50	637.50
10/02/19	TAM	Telephone conference with Mr. Chauncey regarding update on status and order of the court regarding motion to compel; exchange emails with Mr. Chauncey regarding same.	0.50	212.50
10/02/19	TAM	Draft letter to opposing counsel regarding letter tenant sent with October payment.	0.20	85.00
10/02/19	TĂM	Assess, analyze and review numerous emails from Mr. Chauncey.	0.40	170.00
10/02/19	JMS	Telephone call with client and review multiple emails.	0.30	150.00
10/03/19	TAM	Telephone conference with Mark Weinstock regarding providing electronic copies of documents.	0.10	42.50
10/03/19	TAM	Assess, analyze and review emails and call with Mr. Chauncey.	0.70	297.50
10/04/19	TAM	Exchange emails with opposing counsel regarding order from hearing.	0.30	127.50
10/04/19	TAM	Assess, analyze and review numerous emails from Mr. Chauncey.	1.00	425.00
10/07/19	СМЈ	{NO CHARGE} Assess, analyze and review motion for sanctions, motion to correct order, transcript of hearing, and transcript of deposition in preparation for reply in support of same.	1.00	
10/08/19	TF	Prepare and review universe of additional documents provided by client for supplemental discovery disclosures.	0.60	105.00
10/08/19	TF	Meeting with Holo Discovery regarding preparation of client documents for supplemental discovery disclosures.	0.20	35.00
10/08/19	TAM	Assess, analyze and review correspondence from opposing counsel regarding order from motion to compel.	0.30	127.50
10/08/19	TAM	Telephone conference with Mr. Chauncey; exchange numerous emails with Mr. Chauncey; review CAM documentation provided by client; provide instructions for copying and bates stamping same.	1.10	467.50
10/08/19	TAM		0.50	212.50

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Date	Atty	Description	Hours	Amour
10/08/19	•	Assess, analyze and review opposition to motion for sanctions.	1.10	467.5
10/08/19	JMS	Review JSJBD's opposition to motion for sanctions, and opposition to motion to correct order of court.	1.00	500.0
10/09/19	TAM	Prepare for and attend hearing on motions.	2.50	1,062.5
10/09/19	TAM	Revise supplemental production of documents; draft cover letter.	0.80	340.0
10/09/19	CMJ	Assess, analyze and review opposing counsel's oppositions to motions to compel and for sanctions; prepare for and attend hearing on same; debrief and strategize regarding consequences of orders and trial strategy; legal research regarding same.	4.30	1,182.5
10/11/19	CMJ	Legal research regarding discovery violations and associated sanctioning power of the court; begin drafting order regarding motion for sanctions.	2.10	.577.:
10/13/19	CMJ	Conduct legal research regarding hearsay and part performance in preparation for trial.	1.00	275.
10/14/19	TAM	Exchange emails with Mr. Chauncey regarding discussion about CAMs.	0.20	85.
10/14/19	TF	Conference call with Holo Discovery regarding universe of client hard files prepared for attorney review and discovery disclosures.	0.20	35.
10/16/19	JMS	Review exchange of correspondence with Lucas Grower.	0.80	400.
10/21/19	TAM	Draft pre-trial disclosures.	0.90	382.
10/21/19	TAM	Review transcript from hearing on motion for sanctions; draft order granting same.	0.70	297.
10/21/19	JMS	Review transcript of oral argument on hearing for motion for sanctions, motion to take depositions, and motion to correct order of court; discuss with Mr. Moore.	0.70	350.
10/22/19	CMJ	Draft reply in support of motion in limine and opposition to countermotion.	6.10	1,677.
10/22/19	TAM	Draft order from motion for sanctions.	0.60	255.
10/28/19	TAM	Revise reply and opposition to motion and countermotion in limine.	1.00	425.
10/28/19	JMS	Telephone call with client.	0.20	100
10/31/19	TAM	Review reply brief filed by JSJBD.	0.40	170
10/31/19	CMJ	Legal research and draft memo regarding estoppel and part performance.	1.10	302.
10/31/19		Complete direct exam questions for John M. Sacco, Esq.	1.50	750
10/31/19		Review opposition to motion in limine.	0.30	150
11/01/19		for motion for sanctions.	0.30	127
11/01/19		Draft legal research memo regarding waiver, estoppel, part performance, and voluntary payment doctrine.	3.40	935
		Prepare for and appear at hearing on motion in limine.	2.10	892
		Call and leave numerous messages with Charles Jack regarding availability for trial.	0.10	42
		Draft email to court with proposed order from sanctions hearing.	0.20	85
11/04/19	TAM	Exchange emails with Mr. Chauncey regarding payment by tenant and trial	0.50	212

Tropican RE: JSJ ID: 873	BD Co	*	December 12, 201 Invoice 35944 Page 1	
Date	Atty	Description	Hours	Amount
		availability; telephone conference with Mr. Chauncey regarding same.		
11/04/19	TAM	Strategize regarding witness order and preparation of pre-trial memorandum; discussion with Mr. Sacco regarding witness testimony.	1.00	425.00
11/04/19	CMJ	Draft inidividual pre-trial memorandum.	4.40	1,210.00
11/05/19	TAM	Telephone conference with Charlie Jack regarding availability.	0.30	127.50
11/05/19	CMJ	Legal research regarding waiver of attorney-client privilege; revise research memo regarding same.	2.50	687.50
11/06/19	CMJ	Revise legal research memorandum regarding scope of waiver of attorney- client privilege.	1.00	275.00
11/06/19	CMJ	Draft exhibit list and list of depositions in preparation for calendar call; prepare trial subpoenas; begin drafting 7.27 brief and revise pretrial memorandum.	3.20	880.00
11/06/19	JMS	Review memorandum regarding partial performance, waiver, estoppel and ratification.	0.70	350.00
11/08/19	TAM	Review and revise pretrial memorandum.	0.80	340.00
11/08/19	TAM	Review plaintiff's pre-trial disclosures.	0.60	255.0
11/11/19	TAM	Telephone conference with Mr. Chauncey.	1.30	552.5
11/12/19	CMJ	Assess, analyze and review JSJBD exhibit list and compare with Tropicana disclosures to create stipulated exhibit list and defendant's exhibit list.	4.50	1,237.50
11/12/19	CMJ	Follow up with Rocket Reporters regarding original depo transcript of Jeff Vincent; finish drafting trial subpoenas; discuss with Mr. Moore other remaining tasks for trial preparation.	1.60	440.00
11/12/19	CMJ	Continue drafting EDCR 7.27 trial brief.	1.70	467.5
11/12/19	TAM		2.00	850.0
11/12/19	TAM	Prepare for and appear at calendar call; telephone conference with Mr. Chauncey; telephone conference with Mr. Velarde; telephone conference with Charlie Jack.	3.00	1,275.0
11/12/19	TAM	Begin trial preparation.	1.50	637.5
11/12/19	JMS	Review direct examination questions of witnesses.	3.50	1,750.0
11/13/19	CMJ	Finish drafting EDCR 7.27 brief; finalize joint and separate exhibit lists; legal research regarding same and objections to exhibits.	10.30	2,832.5
11/13/19	ТАМ	Print all of Plaintiff's exhibits; review same; determine evidentiary objections for same; compare pre-trial disclosures of parties; finalize exhibit lists for defendants and joint exhibit lists.	12.20	5,185.0
11/13/19	TAM	Discussions with Mr. Jayne regarding 7.27 brief status and discussion regarding legal arguments in same.	0.80	340.0
11/13/19	TAM	Organize documents for the Velardes to testify about.	1.30	552.5
11/13/19	TAM	Exchange numerous emails and calls with Mr. Chauncey.	1.10	467.5
11/13/19	TAM	Discussions with Mr. Sacco regarding various correspondence related to	1.30	552.5

RE: JSJ	BD Co	•		r 12, 2019 ce 359445
ID: 873	2-032 -	TAM		Page 12
Date	Atty	Description	Hours	Amount
11/13/19	JMS	his testimony. Review proposed exhibits, general trial preparation, including providing comments concerning opening statement.	4.00	2,000.00
11/13/19	JMS	Review and edit 7.27 brief.	1.00	500.00
11/14/19	TAM	Revise direct examination of John Sacco.	3.20	1,360.00
11/14/19	TAM	Draft examinations of Joe and Danny Velarde.	2.00	850.00
11/14/19	TAM	Begin to review and revise 7.27 brief.	1.60	680.00
11/14/19	TAM	Exchange emails and calls with Mr. Chauncey regarding	0.50	212.50
11/14/19	TAM	Further revise joint exhibit list; draft email to Mr. Lovato regarding same.	1.70	722.50
11/14/19		and the second s	0.60	255.00
11/14/19	TAM	Meeting with Danny and Joe Velarde for trial preparation; assess, analyze and review emails and calls with Mr. Velarde regarding document he found pertaining to 2007 modification; discussions regarding strategy for disclosure and use of same; continue trial preparation.	8.10	3,442.50
11/14/19	СМЈ	Attend conference call with Mr. Chauncey and client preparation meeting with Danny and Joe Velarde; draft objections to documents disclosed in plaintiff's pretrial disclosures; legal research regarding use of document to refresh recollection; assess, analyze and review both expert reports; telephone conference with court clerk regarding procedure for exhibits and revise joint and proposed defendant exhibit lists.	8.30	2,282.50
11/14/19	JMS	Continue trial preparation including meeting with Danny and Joe Velarde.	4.50	2,250.00
11/15/19	JMS	Review and further revise EDCR pre-trial brief; review documents and revise examination questions; general trial preparation.	5.00	2,500.00
11/15/19	TAM	Meeting with Charlie Jack.	3.40	1,445.00
11/15/19	TAM	Review and discuss emails from Mr. Chauncey with attachments.	2.80	1,190.00
11/15/19	TAM		5.70	2,422.50
11/15/19	CMJ	Attend meeting with expert regarding trial testimony and rebuttal opinions.	3.40	935.00
11/15/19	CMJ	Cross-reference expert reports with disclosed documents regarding specific properties; begin drafting proposed findings of fact and conclusions of law.	4.90	1,347.50
11/16/19	CMJ	Summarize 30(b)(6) deposition; continue drafting proposed findings of fact and conclusions of law.	7.40	2,035.00
11/16/19	TAM	Continue trial preparation - work on direct examination with Mr. Sacco; work on summaries of data; numerous calls and emails with client; review itemization summary of 30(B)(6) deposition testimony.	9.50	4,037.50
11/16/19	JMS	Rehearse direct and cross-exam testimony and assist with trial preparation.	5.00	2,500.00
11/17/19	TAM		13.90	5,907.50

Tropicana Investments, LLC RE: JSJBD Corp. adv. ID: 8732-032 - TAM		December 12, 2019 Invoice 359445 Page 13		
Date	Atty	Description	Hours	Amoun
	·	documents.		
11/17/19	TAM	Review and revise proposed FFCL.	2.00	850.00
11/17/19	CMJ	Finish drafting proposed findings of fact and conclusions of law; assess, analyze and review report of Mr. Jack; prepare cross-examination of Mr. Lubawy.	8.00	2,200.00
11/18/19	CMJ	Prepare cross of Bruce Eisman; prepare copies of various filings for trial.	2.10	577.50
11/18/19	CMJ	Strategize witness examinations with Mr. Moore and Mr. Chauncey; revise proposed joint exhibits as defendant's proposed exhibits continued per court direction.	1.50	412.5
11/18/19	СМЈ	Attend trial.	11.00	3,025.0
11/18/19		Finish revisions to FFCL; finalize preparation for trial.	2.90	1,232.5
11/18/19		Continue preparation for cross examination of Jeff Vincent	1.80	765.0
11/18/19		Attend trial.	11.00	4,675.0
11/19/19	AKC	Brief legal research for Mr. Sacco and pulling relevant case law on issue that arose at trial.	0.30	75.0
11/19/19	TAM	Continue revising cross examination of Jeff Vincent; attend trial.	14.10	5,992.5
11/19/19	TAM	Research Bruno Mark in preparation for his testimony.	0.20	85.0
11/19/19	TAM	Begin revising direct testimony of Danny Velarde; telephone conference with Danny and Joe Velarde.	1.30	552.:
11/19/19	CMJ	Attend trial.	10.00	2,750.0
11/19/19	CMJ	Prepare and organize revised tables of contents and exhibit binders per court's direction.	1.00	275.
11/19/19	JMS	Research case law regarding silence and conduct as they relate to estoppel.	3.50	1,750.
11/20/19	TAM	Continue revising direct examinations of Danny and Joe Velarde.	3.10	1,317.
11/20/19	TAM	Review and revise cross examination of Lubawy.	2.40	1,020.
11/20/19	CMJ	Attend trial.	10.80	2,970.
11/20/19	CMJ	Prepare direct exam of Charles Jack; telephone conference with Mr. Jack regarding same.	2.10	577.
11/20/19	TAM	•	2.00	850.
11/20/19	JMS	Trial preparation including further review of all direct exam questions of witnesses.	3.50	1,750.
11/20/19	TAM	Attend trial.	10.80	4,590.
11/21/19			8,10	3,442.
11/21/19		Attend trial.	8.10	2,227.
11/21/19	CMJ	Review notes from trial and help prepare closing argument; legal research regarding attorney's fees as damages.	1.20	330.
11/21/19		Prepare for examination of Charles Jack.	1.50	412.
11/21/19	TAM		2.10	892.:
11/21/19	TAM	Finish preparing NRCP 52 (c) arguments; revise direct examination of Joe	5.30	2,252.

Tropicana Investments, LLC RE: JSJBD Corp. adv. ID: 8732-032 - TAM		December 12, 2019 Invoice 359445 Page 14		
Date	Atty	Description	Hours	Amount
	·	Velarde; revise direct examination of Jeff Chauncey.		
11/22/19	TAM	Attend trial.	7.00	2,975.00
11/22/19	TAM	Finish direct examination of Mr. Chauncey; prepare closing notes.	5.50	2,337.50
11/22/19	CMJ	Attend trial.	7.00	1,925.00
12/03/19	TAM	Assess, analyze and review email from Mr. Chauncey with tenant letter with December payment; draft letter to opposing counsel regarding same.	0.20	85.00
12/05/19	TAM	Assess, analyze and review findings of fact and conclusions of law; extensive internal discussions regarding discrepancies within same; exchange emails and call with Mr. Chauncey regarding decision.	1.50	637.50
12/05/19	CMJ	Assess, analyze and review findings of fact and conclusions of law; legal research regarding applicability of attorney fees as special damages and motion to alter or amend judgment.	1.30	357.50
12/06/19	CMJ	Legal research regarding motion to alter or amend judgment and applicability of attorney fees.	1.70	467.50
12/09/19	CMJ	Legal research regarding motion to alter or amend.	1.00	275.00
		Total Fees	584.70	219,775.0

Electronically Filed 12/27/2019 11:37 AM Steven D. Grierson CLERK OF THE COURT

DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC'S MOTION TO ALTER OR AMEND

3132

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papers, pleadings, and records on file herein, the attached Memorandum of Points and Authorities, and any oral argument allowed at a hearing on this matter.

Dated this 27th day of December, 2019.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore
Terry A. Moore, Esq.
Nevada Bar No. 7831
Collin M. Jayne, Esq.
Nevada Bar No. 13899
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney for Defendant/Counterclaimant
Tropicana Investments, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This breach of lease case concerns a dispute between Plaintiff/Counterdefendant JSJBD ("Tenant") and Defendant/Counterclaimant Tropicana Investments ("Landlord") as to the rent applicable to a five-year option period which began September 1, 2016. Tenant alleged that the parties never agreed on what rent would apply to the option period and that they should only be required to pay "market rental rate," while Landlord maintained that an agreement was in fact reached and ratified by the Tenant paying the agreed-upon amounts without objection or dispute, and that Tenant had subsequently ceased paying the agreed-upon rental rate in 2018. Ancillary to this issue, Tenant further alleged that Landlord had breached the lease and breached the implied covenant of good faith and fair dealing by impermissibly charging Tenant for "reserve" accounts as part of common area maintenance charges ("CAMs") for the shopping center. Finally, Tenant initially asserted a claim that Landlord failed to comply with maintenance obligations, but this claim was abandoned at trial.

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Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

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The case proceeded to a bench trial lasting five days, at the conclusion of which the Court found that the parties had agreed in 2016 on the rent applicable to the option period precisely as argued by Landlord, and further awarded Landlord damages for the amount of underpaid rent. However, the Court's calculation of underpayment of rent contains a math error, where the correct amount of underpaid rent based on the Court's findings and conclusions should be \$16,780. Thus, the judgment should be amended to reflect the correct amount of rent owed.

Additionally, the judgment should be amended to remove the award of attorneys' fees as damages for Tenant's breach of implied covenant of good faith and fair dealing claim. Tenant disclosed no documents in discovery, and provided zero evidence at trial, reflecting any attorneys' fees Tenant incurred in bringing this action. Further, the damages to which Tenant would be entitled for its breach of implied covenant claim are expressly limited to contract damages under Nevada law. Thus, even though the Court found that Landlord's use of reserves as part of the CAM expenses constituted a breach of the implied covenant of good faith and fair dealing, Tenant is nevertheless precluded from recovering attorney's fees as special damages for that claim, and instead is limited to the amount that Tenant proved it overpaid in CAMs.1 Therefore, the Court's award of damages in an unproven amount of attorneys' fees is contrary to Nevada law which requires a party plead and prove special damages by competent evidence.

Finally, despite the Court's findings and conclusions aligning with nearly all of Landlord's arguments, the Court's order states that judgment is entered in Tenant's favor on both parties' declaratory relief claims. The effect of the Court's judgment setting rent for the option period according to the rent schedule to which the parties agreed is supported by the Court's findings and conclusions, and entirely consistent with the arguments made by Landlord, and thus the wording of the judgment in Tenant's favor, rather than in Landlord's favor, appears to be a mistake that should be corrected.

¹ However, since the Court ruled that the Tenant was entitled to recover those same amounts under its breach of contract claim, the double recovery doctrine necessarily precludes an award of the same amounts under the breach of implied covenant claim.

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Accordingly, Defendant respectfully requests the Court alter or amend the judgment in the following manner:

- 1. Remove the attorneys' fees awarded to Tenant as damages on its breach of implied covenant claim so as to comply with Nevada law;
- 2. Amend the amount of damages due to Landlord on its breach of contract claim for nonpayment of rent to \$16,780; and
- 3. Rephrase the judgment on the parties' declaratory relief claims to be entered in favor of Landlord and against Tenant, with the same outcome of rent being set according to the agreed-upon rent schedule.

STATEMENT OF FACTS II.

- Tenant filed the complaint in this case on November 30, 2018. 1.
- Landlord filed its answer and counterclaim on January 9, 2019. 2.
- The parties proceeded through discovery, during which both sides produced 3. numerous documents.
- A bench trial for this case began on November 18, 2019, and concluded on 4. November 22, 2019.
- On December 5, 2019, the Court issued Findings of Fact and Conclusions of Law 5. ("FFCL"), entering judgment on each of the parties' claims.

FACTS RELEVANT TO TENANT'S CLAIMS REGARDING PAYMENT A. OF CAMS.

- Tenant asserted a claim for breach of lease, and a claim for breach of implied 6. covenant of good faith and fair dealing, both of which contained allegations that Landlord was liable for charging inaccurate CAM amounts. See Compl. ¶¶ 85, 103
- Prior to trial, Tenant produced zero documents in discovery that showed any 7. attorneys' fees Tenant incurred in bringing this action.
- During the trial, no witness testified to any amount Tenant had paid its attorneys, 8. at any time.

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9.	No documents were admitted into evidence which show any amount that Tenan
had paid its	attorneys at any time.
10.	The parties delivered closing arguments and the case was submitted on Friday
November 2	22, 2019.

- In the five days of trial, Tenant provided zero documentary evidence or testimony relating to any attorneys' fees incurred by Tenant, at any time.
- Relevant to Tenant's claims for overpayment of CAMs, the Court's findings of fact and conclusions of law include the following:
 - The lack of credibility and general lack of knowledge of any of Plaintiff's a. witnesses forces the Court to rely upon the documentary evidence admitted during the proceedings. Findings of Fact and Conclusions of Law, at ¶ 71.
 - The parties' predecessors in interest executed the subject Lease on July 9, b. 1996. Id. ¶ 7.
 - The 1996 Lease referenced \$500 per month in "estimated" CAM charges, c. which were subject to a quarterly accounting of actual CAM costs. Id. ¶ 12.
 - The Lease defined CAM costs. *Id.* ¶ 13. d.
 - The Lease also contains an attorney's fees provision, which provides that e. "[i]n the event the Landlord finds it necessary to retain an attorney in connection with the 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." Id. ¶ 16, n.4.
 - On April 16, 2001, the parties executed an Amendment to Retail Building Lease Dated July 9, 1996, which, among other things, changed the documentation and accounting for CAM expenses from quarterly to annual. Id. ¶¶ 20–21.
 - In June 2007, the parties executed a Lease Assignment and Modification g. which changed the "estimated" CAM charge to \$1,176 per month, but did not otherwise alter or change the accounting obligation of Landlord, and/or the other obligations of Defendant to properly charge for actual CAM expenses under the Lease. *Id.* ¶¶ 25, 32.

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h.	From	approximately	2007	to	present,	Tenant	has	paid	the	"estimated"
CAM of \$1,1	76 for ea	ach and every r	nonth.	Ia	!. ¶ 63.					

- The list of items to be included in CAMs does not include the category i. used by Landlord for "reserves." Id. ¶ 65.
- Landlord has failed to provide a CAM accounting including the accounting of the various "reserves" referenced in the annual Statements produced by Landlord in this case. *Id.* ¶ 66.
- Landlord did not breach the Lease by failing to provide quarterly k. accounting CAM costs as that provision was modified in writing by the 2001 Amendment to an annual accounting. Id. ¶ 68.
- However, as a result of Landlord's inclusion of "reserve" funds in the 1. CAMs, Tenant has overpaid the CAM expense and is entitled to reimbursement. Id. ¶¶ 67, 69.
- Evidence was presented at trial of the amounts of CAMs charged, m. including the "reserves" which Landlord charged, from which the Court found that Tenant overpaid \$4,578.00. Id. ¶ 98, n.7.
- Landlord's use of reserves as part of the CAM expenses is a breach of the n. Lease and a breach of the covenant of good faith and fair dealing. Id. ¶¶ 95, 104.
- The Court made no findings regarding whether attorney's fees were incurred by 13. Tenant in asserting its breach of implied covenant claim, nor any findings as to the amount of attorney's fees incurred by Tenant.
- Based on these findings and conclusions, the Court entered judgment in Tenant's 14. favor and against Landlord on Tenant's claim for breach of lease, in the amount of \$4,578.00. Id. at 18:7-9
- The Court further entered judgment in Tenant's favor and against Landlord on 15. Tenant's claim for breach of the implied covenant of good faith and fair dealing "in the amount

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of the attorney's fees and costs related to the CAM expense portion of the litigation only." Id. at 18:10-15.

While the Lease includes a unilateral attorney's fees provision allowing for 16. Landlord to recover reasonable attorney's fees incurred in bringing an action to enforce a default by Tenant, the Lease and its various addenda and amendments do not contain any provision providing for attorney's fees to be awarded to Tenant in any case.

FACTS RELEVANT TO LANDLORD'S CLAIM FOR UNPAID RENT. В.

- In connection with Landlord's position that an agreement was reached as to the 17. rent applicable to the option period beginning in September 2016, Landlord asserted a breach of lease claim based on Tenant's failure to pay the full rent amount to which the parties agreed. See Answer & Countercl. ¶¶ 58–60.
- In the Court's FFCL, the Court made the following findings and conclusions 18. relevant to Landlord's claim for unpaid rent:
 - An agreement was reached by the parties as to a rent schedule for the fiveyear option period beginning on September 1, 2016, which provided for monthly rent of \$8,400 for the first two years, which would increase to \$8,610 starting September 1, 2018; \$8,820 starting September 1, 2019; and \$9,030 starting September 1, 2020. Findings of Fact and Conclusions of Law, at ¶ 89.
 - Consistent with the parties' agreement, Tenant began paying \$8,400 per month in September 2016, and continued paying in accordance with the agreement in September 2017, and through August 2018. *Id.* ¶¶ 47, 54, 92.
 - In September 2018, Tenant continued paying \$8,400 per month, despite c. the parties' agreement that rent would increase to \$8,610 per month on September 1, 2018. *Id.* ¶¶ 91–92.
 - Tenant failed to pay rent according to the agreed-upon rent schedule from d. that date through November 2019, including the most recent payment at the time of trial. *Id.* ¶ 92.

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- Tenant paid a reduced rent rate of \$5,150 for four months. *Id.* ¶ 92, n.6. e.
- Therefore, Tenant's underpayment totals \$13,000. Id. f.
- Based on these findings, the Court entered judgment on Landlord's breach of 19. lease claim in Landlord's favor, in the amount of \$13,000.
- However, based on the numbers and dates in the Court's findings, the correct 20. calculation of underpaid rent is \$16,780.²

FACTS RELEVANT TO DECLARATORY RELIEF CLAIMS. C.

- Tenant's complaint sought declaratory relief on the following points: 21.
- The Court should fix the amount of monthly rent for the five-year option a. period because the option clause is capable of enforcement. Compl. ¶ 70.
- The Court should declare that Tenant possessed option rights that it b. exercised, with all terms settled. Compl. ¶ 73
- The Court should declare that the parties agreed to reasonable / market c. rent for the option period. Compl. ¶ 74.
- The Court should declare the amount of reasonable / market rent for the d. premises based on market conditions as of the date of the exercise of the option. Compl. ¶ 75.

- For the eleven months from September 2018 through and including July 2019, Tenant paid \$8,400 per month, \$210 short of the agreed-upon \$8,610 for that year, totaling underpayment of \$2,310.
- b) In August 2019, Tenant reduced its rent to \$5,150, which was short of the agreed-upon rent of \$8,610 by **\$3,460**.
- c) Finally, for September 2019 through November 2019, the agreed-upon rent increased to \$8,820, and Tenant continued paying \$5,150. Thus, Tenant underpaid by \$3,670 each of these three months, totaling \$11,010.
- d) Thus, Tenant underpaid rent by a total of (2,310 + 3,460 + 11,010) = \$16,780.

It should be noted that the Tenant also underpaid December 2019's rent by only paying \$7,350, leaving a balance owed of \$1,470 for that month.

² The calculation of underpayment of rent, based on the Court's findings, should be as follows:

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	e.	The Court should declare that Landlord acted unreasonably in unilaterally
setting	the am	ount of rent. Compl. ¶ 76.

- The Court should declare the amount of rent that should be paid and/or f. deposited with the Court while the case remains pending. Compl. ¶ 77.
- Landlord's counterclaim sought declaratory relief on the following points: 22.
- The Court should declare that the purpose and effect of the 1996 Option Agreement extended only to the two option periods for 2001 and 2006, and that the market rental rate term did not extend beyond those two option periods. Counterel. ¶ 47.
- The Court should declare that the 2007 Lease Assignment and b. Modification provides for three conditional options subject to negotiations of rental increases. Countercl. ¶ 48.
- The Court should declare that the 2007 Lease Assignment and c. Modification did not contemplate decreases in base rent or rent based on "market rate" for the options provided. Countercl. ¶ 49.
- The Court should declare that (1) Tenant's insistence upon renegotiation d. of a reduced rent based on market rate contrary to the express language of the 2007 Lease Assignment and Modification; (2) failure to negotiate in good faith; and (3) failure to satisfy the conditional nature of the option renders Tenant a month-to-month holdover tenant. Countercl. ¶ 50-53.
- The Court should declare that Tenant's authorized agent and attorney, e. Lesley Miller, Esq., exercised the option, and that the exercise of the option was confirmed and ratified in all respects, including the payment of rental increases which Tenant made voluntarily and without protest. Countercl. ¶ 54.
- The Court should declare that there is no further need to negotiate the base f. monthly rent and that Tenant is required to pay the sum of base rent as agreed by Tenant's agent and attorney, with annual increases of \$210 per month. Countercl. ¶ 55.

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23.	The Court issued	relevant findings a	and conclusions	as follows:
40.	THE COURT ISSUED	TOTO VALLE TITIOTIES I	and contendicing	ab iono mb

- The 1996 Option Agreement provided two options that entitled the Tenant a. to renew the lease on September 1, 2001 and September 1, 2006, respectively, "at a market rental rate and terms as agreed by Landlord and Tenant." Findings of Fact and Conclusions of Law at ¶¶ 18–19.
- During negotiations leading up to the 2007 Lease Modification, Tenant b. attempted to add a "fair market value" term to the rental rate in the Lease, which was rejected by Landlord. Id. ¶ 26.
- The 2007 Lease modification was entered into after the exercise of all c. prior options by Tenant's predecessors-in-interest. Id. ¶¶ 31, 73.
- Tenant timely exercised the option in 2016, for which all terms and d. conditions were in place except for the rental rate. *Id.* ¶¶ 74–75.
- The parties reached an agreement on the rent amounts for the option term e. beginning September 1, 2016, and Tenant acted consistent with that agreement by paying the full amount of rent without protest or dispute. *Id.* ¶¶ 49–50.
- The evidence and the terms of the 2007 Lease Modification do not support f. Tenant's position that the contract permits a lower "fair market value" rent to be established, when it states that rent for the option period would be "under terms and conditions, including but not limited to rental increases to be negotiated." Id. ¶¶ 86, 88.
- \$8,400 per month, the amount that was agreed to between the parties, is g. not an unreasonable amount of rent for the option period, as this comports with the terms of the option exercised by Tenant, as well as the understanding of the parties that rent would increase during the option periods, and reflects the schedule Tenant's attorney proposed and Defendant accepted. Id. ¶¶ 60, 89.
- Substantial evidence was submitted establishing beyond a preponderance h. of the evidence that, based on the contractual language negotiated and agreed to by the parties as part of the 2007 Lease Modification, as well as the subsequent negotiations and

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conduct of the parties, the appropriate rent applicable to the option period cannot be based on market rental rate or fair market value. Id. ¶ 105.

- Tenant's failure to pay the agreed-upon amount of rent from August 2019 i. through November 2019 constituted a breach of Tenant's obligations under the Lease and the Counterdefendants' obligations under the guaranties.
- Based on these findings and conclusions, the Court entered judgment in favor of 24. Tenant and against Landlord on Tenant's claim for declaratory judgment, establishing a reasonable rent schedule matching the amount proposed by Tenant's attorney, beginning at \$8,400 per month for the first two years and increasing by \$210 per month every year thereafter. Id. at 17:26–18:6.
- The Court further entered judgment in favor of the counterdefendants and against 25. Landlord on all counterclaims other than Defendant's claim for breach of Lease, including Landlord's claim for declaratory relief.

LEGAL ARGUMENT III.

The Court should alter or amend the judgment as to (1) the damages awarded for Tenant's breach of implied covenant claim; (2) the amount of unpaid rent due to Landlord under its breach of lease claim; and (3) correctly identify Landlord as the prevailing party on both parties' declaratory relief claims.

DAMAGES FOR TENANT'S CAMS CLAIM. Α.

First, the judgment should be amended with regard to the amount of damages awarded to Tenant on its claim for breach of the implied covenant of good faith and fair dealing. The Court's award of Tenant's attorneys' fees incurred in pursing the CAMs issue is unsupported by Nevada law, as an award of attorneys' fees as special damages must be pleaded and proven by competent evidence at trial, and the Tenant failed to disclose or present any evidence of attorneys' fees in the case.

1. Tenant cannot recover attorneys' fees that were not proven as special damages at trial.

Nevada generally adheres to the "American Rule" that attorneys' fees may only be awarded when authorized by statute, rule, or agreement. See, e.g. Pardee Homes of Nev. v. Wolfram, 135 Nev. Adv. Op. 22, 444 P.3d 423, 426 (2019). Some exceptions to this general rule have been recognized, including an exception allowing for attorneys' fees as special damages which are allowed in a few select types of cases. See Sandy Valley Assocs' v. Sky Ranch Estates Owners Association, 117 Nev. 948, 960, 35 P.3d 964, 971 (2001).

In Sandy Valley, the Nevada Supreme Court considered an award of attorneys' fees as special damages in an action involving title to real property where those fees were not requested until after trial. *Id.* at 958–60, 35 P.3d at 970–71. The Court held that the district court erred in considering attorney fees as special damages because the issue was neither pleaded nor proven by competent evidence at trial, specifically stating that litigants cannot obtain attorney fees as special damages without complying with NRCP 9(g) and proving by competent evidence attorneys' fees "just as any other element of damages." *See id.* at 959–60, 35 P.3d at 971. Following the *Sandy Valley* decision, the Nevada Supreme Court has consistently re-affirmed that attorneys' fees cannot be awarded as special damages absent proof at trial by competent evidence:

Sandy Valley's comment that attorney fees as special damages are "foreseeable damages arising from tortious conduct or a breach of contract," and a "natural and proximate consequence of ... injurious conduct" did not expand the scope of the scenarios that warrant attorney fees as special damages. Sandy Valley's holding embraced the general concept that attorney fees as special damages, as with any other item of damages, must be pleaded and proven by competent evidence. Therefore, to the extent Sandy Valley has been read to broadly allow attorney fees as special damages whenever the fees were a reasonably foreseeable consequence of injurious conduct, we disavow such a reading.

Pardee Homes, 444 P.3d at 426 (citations omitted).

The Sandy Valley Court provided three scenarios in which attorneys' fees as special damages may be appropriate: (1) "cases when a plaintiff becomes involved in a third-party legal dispute as a result of a breach of contract or tortious conduct by the defendant." Sandy Valley at 957, 35 P.3d at 970; (2) "cases in which a party incurred the fees in recovering real or personal

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property acquired through the wrongful conduct of the defendant or in clarifying or removing a cloud upon the title to property." Id., and (3) injunctive or declaratory relief actions compelled "by the opposing party's bad faith conduct." Id. at 958, 35 P.3d at 970.

In Pardee Homes, the Nevada Supreme Court reversed the district court's award of attorneys' fees as special damages under a two-party breach of contract claim. Id. In reaching this conclusion, the Court noted that Sandy Valley "does not support an award of attorney fees as special damages where a plaintiff merely seeks to recover fees incurred for prosecuting a breachof-contract action against a breaching defendant." Pardee Homes, 444 P.3d at 426.

Here, Tenant did not plead attorneys' fees as special damages. Further, Tenant failed to disclose any evidence of attorneys' fees prior to trial, and failed to elicit any testimony or documentary evidence that established any facts of attorneys' fees incurred by the Tenant at any time. As a result of the lack of any such evidence being presented, the Court's findings of fact contain no mention of the amount of attorney's fees Tenant proved at trial. As such, Tenant is precluded from recovering attorneys' fees as special damages for any of its claims.

An award of damages will only be overturned if the award is "clearly wrong," meaning it is unsupported by evidence presented at trial. See, e.g. Road & Highway Builders v. N. Nev. Rebar, 128 Nev. 384, 391, 284 P.3d 377, 381 (2012). Here, the Court's award of damages "in the amount of the attorney's fees and costs related to the CAM expense portion of the litigation only" is impermissible because no evidence was presented at trial to establish these damages. As such, the judgment must be amended to cure this legal defect.

Tenant's damages for its breach of implied covenant claim are limited 2. to damages it could recover in a breach of contract claim.

The proper amount of damages that should be awarded to Tenant for its contractual breach of implied covenant claim is limited to contract damages—the amount which Tenant could recover on a breach of contract claim. In Hilton Hotels Corp. v. Butch Lewis Prods., Inc., the seminal case on breach of implied covenant claims, the Nevada Supreme Court held that such a claim "give[s] rise to an award of contract damages." Hilton Hotels, 107 Nev. 226, 232-33,

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808 P.2d 454). The Hilton Hotels decision further enunciated the significant difference between an action founded in tort or contract in good faith covenant cases, where "the tort action requires a special element of reliance or fiduciary duty as was present in, for example, United States Fidelity v. Peterson, 91 Nev. 617, 540 P.2d 1070 (1975), and K Mart v. Ponsock, 103 Nev. 39, 732 P.2d 1364 (1987)." Id. at 232-33, 808 P.2d 919, 923 (1991). The cases cited by Hilton Hotels concern an action by an insured against its his insurer based on bad-faith refusal to compensate a loss, and an action by an employee against her employer alleging bad-faith discharge to avoid paying retirement benefits.

Thus, when a breach of implied covenant claim does not involve a contract with such a "special element of reliance or fiduciary duty," only contract damages are recoverable. Id.; see also Morris v. Bank of Am. Nevada, 110 Nev. 1274, 1279, 886 P.2d 454, 458 (1994). Contract damages are those "awarded to make the aggrieved party whole and ... place the plaintiff in the position he would have been in had the contract not been breached." Hornwood v. Smith's Food King No. 1, 107 Nev. 80, 84, 807 P.2d 208, 211 (1991).

Here, Tenant's recovery for its claim for breach of implied covenant claim is limited to the amount of damages Tenant could recover under its breach of contract claim, as both claims are limited to contract damages, and are based on the same contract and the same alleged conduct by Landlord. As stated above, contract damages are limited to compensatory damages, and do not include attorneys' fees unless pleaded and proven by competent evidence as special damages, which did not occur here. Moreover, the Court has already considered the amount of damages Tenant may recover on its breach of contract claim, as the Court awarded a total of \$4,578 on Tenant's second claim for relief for breach of contract. See FFCL at 18:7-9.

Furthermore, the Nevada Supreme Court has repeatedly affirmed that a party may not receive a double recovery: "a plaintiff can recover only once for a single injury even if the plaintiff asserts multiple legal theories." Elyousef v. O'Reilly & Ferrario, LLC, 126 Nev. 441, 444, 245 P.3d 547, 549 (2010). As such, the Court cannot award Tenant any additional damages for its breach of implied covenant claim beyond what the Tenant has already been awarded on its

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breach of contract claim. Thus, the judgment must be amended to reduce the damages awarded to Tenant for this claim to either zero dollars, or simply nominal damages. See, e.g. Commercial Cabinet Co., Inc. v. Mort Wallin of Lake Tahoe, Inc., 103 Nev. 238, 240, 737 P.2d 515, 517 (1987) ("a money damage award must be supported by substantial evidence to be sustained because the law does not permit arriving at a figure by conjecture. A plaintiff who proves a right to damages without proving the amount as well is only entitled to nominal damages.").

3. Tenant is not a prevailing party

Finally, while the judgment appears to award attorneys' fees to Tenant as a form of special damages, it bears noting that the only other explanation for awarding attorneys' fees—as to a prevailing party—is inapplicable here. As is more thoroughly addressed in Landlord's concurrently-filed motion for attorneys' fees, Tenant is not a prevailing party here, and thus no circumstances would apply in which Tenant would be entitled to recover attorneys' fees.

To be a prevailing party, a party must "succeed[] on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." Valley Electric Ass'n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005). Further, the judgment awarded to the prevailing party must be monetary in nature. Id. In cases where both sides are awarded monetary judgments, the district court should offset all awards and then determine which party prevailed. Parodi v. Budetti, 115 Nev. 236, 241, 984 P.2d 172, 175 (1999). Finally, the district court's offset calculation should be used to determine whether the "total net damages" exceed the \$20,000 threshold for permissive attorneys' fees under NRS 18.010(2)(a).

Here, both Landlord and Tenant were awarded monetary judgments; Tenant was awarded \$4,578 for its breach of contract claim, and Landlord was awarded \$13,0003 for its breach of contract claim. As Tenant is entitled to only nominal damages on its breach of implied covenant claim, for the reasons stated above, the offset "net damages" result in Landlord's favor. Thus,

³ As discussed below, this amount appears to be based on a calculation error and should be increased to \$16,780, but the error does not impact the analysis of which party prevailed.

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Tenant cannot be a prevailing party, and the Court cannot award Tenant attorneys' fees for any reason other than as special damages.

As explained in detail above, attorneys' fees cannot be awarded as special damages for Tenant's breach of implied covenant claim because Tenant did not set forth any evidence—much less prove by competent evidence—of attorneys' fees incurred. As such, Tenant is limited to recover contract damages for this claim. Finally, because the double-recovery doctrine precludes Tenant from recovering the same amount the Court has already awarded as contract damages in Tenant's breach of contract claim, the judgment must be amended to reduce the damages for the breach of implied covenant claim to zero or nominal damages.

DAMAGES FOR LANDLORD'S BREACH OF LEASE CLAIM. В.

Second, the judgment must be altered or amended to correct an apparent calculation error as to the amount of underpaid rent, which is necessary to determine the correct amount of Landlord's damages for its breach of contract claim.

As reflected in the Court's Findings of Fact and Conclusions of Law, the option period is subject to the schedule of rents agreed to by the parties, as follows:

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9/1/16 to 8/31/17 - $8,400 per month, $100,500 per annum
9/1/17 to 8/31/18 - $8,400 per month, $100,500 per annum
9/1/18 to 8/31/19 - $8,610 per month, $103,320 per annum
9/1/19 to 8/31/20 - $8,820 per month, $105,840 per annum
9/1/20 to 8/31/21 - $9,030 per month, $108,360 per annum
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Findings of Fact and Conclusions of Law, at ¶ 89, 91.

Further, the Court's Findings of Fact included that Tenant paid the following amounts: (1) \$8,400 through July 2019; and (2) \$5,150 from August 2019 through November 2019. *Id.* ¶¶ 47, 54, 91, 92 n.6. Putting the amount of rent required and the amount of rent paid side-by-side illustrates that the sum of Tenant's underpayments under this rent schedule is \$16,780:

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Year	Date	Rent Required	Rent Paid	Underpayment		
1	9/2016-8/2017	\$8,400	\$8,400	\$0		
2	9/2017-8/2018	\$8,400	\$8,400	\$0		
3	9/2018-7/2019	\$8,610	\$8,400	$(210 \times 11 \text{ months}) = \$2,310$		
3	8/2019	\$8,610	\$5,150	$(3,460 \times 1 \text{ month}) = $3,460$		
4	9/2019–11/2019	\$8,820	\$5,150	$(3,670 \times 3 \text{ months}) = $11,010$		
				TOTAL: \$16,780		

Based on this correct calculation, the judgment should be amended to increase the damages awarded to Landlord for its breach of contract cause of action to \$16,780.

DECLARATORY RELIEF ACTIONS. C.

Third, the Court's findings and conclusions do not support judgment in Tenant's favor on both Tenant's declaratory relief claim and Landlord's declaratory relief claim. Based on the Court's findings, nearly all of Landlord's requested declarations were in fact declared, and almost none of Tenant's requested declarations were in fact declared. Thus, the judgment should be amended to state that judgment is entered in Landlord's favor on both declaratory relief claims, or at the very least, that judgment is entered in favor of both parties on their respective declaratory relief claims.

Tenant's Declaratory Relief Claim. 1.

Tenant's Declaratory Relief Cause of Action sought to have the Court (1) declare that Landlord acted unreasonably in unilaterally setting the amount of rent; (2) declare that the parties agreed to reasonable / market rent; (3) declare the amount of reasonable / market rent for the premises based on market conditions; (4) declare that Tenant possessed option rights that it exercised with all terms settled; (5) declare the amount of rent that should be paid and/or deposited with the Court while the case is pending; and (6) fix the amount of monthly rent for the five-year option period because the option clause is capable of enforcement. Compl. ¶¶70–77.

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Of these six request declarations, the Court's findings and conclusions reflect agreement only with the final topic—setting the amount of rent for the option period. Apart from this, the Court's findings and conclusions contradict the other five requested declarations: (1) the Court found that the Landlord did not unilaterally set the rent because the rent was based on Tenant's attorney's offer; (2) the Court found that the parties did not agree to "reasonable/market rent," and that such a term was contrary to the 2007 Lease Modification's terms and the expectations of the parties; (3) the Court set rent for the premises, but did so based on the parties' agreement rather than based on market conditions; (4) the Court found that the Tenant exercised option rights, but that the rent term was not settled; and (5) the Court declined to declare any amount requiring to be deposited while the case was pending. As such, the Court's findings and conclusions rule against Tenant on five of the six topics Tenant sought.

Moreover, the one issue in which Tenant could be viewed as prevailing—seeking a declaration of the rent for the premises for the option period—was also sought by Landlord, who asserted a counterclaim seeking a declaration "that there is no further need to negotiate the base monthly rent as claimed by [Tenant], and that for the first option period, [Tenant] is required to pay the sum of base rental as agreed by [Tenant]'s agent and attorney, with annual monthly increases in the amount of \$210.00 per month." Countercl. ¶ 55. In other words, both parties sought a declaration of what rent should apply to the option period, with the one difference being that Tenant asserted that the rent should be ascertained based on market conditions, and Landlord asserted that it should be ascertained based on the agreement of the parties. The Court did in fact set rent for the option period based on the agreement of the parties. As such, if the Court's decision could be viewed as granting Tenant's requested declaration in any way, it can only be construed as granting Landlord's requested declaration as well.

The judgment should therefore be amended to rule in Landlord's favor on Tenant's declaratory relief claim, as Tenant did not receive the vast majority of the declarations this claim for relief sought, and the only declaration which the Court did grant was granted in the fashion that Landlord requested.

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Landlord's Declaratory Relief Counterclaim. 2.

Similarly, the judgment should be amended to be in Landlord's favor on Landlord's own declaratory relief counterclaim. Landlord's counterclaim asserted a claim for declaratory relief which sought declarations on the following topics: (1) that Tenant's authorized agent and attorney exercised the option, and that the exercise of the option was ratified in all respects including voluntary payment of rental increases by Tenant; (2) that there is no further need to negotiate the base monthly rent due to the agreement reached; (3) that the 1996 Option Agreement extended only to the two option periods offered in 2001 and 2006 and that the "market rent" term did not extend beyond those two option periods; (4) that the three options provided by the 2007 Lease Modification were subject to negotiations of rental increases; (5) that the 2007 Lease Modification did not contemplate decreases in base rent, nor rent based on "market rate;" and (6) that, in the alternative, Tenant failed to comply with the conditions necessary for exercise of the option, resulting in Tenant being a month-to-month holdover tenant. Countercl. ¶¶ 47–55.

As noted above, the Court's findings and conclusions repeatedly coincide with Landlord's requested declarations. The Court found an agreement was reached as to rent, and that no further negotiation was necessary based on that agreement. Findings of Fact and Conclusions of Law ¶¶ 49-50, 60, 89, 105. The Court found that both options provided in the 1997 Option Agreement were exercised, and that the "market rent" term did not apply to the future options, which instead were subject only to rental increases. Id. ¶¶ 18-19, 26, 31, 60, 73-75, 86, 88-89, 105. These findings and conclusions provide the declarations that Landlord sought, with the sole exception of the alternative claim for Tenant to be declared a holdover tenant due to the lack of an enforceable option. All things considered, Landlord prevailed in receiving judicial declarations on five of the six topics requested. As such, the judgment in Tenant's favor on Landlord's declaratory relief counterclaim is clearly erroneous, and must be amended.

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IV. CONCLUSION

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The judgment entered in this case, while largely arriving at the correct outcome, contains three significant errors that must be corrected. First, Nevada law generally precludes an award of attorneys' fees as special damages in a contractual breach of implied covenant claim, and even when those fees are recoverable, such damages must be pleaded and proven by competent evidence at trial. Because Tenant failed to present any evidence of attorneys' fees it incurred, the Court's award of attorneys' fees as special damages is impermissible. Moreover, as the judgment awards Tenant the full extent of contract damages as a result of its breach of contract claim, the judgment must be amended to award zero dollars, or only nominal damages for the breach of implied covenant claim. Second, the judgment contains a math error in calculating that amount of underpaid rent, and as a result awards an amount of damages on Landlord's breach of contract claim that is contrary to the evidence, and the judgment must be amended to award the correct amount according to the Court's findings and conclusions. Finally, in light of the Court's findings and conclusions nearly universally adopting Landlord's theory of the case and the factual declarations which Landlord sought, the judgment should be amended to reflect judgment in Landlord's favor on Tenant's declaratory relief claims, as well as Landlord's declaratory relief counterclaims. In the alternative, because the judgment may be construed as granting one of Tenant's requested declarations (albeit in Landlord's favor), the judgment should, at least, be altered to reflect judgment in Landlord's favor on Landlord's declaratory relief claim, even if judgment is entered in Tenant's favor on Tenant's declaratory relief claim.

Dated this 27th day of December, 2019.

MARQUIS AURBACH COFFING

By /s/ Terry A. Moore
Terry A. Moore, Esq.
Nevada Bar No. 7831
Collin M. Jayne, Esq.
Nevada Bar No. 13899
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for
Defendant/Counterclaimant
Tropicana Investments, LLC

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MARQUIS AURBACH COFFING

Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

I hereby certify that the foregoing <u>DEFENDANT/COUNTERCLAIMANT</u> TROPICANA INVESTMENTS, LLC'S MOTION TO ALTER OR AMEND JUDGMENT 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:⁴

Mario Lovato

mpl@lovatolaw.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Cally Hatfield an employee of Marquis Aurbach Coffing

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⁴ 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).

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1 **Marquis Aurbach Coffing** Terry A. Moore, Esq. 2 Nevada Bar No. 7831 10001 Park Run Drive 3 Las Vegas, Nevada 89145 Telephone: (702) 382-0711 Facsimile: (702) 382-5816 4 tmoore@maclaw.com 5 Attorneys for Tropicana Investments, LLC **DISTRICT COURT** 6 7 **CLARK COUNTY, NEVADA** 8 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation, 9 Case No.: A-18-785311-B Dept. No.: Plaintiff, XI 10 VS. 11 TROPICANA INVESTMENTS, LLC, a 12 California limited liability company, 10001 Park Run Drive Las Vegas, Nevada 89145 382-0711 FAX: (702) 382-5816 13 Defendant. 14 15 TROPICANA INVESTMENTS, LLC, a California limited liability company, 16 Counterclaimant, 17 VS. 18 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada 19 corporation; STUART VINCENT, an individual; JEFFREY B. VINCENT, an individual; JEFF 20 WHITE, an individual; JOHN DOES I-X; and ROE CORPORATIONS, 21 Counterdefendants. 22 23 24 25 26

Electronically Filed 12/27/2019 11:28 AM Steven D. Grierson **CLERK OF THE COURT**

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

Page 1 of 3

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

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

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

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).

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DISTRICT COURT

CLARK COUNTY, NEVADA

JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation. Case No.: A-18-785311-B Plaintiff, Dept.: XI VS. TROPICANA INVESTMENTS, LLC, a California limited liability company, Defendant. 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; having considered the oral and written arguments of counsel, and with the intent of

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.

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

FINDINGS OF FACT

- Plaintiff JSJBD Corp ("JSJBD") is a Nevada corporation doing business in Clark County, Nevada.
- 2. Defendant Tropicana Investments, LLC ("Tropicana Investments") is a California limited liability company doing business in Clark County, Nevada.
 - 3. JSJBD was formed on March 8, 2007.
- 4. JSJBD was formerly named JSJ, LLC that filed Articles of Conversion under NRS 92A.205 with the Nevada Secretary of State on March 6, 2014, which changed the name of the entity and converted it to a corporation.
- 5. Tropicana Investments owns the commercial shopping center commonly referred to as Tropicana Plaza located at 3430 East Tropicana Avenue, Las Vegas, Nevada, 89121.
- 6. JSJBD does business as Blue Dog's Pub, and owns and operates a tavern in Suites 27, 28, and 29 comprising a space of approximately 4,200 square feet ("Subject Premises") in Tropicana Plaza.
- 7. On or about July 9, 1996, Walter L. Schwartz ("Schwartz"), as lessor, and Mark S. Van Aken ("Van Aken"), as tenant, entered into a written Lease ("Lease") for the Subject Premises.

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

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

- 8. Tropicana Investments is the successor-in-interest and current landlord under the Lease entered into on July 9, 1996, and various Amendments/Addenda, for the Subject Premises.
- 9. Plaintiff is the successor-in-interest and current tenant under the Lease, and various Amendments/Addenda for the Subject Premises.
- 10. The Lease provided for a tenancy lasting for a term of five years and five months, commencing April 1, 1996, and terminating on August 31, 2001.
- 11. During the initial term of the Lease, from April 1, 1996 to August 31, 2001, the minimum monthly rent began at \$3,150 per month, and this monthly rent increased by \$210 at the beginning of every year of the five-year and five month term.
- 12. The 1996 Lease referenced \$500 per month in "estimated" common area maintenance ('CAM") charges, which were subject to the quarterly accounting of actual CAM costs.
 - 13. The CAM costs are defined in the Lease:

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

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

Common Areas and Parking Lot. A reasonable allowance to Landlord for Landlord's 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.

(various errors in original).

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

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

- 15. Under paragraph 9 of the Lease, Roof expenses are carved-out and made the sole obligation of the Landlord. The Lease states: "Landlord shall at his sole cost and expense, keep and maintain in good repair, (excluding painting) of extension walls and roof repairs" (emphasis added).
 - 16. Section 24 of the Lease contains an attorney's fees provision.⁴
- 17. The Lease did not include any options to extend the term of the Lease. A separate Option Agreement was executed by the original landlord and tenant ("1996 Option Agreement").
- 18. The 1996 Option Agreement provided two (2) five-year options if the tenant was in full compliance with the terms of the Lease. The first option provided that the tenant would be entitled to renew the Lease for a five-year period commencing on September 1, 2001. The second option provided that the tenant would be entitled to renew the Lease for a second five-year period commencing on September 1, 2006.
- 19. The options provided by the 1996 Option Agreement were to be "at a market rental rate and terms as agreed by Landlord and Tenant."
- 20. On April 16, 2001, Van Aken exercised the first option under the 1996 Option Agreement. As a result of the exercise of that Option, an Amendment to Retail Building Lease Dated July 9, 1996 ("2001 Amendment") was executed. The 2001 Amendment extended the Lease term for five (5) years, from September 1, 2001 through August 31, 2006. During the extended term, the parties agreed that the base rent would begin at \$5,670 per month, and that this

In the event the Landlord finds it necessary to retain an attorney in connection with the 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.

⁴ That section states:

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

- 21. Paragraph 4 of the 2001 Amendment changed the documentation and accounting for CAM expenses from quarterly to annual.
- 22. On March 7, 2006, Van Aken exercised the second option under the 1996 Option Agreement. The Addendum to Retail Building Lease Dated July 9, 1996 ("2006 Addendum") extended the tenancy for a term of five (5) years, from September 1, 2006 through August 31, 2011. During the extended term, it was agreed that the base rent would begin at \$6,720 per month for the 2006–2007 year, and that this monthly rent would increase by \$210 at the beginning of every year, ending at \$7,560 per month for the final year.
- 23. The 2006 Addendum gave Van Aken an option to extend the Lease term for "one (1) final extension term of five (5) years," to begin on September 1, 2011, and provided that such extension term would be "under terms and conditions to be negotiated."
- 24. In approximately 2007, Van Aken, sold the assets of his bar located in the Subject Premises to JSJ, LLC.
- 25. Defendant, Van Aken, as assignor, and Plaintiff as assignee, entered into a Lease Assignment and Modification agreement executed by all parties in June 2007 ("2007 Lease Modification").
- 26. As part of the negotiations leading up to the 2007 Lease Modification, JSJ, LLC attempted to add a term of "fair market value" for the rental rate in the Lease. The addition of this term was rejected by Defendant.
- 27. After the Defendant rejected "fair market value" as a term, Plaintiff signed the 2007 Lease Modification with the wording requiring "rental increases."

- 28. The 2007 Lease Modification stated that it is the desire of all parties to allow Van Aken to assign the Lease, the 2001 Amendment, and 2006 Addendum to the Assignee, Plaintiff, under terms and conditions as set forth in the 2007 Lease Modification.
- 29. The 2007 Lease Modification provided a new provision conditionally granting the Plaintiff three additional options to extend the Lease by five years at a time:

...Landlord agrees to conditionally grant Assignee, J.S.J., LLC, three (3) additional five (5) year options to renew the term of the Lease under terms and conditions, including but not limited to 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.

- 30. The 2007 Lease Modification regarding the three five-year options does not include the term "fair market value."
- 31. The 2007 Lease Modification was entered into after the exercise of all prior options by Plaintiff's predecessor in interest.
- 32. The 2007 Lease Modification changed the "estimated" CAM charge to \$1,176 per month, but did not otherwise alter or change the accounting obligation of Defendant and/or the other obligations of Defendant to properly charge for actual CAM expenses under the Lease.
- 33. The 2007 Lease Modification provided that Van Aken would pay Defendant ten percent (10%) of the total sales price of the business as consideration for the Defendant offering Plaintiff the three additional five-year options.
- 34. Concurrently with the execution of the 2007 Lease Modification, the three managers of JSJ, LLC—Jeffrey Vincent, Stuart Vincent, and Jeff White—each executed a personal guaranty of JSJ, LLC's obligations under the Lease.

- 35. On or about February 22, 2011, Defendant and Plaintiff entered into a written Addendum II to Retail Building Lease ("2011 Addendum") which gave effect to the option⁵ exercised by Plaintiff and set forth the amount of rent that was agreed upon for the term.
- 36. The 2011 Addendum extended the term of the Lease from September 1, 2011 to August 31, 2016.
- 37. In the 2011 Addendum, Defendant and Plaintiff agreed that the monthly rent for the first two years of the first option term (September 2011 through August 2012, and September 2012 through August 2013) would remain at the same rate as was paid the prior year (September 2010 through August 2011), and that the regular annual increases of monthly rent by \$210 would resume thereafter at the beginning of each of the remaining three (3) years of the option (from September 1, 2013, through August 31, 2016). Monthly rent remained at \$7,560 through August 31, 2013; increased by \$210 on September 1, 2013, to \$7,770; increased by \$210 on September 1, 2014 to \$7,980; and increased by \$210 on September 1, 2015 to \$8,190.
- 38. On February 26, 2016, Plaintiff notified Defendant that it was exercising its option available under the 2007 Lease Modification, to commence on September 1, 2016.
- 39. During the negotiations on the terms of the modification to implement the option, Plaintiff requested a \$2,500 reduction in monthly rent a 30% reduction in the rental rate.
 - 40. Defendant did not accept this request.
- 41. Defendant informed Plaintiff that, instead of exercising another addenda or amendment as the parties had done in the past to effectuate the exercise of options, Defendant preferred to execute an entirely new form of Lease to replace the outdated form of lease.

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

- 42. On June 15, 2016, Defendant's authorized agent, Commercial Investment Real Estate Services, extended an offer in writing to Plaintiff that, among other terms, proposed the amount of base rent for the initial year of the lease extension to remain the same as the previous year (2015–2016), which amounted to \$8,190 per month with 3% annual increases thereafter.
- 43. On August 2, 2016, Lesley B. Miller, Esq. of the law firm Kaempfer Crowell, notified Landlord that she represented Plaintiff. Miller requested that the payment of base rent for the first year of the five-year renewal term would remain the same as the previous year (9/1/2015–8/31/2016).
- 44. On August 31, 2016, Miller again reiterated the exercise of the option rights under the Lease to renew for an additional five-year term. Miller attached a proposed amendment to the Lease which provided for the following rent schedule:

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09/01/16 to 08/31/17 - $8,400 per month, $100,500 per annum 09/01/17 to 08/31/18 - $8,400 per month, $100,500 per annum 09/01/18 to 08/31/19 - $8,610 per month, $103,320 per annum 09/01/19 to 08/31/20 - $8,820 per month, $105,840 per annum 09/01/20 to 08/31/21 - $9,030 per month, $108,360 per annum
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- 45. On September 7, 2016, Defendant's counsel, John M. Sacco, Esq., sent correspondence to Miller discussing several other issues including: parking, CAMs, security patrols, and issues related to personal guaranties. No mention of rejecting the amount of rent was set forth in Sacco's letter. He confirmed that the parking, CAMs, security patrols and guaranty-related issues were the "final matters" that the parties were attempting to work through.
- 46. Sacco called Miller to let her know that the Defendant agreed with the rent schedule as she had proposed in her August 31st addendum and he reiterated that he thought the other issues set forth in his letter were the final matters that needed to be resolved.
- 47. Consistent with the parties' agreement, the Plaintiff began paying \$8,400 per month in September 2016. The Plaintiff paid this sum through August 2017. These monthly

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

- 48. At no point during the first year of the Option Term (9/1/16 8/31/17) did the Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it was making such payments to preserve its rights under the option agreements.
- 49. Although the parties reached an agreement on the rent amounts for the option term, and Plaintiff then paid consistent with that agreement, Plaintiff and Defendant, through their respective counsel, exchanged drafts of a proposed updated standardized lease form during the next twelve months in an attempt to update the remaining non-rent portions of the twenty-year old Lease.
- 50. During that time frame, the parties' conduct was consistent with the parties having agreed to the rent term of the Option, as Plaintiff paid the full amount of rent in accordance with the agreement reached in September 2016, Plaintiff continuously occupied the Premises, and both Plaintiff and Defendant performed their obligations under the Lease without protest or dispute.
- 51. On August 7, 2017, Plaintiff, through new counsel, Lucas A. Grower, Esq., sent Defendant correspondence advising that Grower would be representing Plaintiff.
- 52. On August 31, 2017, the Plaintiff, through its new counsel, demanded that Lease negotiations be restarted for the base rent on the basis of "market rental rate and terms".
- 53. Defendant's attorney disagreed with Plaintiff's new position, maintaining that the parties had reached an agreement as to rent, and that the option did not provide for negotiations based on market rental rate.

- 54. Beginning in September of 2017, Plaintiff continued to pay monthly rent of \$8,400. Payment of this amount was consistent with the second year of the rent schedule that had been agreed upon by the parties.
- 55. At no point during the second year of the Option Term (9/1/17 8/31/18) did the Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it was making such payments to preserve its rights under the option agreements.
- 56. On November 30, 2018, 27 months after the Option term commenced, Plaintiff filed the instant lawsuit.
- 57. At trial, Plaintiff presented an expert witness, Matthew Lubawy, who testified to his opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was \$1.05 per square foot per month, or monthly rent of \$4,410.
- 58. Defendant presented an expert witness, Charles E. Jack IV, who testified to his opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was \$1.75 per square foot per month, or monthly rent of \$7,350.
- 59. The Court determines that both expert witnesses provided credible testimony. However, the Court finds that the comparables utilized by Jack were more applicable to the conditions of the Subject Premises.
- 60. \$8,400 per month is not an unreasonable amount of rent for the option period, as this comports with the terms of the option exercised by Plaintiff, as well as the understanding of the parties that rent would increase during the option periods, and reflects the schedule Plaintiff's attorneys proposed and Defendant accepted.

- 61. After receiving Jack's expert report that opined that \$1.75 per square foot per month was the market rental rate, Plaintiff reduced the amount it was paying monthly from August 2019 through November 2019, from \$8400 to \$5150.
- 62. Defendant did not present sufficient evidence that Plaintiff was previously undercharged for its water usage within the Leased Premises. The Court finds that the methodology utilized by Defendant in determining the amount of the Plaintiff's pro-rata water usage was not reasonable, and not credible.
- 63. From the date of the assignment of the Lease in approximately 2007 to present, Plaintiff has paid the "estimated" CAM of \$1,176 for each and every month.
- 64. Defendant did not present sufficient evidence that it incurred \$239,803 in CAM expenses from 2012 through 2018 that were not previously assessed to the Plaintiff.
- 65. The list of items to be included in CAMS does not include the category used by Defendant for "reserves".
- 66. Defendant has failed to provide a CAM accounting including the accounting of the various "reserves" referenced in the annual Statements produced by Defendant in this case.
- 67. As a result of Defendants inclusion of "reserve" funds in the CAMS, Plaintiff has overpaid the CAM expense and is entitled to reimbursement.
- 68. Defendant did not breach the Lease by failing to provide quarterly accounting CAM costs as that provision was modified in writing by the 2001 Amendment to an annual accounting.
- 69. Defendant has charged amounts in excess of the CAM charges, for which restitution and reimbursement should be made to Plaintiff.
- 70. Defendant has not breached its obligation to repair and maintain the premises, including the roof, the HVAC system, and other portions of the premises.

- 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.

- 79. The elements of a claim for breach of contract are: (1) the parties entered into a valid and existing contract; (2) Plaintiff performed or was excused from performance; (3) Defendant breached; and (4) Plaintiff sustained damages as a result of the breach.
- 80. A contract must contain all essential terms to be enforceable, and rent is an essential term of an option agreement.
- 81. Interpretation of a contract is a question of law. The Court looks at the plain language in the contract.
- 82. Nevada has recognized an exception for a lease extension option containing all terms except for rent, holding that such an option should be enforced at an agreed rent or at a court-fixed reasonable rent. *Cassinari v. Mapes*, 91 Nev. 778, 781 (1975).
- 83. A commercial tenant may affirm the option rights and seek judicial determination of the amount of rent where the parties have been unable to agree. *Cassinari* at 781.
- 84. The terms of the 2007 Lease Modification are plain and unambiguous and may be interpreted as a matter of law. Under these clear terms, the five-year options were expressly and unambiguously made conditional upon "terms and conditions, including but not limited to rental increases, to be negotiated."
- 85. The language in the 2007 Lease Modification related to rent after the execution of the Option is unambiguous.
- 86. As the Plaintiff contends that the parties failed to come to an agreement as to the amount of rent for the option period beginning September 1, 2016, the Court is empowered to declare the amount of rent applicable to that option period. The evidence and the terms of the 2007 Lease Modification do not support Plaintiff's position that the contract permits a lower "fair market value" to be established.

- 87. While there is some evidence that the Plaintiff attempted to change the terms of the proposed rent schedule in July 2017 to reduce the amount of rent for the first year, the evidence shows that Plaintiff never actually paid this lower amount.
- 88. The language of the 2007 Lease Modification states that the rent for the option period would be "under terms and conditions, including but not limited to rental increases to be negotiated." The parties agree that all essential terms other than rent are provided elsewhere in the 2007 Lease Modification, leaving only the rent to be negotiated. Thus, if no agreement was reached as to rent, all essential terms of the option are present except the rental rate, and *Cassinari* would apply to render the option enforceable based on a reasonable rental amount to be determined by this Court.
- 89. Based on the facts presented, the Court determines that an agreement was reached and that the reasonable rent is \$8,400 per month for the first two years of the second option term under the 2007 Lease Modification increasing by \$210 every year starting on September 1, 2018. The Plaintiff agreed to the 2007 Lease Modification option language which requires that any options be based on "rental increases," so it would not be reasonable for rent to decrease.
- 90. The rent agreed to by the parties and reflected in this schedule based upon the evidence before the Court, reflects a reasonable amount of rent under *Cassinari*.
- 91. After hearing and weighing the evidence the Court sets the rent as the schedule agreed to and partially performed by the parties:

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09/01/16 to 08/31/17 - $8,400 per month, $100,500 per annum 09/01/17 to 08/31/18 - $8,400 per month, $100,500 per annum 09/01/18 to 08/31/19 - $8,610 per month, $103,320 per annum 09/01/19 to 08/31/20 - $8,820 per month, $105,840 per annum 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

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	Less	Revised	Square	Plaintiffs	Less	Difference
	Expense	Disallowed	Operating	Foot	Pro Rata	Payments	
		Reserve	Expense	Rate	Share	Made	
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

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.

- 99. The elements of a claim for breach of the implied covenant of good faith and fair dealing are: (1) Plaintiff and defendant were parties to a contract; (2) Defendant owed a duty of good faith to plaintiff; (3) Defendant breached that duty by performance in a manner that was unfaithful to the purpose of the contract; and (4) Plaintiff's justified expectations were thus denied.
 - 100. In every contract there is an implied promise of good faith and fair dealing.
- 101. Where the terms of a contract are literally complied with, but one party to the contract deliberately contravenes the intention and spirit of the contract, that party can incur liability for breach of the implied covenant of good faith and fair dealing.
- 102. When one party performs a contract in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied, damages may be awarded against the party who does not act in good faith.
- 103. Whether the controlling party's actions fall outside the reasonable expectations of the dependent party is determined by the various factors and special circumstances that shape these expectations.
- 104. The use of reserves as part of the CAM expenses is a breach of the covenant of good faith and fair dealing.
- 105. Substantial evidence was submitted establishing beyond a preponderance of the evidence that, based on the contractual language negotiated and agreed to by the parties as part of the 2007 Lease Modification, as well as the subsequent negotiations and conduct of the parties, the appropriate rent applicable to the option period cannot be based on market rental rate or fair market value.
- 106. The doctrines of part performance and/or estoppel preclude the Plaintiff from arguing that no agreement existed. In general, principles of part performance and/or estoppel

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

- of all relevant facts. Plaintiff's conduct of paying this amount of rent was designed to be relied upon, in that Plaintiff intended for Defendant to accept the full amount of rent as payment under the Lease, in exchange for being allowed to continue to occupy the Premises. Plaintiff's significant delay in asserting any dispute or protest as to the amounts being paid demonstrate the Defendant had no idea of Plaintiff's purported hidden understanding that it did not agree to the rent. Defendant detrimentally relied on Plaintiff's position, as Defendant kept the property off the market instead of attempting to find a new tenant willing to pay full rent. The Plaintiff is estopped from now taking a contrary position as to the amount of rent that Plaintiff offered, agreed to, and did, in fact, perform.
- 108. As there were good faith disputes related to the amount of rent for the option period presented for determination to the Court, the Court finds that there has been no breach of the implied covenant of good faith and fair dealing on that issue.
- 109. Judgment in Defendant's favor is appropriate on Defendant's counterclaim for breach of Lease, as Plaintiff's failure to pay the agreed-upon amount of rent from August 2019 through November 2019 constituted a breach of Plaintiff's obligations under the Lease and Counterdefendants' obligations under the Guaranties.
- 110. If any conclusions of law are properly findings of fact, they shall be treated as if appropriately identified and designated.

Based upon the foregoing Findings of Fact and Conclusions of Law

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

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

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

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

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

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

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

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

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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	41.					
6	DATED this 5 th day of December, 2019.					
7						
8	Salone					
9	Elizabeth Gonzalez, District Court Judge					
10	Cartificate of Starting					
11	Certificate of Service					
12	I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of 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 1 st 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):					
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CLERK OF THE COURT 1 **Marquis Aurbach Coffing** Terry A. Moore, Esq. 2 Nevada Bar No. 7831 Collin M. Jayne, Esq. 3 Nevada Bar No. 13899 10001 Park Run Drive 4 Las Vegas, Nevada 89145 Telephone: (702) 382-0711 5 Facsimile: (702) 382-5816 tmoore@maclaw.com 6 cjayne@maclaw.com Attorneys for Tropicana Investments, LLC 7 DISTRICT COURT 8 **CLARK COUNTY, NEVADA** 9 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada 10 corporation, A-18-785311-B Case No.: Plaintiff, Dept. No.: XI11 12 VS. TROPICANA INVESTMENTS, LLC, a 13 California limited liability company, 14 Defendant. 15 TROPICANA INVESTMENTS, LLC, a **DEFENDANT/COUNTERCLAIMANT** TROPICANA INVESTMENTS LLC'S 16 California limited liability company, **OPPOSITION TO PLAINTIFF JSJBD** 17 Counterclaimant, CORP'S MOTION TO RETAX COSTS 18 VS. 19 Hearing: January 17, 2020 (In Chambers) JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation; STUART VINCENT, an individual; 20 JEFFREY B. VINCENT, an individual; JEFF WHITE, an individual; JOHN DOES I-X; and 21 ROE CORPORATIONS, 22 Counterdefendants. 23 Defendant/Counterclaimant Tropicana Investments, LLC (hereinafter "Tropicana") by 24 and through its attorneys of record, the law firm of Marquis Aurbach Coffing, hereby submits 25 their Opposition to JSJBD Corp's Motion to Retax Costs. This Opposition is made and based 26 upon all papers, pleadings and records on file herein, the following Memorandum of Points and 27

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Authorities, and any oral argument allowed by the Court as the time of hearing in this matter.

Dated this 27th day of December, 2019.

MARQUIS AURBACH COFFING

/s/ Terry A. Moore Terry A. Moore, Esq. Nevada Bar No. 7831 Collin M. Javne, Esq. Nevada Bar No. 13899 10001 Park Run Drive Las Vegas, Nevada 89145 Attorneys for Tropicana Investments, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION I.

Following a one-week trial predominantly concerning the amount of rent applicable to the lease option period, this Court issued findings of fact and conclusions of law ("FFCL") rejecting each of Plaintiff JSJBD Corp. ("Tenant")'s arguments as to the rent being based on a "reasonable rate" or "fair market rent." Instead, the Court's FFCL adopted Defendant Tropicana Investments ("Landlord")'s theory of the case, finding that the parties agreed on a rent schedule for the option period, that Tenant performed in accordance with that agreement for two years, and further that Tenant breached the Lease by failing to make rent payments in accordance with that agreement beginning in 2018. While the Court found that Landlord over-charged for CAMs to a degree, the Court's award of damages to the Landlord for breach of the lease surpasses the damages awarded to Tenant by approximately fourfold. As such, Landlord prevailed on nearly every issue in this case, including the primary dispute, and was awarded the largest net damages Therefore, Landlord submitted a verified memorandum of costs including detailed award.

As analyzed in detail in Landlord's concurrently filed Motion to Alter or Amend Judgment and Motion for Attorney's Fees, the Court's Findings of Fact and Conclusions of Law erroneously awarded attorney's fees as special damages for Tenant's breach of implied covenant claim even though Tenant failed to plead or prove attorney's fees as special damages, and that portion of the judgment must be amended. Once this error of law is corrected, the judgment will result in a greater monetary award for Landlord than for Tenant.

documentary evidence of each cost incurred and a declaration of Landlord's counsel stating that all claimed costs were reasonable, necessary, and actually incurred in this action.

Despite Landlord plainly being the prevailing party here, Tenant filed a Motion to Retax which presumes that Landlord actually did not prevail, with no supporting analysis for this conclusion. Further, Tenant's Motion to Retax ignores that each of the costs sought by Landlord are provided for by NRS 18.005, and it fails to set forth any meritorious argument or evidence disputing Landlord's evidence establishing that each cost was reasonable, necessary, and actually incurred. As such, the Court should deny the Motion to Retax and award Landlord all costs detailed in the verified memorandum of costs.

II. <u>LEGAL ARGUMENT</u>

A. LANDLORD IS THE PREVAILING PARTY.

First, there can be no question that Landlord is the prevailing party in this case, and thus that Landlord is entitled to recover its costs of litigation under NRS 18.020. Tenant's attempt to reframe the primary issues of the case in its preferred image is unpersuasive, and relies on blatant misstatements of the claims at issue and the result of the trial. Regardless, there can be no dispute that Landlord received the greatest monetary award, rendering Landlord the prevailing party as a matter of law. Indeed, the assertion by Tenant that the Landlord maintained its attempt to evict the tenant through the trial is belied by the actual evidence and argument presented during the trial, all of which the Court is well aware of. Accordingly, the Court should summarily disregard the Tenant's attempt at revisionist history as nothing more than the red herring that it truly is.

Nevada law provides that costs "must be allowed of course to the prevailing party" in almost all civil cases, including actions for the recovery of possessory rights of real property, or for recovery of money damages in excess of \$2,500. NRS 18.020(1), (3). To be considered a "prevailing party," a party must "succeed[] on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Valley Electric Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005). Further, the judgment awarded to the prevailing party must be monetary in nature. *Id*.

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

1. <u>After Offsetting the Monetary Judgments, Landlord is the Prevailing Party.</u>

First, Landlord is the prevailing party for all intents and purposes in this case because the Court awarded a greater monetary judgment to Landlord than it did to Tenant. As Nevada requires that the Court offset these monetary judgments before determining the prevailing party, the Court must conclude that Landlord is the prevailing party here.

In cases where both sides are awarded monetary judgments, the district court should offset all awards on both sides and then determine, based on the net award, which party prevailed for the purposes of awarding costs to a prevailing party. *Robert J. Gordon Constr. v. Meredith Steel*, 91 Nev. 434, 537 P.2d 1199 (1975). In *Gordon*, the district court awarded a subcontractor plaintiff \$12,062.46 under a contract claim, and offset that award by \$975 in favor of the general contractor defendant due to a counterclaim for damaged equipment. *Id.* at 436–37, 537 P.2d at 1200. The district court then offset these awards to arrive at a "net award" to the subcontractor of \$11,087.46. *Id.* The Nevada Supreme Court implicitly approved of this approach, stating that the determination of whether a court may award attorney's fees to a prevailing party under NRS 18.010 must be based on "the total amount of the judgment," and concluded that the net damages awarded by the district court did not warrant an award of attorney's fees. *Id.* at 438–39, 537 P.2d at 1202.

Nevada's "offset" approach to this issue was more expressly detailed in *Parodi v. Budetti*, 115 Nev. 236, 984 P.2d 172 (1999). In *Parodi*, a matter including several consolidated cases, the Court was asked to consider whether a district court should look at parties' distinct claims and determine awards of costs separately for each claim and then offset the awards of costs and fees against each other; or rather whether the claims should be considered "as a whole and let the total net award govern the outcome [of the prevailing party analysis] of NRS 18.010 and 18.020." *Id.* The Court recognized that Nevada caselaw had previously supported the second "offset" approach for cases involving multiple counts or counterclaims. *Id.* (citing *Gordon* and *Peterson v. Freeman*, 86 Nev. 850, 477 P.2d 876 (1970)). The *Parodi* Court expressly adopted this approach as appropriate in such cases and in cases where multiple Page 4 of 14

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lawsuits have been consolidated. Thus, once all damage awards are offset against each other, the Court should then award costs to the prevailing party pursuant to NRS 18.020. *Id.* at 241–42, 984 P.2d at 175.

Here, both Landlord and Tenant were awarded monetary judgments. The Court awarded Tenant \$4,578 for its breach of contract claim, and Tenant is entitled to, at most, nominal damages on its breach of implied covenant claim.² Meanwhile, the Court awarded Landlord \$13,000³ for its breach of contract claim. In this scenario, as in *Gordon* and *Parodi*, the Court must offset the monetary awards to determine the prevailing party. *Id.* Thus, the "net damages" in this case amount to over \$8,000 being awarded to Landlord.

Tenant's Motion to Retax properly cites the "any significant issue" standard which is the first step in determining prevailing parties, but ignores Nevada law requiring that such a party receive a monetary judgment. *See Valley Electric Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005). Because Tenant did not receive a net monetary judgment, Tenant cannot be the prevailing party. Moreover, Tenant's argument would allow both Tenant and Landlord to be considered prevailing parties, as both parties prevailed on "significant issues." This approach was expressly rejected in *Parodi*, and thus disregards caselaw repeatedly affirming that a district court must find one party to be the prevailing party, based on the net result of all monetary judgments after offsetting all damage awards. Therefore, the Court must deny the motion to retax because Landlord, as the recipient of the greatest "net" award of damages and the party that truly won on the major issues, is plainly the prevailing party.

2. Landlord Prevailed on the Primary Disputed Issue.

Even if the Court were to ignore the straightforward mathematical analysis required by *Gordon* and *Parodi* to determine the prevailing party based on which party prevailed on the most "significant issue," the simple truth is that Landlord would still be the prevailing party here.

² See note 1, supra, and Landlord's Motion to Alter or Amend.

³ As discussed in Landlord's Motion to Alter or Amend, this amount appears to be based on a calculation error and should be increased to \$16,780, but this error does not impact the analysis of which party prevailed.

This case was always about settling the disagreement over rent applicable to the option period. The complaint was filed in November 2018, shortly after Tenant first paid an amount of rent inconsistent with the agreement reached by the parties and shortly after Landlord threatened eviction for Tenant's default by failing to pay rent in accordance with that agreement. The vast majority of the complaint was dedicated to Tenant's request for a judicial declaration that the rent for the option period should be determined based on "market rental rate." *See, e.g.* Compl. ¶¶ 10–13, 16–18, 21–51, 60–77, 80–84, 91–102. Put another way, of the 97 paragraphs of non-jurisdictional allegations in the complaint, about one in ten of these paragraphs concern issues *other than* rent: 7 concern allegations of Landlord's failure to maintain and repair the premises, 5 concern allegations of Landlord overcharging for CAMs, and 1 concerns Landlord's obligation to provide security for the common areas. At trial, Tenant abandoned its claims based on maintenance and repair, and offered zero evidence relating to the lack of security allegation. These other claims were plainly "afterthought" issues that the Tenant only included because it had already decided to sue based on the rent issue.

Meanwhile, Landlord's counterclaim was focused *entirely* on establishing rent for the option period at the amounts on which the parties had agreed, or in the alternative establishing that no agreement was reached, rendering the Tenant a holdover month-to-month tenant at the same rent as was in effect prior to the lease expiring. *See generally* Answer & Countercl. The sole mention of eviction in Landlord's counterclaim is the *last* cause of action which clearly sought restitution of the premises only in the event the Court did not grant the previously requested relief of resolving the disagreement over rent for the option period. Eviction was not, in any sense, the primary purpose of the counterclaims and, contrary to the Tenant's current arguments, at no point after the Complaint was filed did the Landlord assert or seek to have the Tenant evicted.

Moreover, after significant motion practice and 5 days of testimony and evidence, it was clear at trial that the most important issue being litigated was setting rent for the option period, and determining the proper method of calculating what that rent should be. Landlord submits that this Court is fully aware of the amount of time both sides spent on this issue as opposed to

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any other issue. Further, Landlord did *not* request eviction at trial, but rather requested that the Court set rent for the option period based on the agreement of the parties. As such, it is plain that the issue of setting rent for the option period was the primary issue in the case.

Further, the Court's ruling on this primary issue of rent for the option period was unquestionably in Landlord's favor. Tenant's entire case was based on its tortured interpretation that the option period was unequivocally required to be based solely on "market rental rate," and thus it requested that the Court declare the rent for the option period to be \$1.05 per square foot per month (the amount suggested by Tenant's appraisal). Landlord's defense, and Landlord's counterclaims for breach of lease, were based on the contrary interpretation that the parties had agreed on rent for the option period when a rent schedule was proposed by Tenant, which was agreed to by Landlord, and which was followed by Tenant for two years without protest. At the conclusion of trial, the Court entered judgment adopting—nearly verbatim—the facts and legal conclusions advanced by Landlord, and declaring that the option period was subject to the agreed-upon rent schedule, as Landlord requested. There can be no dispute that Landlord prevailed on this issue.

Finally, and most remarkably, Tenant argues that Landlord's counterclaims were "adjudged in favor of the Counterdefendants." JSJBD Motion to Retax at 2:26–27. This statement is clear misstatement of the text of the Court's FFCL, which states that judgment was entered "in favor of Counterclaimant Tropicana Investments, LLC, and against Counterdefendant JSJBD Corp, and all other Counterdefendants on the Second Claim for Relief for Breach of Lease Agreement for the underpayment of rent according to the schedule in the amount of \$13,000." FFCL at 18:19–24. This ruling was plainly in Landlord's favor, and further was directly contradictory to Tenant's requested relief.⁴ Tenant's refusal to recognize the Court's ruling does not change the fact that Landlord did, in fact, prevail on the issue of rent, and that

⁴ As is more fully addressed in Landlord's Motion to Alter or Amend, the judgment in favor of Tenant on both parties' declaratory relief claims is not supported by the Court's findings and conclusions, and thus appears to be an error.

damages were awarded to Landlord on that basis against both the Tenant and the 3 personal guarantors.

In sum, Landlord not only prevailed on its counterclaim for Breach of Contract against all counterdefendants, but the monetary recovery awarded to Landlord surpassed that awarded to Tenant. Thus, not only did Landlord prevail on the most "significant issue" in the case, but the "net damages" analysis required by *Gordon* and *Parodi* requires that Landlord be declared the prevailing party. As such, Landlord is entitled to recover all of its costs under NRS 18.020.

B. DEFENDANT'S COSTS ARE PROPERLY DOCUMENTED.

Apart from generally challenging Landlord's status as a prevailing party, Tenant's Motion to Retax raises specific issues with Landlord's evidence supporting various items in Landlord's verified memorandum of costs.

A prevailing party is entitled "of course" to an award of costs against the adverse party. NRS 18.020. Types of "costs" that are taxable are specifically enumerated under NRS 18.005 as sixteen separate categories, and one catch-all category of "[a]ny other reasonable and necessary expense incurred in connection with the action ... "NRS 18.005(17). This catch-all description matches the Nevada Supreme Court's direction that a prevailing party must establish, by "something more than a memorandum of costs," that all requested costs were "reasonable, necessary, and actually incurred" in the action. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). Thus, a district court should award all costs which are reasonable, necessary, and actually incurred in the action, when this is supported by some evidence beyond the verified memorandum of costs itself. *See id.*

Contrary to Tenant's bald assertions, none of Landlord's costs are "estimates," as Landlord has submitted documentary evidence showing the date, amount, and a description of each individual cost incurred, as well as an affidavit of counsel verifying these costs were reasonable, necessary, and actually incurred in this action. The documents and affidavit constitute "something more than a memorandum of costs," and in fact constitute *evidence* of the costs incurred, as required by Nevada law. *See Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). As such, Landlord has satisfied its burden of establishing

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an entitlement to recover all costs submitted in the verified memorandum of costs. Landlord will address each specific category raised in Tenant's Motion in turn:

- Process server for Stuart Vincent, Jeff Vincent, and Jeff White. These costs 1. are specifically enumerated as recoverable under NRS 18.005(7), and Landlord has attached documentation establishing the amount actually incurred. See Landlord's Verified Memorandum of Costs at Exhibits 2, 3, and 4. Tenant's peculiar attempt to differentiate between Landlord's meritorious counterclaims and the "main claims" between Tenant and Landlord is irrelevant and unsupported by any law, and is simply untrue as detailed above. Landlord was obligated to name the three personal guarantors of the Lease in its Breach of Contract counterclaim, and as the Court found in favor of Landlord and against all of the Counterdefendants on that claim, there can be no legitimate dispute that Landlord prevailed on that issue and that the costs associated with serving the Counterdefendants is a recoverable cost. Landlord is therefore entitled to all costs enumerated under NRS 18.005. NRS 18.020. These costs should not be retaxed.
- 2. Once again, these costs are specifically enumerated under NRS 18.005(12), and Landlord has supplied documentation establishing that the costs were reasonable, necessary, and actually incurred in this action. Recognizing that Landlord attached sufficient documentation of its copy costs, Tenant instead suggests that Landlord's 25-cent per page cost is not reasonable. Landlord submits to this Court's knowledge and experience that 25 cents per page is customary in the legal community and is not an unreasonable cost to pay for everyday printing. These costs should not be retaxed.
- Scanning. While not specifically enumerated under NRS 18.005, scanning of 3. documents is undeniably a necessity in the digital age where all documents must be electronically filed with the Court. Landlord's counsel's firm tracks all scanning and copying that is done for a given case, and Landlord's verified memorandum of costs contains evidence showing precise numbers of pages scanned and dates on which such scans occurred. This evidence establishes that Landlord charged a reasonable amount for scanning, as is customary in the community. Landlord has established that the scanning costs are reasonable and necessary

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expenses incurred in connection with the action, and thus are recoverable under NRS 18.005(17). These costs should not be retaxed.

- 4. Data Production discs, laser color copies, and long-distance telephone. These costs are also established as reasonable, necessary, and actually incurred by Landlord's documentary and testimonial evidence submitted with the verified memorandum of costs. On at least two occasions, Landlord disclosed electronic copies of documents pursuant to NRCP 16.1 and documents responsive to discovery requests on discs. Color copies are a necessary cost in any litigation, especially here where color photographs of the property were included in Plaintiff's disclosures, and in the reports of both experts. Long-distance telephone calls were required because Landlord's principal, Jeff Chauncey, resides in Florida, and thus these costs were necessarily incurred every time Landlord's attorneys needed to communicate with their client. Moreover, each of these categories of costs is documented with precision in Exhibit 1 to Defendant's verified memorandum of costs, and is affirmed to be reasonable, necessary, and actually incurred by the declaration of Defendant's counsel. These costs should not be retaxed
- Court reporter fees for non-appearances. This issue was previously brought to 5. the Court's attention in the context of Landlord's motion for sanctions filed October 1, 2018. As explained in detail in that motion, Landlord properly served deposition notices on Tenant's attorney for both Tenant's NRCP 30(b)(6) designee and for Bruce Eisman, and both witnesses failed to appear at their duly designated times. Specifically, (1) the 30(b)(6) designee's deposition was set for September 17, 2019, the witness failed to appear, and Tenant never communicated any objection to the date or request for a more convenient date; and (2) Bruce Eisman's deposition was set for August 30, 2019, the witness failed to appear, and Tenant never communicated any objection to that date or request for a more convenient date. The emails between counsel discussing the witnesses' failures to appear are attached as exhibits to Landlord's motion for sanctions; these emails show that Landlord's counsel followed all requirements of the Nevada Rules of Civil Procedure and common courtesy in attempting to set these depositions.

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Further, at the hearing on the motion for sanctions, the Court granted Landlord's request for sanctions, sanctioning Tenant's attorney \$2,000 in attorney's fees, and specifically addressed the Landlord's request for reimbursement of the costs associated with the non-appearances by stating that it was not awarding the fees for the court reporters, specifically because these costs are taxable at the end of the case. As the Court recognized at that time, court reporter fees are specifically enumerated under NRS 18.005(2) as taxable costs. Landlord has provided evidence establishing that these costs were reasonable, necessary, and actually incurred in this action, and the costs should not be retaxed.

- Holo Discovery trial exhibits. Tenant's Motion to Retax once again attempts to 6. draw a distinction between costs based on the particular claims on which Landlord prevailed. As detailed above, Nevada law does not support such a position, and instead requires that a single party be declared "prevailing" for the entire case, based on the net damages awarded. Moreover, the fact that the trial exhibits largely related to the CAMs issue is irrelevant to the standard for taxable costs, which is whether the cost was reasonable, necessary, and actually incurred. Tenant does not dispute that these costs—which are documented in detail—were reasonable, necessary, or actually incurred. Moreover, as the Court will recall, Landlord was obligated to shoulder this entire burden due to Tenant's attorney's failure to respond to Landlord's attempts to create a joint exhibit list, in contravention of this Court's instructions, which resulted in extreme delay and confusion throughout the trial. Indeed, it should be further noted that Tenant failed to notice and conduct an EDCR 2.67 conference prior to trial and did not even attempt to prepare a joint pretrial memorandum as the rules require. Landlord was the only party that followed the rules and timely complied with its obligations under those rules. Consequently, these costs should not be retaxed.
- 7. **Expert witness costs**. Tenant's Motion to Retax does not argue that the claimed cost of \$7,300 for Mr. Jack's expert testimony was unreasonable, unnecessary, or not actually incurred; rather, Tenant merely states that Landlord is limited to \$1,500 (with no citation to any authority). While Landlord agrees that, ordinarily, NRS 18.005(5) limits expert costs to \$1,500, the statute explicitly allows a court to allow costs in excess of that amount "after determining

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that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee." NRS 18.005(5). Indeed, the legal analysis for this issue that has been put forth by the Nevada Court of Appeals in *Frazier v. Drake* was analyzed in detail in Landlord's verified memorandum of costs. *See* Landlord's Verified Memorandum of Costs at 3:10–5:2. Each of these factors weighs in favor of a cost in excess of \$1,500, including the importance of Mr. Jack's testimony to Landlord's case; the degree to which Mr. Jack's testimony aided the trier of fact in deciding the case; the extent and nature of work performed by Mr. Jack; the independent investigation performed by Mr. Jack in preparing his rent analysis; the amount of time Mr. Jack spent in court, preparing his report, and preparing for trial; the fees charged by Mr. Jack; and the fees traditionally charged by comparable experts. Tenant has not even mentioned this analysis, and thus has not presented any cogent argument for the Court to disregard Landlord's valid basis for seeking the full \$7,300 incurred for Mr. Jack's testimony. These costs should not be retaxed.

8. Parking fees, runner fees, secretary of state fees, and undifferentiated filing fees. Tenant's Motion to Retax states simply that Landlord has provided "zero evidentiary support" for these costs. On the contrary, Landlord has provided a spreadsheet of costs incurred by Landlord's attorneys (exhibit 1 to verified memorandum) and an affidavit of counsel testifying that each such cost was reasonable, necessary, and actually incurred in this action. This evidence includes specific information as to the amounts of individual costs, when each cost was incurred, and a description of each cost. See, e.g. Landlord's Verified Memorandum of Costs at p. 39 (table showing costs for Secretary of State, including \$82.00 for certified copies of documents on 12/14/2018 and \$12.00 for JSJBD entity documents on 1/31/2019, for total cost of \$94.00). Parking fees were necessary and reasonable each time a hearing was held on this case. Runner fees were necessary and reasonable each time a motion or other filing was required to be sent to the Court or opposing counsel. Secretary of State fees were necessary and reasonable to obtain information related to JSJBD Corp. and its corporate conversion. Filing fees were necessary and reasonable for anything that Landlord had to file in the case, and moreover are specifically enumerated as taxable under NRS 18.005(1) and the Court may take judicial notice

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of the filing fees charged by the Court and documented in Odyssey. As such, Landlord has met its burden for showing that each of these costs is recoverable, and the motion should be denied.

Nevertheless, if Tenant does not think that the parking fees and Secretary of State fees have been properly documented, additional documentation of those parking receipts and Secretary of State fees are attached hereto as **Exhibit A and B** respectively.

III. CONCLUSION

Tenant's Motion to Retax is nothing more than a stubborn refusal to acknowledge that it lost, with no meritorious legal support for the requested relief. In reality, Nevada law requires the Court to find that Landlord was the prevailing party, and thus that Landlord is entitled to all reasonable and necessarily incurred costs which are properly documented. Tenant has little cogent analysis of the sufficiency of Landlord's evidence in support of the requested costs, and Landlord's verified memorandum of costs undeniably contains both thorough documentary and testimonial evidence that each and every cost was reasonable, necessary, and actually incurred in this action. As such, Landlord has met its burden of supporting its request for costs as prevailing party, and the Court should not retax any of Landlord's costs. The Motion must be denied.

Dated this 27th day of December, 2019.

MARQUIS AURBACH COFFING

Ву	/s/ Terry A. Moore	
Ī	Terry A. Moore, Esq.	
	Nevada Bar No. 7831	
	Collin M. Jayne, Esq.	
	Nevada Bar No. 13899	
	10001 Park Run Drive	
	Las Vegas, Nevada 89145	
	Attorneys for Tropicana	Investments,
	LLC	

MARQUIS AURBACH COFFING

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing <u>DEFENDANT/COUNTERCLAIMANT</u>

TROPICANA INVESTMENTS LLC'S OPPOSITION TO PLAINTIFF JSJBD CORP'S

MOTION TO RETAX COSTS 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:⁵

Mario Lovato: mpl@lovatolaw.com

/s/ Cally Hatfield
An employee of Marquis Aurbach Coffing

⁵ 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

LAZ Las Vegas City Centre Garage City Centre Garage 455 S. 3rd Street Las Vegas, Nevada 89101 (702) 419-8838

Date:

10:09 AM 08 Jul 2019

Receipt #:

94230604

Ticket #:

10074700

Arrived:

8:26 AM 08 Jul 2019

Departed:

10:09 AM 08 Jul 2019

Total Duration:

1 hr 43 mins

Parking Fee:

\$14.00

Tax

\$0.00

Total:

\$14.00

Payment Method:







12 FlashParking

LAZ Las Vegas City Centre Garage City Centre Garage 455 S. 3rd Street Las Vegas, Nevada 89101 (702) 419-8838

Date:

9 55 AM 09 Sep 2019

Receipt #:

102187010

Ticket #:

10094114

Arrived: 8:50 AM 09 Sep 2019

Total Duration:

Departed: 9:55 AM 09 Sep 2019

Parking Fee:

1 hr 5 mins

\$11.00

Tax

Total:

\$0.00 \$11.00

Payment Method: AMEX 1077



Powered By Flash Parking

2 FlashParking

LAZ Las Vegas City Centre Garage City Centre Garage 455 S. 3rd Street Las Vegas, Nevada 89101 (702) 419-8838

Date: 9:14 AM 02 Oct 2019

Receipt #:

105125268

Ticket #:

10102321

Arrived:

8:36 AM 02 Oct 2019

Departed: 9:14 AM 02 Oct 2019

Total Duration:

37 mins

Parking Fee:

\$8.00

Тах

\$0.00

Total: 💉

\$8.00

Payment Method: AMEX 1077





PFlashParking

LAZ Las Vegas City Centre Garage
City Centre Garage
455 S. 3rd Street
Las Vegas, Nevada 89101
(702) 419-8838

Date: 10:37 AM 09 Oct 2019
Receipt #: 106031664
Ticket #: 10104487
Arrived: 8:34 AM 09 Oct 2019
Departed: 10:37 AM 09 Oct 2019

Departed: 10:37 AM 09 Oct 2019
Total Duration: 2 hrs 3 mins
Parking Fee: \$17.00
Tax \$0.00

Total: \$17.00 Payment Method: AMEX 1077

Powered By Flash Parking

DFlashParking

LAZ Las Vegas City Centre Garage
City Centre Garage
455 S. 3rd Street
Las Vegas, Nevada 89101
(702) 419-8838

 Date:
 9:14 AM 04 Nov 2019

 Receipt #:
 109388486

 Ticket #:
 10113182

 Arrived:
 8:27 AM 04 Nov 2019

 Departed:
 9:14 AM 04 Nov 2019

 Total Duration:
 47 mins

 Parking Fee:
 \$8.00

 Tax
 \$0.00

 Payment Method:
 AMEX 1077



Powered By Tash Parking



LAZ Las Vegas City Centre Garage

City Centre Garage 455 S. 3rd Street Las Vegas, Nevada 89101

(702) 419-8838

Date: 10:16 AM 12 Nov 2019 110438854 Receipt #

Arrived: 8:37 AM 12 Nov 2019 Ticket #:

Fotal Duration: 1 hr 38 mins Departed: 10:15 AM 12 Nov 2019

\$14.00 Parking Fee:

\$0.00

\$14.00 Visa 8363 Payment Method:

Total: Tax

Powered By [2] Flash Parking

25.25.08

2 Flash Parking

LAZ Parking Las Vegas City Centre Garage City Centre Garage 455 S. 3rd Street

Las Vegas, Nevada 89101 (702) 419-8838 Date: 5:23 PM 18 Nov 2019 Receipt #: 111288958 Ticket #: 10117275 Arrived: 7:47 AM 18 Nov 2019

Departed: 5:23 PM 18 Nov 2019

Total Duration: 9 hrs 35 mins Parking Fee: \$23.00

\$0.00

\$23.00

Tax **Total:** Payment Method: AMEX 1077

Powered By Parking

LAZ Parking Las Vegas City Centre Garage Las Vegas, Nevada 89101 City Centre Garage 455 S. 3rd Street

Date: 5:16 PM 19 Nov 2019 111420807 Receipt.#:

(702) 419-8838

Arrived: 9:24 AM 19 Nov 2019 Ticket #:

Departed: 5:16 PM 19 Nov 2019 Total Duration: 7 hrs 52 mins

\$23.00 Parking Fee:

\$0.00

\$23.00

Total: Tax

Payment Method: AMEX 1077

Powered By PlashParking



LAZ Parking Las Vegas City Centre Garage

City Centre Garage 455 S. 3rd Street Las Vegas, Nevada 89101 (702) 419-8838

111556834 Receipt #: Ticket #:

Date: 5:09 PM 20 Nov 2019

Arrived: 9:03 AM 20 Nov 2019

Departed: 5:09 PM 20 Nov 2019 Total Duration:

8 hrs 5 mins Parking Fee:

\$23.00 \$0.00 \$23.00

Total:

Payment Method: AMEX 1077

Powered By Parking



LAZ Parking Las Vegas City Centre Garage

City Centre Garage 455 S. 3rd Street Las Vegas, Nevada 89101 (702) 419-8838 4:09 PM 21 Nov 2019

Arrived: 9:02 AM 21 Nov 2019 Ticket #:

Departed: 4 09 PM 21 Nov 2019

Total Duration:

Parking Fee:

\$0.00

Total:

(**己**FlashParking

City Centre Garage
455 S. 3rd Street
Las Vegas, Nevada 89101
(702) 419-8838

 Date:
 3:19 PM 22 Nov 2019

 Receipt #
 111824795

 Ticket #
 10119147

 Arrived:
 8:51 AM 22 Nov 2019

 Departed:
 3:19 PM 22 Nov 2019

 Total Duratio
 6 his 28 mins

 Parking Fee
 \$23.00

 Tax
 \$0.00

 Total:
 \$23.00

Payment Method: AMEX 1077

PLEASE TAKE TO EXIT

CREDIT OR EXACT

CHANGE ONLY AT EXIT



155UB # 1-000511 109:33 22 Nov 19 24.00 po

Exhibit B

STATE OF NEVADA

BARBARA K. CEGAVSKE

Secretary of State

KIMBERLEY PERONDI

Deputy Secretary for Commercial Recordings



202 N. Carson Street Carson City, NV 89701-4201 Telephone (775) 684-5708 Fax (775) 684-7138

Commercial Recordings Division

OFFICE OF THE SECRETARY OF STATE

MARQUIS & AURBACH 3430 E TROPICANA LAS VEGAS, NV 89121

Job:C20181214-0556 December 14, 2018

Special Handling Instructions: COPIES EMAIL ON 12/14/18 DJM

Charges

CIMI BOX					
Description	Document Number	Filing Date/Time	Qty	Price	Amount
Entity Copies	00011181066-34		26	\$2.00	\$52.00
Copies - Certification of	00011181066-34		1	\$30.00	\$30.00
Document					
Total					\$82.00

Payments

Laymonds					
Type	Description		Amount		
Billed	750037		\$82.00		
Total			\$82.00		
	edit Balance: \$0.00				

Job Contents:

NV Corp Certified Copy Request Cover Letter

MARQUIS & AURBACH 3430 E TROPICANA LAS VEGAS, NV 89121

STATE OF NEVADA

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SECRETARY OF STATE

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Electronically Filed 12/30/2019 11:27 PM Steven D. Grierson CLERK OF THE COURT 1 MARIO P. LOVATO Nevada Bar No. 7427 2 LOVATO LAW FIRM, P.C. 7465 W. Lake Mead Blvd. Ste. 100 3 Las Vegas, Nevada 89128 T: (702) 979-9047 4 mpl@lovatolaw.com 5 Attorney for Plaintiff JSJBD Corp dba Blue Dogs Pub and Counterdefendants 6 DISTRICT COURT 7 **CLARK COUNTY, NEVADA** 8 JSJBD CORP dba Blue Dogs Pub, a Nevada 9 corporation, CASE NO. A-18-785311-B DEPT 11 10 Plaintiff. 11 VS. 12 TROPICANA INVESTMENTS, LLC, a California 13 limited liability company, 14 Defendant. HEARING DATE: 01/17/20 **HEARING TIME: Chambers** 15 PLAINTIFF / COUNTERDEFENDANTS' 16 OPPOSITION TO MOTION TO RETAX COSTS 17 Plaintiff JSJBD Corp. and Counterdefendants, through counsel, oppose Defendant / 18 Counterclaimant Tropicana Investments, LLC's motion to retax costs. 19 This Opposition is based on the pleadings and papers on file, the attached Memorandum 20 21 of Points and Authorities, the attached exhibits, and any oral argument that may be heard. 22 LOVATO LAW FIRM, P.C. 23 /s/ Mario Lovato MARIO P. LOVATO 24 Nevada Bar No. 7427 Attorney for Plaintiff JSJBD Corp 25 dba Blue Dogs Pub and Counterdefendants 26 27 28

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT

A. FOR REASONS CITED IN PRIOR FILINGS, DEFENDANT / COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC IS NOT A PREVAILING PARTY.

As stated in Plaintiff and Counterdefendants' motion to retax costs¹—as well as their motion for attorney fees and costs²—Defendant / Counterclaimant Tropicana Investments, LLC is not a prevailing party.

Plaintiff and Counterdefendants are the prevailing parties in this case. Plaintiff-Tenant Blue Dogs Pub was served with a Thirty-Day Notice to Quit prior on November 14, 2018. *See, e.g.*, Thirty-Day Notice, attached as **Ex. 1**. Such Thirty-Day Notice disavowed any option to extend the Lease, treating the Blue Dogs Pub as being a holdover who only had a month-to-month lease that could supposedly be terminated on 1-month's notice.

1. Tropicana Investments, LLC served a Thirty-Day Notice of Termination of Lease that disavowed any and all lease rights of Blue Dogs Pub, which prompted and necessitated the filing of the Complaint in this case.

Having been served with a Notice to Terminate its Lease, JSJBD Corp filed suit before the end of the month to affirm its five-year option right and to have rent set by the Court, which are the substantial matters in the case on which JSJBD clearly prevailed.

Tropicana Investments never relented on its attempt disavow the Lease and evict JSJBD.

It continued asserting its Counterclaim for Eviction to the end of trial.

Further, Tropicana Investments took the unusual step of not only asserting a Counterclaim against its tenant, JSJBD Corp.; rather, it chose to assert Counterclaims against third parties (Jeff

¹ Filed herein on December 13, 2019, 3 days after Def.'s Memo of Costs (which was filed 3 days after the FFCL).

² Filed herein on December 26, 2019, 21 days after service of the Findings of Fact and Conclusions of Law ("FFCL").

White, Stuart Vincent, and Jeff Vincent). Those claims failed, with the claims being adjudged in favor of the Counterdefendants.

Plaintiff JSJBD Corp is the prevailing party, as it was required to file suit to affirm its option rights. It obtained a favorable result in Plaintiff having its option rights affirmed and declaratory relief granted. Further, Counterdefendants prevailing on all Counterclaims asserted against them. A party prevails "if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608 (2015), *quoting Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted).

Plaintiff JSJBD Corp and Counterdefendants are the prevailing parties in succeeding on the significant issue—which was having the option rights confirmed and declaratory relief granted.

2. Plaintiff JSJBD Corp dba Blue Dogs Pub is the prevailing party under NRS 18.020(2)(a).

Plaintiff JSJBD Corp prevailed as a party under NRS 18.020 who was required to assert claims to confirm its possessory right to real property under its Lease, and five-year options to extend such lease.

NRS 18.010(2)(a) states in pertinent part:

- 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
- (a) When the prevailing party has not recovered more than \$20,000....
- 3. Plaintiff JSJBD Corp, and Counterdefendants, are the prevailing party under the Nevada Supreme Court case law in *Sandy Valley* and its progeny.

In addition, "[The] Sandy Valley [case] discussed three scenarios in which attorney fees as special damages may be appropriate." *Pardee Homes of Nevada v. Wolfram*, 444 P.3d 423, 426, 135 Nev. Adv. Op. 22 (2019), *citing Sandy Valley Associates v. Sky Ranch Estates Owners*

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Association, 117 Nev. 948, 957-58, 960, 35 P.3d 964, 970 (2001) (receded from on other grounds by Horgan v. Felton, 123 Nev. 577, 170 P.3d 982 (2007), and Liu v. Christopher Homes, LLC, 130 Nev. 147, 321 P.3d 875 (2014)).

"First, 'cases when a plaintiff becomes involved in a third-party legal dispute as a result of a breach of contract or tortious conduct by the defendant." *Pardee Homes*, 44 P.3d at 426 n.3, *citing Sandy Valley*, 117 Nev. at 957, 35 P.3d at 970. This provides clear basis for the Counterdefendants to recover attorney fees since Defendant Tropicana Investments brought each of them into a dispute that resulted from Tropicana Investment's own breach.

Second, "cases in which a party incurred the fees *in recovering real or personal property acquired through the wrongful conduct of the defendant or in clarifying or removing a cloud upon the title to property.*" *Pardee Homes*, 44 P.3d at 426 n.3, *citing Sandy Valley*, 117 Nev. at 957, 35 P.3d at 970 (partially abrogated by Horgan, 123 Nev. at 586, 170 P.3d at 988 (clarifying that "attorney fees [in actions to clear a clouded title] are now only available as special damages in slander of title actions"). While this basis references "slander of title," such a case is very similar to a case where a Landlord is attempting to evict a commercial tenant by refusing to recognize enforceable option rights that entitle the tenant to continued possession of the real property.

Generally, an action to clarify or remove a cloud on title is either an action in equity or an action for declaratory relief. See MacDonald v. Krause, 77 Nev. 312, 317–18, 362 P.2d 724, 727 (1961) (identifying actions to quiet title and to remove clouds on title as actions in equity); Kress v. Corey, 65 Nev. 1, 25–26, 189 P.2d 352, 363-64 (1948) (stating that a cloud on title may be removed by a declaratory judgment). Hence, when discussing the recovery of attorney fees as damages that arose from actions to clarify or remove a cloud on title, the Horgan court was not concluding that a slander of title claim is a prerequisite to recovering attorney fees as special damages in all civil actions that relate to title to real property. See 123 Nev. at 579, 583-86, 170 P.3d at 983, 986-88. Rather, as revealed by its language and the authorities it relied on, the Horgan court held that slander of title is a prerequisite to a party's recovery of attorney fees that were amassed in asserting claims to clarify or remove a cloud on title, such as declaratory or equitable relief claims. Id.

In explaining its analysis and conclusions, the Horgan court stated that when a plaintiff incurs attorney fees as a result of a defendant's intentional effort to cloud title, the plaintiff deserves the fees because he or she had no choice but to litigate. Id. at 585–86, 170 P.3d at 987–88. Otherwise, absent slander of title, the plaintiff shoulders the debt for the attorney fees that he or she risked accruing when deciding to clarify or remove a cloud on title by suing the defendant. See id.

Liu v. Christopher Homes, LLC, 130 Nev. 147, 154, 321 P.3d 875, 879 (2014) (emphasis added).

"Third, injunctive or *declaratory relief actions compelled 'by the opposing party's bad faith conduct.*" *Pardee Homes*, 44 P.3d at 426 n.3, *citing Sandy Valley*, 117 Nev. at 958, 35 P.3d at 970. Here, "bad faith conduct" is shown by, inter alia, Tropicana Investment's disavowing of any right to lease the property at all, disavowing the five-year options, as well as failure to properly account for CAM costs.

"These narrow exceptions in which attorney fees as special damages may be warranted are well established in Nevada's jurisprudence." *Pardee Homes*, 44 P.3d at 426 n.3, *citing Michelsen v. Harvey*, 110 Nev. 27, 29, 866 P.2d 1141, 1142 (1994) ("As an exception to the general rule, it is well-settled in Nevada that attorney's fees are considered an element of damages in slander of title actions."), *receded from in Horgan*, 123 Nev. 577, 170 P.3d 982; *Lowden Inv. Co. v. Gen. Elec. Credit Co.*, 103 Nev. 374, 380, 741 P.2d 806, 809 (1987) (providing that "attorney's fees attributable to plaintiff's litigation with other parties may be recovered as damages when defendant's conduct caused the litigation"); *Von Ehrensmann v. Lee*, 98 Nev. 335, 337-38, 647 P.2d 377, 378-79 (1982) ("Where equitable relief is sought, an award of attorneys' fees is proper if awarded as an item of damages.").

4. The Court has already found entitlement to attorney fees when it comes to CAM issues.

The Court has already determined that Plaintiff JSJBD Corp is entitled to attorney fees for its Second Claim for Relief in regard to Defendant's breach of the implied covenant of good faith

and fair dealing when it comes to common area maintenance charges / overcharges. *See* Findings of Fact and Conclusions of Law (entered December 5, 2019) at 18.

Approximately one-third of the fees and costs are attributable to litigating CAM issues, including issues in the case as a whole that affect CAM issues. This has been attested to and otherwise supported in Plaintiff / Counterdefendants' Motion for Attorney Fees and Costs filed on December 26, 2019. Since CAM issues were inextricably intertwined with many general issues, it is difficult to specifically separate CAM issues, leading to an approximation of one-third of overall attorney fees and costs in this case.

B. AS STATED IN THE MEMORANDUM OF COSTS—AND THE MOTION FOR ATTORNEY FEES—THE COSTS INCURRED BY JSJBD CORP AND COUNTERDEFENDANTS WAS ACTUAL, NECESSARY, AND WAS PROPERLY DOCUMENTED.

JSJBD Corp / Counterdefenants' Memorandum of Costs was timely. Defendant takes the position that the deadline was December 10. Defendant then acknowledges that such Memorandum of Costs was timely on December 10.

The filing of a supplement is a different issue from whether the initial filing was timely. Costs are often supplemented as additional receipts, costs, and other proof are obtained or incurred. Plainly, Defendant had no difficulty, or "prejudice," in reviewing the costs items referenced in the supplement, since Defendant's motion addresses the two supplemental cost items in scrutinizing detail. Yet, Defendant fails to cite any legal authority whatsoever in arguing that a supplemental amount that was actually incurred cannot supposedly be presented to the Court.

Defendant does not object to any cost item on basis of not being actual and/or supported by receipts or declaratory proof. Each and all cost items are properly supporting, in glaring contrast to many, if not most, of the cost items sought in the Memorandum of Costs filed by Defendant.

C. DEFENDANT'S REMAINING ARGUMENTS ARE WITHOUT MERIT.

Defendant has sought its own expert costs, which are well in excess of \$1,500. Defendant cannot properly object to types of costs that Defendant has attested to being reasonable and necessary when Defendant has sought costs in its own Memorandum of Costs and Disbursement in regard to expert fees.

The expert costs were necessarily incurred. Defendant essentially argues that Mr. Lubawy's testimony was not reasonable or necessary in light of a FFCL that had not been entered at the time of the testimony.

What had actually been entered by the Court prior to trial testimony was the key decision by the Court to grant partial summary adjudication to Plaintiff JSJBD Corp. That decision plainly stated that there would be an evidentiary hearing to determine reasonable rental rate, which requires expert testimony. Such decision stated, inter alia:

THE COURT HEREBY FINDS that Plaintiff / Counterdefendant JSJBD Corp has an enforceable option to renew / extend the Lease for the current option period of September 1, 2016 to August 31, 2021, that the parties have not been able to agree on an amount for the rent for such option period, and that per Nevada case law cited in JSJBD Corp.'s briefing, the Court can determine a reasonable rental rate via an evidentiary hearing, i.e. at the trial currently set for November 18, 2019 at 1:30 p.m. per the Business Court Scheduling Order already entered by the Court herein.

See Order granting Pl.'s Countermotion, attached as **Ex. 2**. The purpose of the evidentiary hearing was to determine "reasonable rental rate." Such rate would be determined by reviewing the expert testimony presented by Plaintiff and Defendant. Such testimony was necessary and in accordance with the procedure mandated by the Court's Order.

Finally, Defendant's claim about the expert cost in retaining a bookkeeper to review Defendant's improper common area maintenance charges is meritless. Brent Howard was

disclosed as a retained expert back in July. See, e.g., Plaintiff's Disclosures of Witnesses & Documents served in July 2019, attached as Ex. 3.

Defendant is the party who delayed producing any pertinent CAM materials, which eventually required the filing a motion to compel, which further resulted in a Discovery Order compelling production. Thereafter, Defendant still failed and refused to produce the required documents. When it came to the documents that were produced, obviously Plaintiff's retained expert bookkeeper would be used to review the same. The expense is attested to in the Memorandum of Costs, NRS 18.005 plainly allows for recovery of costs of "expert witnesses" ("Reasonable fees of not more than five expert witnesses"), and Plaintiff has only requested expert fees for two such witnesses herein. The Court ultimately determined that Tropicana Investments, LLC had, in fact, breached in regard to CAM costs and the obligation to account for the same. Accordingly, the costs are properly sought and were actual, necessary and reasonable.

II.

CONCLUSION

Defendant's motion to retax costs should be denied in its entirety. The costs sought in Plaintiff and Counterdefenants' Memorandum of Costs and Disbursement should be granted and awarded to them in their entirety.

LOVATO LAW FIRM, P.C.

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

EXHIBIT 1

THIRTY DAY NOTICE TO QUIT THE PROMISES [NRS 40.251]

TO:

JSJBD CORP, J.S.J, LLC; AND ANY SUBTENANTS, ASSIGNEES AND OCCUPANTS

PREMISES:

3430 EAST TROPICANA AVENUE, SUITES 27, 28, & 29

LAS VEGÁS, NV 89121

PLEASE TAKE NOTICE that your tenancy at the above Premises ("Premises") is hereby terminated. You must vacate within thirty (30) days from the date of service of this Notice the Premises commonly described as:

3430 EAST TROPICANA AVENUE, SUITES 27, 28, & 29 LAS VEGAS, NV 89121

PLEASE TAKE FURTHER NOTICE that you are hereby required to vacate the Premises within thirty (30) calendar days following the Date of Service of this notice. If you do not comply with this notice, your possession of the Premises will be unlawful (called "unlawful detainer"), and your Landlord may initiate an eviction against you by either serving you with a Five Day Notice to Quit for Unlawful Detainer or a Summons and Complaint for Unlawful Detainer. If the court determines that you are guilty of an unlawful detainer, the court may issue a summary order for your removal or an order providing for your nonadmittance, directing the sheriff or constable to remove you within twenty-four (24) hours after receipt of the order.

PLEASE BE ADVISED that if you are sixty (60) years of age or older, or if you have a physical or mental disability and your tenancy is not week-to-week, you may make a written request to your Landlord to be allowed to continue in possession of the rental Premises for an additional thirty (30) days past the expiration of this notice pursuant. You must provide your Landlord with proof of your age or disability with your written request. If your Landlord rejects your request, you have the right to petition the court to continue possession of the Premises for an additional thirty (30) days.

PLEASE BE ADVISED that pursuant to NRS 118A.390, you may seek relief if a Landlord unlawfully removes you from the Premises, or excludes you by blocking or attempting to block your entry upon the Premises, or willfully interrupts or causes or permits the interruption of an essential service required by the rental agreement or chapter 118A of the Nevada Revised Statutes¹.

PLEASE BE ADVISED THAT YOU CAN OBTAIN INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the Civil Law Self-Help Center, which is located on the first floor of the Regional Justice Center in downtown Las Vegas, or on its website, www.CivilLawSelfHelpCenter.org.

DATE: 11/14//8

TROPICANA INVESTMENTS, LLC, OWNER/LANDLORD,

x: //

Terry A. Moore, Esq. Nevada Bar No. 7831

MARQUIS AURBACH COFFING P.C.

10001 Park Run Drive Las Vegas, Nevada 89145 Attorneys for Owner/Landlord

(702) 382-0711

¹ This statute is only applicable as described and included for ease of reference.

EXHIBIT 2

Electronically Filed 7/24/2019 1:09 PM Steven D. Grierson MARIO P. LOVATO, ESQ. CLERK OF THE COURT Nevada Bar No. 7427 LOVATO LAW FIRM, P.C. 7465 W. Lake Mead Blvd. Ste. 100 Las Vegas, Nevada 89128 3 TEL: (702) 979-9047 mpl@lovatolaw.com Attorney for Plaintiff / Counterdefendant JSJBD Corp dba Blue Dogs Pub and 5 the individual Counterdefendants 6 DISTRICT COURT 7 **CLARK COUNTY, NEVADA** 8 9 JSJBD CORP, d/b/a Blue Dogs Pub, a Nevada corporation, Case No.: A-18-785311-B 10 Plaintiff, 11 **BUSINESS COURT** VS. 12 13 TROPICANA INVESTMENTS, LLC, a California limited liability company, 14 Defendant. 15 16 AND COUNTERCLAIMS. 17 18 **ORDER** 19 On July 8, 2019, on the 9:00 a.m. hearing calendar, a hearing took place for: (1) Defendant 20 / Counterclaimant Tropicana Investments, LLC's Motion for Partial Summary Judgment; and (2) 21 Plaintiff / Countderdefendant JSJBD Corp dba Blue Dogs Pub's Countermotion for Partial 22 Summary Adjudication, the parties having filed opposition and reply briefs in regard to such 23 Motion and Countermotion, the parties appearing through their respective counsel, and client-24 25 representatives Jeffrey Vincent, Stuart Vincent and Bruce Eisman also appearing in person, the 26 Court having reviewed the Motion, Countermotion, and opposition and reply briefs thereto, the

Court having heard the arguments of counsel, and for good cause,

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THE COURT HEREBY FINDS that Plaintiff / Counterdefendant JSJBD Corp has an enforceable option to renew / extend the Lease for the current option period of September 1, 2016 to August 31, 2021, that the parties have not been able to agree on an amount for the rent for such option period, and that per Nevada case law cited in JSJBD Corp.'s briefing, the Court can determine a reasonable rental rate via an evidentiary hearing, i.e. at the trial currently set for November 18, 2019 at 1:30 p.m. per the Business Court Scheduling Order already entered by the Court herein.

IT IS HEREBY ORDERED, ADJUDGED, DECREED that:

- 1. Defendant Tropicana Investments, LLC's Motion for Partial Summary Judgment is DENIED; and
- 2. Plaintiff / Counterdefendant's JSJBD Corp's Countermotion for Partial Summary Adjudication is GRANTED such that the Court determines that JSJBD Corp has an enforceable option to renew / extend for the current option period of September 1, 2016 to August 31, 2021 whether it has been properly even ciscal a and that the Court will determine the reasonable rental rate for such option period subject to the proof, etc. presented by the parties at trial.

DATED: July 23rd, 2019.

Submitted by:

LOVATO LAW FIRM, P.Ø.

Nevada Bar No. 7427

Attorney for Plaintiff / Counterdefendant JSJBD Corp dba Blue Dogs Pub and

the individual Counterdefendants

JU**D**GE

EXHIBIT 3

1 2 3 4 5	Nevada Bar No. 7427 LOVATO LAW FIRM, P.C. 7465 W. Lake Mead Blvd. Ste. 100 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	
7	DISTRICT COURT	
8	CLARK COUNTY, NEV	ADA
9 10	corporation.	Case No.: A-18-785311-B
11		BUSINESS COURT
12 13	<u> </u>	
13	California limited liability company	
15	Dofon Lost	
16 17	AND COUNTERCLAIMS.	
18		ALD A NUTCO
19	PLAINTIFF / COUNTERDEFE NRCP 16.1 LIST OF WITNESSES AND	
20	Plaintiff / Counterdefendants, through counsel, disclo	ose and produce the following list of
21	witnesses and documents.	
22	I.	
23	WITNESSES	
24	1. Jeffrey Vincent	
25	c/o Mario P. Lovato	
26	7465 W. Lake Mead Blvd. Ste. 100 Las Vegas, NV 89128	
27		
20	Jeffrey Vincent is a principal owner of Plaintiff and ha	as appeared in-person at proceedings

1	in this case. He is able to testify about the facts and circumstances of this case.
2	2. Stuart Vincent
3	c/o Mario P. Lovato
3	Lovato Law Firm, P.C.
4	7465 W. Lake Mead Blvd. Ste. 100
	Las Vegas, NV 89128
5	
6	Stuart Vincent is a principal owner of Plaintiff and has appeared in-person at proceedings
7	in this case. He is able to testify about the facts and circumstances of this case.
8	3. Jeffrey White
	c/o Mario P. Lovato
9	Lovato Law Firm, P.C.
	7465 W. Lake Mead Blvd. Ste. 100
10	Las Vegas, NV 89128
11	Jeffrey White was formerly a principal owner of Plaintiff, and is a counterdefendant added
12	and is a counterdefendant added
12	to the case by Defendant / Counterclaimant. He is able to testify about the facts and circumstances
13	of 2 standard, Counterclaimant. The is able to testify about the facts and circumstances
	of this case.
14	
	4. Bruce Eisman
15	c/o Mario P. Lovato
16	Lovato Law Firm, P.C.
10	7465 W. Lake Mead Blvd. Ste. 100
17	Las Vegas, NV 89128
·	Zus V 05120
18	Bruce Eisman is a principal owner of Plaintiff. and has appeared in-person at proceedings
10	and has appeared in-person at proceedings
19	in this case. He is able to testify about the facts and circumstances of this case.
20	and the testify about the facts and encumstances of this case.
20	5. Bruno Mark
21	c/o Mario P. Lovato
	Lovato Law Firm, P.C.
22	7465 W. Lake Mead Blvd. Ste. 100
	Las Vegas, NV 89128
23	Lus Vegus, 1. V 69128
24	Bruno Mark is a principal owner of Plaintiff and has appeared in-person at proceedings in
-	branch where of Flamenta and has appeared in-person at proceedings in
25	this case. He is able to testify about the facts and circumstances of this case.
	and circumstances of time case.
26	6. Persons with knowledge, JSJBD Corp
,	c/o Mario P. Lovato
27	Lovato Law Firm, P.C.
8	7465 W. Lake Mead Blvd. Ste. 100
ا ۵,	Las Vegas, NV 89128
	Lab v egas, 11 v 07120

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2	This is the Plaintiff-entity in this case. It has persons with knowledge who are able to
3	testify about the facts and circumstances of this case.
4	7. Jeffrey Chauncey
5	Address unknown
6	Jeffrey Chauncey has asserted that he is the principal owner of Defendant Tropicana
7	Investments, LLC and has also used, inter alia, the title "Building Manager." He is able to testify
8	about the facts and circumstances of this case.
9	8. Roni Chauncey Address unknown
11	Roni Chauncey is Jeffrey Chauncey's sister and has been involved in the operation of
12	Defendant Tropicana Investments, LLC.
131415	9. Joe Velarde Commercial Investment Real Estate Services Galleria Drive Ste 1109
16	Henderson, NV 89014 Joe Velarde has been a broker-agent of Defendant Tropicana Investments, LLC and has
17 18	been involved in many of the discussions between Plaintiff and Defendant.
19	10. Dan Velarde Commercial Investment Real Estate Services
20	Galleria Drive Ste 1109 Henderson, NV 89014
21 22	Dan Velarde has been a broker-agent of Defendant Tropicana Investments, LLC and has
23	been involved in many of the discussions between Plaintiff and Defendant.
24	11. Mark Van Aken 4608 Paradise Rd.
25	Las Vegas, NV 89169
26	Mark Van Aken is the predecessor-in-interest to Plaintiff, and was party to the original
27	Lease and related documents prior to the transfer of his interests to Plaintiff. He is able to testify
28	about the facts and circumstances of this cose

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2	Tropicana Investments, LLC P.O. Box 50170
	Lighthouse Point, FL 33074
3	Eighthouse Folia, i E 350/4
4	This is the Defendant-entity in this case. It should have persons with knowledge who are
5	able to testify about the facts and circumstances of this case.
6	12 D
7	13. Persons with knowledge, JSJBD Corp
,	c/o Mario P. Lovato Lovato Law Firm, P.C.
8	7465 W. Lake Mead Blvd. Ste. 100
9	Las Vegas, NV 89128
10	This is the Plaintiff-entity in this case. It has persons with knowledge who are able to
11	testify about the facts and circumstances of this case.
12	14. John M. Sacco
13	Marquis Aurbach Coffing
	10001 Park Run Dr.
14	Las Vegas, NV 89145
15	This is attorney for Defendant Tropicana Investments, LLC and is the person who drafted
16	
17	numerous items of correspondence sent prior to the filing of the case. He has knowledge and
1/	information about the facts and circumstances of this case.
18	and the amstances of this ease.
19	15. Persons with knowledge
19	Commercial Investment Real Estate Services
20	Galleria Drive Ste 1109
21	Henderson, NV 89014
21	This is the entity that is involved in being a last
22	This is the entity that is involved in being a broker-agent and related real property
23	management for Defendant Tropicana Investments, LLC. It should have persons with knowledge
24	and information about the facts and circumstances of this case.
25	16. Persons with knowledge
د	Let It Rain Roof Company
26	Address unknown (somewhere in Las Vegas area)
27	Possible phone number: (702) 499-3437
8	This is the entity that has had involvement with roof issues at Plaintiff's tayern. It should

have person who have knowledge and information regarding the facts and circumstances of this case.

II.

EXPERT WITNESS DISCLOSURE

1. Matthew Lubawy, MAI, CVA Senior Managing Director Valbridge Property Advisors 3034 S. Durango Dr. Ste 100 Las Vegas, NV 89117

This is the expert real property appraiser who drafted the October 10, 2018 Market Rent Analysis real property appraisal report in regard to Blue Dogs Pub, 3430 E. Tropicana Ave Units 27-29, Las Vegas, Nevada 89121 providing a market rent analysis for the date of September 1, 2016. Such expert report was served by Plaintiff's counsel upon counsel for Defendant Tropicana Investments, LLC on November 16, 2018, with counsel for Tropicana Investments, LLC acknowledging the same via email dated November 19, 2018. Mr. Lubawy may provide a rebuttal report as well. A longer form CV and a list of cases should be provided shortly. In addition, persons with knowledge at Valbridge Property Advisors may be called in the unlikely event of conflict or other issues calling for the same.

Monique Beban
 Valbridge Property Advisors
 3034 S. Durango Dr. Ste 100
 Las Vegas, NV 89117

This is the expert real property appraiser who assisted with the October 10, 2018 Market Rent Analysis real property appraisal report in regard to Blue Dogs Pub, 3430 E. Tropicana Ave Units 27-29, Las Vegas, Nevada 89121 providing a market rent analysis for the date of September 1, 2016. Such expert report was served by Plaintiff's counsel upon counsel for Defendant Tropicana Investments, LLC on November 16, 2018, with counsel for Tropicana Investments,

LLC acknowledging the same via email dated November 19, 2018. Ms. Beban may assist with a rebuttal report as well.

3. Brent Howard
BHI Bookkeeping
2385 N Decatur Blvd
Las Vegas, NV 89108

Mr. Howard has agreed to do the analysis on the CAM accounting, expenses, etc., which documents, information and amounts have not been produced, disclosed, or received in this case. Brent Howard has not previously testified as an expert witness in litigation. His CV / resume will be provided.

4. Reserving right to present testimony re Mathematical calculations, payments, and summaries of same, etc.

In addition, the principals of JSJBD Corp reserve the right to provide testimony regarding mathematical calculations relating to rent payments, right to reimbursement of overpayments, CAM payments, rights to reimbursement of overpayments, as well as various other dollar amounts. While mathematical calculations of dollar amounts are often presented as "expert testimony," because they involve mathematical calculations rather than non-mathematical opinion testimony, Plaintiff reserves the right to present testimony as to mathematical calculations via Plaintiff's principals whether by presenting summaries with supporting documentation or otherwise presenting such mathematical calculations.

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]	1 III.
2	DOCUMENTS
3	Plaintiff / Counterdefendants produces documents bates stamped BDP 1-174 on an
4	
5	DATED: July 26, 2019.
6	
7	LOVATO LAW FIRM, P.C.
8	MARIOP LOVATO
9	Nevada Bar No. 7427
10	Attorney for Plaintiff / Counterdefendant JSJBD Corp dba Blue Dogs Pub
11	
12	CERTIFICATE OF SERVICE
13	IT IS HEREBY CERTIFIED that, on July 26, 2019, the above and foregoing PLAINTIFF
14	TOOMTERDEFENDANTS THREF 16.1 LIST OF WITNESSES AND DOCUMENTS
15	(along with the attached CD with documents) was served via United States Mail, postage
16	prepaid, upon by the following:
17	
18	Terry A. Moore
19	Marquis Aurbach Coffing 10001 Park Run Dr.
20	Las Vegas, NV 89145
21	Attorneys for Defendant / Counterclaimant Tropicana Investments, LLC
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Las Vegas, Nevada 89145 382-0711 FAX: (702) 382-5816

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Steven D. Grierson
CLERK OF THE COURT

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,

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.

DEFENDANT/COUNTERCLAIMANT TROPICANA INVESTMENTS LLC'S OPPOSITION TO PLAINTIFF JSJBD CORP'S MOTION FOR ATTORNEY FEES AND COSTS

Hearing: January 31, 2020 (In Chambers)

Defendant/Counterclaimant Tropicana Investments, LLC (hereinafter "Landlord") by and through its attorneys of record, the law firm of Marquis Aurbach Coffing, hereby submits their Opposition to JSJBD Corp's Motion for Attorney Fees and Costs (the "Motion"). This Opposition is made and based upon all papers, pleadings and records on file herein, the

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following Memorandum of Points and Authorities, and any oral argument allowed by the Court as the time of hearing in this matter.

Dated this 9th day of January, 2020.

MARQUIS AURBACH COFFING

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Keeping with the common theme of the post-trial motions in this case, Plaintiff/ Counterdefendants (collectively, "Tenant")'s Motion for Attorney Fees and Costs must be denied because Tenant is not the prevailing party in this case, and because Nevada law does not allow attorney's fees to be awarded as special damages unless those fees are pled and proven at trial. Tenant did not plead nor offer any evidence of attorney's fees incurred as a result of the alleged breach of implied covenant of good faith and fair dealing, and thus the Court cannot award attorney's fees as special damages on that claim.

Furthermore, even if the Court should disagree with Landlord's arguments pertaining to attorney's fees as special damages in this case, the actual amount of attorney's fees related to the CAMs issue is no more than *five percent* of the total work performed by Tenant's attorney, as is easily ascertained from a review of the records that Tenant's attorney provided in his declaration. Therefore, if an award of attorney's fees is appropriate at all, the amount of that award should not exceed five percent of the total amount billed, which equals approximately \$6,331.50. Thus, should the Court deny Landlord's Motion to Alter or Amend Judgment in regard to removing the

Page 2 of 13

award of attorney's fees to Tenant, the net monetary award, after offsetting all claims on both sides, is still in favor of Landlord.

In short, even if the Court could award Tenant a reasonable amount of attorney's fees incurred in litigating the CAMs issue, Tenant is still not a prevailing party, and thus Tenant is not entitled to any additional attorney's fees or costs, and the Motion must be denied.

II. <u>LEGAL ARGUMENT</u>

A. LANDLORD IS THE PREVAILING PARTY.

First, there can be no question that Landlord is the prevailing party in this case, and thus that Tenant is not entitled to recover its attorney's fees or costs of litigation under NRS 18.020. This topic is more thoroughly addressed in Landlord's Motion to Alter or Amend Judgment, Motion for Attorneys' Fees and Costs, and Motion to Retax, and therefore those arguments are incorporated by reference here.

1. The Court Cannot Award Tenant Attorney Fees as Special Damages.

As a preliminary matter, the Court's award of attorney's fees as special damages for Tenant's breach of implied covenant claim is contrary to Nevada law requiring that any category of special damages be pled and proven by competent evidence at trial. *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 960, 35 P.3d 964, 971 (2001). The *Sandy Valley* Court enumerated three scenarios in which attorney's fees as special damages may be appropriate, but reiterated that these fees, like any other category of special damages, must be pled and proven by competent evidence. *Id.* The unavailability of attorney's fees as special damages in a contract-based claim was reiterated in *Pardee Homes of Nev. v. Wolfram*, 135 Nev. Adv. 173, 177–78 444 P.3d 423, 426 (2019).

Here, Tenant failed to disclose any evidence of attorney's fees incurred in pursuing the breach of implied covenant claim, and failed to elicit any evidence at trial of this category of damages. This Court's own FFCL reflects this reality, as attorney's fees are not mentioned at any point in the Findings of Fact, and the judgment contains no specific amount of attorney's fees. As such, the Court's award of attorney's fees as special damages is plain error, being unsupported by evidence presented at trial, and contrary to Nevada law.

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In addition to the lack of factual support preventing an award of attorney's fees in this case, Tenant's legal argument pertaining to the availability of attorney's fees as special damages is based on a nonsensical analysis of what occurred in this case. Tenant's Motion recognizes that the instances enumerated in *Sandy Valley* allowing for attorney's fees as special damages are "narrow exceptions," but then attempts to force a breach of implied covenant claim into one of those narrow exceptions like a square peg into a round hole.

Specifically, Tenant attempts to categorize this case as fitting into the categories of "a third-party legal dispute as a result of breach of contract or tortious conduct by the defendant," or "declaratory relief actions compelled by the opposing party's bad faith conduct." Mot. at 3–4. Tenant has evidently lost sight of the forest for the trees: the only relevant claim for the purposes of this motion is that for which Tenant was awarded attorney's fees as special damages—breach of the implied covenant of good faith and fair dealing based on Landlord's alleged overcharging of CAMs. This claim is not a third-party legal dispute, nor a declaratory relief claim compelled by Landlord's bad faith conduct. It is a straightforward two-party breach of contract action, which is, in fact, most similar to the claim at issue in *Pardee Homes*. See 135 Nev. at 177–78 (reversing an award of attorney's fees as special damages because Sandy Valley "does not support an award of attorney fees as special damages where a plaintiff merely seeks to recover fees incurred for prosecuting a breach-of-contract action against a breaching defendant."). Tenant's breach of implied covenant claim asserted that Landlord breached the covenant of good faith and fair dealing implied in the lease by charging for CAMs in a manner not permitted by the lease. Just as the Pardee Homes plaintiff was not entitled to attorney's fees as special damages in such a case, and rather was limited to contract damages, so too here, Tenant cannot recover attorney's fees as special damages for its breach of implied covenant claim.

Tenant further claims that this case is "very similar" to a *slander of title* action, because the Landlord was "refusing to recognize enforceable option rights that entitle the tenant to continued possession of the real property." Mot. at 3–4. On the contrary, as the Court is fully aware, Landlord's theory at trial—with which this Court agreed—was that Tenant *did* exercise its option rights, and that the parties *did* agree on a rent term for the option period. *Compare*

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Answer & Countercl. ¶¶ 58–60 (asserting claim for breach of lease due to Tenant's failure to pay agreed-upon rent amount during option period); FFCL at ¶¶ 47, 54, 89–92; *id.* at 18:19–24 (finding that an agreement was reached on rent for the option period and entering judgment in Landlord's favor on its breach of lease claim). Notwithstanding Tenant's incorrect statement of Landlord's position, this case had zero allegations on either side regarding title to the property or any alleged clouds on Landlord's title to the property. The reality is that the case is not at all similar to a slander of title action, and thus the case cannot fit into any of the "narrow exceptions" permitting attorney's fees as special damages enumerated by *Sandy Valley* and *Pardee Homes*.

Tenant cannot recover attorney's fees, because (1) attorney's fees are not recoverable for the two-party breach of implied covenant claim, and (2) Tenant did not plead and prove attorney's fees as special damages by competent evidence at trial. After accommodating for this error in the FFCL, the resulting lawful judgment will include an award of \$4,578 to Tenant for its breach of contract and breach of implied covenant claims, and an award of \$16,780¹ to Landlord for its breach of contract claim.

2. Without Special Damages, Landlord Received the Greater Monetary Judgment.

Attorney's fees and costs are only recoverable by the prevailing party under Nevada law. Because Tenant is not entitled to attorney's fees as special damages, Tenant is also not the prevailing party in this case because the amount of damages awarded to Landlord exceeds the amount awarded to Tenant.

Nevada law provides that, to be considered a "prevailing party," a party must "succeed[] on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Valley Electric Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005). Further, the judgment awarded to the prevailing party must be monetary in nature. *Id.* In the event there are monetary judgments on both sides, the district court must offset all such judgments to

¹ Subject to the Court's agreement with Landlord's correction of the apparent math error in the FFCL.

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determine the prevailing party based on the "net" monetary judgment. Robert J. Gordon Constr. v. Meredith Steel, 91 Nev. 434, 537 P.2d 1199 (1975); see also Parodi v. Budetti, 115 Nev. 236, 984 P.2d 172 (1999).

Here, both Landlord and Tenant were awarded monetary judgments. The Court awarded Tenant \$4,578 for its breach of contract claim, and Tenant is entitled to, at most, nominal damages on its breach of implied covenant claim.² Meanwhile, the Court awarded Landlord \$13,000³ for its breach of contract claim. In this scenario, as in *Gordon* and *Parodi*, the Court must offset the monetary awards to determine the prevailing party. *Id.* Thus, the "net damages" in this case amount to approximately \$8,4224 being awarded to Landlord.

Tenant's Motion cites the "any significant issue" standard which is the first step in determining prevailing parties, but ignores Nevada law requiring that such a party receive a monetary judgment. See Valley Electric Ass'n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005). Because Tenant did not receive a net monetary judgment, Tenant cannot be the prevailing party. Moreover, Tenant's argument would allow both Tenant and Landlord to be considered prevailing parties, as both parties prevailed on "significant issues." This approach was expressly rejected in *Parodi*, and thus disregards caselaw repeatedly affirming that a district court must find one party to be the prevailing party, based on the net result of all monetary judgments after offsetting all damage awards. Therefore, Landlord, as the recipient of the greatest "net" award of damages and the party that truly won on the major issues, is plainly the prevailing party, and the Court must deny the Motion because Tenant cannot recover attorney's fees or costs when it is not the prevailing party.

² See supra; see also Landlord's Motion to Alter or Amend.

³ As discussed in Landlord's Motion to Alter or Amend, this amount appears to be based on a calculation error and should be increased to \$16,780, but this error does not impact the analysis of which party prevailed.

⁴ Or, in the event the Court grants the Motion to Alter or Amend as to the math error, \$12,202.

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3. **Landlord Prevailed on the Primary Disputed Issue.**

Even if the Court were to ignore the straightforward mathematical analysis required by Gordon and Parodi to determine the prevailing party based on which party prevailed on the most "significant issue," the simple truth is that Landlord would still be the prevailing party here.

This case was always about settling the disagreement over rent applicable to the option period. The complaint was filed in November 2018, shortly after Tenant first paid an amount of rent inconsistent with the agreement reached by the parties and shortly after Landlord threatened eviction for Tenant's default by failing to pay rent in accordance with that agreement. The vast majority of the complaint was dedicated to Tenant's request for a judicial declaration that the rent for the option period should be determined based on "market rental rate." See, e.g. Compl. ¶¶ 10-13, 16-18, 21-51, 60-77, 80-84, 91-102. Put another way, of the 97 paragraphs of nonjurisdictional allegations in the complaint, about one in ten of these paragraphs concern issues other than rent: 7 concern allegations of Landlord's failure to maintain and repair the premises, 5 concern allegations of Landlord overcharging for CAMs, and 1 concerns Landlord's obligation to provide security for the common areas. At trial, Tenant abandoned its claims based on maintenance and repair, and offered zero evidence relating to the lack of security allegation. These other claims were plainly "afterthought" issues that the Tenant only included because it had already decided to sue based on the rent issue.

Meanwhile, Landlord's counterclaim was focused *entirely* on establishing rent for the option period at the amounts on which the parties had agreed, or in the alternative establishing that no agreement was reached, rendering the Tenant a holdover month-to-month tenant at the same rent as was in effect prior to the lease expiring. See generally Answer & Countercl. The sole mention of eviction in Landlord's counterclaim is the *last* cause of action which clearly sought restitution of the premises only in the event the Court did not grant the previously requested relief of resolving the disagreement over rent for the option period. Eviction was not, in any sense, the primary purpose of the counterclaims and, contrary to the Tenant's current arguments, at no point after the Complaint was filed did the Landlord assert or seek to have the Tenant evicted.

Moreover, after significant motion practice and 5 days of testimony and evidence, it was clear at trial that the most important issue being litigated was setting rent for the option period, and determining the proper method of calculating what that rent should be. Landlord submits that this Court is fully aware of the amount of time both sides spent on this issue as opposed to any other issue.

In sum, it is undeniable that the issue of setting rent for the option period was the primary issue in the case, and that the Court's ruling on this primary issue was unquestionably in Landlord's favor. Tenant's entire case was based on its tortured interpretation that the option period was required to be based solely on "market rental rate," and thus it requested that the Court declare the rent for the option period to be \$1.05 per square foot per month (the amount suggested by Tenant's appraisal). Landlord's defense, and Landlord's counterclaims for breach of lease, were based on the contrary interpretation that the parties had agreed on rent for the option period when a rent schedule was proposed by Tenant, which was agreed to by Landlord, and which was followed by Tenant for two years without protest. At the conclusion of trial, the Court entered judgment adopting—nearly verbatim—the facts and legal conclusions advanced by Landlord, and declaring that the option period was subject to the agreed-upon rent schedule, as Landlord requested. There can be no dispute that Landlord prevailed on this issue.

Finally, and most remarkably, Tenant argues that Landlord's counterclaims were "adjudged in favor of the Counterdefendants." JSJBD Motion to Retax at 2:26–27. This statement is a clear misstatement of the text of the Court's FFCL, which states that judgment was entered "in favor of Counterclaimant Tropicana Investments, LLC, and against Counterdefendant JSJBD Corp, and all other Counterdefendants on the Second Claim for Relief for Breach of Lease Agreement for the underpayment of rent according to the schedule in the amount of \$13,000." FFCL at 18:19–24. This ruling was plainly in Landlord's favor, and further was directly contradictory to Tenant's requested relief.⁵ Tenant's refusal to recognize the Court's

⁵ As is more fully addressed in Landlord's Motion to Alter or Amend, the judgment in favor of Tenant on both parties' declaratory relief claims is not supported by the Court's findings and conclusions, and thus appears to be an error.

10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816 ruling does not change the reality that Landlord did, in fact, prevail on the issue of rent, and that damages were awarded to Landlord on that basis against both the Tenant and the three personal guarantors.

In sum, Landlord not only prevailed on its counterclaim for Breach of Contract against all counterdefendants, but the monetary recovery awarded to Landlord surpassed that awarded to Tenant. Thus, not only did Landlord prevail on the most "significant issue" in the case, but the "net damages" analysis required by *Gordon* and *Parodi* requires that Landlord be declared the prevailing party. As such, Tenant is not entitled to attorney's fees or costs, and the Motion must be denied.

B. TENANT'S REQUESTED AMOUNT OF ATTORNEY'S FEES BASED ON THE CAMS ISSUE IS INFLATED.

In the event the Court disagrees with the above analyses and determines that Tenant is entitled to recover damages in the amount of attorney's fees and costs related to the CAM expense portion of the litigation, Tenant has no basis for asserting the wildly inaccurate estimate that *a full one-third* of the case concerned the CAMs issue. As this Court is aware, this litigation has always been primarily about the rent, and the CAMs issue like the repair and maintenance issue was, at best, an afterthought. Very little time was spent during discovery or at trial that had anything to do with CAMs. In fact, a detailed review of Tenant's attorney's time report dispels any doubt that the CAMs issue was a major portion of the time spent on this case as just under *five percent* of the total time reported by Tenant's attorney was spent on anything related to CAMs. As such, if the Court grants the instant Motion, the amount of attorney's fees awarded to Tenant should be no more than five percent of the total amount billed, or approximately \$6,331.50.

First, the CAMs issue was not anywhere near significant enough as to represent one-third of the litigation, but rather it was a minor issue for which Tenant produced almost no evidence, and almost zero testimony at trial. Tenant's Complaint contained 97 paragraphs of non-jurisdictional allegations, 5 of which related to CAMs. *See* Compl. ¶¶ 14–15, 53–55. Tenant attempted to call Bruno Mark at trial to testify about the CAMs issue, but Mr. Mark was Page 9 of 13

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precluded from testifying beyond his personal background, based on the Court's order binding Tenant to the testimony of its NRCP 30(b)(6) representative. As such, the evidence at trial relating to CAMs consisted of only brief mentions during the testimony of Jeffrey Vincent and/or Stuart Vincent, and less than an hour of discussion with Jeff Chauncey. In the context of a fiveday trial, the vast majority of the time was spent debating whether an agreement was reached on rent, whether the parties had agreed to market-rate rent, what market-rate rent would be, and whether the Tenant had voluntarily paid full rent over the span of the previous three years. As such, CAMs were only a small subset of the litigation, and most certainly did not amount to one third of the total time dedicated by Tenant's attorney.

This conclusion is additionally evidenced by Tenant's attorney's own billing records. The thorough record of all activities undertaken by Tenant's attorney, attached as Exhibit 2 to the Motion, show a total of 361.8 hours across no less than 450 distinct time entries. Below is a list of every single entry that has anything to do with CAMS:

Date	Time Description	Time
2/12	Exchange emails with client re CAM issues and re a meeting in preparation for settlement conference.	.3
7/22	Draft request for production of documents re CAMs.	1.0
8/01	Review emails from client re inconsistent CAM charges. Review additional email and documents re same.	.4
9/17	Begin drafting motion to compel production of documents. ⁶	.5
9/25	Draft and revise motion to compel production of documents.	2.2
9/26	Review voicemail re signed OST. Arrange for pickup. File motion to compel with signed OST. Draft and file notice of entry of order re same.	.5
9/26	Draft and send detailed email updating clients on OST and motion to compel, as well as hearing for same.	.6
9/30	Review Defendant's opposition re motion to compel.	.6
10/01	Draft, revise and file reply in support of motion to compel.	1.2
10/02	Prepare for, and attend, hearing for motion to compel production of documents.	2.8
10/04	Draft order re motion to compel. Draft and send email to defense counsel re same.	.8

⁶ Tenant's Motion to Compel Production of Documents was related to Tenant's request for production of CAM documents, and thus Landlord included any entries related to that motion for the purposes of this list.

10/08	Draft and revise order re motion to compel.	.5		
10/09	10/09 Review numerous documents served re CAMs.			
10/31	Research and review case law re CAM issues and litigation.	.5		
11/01	Draft memo re CAM language in lease and related documents.	1.0		
11/26	Review report re bookkeeping review of CAMs. Tel. calls with client re	1.6		
	same.			
TOTAL		15.3		

Mot. at Ex. 2, pp.5–12. A copy of Tenant's attorney billing records with all of the above CAM-related entries highlighted is attached hereto as **Exhibit A** for the Court's convenience.

Even assuming that all of these entries concerned solely work relating to the CAMs issue, the grand total of 15.3 hours represents approximately 4.2% of the total 361.8 hours Tenant's attorney spent on the case as a whole. This list does not include the block bills for entire days spent in trial, but Landlord submits this Court will recall that the total amount of time spent during trial on CAMs amounted to no more than 2 hours over the five days. Giving Tenant the benefit of the doubt in this regard, Landlord submits that Tenant's attorney's time dedicated to the CAMs issue constituted no more than 5% of the total time spent in the case.

Tenant's attorney's estimate that the CAMs issue represented "approximately one-third" of the work he performed is demonstrably inflated, and is refuted by his own billing records. Moreover, the pleadings, documents, and witnesses in this case, as well as the total time spent on this issue at trial, are indicative of the minimal attention spent on the CAMs issue similar to the rent and maintenance-related allegations. Based on this objective evidence, any attorney's fees awarded to Tenant on the basis of the CAMs issue should be limited to five percent of the total amount billed, which equals \$6,331.50.

III. <u>CONCLUSION</u>

Tenant is not the prevailing party here, and attorney's fees are not awardable as special damages based on Tenant's breach of implied covenant claim. Despite Tenant's attempt to rewrite history, the honest truth is that the one primary issue being litigated—the amount of rent for the option period—was decided entirely in Landlord's favor, against both JSJBD Corp. and the individual guarantor counterdefendants. Moreover, Landlord is objectively the prevailing party after offsetting all damages awards. As such, the Court cannot award attorney's fees and

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costs to Tenant, as damages or otherwise, and the Motion must be denied. However, should the Court disagree and find that an award of attorney's fees and costs is appropriate in the amount expended on the CAMs issue, the Tenant's attorney's own billing records establish that the amount of time actually spent on this issue constituted no more than five percent of the total time billed. Thus, if the Court awards any attorney's fees or costs, the amount of that award should be no more than \$6,331.50, representing five percent of the total amount billed.

Dated this 9th day of January, 2020.

MARQUIS AURBACH COFFING

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

Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

certify hereby that the foregoing **DEFENDANT/COUNTERCLAIMANT** TROPICANA INVESTMENTS LLC'S OPPOSITION TO PLAINTIFF JSJBD CORP'S MOTION FOR ATTORNEY FEES AND COSTS was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁷

Mario Lovato: mpl@lovatolaw.com

/s/ Rosie Wesp An employee of Marquis Aurbach Coffing

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⁷ 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

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7	DATE		DESCRIPTION	HRS
6	07/17	MPL	Tel. call with Lucas Grower re new matter. Review email and documents sent by Grower.	.5
7	07/23	MPL	Exchange correspondence with Grower about possible conf. call and initial consultation with clients.	.5
8	07/24	MPL	Tel. conf. with clients re potential matter.	.3
0	07/24	MPL	Exchange emails with Grower re tel. conf.	.2
9	07/25	MPL	Initial consultation meeting with clients.	1.0
9	07/25	MPL	Draft and send email to Grower re meeting.	.2
10	07/25	MPL	Draft and send retainer agreement to potential client.	.5
10	07/27	MPL	Draft and send finalized retainer agreement to client. Draft and send email to	0
11			Grower re status. Review email from client re retainer agreement and retainer check.	
	07/30	MPL	Exchange emails with Grower re delivery of file.	.2
12	07/31	MPL	Review email from Grower re electronic files that will be delivered.	.2
	08/01	MPL	Exchange emails with Lucas Grower re time for drop off of file.	.1
13	08/20	MPL	Draft letter to send to opp. counsel.	2.2
	08/20	MPL	Draft and send email to client for review and approval of draft. Review	.2
14			responding email from Grower re same.	
	08/21	MPL	Review email from client re changes to be made to the letter to Sacco.	.2
15	09/04	MPL	Draft and revise letter to be sent to opp. counsel re status of the case and breaches committed by Landlord. Draft and send email to client re same.	.4
16	09/04	MPL	Draft and send email to prior counsel re client contact information. Tel. call to client discussing letter.	.2
17	09/10	MPL	Draft and send email to client re clearance to send letter to opp. counsel.	.1
1/	09/10	MPL	Review responding email from client re possible appraisal process.	.1
18	09/21	MPL	Review email from client re date of possible appraisal.	.1
10	09/24	MPL	Review letter forwarded by client from Landlord making demands re rent.	.3
10			Review additional email re same. Draft and send email re appraisal issues.	
19	09/25	MPL	Draft and send email to client re letter to go out. Review and revise letter, and	.3
20	10/05	MPL	send to opp. counsel. Draft and send email to client re same. Review correspondence from opp. counsel re rent demands and analysis.	.5
	10/05	MPL	Draft and send email to client re correspondence from opp. counsel, and brief	.8
21			analysis re same.	
22	10/08	MPL	Tel. call to opp. counsel, leave voicemail.	.1
	10/08	MPL	Draft and send email to opp. counsel re possible alternative and reasonable methods for resolving issues regarding rent. Draft and send email to client re	.5
23			status.	
24	10/08	MPL	Tel. call from opp. counsel (Moore) re methods of resolving rent issue.	.3
24	10/08	MPL	Draft and send email confirming tel. call and the proposals made by client.	.5
25	10/08	MPL	Draft and send email to client re status.	.5 .2 .2
25	10/08	MPL	Exchange emails with client re various rental issues and setting up date / time for tel. conf.	.2
26	10/09	MPL	Exchange emails with client re date / time for tel. conf.	.2
	10/09	MPL	Review email from client re rental value, etc.	.1
27	10/12	MPL	Review appraisal forwarded by client. Review voicemail from client.	.3
	10/12	MPL	Draft and send email to client re same.	.2
28	10/17	MPL	Review correspondence from opp. counsel purporting yet again to set rent at \$8,400 and threatening eviction. Draft and send email to client re same.	.6
	10/17	MPL	Draft and revise Complaint.	.5
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1	10/18	MPL	Draft and send email to client re the next steps in the case. Review responding email from client re same.	.3
2	10/19	MPL	Review email from client re payments being made, and setting up meeting. Draft and send responding email re same.	.3
2	10/24	MPL	Mtg with client to discuss possible case filing, etc.	1.0
3	10/26	MPL	Review email from client with photo of attic space and issues re evaporative cooler.	.2
4	10/31	MPL	Exchange emails with client re rent issues and arranging for tel. conf. by end of the week.	.2
5	11/06	MPL	Research and review law re enforceability of lease where rent amount is not stated. Draft memorandum re same.	3.0
6	11/06 11/08	MPL MPL	Draft and send email to client re same.	.2 1.2
7			Review October 17 letter sent by Landlord's counsel. Draft and send detailed letter responding to same.	
8	11/08	MPL	Draft and send email to client re same.	.2
	11/08	MPL	Draft and revise Complaint in accordance with letter and legal research conducted.	2.0
9	11/15	MPL	Review email from client re period of unavailability of client.	.1
10	11/15 11/16	MPL MPL	Research and review law re open term re rent. Draft and revise complaint. Draft and send correspondence to opp. counsel with copy of appraisal obtained	2.5 .2
10			by client.	
11	11/16 11/19	MPL MPL	Research and review NRS Chapter 118C statutes re repairs, rent, and other issues. Draft and send additional email to opp. counsel with copy of appraisal obtained	1.2 .2
12			by client, in light of possible issue with email service.	
	11/19 11/20	MPL MPL	Review responding email from opp. counsel that the prior email was received. Draft and send email updating client on status of service of appraisal.	.1 .1
13	11/20	MPL	Research and review law re open term re rent. Revise complaint.	1.5
	11/27	MPL	Review email from client re issues re next month's rent check.	.1
14	11/28	MPL	Revise complaint. Draft and send email to client re status.	.5
1	11/29	MPL	Tel. conf. with client re status of case and impending filing of complaint.	.3
15	11/30	MPL	Draft, revise and file Complaint in Business Court.	2.0
1.	11/30	MPL	Draft and send email to client re same.	.1
16	12/03	MPL	Review file-stamped copy of Complaint.	.1
17	12/03	MPL	Draft and send email to client re judge assignment and next steps.	.6
17	12/03	MPL	Review detailed email from client re allegations of Complaint	.4
10	12/03	MPL	Tel. call with client re Complaint and whether to amend allegations.	.3
18	12/03	MPL	Review email from clerk's office. Tel. call with clerk's office re same.	.3
19	12/03	MPL	Draft and submit amended Business Court cover sheet, as requested by clerk's office.	.2
20	12/04	MPL	Draft and submit Summons for approval by court clerk.	.3
20	12/05	MPL	Review Summons accepted and signed by court clerk.	.2
21	12/05	MPL	Draft and send email to opp. counsel with copy of the Complaint and Summons and inquiring whether counsel would be willing to sign an Acceptance of Service of same.	.2
22	12/05	MPL	Draft and send email to client updating client on the status of the Complaint and Summons and possible service of same.	.2
23	12/06	MPL	Arrange for service of process of Complaint and Summons. Tel. call with runner re completed service.	.4
24	12/06	MPL	Draft and send email to client re service of Complaint and Summons.	.2
24	12/06	MPL	Draft affidavit of service for signature / completion by process server.	.2 .2 .3
25	12/11	MPL	Draft and file summons with affidavit of service.	.3
	12/18	MPL	Review email from opp. counsel requesting extension. Draft and send responding email granting requested extension.	.2
26	12/18	MPL	Review email from client re rent issues. Draft and send detailed email re same and providing status update re case.	.4
27	12/27	MPL	Review email from client re landlord's visit to property and sign issue.	.1
_	01/02	MPL	Review email from client re sign issues. Draft and send responding email re same.	.2
28	01/02	MPL	Review email from client re landlord's request for tenant estoppel certificate.	.2
	01/03	MPL	Draft and send email to client re same. Review email from client, forwarding landlord email.	.2
		_	,	

1	01/03	MPL	Tel. call with client re same.	.3
1	01/03	MPL	Review additional email, and attachment, from client re sign issues.	.2
اء	01/04	MPL	Draft and send detailed email to client re possible settlement discussions.	
2	01/04	MPL	Review responding email re same.	.5 .2 .2
اء	01/07	MPL	Review email from client re settlement and negotiation issues.	.2
3	01/07	MPL	Draft and send email to opp. counsel re extension required from opp. counsel and	.2
			the date when a response will be due from Defendant.	
4	01/09	MPL	Review answer and counterclaim filed by landlord.	.8
	01/09	MPL	Draft and send detailed email to client re same.	.5
5	01/10	MPL	Review email from client re possible discussion or meeting. Draft and send email	.2
			to client setting up tel. conf.	
6	01/11	MPL	Tel. conf. with client.	.5
	01/11	MPL	Review email sent by landlord to client re various issues.	.2
7	01/17	MPL	Review voicemail from opp. counsel re settlement issues.	.1
	01/17	MPL	Draft and send detailed email to client re voicemail and re approach to settlement	.5
8			issues.	
	01/23	MPL	Review business court order setting initial case conference hearing.	.5
9	01/23	MPL	Draft and send detailed email to client re same.	.4
	01/23	MPL	Legal research re favorable case law in Nevada re enforceability of option.	.5
10	01/24	MPL	Draft and revise memorandum re enforceability of option where rent not	1.0
10			determined.	
11	01/24	MPL	Draft memorandum re Defendant's admissions in the Answer.	.5
11	01/25	MPL	Tel. call with client re issue concerning additional counterdefendants.	.5
12	01/25	MPL	Tel. call with Jeff White, discussing non-representation and the issues in the case.	.5
14	01/25	MPL	Draft and send detailed email to Jeff White confirming non-representation and	.2
13			other issues.	
13	01/25	MPL	Draft reply to Counterclaim.	1.5
14	01/28	MPL	Tel. call with client discussing initial case conference.	.3
14	01/28	MPL	Draft and send detailed email re same.	.3
1.5	01/28	MPL	Review email from Plaintiffs' counsel re his being late to hearing.	.1
15	01/28	MPL	Research and review rules governing deposit of monies with Court where	.6
1.0			allegedly in dispute.	
16	01/29	MPL	Prepare for, and attend, initial case conference with judge. Meet with client	3.0
1.7			representatives at hearing.	
17	01/29	MPL	Draft and send email re case conference hearing to Jeff White. Review	.2
			responding email re same.	
18	01/31	MPL	Draft, revise and file answer to counterclaim.	1.2
	02/05	MPL	Draft, revise and file reply to counterclaim.	2.2
19	02/05	MPL	Draft and send email to client re filing of reply.	.2
	02/05	MPL	Review business court order setting discovery and trial dates.	.3
20	02/12	MPL	Exchange emails with client re CAM issues and re a meeting in preparation for	.3
			settlement conference.	
21	02/25	MPL	Review documents served by Defendant. Review roof video served by	1.5
			Defendant. Review additional initial disclosures.	
22	02/27	MPL	Review Defendant's initial disclosures.	.2
	03/11	MPL	Review supplemental production of discovery by Defendant / Counterclaimant in	.3
23			the case.	
	03/15	MPL	Review various documents and deadlines in the case. Draft and send email to	2.4
24			client re same. Begin drafting settlement conference brief. Review additional	
	02/10) (D)	email from client.	1.0
25	03/18	MPL	Meeting with clients in preparation for settlement conference.	1.2
	03/21	MPL	Finalize settlement conference brief.	3.5
26	03/21	MPL	Tel. call to court re drop-off of brief.	.1
	03/21	MPL	Draft and send email to client re settlement conference.	.2
27	03/22	MPL	Prepare for, and attend, settlement conference with Judge Denton, client	3.5
	l		representatives and opposing counsel.	
	04/00	MDI	Daviavy amail from alignt to tal gamf	1
28	04/09	MPL MPI	Review email from Leff White restatus	.1
28	04/09	MPL	Review email from Jeff White re status.	.1
28				

1	04/11	MPL	Review email from Jeff White re service of Counterclaim.	.1
1	04/11	MPL	Tel. call to Jeff White re same.	.6
2	04/15	MPL	Review affidavit of service filed by Defendant.	.1
4	04/23	MPL	Review email from Jeff White re Counterclaim.	.2
2	04/23	MPL	Review email from Stuart Vincent re Counterclaim served upon him.	.2
3	04/23	MPL	Draft and send email to Stuart Vincent re Counterclaim.	.2
	04/26	MPL	Draft and send emails to Jeff White re representation and possible reply to	.6
4			counterclaim. Review additional emails from Jeff White re same.	
_	05/02	MPL	Review affidavit of attempted service re Jeff Vincent.	.1
5	05/06	MPL	Review email from client re possible meeting.	.1
	05/07	MPL	Draft and send email to client with possible meeting, and discussing various	.2
6			filings to be made.	
	05/07	MPL	Draft reply to counterclaim for Counterdefendants. File same. Draft and send	1.2
7			detailed email to clients re same.	
	05/07	MPL	Research and review law re responses to arguments about enforceability of option,	3.5
8			of "including but not limited to" terminology, re other provisions of Lease	
			documents. Draft memorandum for use in dispositive motion practice.	
9	05/08	MPL	Meeting with clients to discuss litigation strategy, etc.	1.5
	05/08	MPL	Draft, revise and file reply to counterclaim.	.3
10	05/08	MPL	Review possible bases for using offer of judgment procedure to support motion	1.0
			for attorney fees.	
11	05/08	MPL	Draft arguments in support of possible motion for summary judgment. Research	1.3
11			and review law in support of same.	
12	05/22	MPL	Draft and send email to client re facts that we are looking to establish in support	.3
12			of opposition and countermotion.	
13	05/22	MPL	Draft and send additional email to client re tel. conf. Review responding email re	.1
13			same.	
14	05/22	MPL	Review Defendant's motion for partial summary judgment.	.5
14	05/23	MPL	Draft and send email to client re tel. conf. Attend tel. conf. with client re drafting	.5
1.5			of opposition and countermotion.	
15	05/23	MPL	Draft arguments in support of a countermotion for partial summary judgment.	1.5
1.0			Research and review law re real property options to extend / renew.	
16	05/24	MPL	Review emails sent by client for possible use in opposition and countermotion.	.6
	05/24	MPL	Research and review law re interpretations of various Lease provisions.	1.4
17	05/28	MPL	Review email from client re date of meeting with witness. Tel. call with client re	.5
			same.	
18	06/04	MPL	Review email from client from Joe Velarde.	.1
	06/04	MPL	Draft opposition to MSJ.	.5
19	06/04	MPL	Meeting with client, meeting with witness. Draft declaration of Van Aken.	4.0
	06/05	MPL	Draft and send correspondence requesting extension of time for filing of	.2
20			opposition brief. Review responding email re same. Review responding email re	
			same.	
21	06/05	MPL	Review documents sent by client. Draft and send email inquiring about attorney	.5
			letter that has no signature from several years ago.	
22	06/05	MPL	Review additional documents sent by client.	.2
	06/06	MPL	Draft and send email to client re formatting of documents for use in litigation.	.1
23	06/07	MPL	Review Tom Harper correspondence with opp. side in years past.	.1
	06/10	MPL	Draft and send email to client re status of hearing and brief.	.2
24	06/10	MPL	Draft and revise opposition and countermotion.	2.5
	06/10	MPL	Draft and send email to opp. counsel re two day extension.	.1
25	06/10	MPL	Review correspondence sent by client involving Chauncey and others.	.8
	06/10	MPL	Review correspondence form opp. counsel re changes to scheduling order.	.2
26	06/11	MPL	Draft and revise opposition and countermotion.	3.0
-	06/11	MPL	review email from opp. counsel re possibly moving various deadlines.	.1
27	06/12	MPL	Exchange emails with client re documents being sent.	.2
- '	06/12	MPL	Review historical correspondence between the parties. Draft and send email to	.5
28	0.011.2	1 (5.	client re documents needed.	
20	06/12	MPL	Research and review case law dealing with amending lease situation, including	1.5
	06/12) (DI	McLane v. Prudential. Draft and send email to client re same.	2
	06/12	MPL	Exchange numerous emails with clients re documents, exhibits, etc. Review	.3
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1			additional documents sent by client. Draft and send email to client re change of	
1			hearing date.	
2	06/12	MPL	Draft and revise oppn MSJ	3.2
	06/13	MPL	Review additional emails forwarded by client.	.2
3	06/13	MPL	Review draft Stipulation and Order.	.2
7	06/13	MPL	Draft and revise oppn MSJ.	1.0
4	06/14	MPL	Exchange emails with opp. counsel re stipulation, etc.	.2
- 1	06/14	MPL	Review email from opp. counsel about status of various items in case.	.1
5	06/14	MPL	Draft and revise oppn MSJ.	4.5
٦	06/18	MPL	Draft and revise oppn and countermotion.	3.0
6	06/18 06/18	MPL MPL	Draft and revise stipulation and order to continue hearing. Tel. call to law clerk re oppn and countermotion, and re incoming stipulation to	.2 .2
Ϋ́	00/18	MPL	continue hearing.	.2
7	06/18	MPL	Review additional documents sent by opp. party.	.3
´	06/17	MPL	Draft oppn and countermotion	3.0
8	06/19	MPL	Draft and send email to client re declaration and opposition.	.4
	06/19	MPL	Draft and send email to client with revised version of declaration.	.2
9	06/19	MPL	Draft and send email to opp. counsel with copy of opposition and countermotion.	.2
	06/19	MPL	Draft, revise and file opp. to motion for summary judgment.	1.0
10	06/19	MPL	Exchange emails with opp. counsel re stipulation and order not signed by court.	.2
			Review email from court re same.	
11	06/19	MPL	Exchange emails with opp. counsel re splitting stipulation and order into two	.2
			parts. Review and revise stipulations.	
12	06/20	MPL	Draft and send detailed email to client re opposition and countermotion, date and	.4
	0.6/2.0) (DI	preparation for hearing, and re discovery to disclose and produce.	7
13	06/20	MPL	Exchange additional emails with client re discovery to be produced.	.7
	06/20 06/20	MPL MPL	Review email from court re stipulation ready for pickup.	.2 .3
14	06/20	MPL	Tel. call with client re status of the case and discovery issues. File Order. Draft and file notice of entry of order.	.3
	06/21	MPL	Review email from client re discovery issues.	.2
15	06/24	MPL	Draft initial list of witnesses and documents.	.8
	06/25	MPL	Review email from client re fire at shopping center location.	.1
16	06/26	MPL	Draft and send email to client re article in newspaper about fire.	.2
	06/27	MPL	Exchange emails with opp. counsel re judge's non-agreement re stipulation.	.2
17	07/01	MPL	Review email from opp. counsel re rebuttal reports and discovery issues. Draft	.2
			and send responding email re same.	
18	07/01	MPL	Draft Van Aken Declaration. Draft and send email to client re same.	.5
10	07/01	MPL	Review reply brief filed by Defendant. Draft notes for use in reply to	2.0
19	0.7/0.1	LEDI	counterclaim.	2
20	07/01	MPL	Draft and send detailed email to client re same.	.3
20	07/01	MPL	Revise Jeff Vincent declaration. Draft and send email to client re same. Review voicemail from client re Aken declaration. Draft and send responding	.2 .3
21	07/02	MPL	email re methods for obtaining possible signature.	.3
41	07/02	MPL	Draft and send additional emails to clients re possible declarations.	.3
22	07/03	MPL	Draft, revise and file reply in support of counterclaim.	5.5
22	07/03	MPL	Draft and send email to clients re reply brief, copy of same, and preparations for	.5
23			hearing.	
23	07/08	MPL	Prepare for, and attend, hearing for competing motions for summary judgment.	3.5
24	07/08	MPL	Draft and send email to prior counsel re hearing in light of comments made at	.4
			hearing re attorney.	
25	07/08	MPL	Tel. call to prior counsel re comments at hearing and possible attempt by defense	.1
23			counsel to depose.	
26	07/09	MPL	Draft and send email for transcripts, etc.	.1
-0	07/09	MPL	Draft and send detailed email to Jeff White re status of the case.	.4
27	07/09	MPL	Draft and send detailed email to clients re litigation strategy and next steps in case.	.4
- '	07/09	MPL	Exchange emails with client re tel. conf.	.1
28	07/10 07/10	MPL MPL	Exchange emails with client re tel. conf. Prepare for, and attend tel. conf. with clients.	.1 1.0
-	07/10	MPL	Review email from clients re potential offer of judgment.	.2
	07/10	MPL	Tel. conf. with clients re status of the case and next steps, etc.	.5
	0//11	1711 1	1011 cont. The chemic to status of the case and next steps, etc.	.5

1	07/16	MPL	Review email from client re rebuttal report.	.2
1	07/18	MPL	Review expert witness designation from opp. counsel.	.4
2	07/22	MPL	Draft and revise Order denying Landlord's motion for partial summary judgment	1.0
-			and granting countermotion for partial summary judgment.	
3	07/22	MPL	Tel. call to expert witness re report, etc.	.4
	07/22	MPL	Review report drafted and served by Landlord.	.3
4	07/22 07/22	MPL	Draft offer of judgment. Draft request for production of documents re CAMs	.2
	07/22	MPL MPL	Draft list of witnesses and documents.	1.0 1.2
5	07/23	MPL	Draft and send detailed email re future rental payments.	.6
	07/23	MPL	Draft and revise proposed Order for the Court. Deliver to Court.	.5
6	07/24	MPL	Review Order entered by court. Draft and send detailed email to client re	.3
			additional interlineation by Court.	
7	07/24	MPL	Review email from opp. counsel inquiring about Order.	.1
	07/24	MPL	Draft and send responding email re Order.	.1
8	07/24	MPL	Tel. call with expert re drafting of report.	.4
	07/24	MPL	Draft and send email to clients re setting up a tel. conf. with expert.	.1
9	07/24 07/24	MPL MPL	Draft and send email to clients re possible expert on accounting issues. Review detailed email from client re errors in opp. party's expert report.	.1 .2
10	07/24	MPL	Draft and file notice of entry of order.	.1
10	07/24	MPL	Review CV and testimony log from expert.	.1
11	07/25	MPL	Review email from court reporter re availability of transcripts.	.1
11	07/25	MPL	Review email from client re additional errors in Landlord's expert report.	.2
12	07/26	MPL	Draft and send responding email to court reporter re transcripts.	.1
12	07/26	MPL	Draft and send email to client re tel. conf.	.1
13	07/26	MPL	Draft and serve initial disclosures and productions.	.5
	07/26	MPL	Draft and serve document requests on Landlord.	.6
14	07/26	MPL	Draft and send detailed email to client re discovery that has been served.	.3
	07/26	MPL	Draft and send email to client re availability in early August.	.1
15	07/26	MPL	Review Landlord's document requests and interrogatories. Draft initial response and notes re same.	1.0
	07/26	MPL	Review Landlord's request for admissions. Draft initial response to same.	1.0
16	07/29	MPL	Draft and serve email to client re additional documents to be sent by client to this	.2
			attorney's office.	
17	07/29	MPL	Tel. call with prior counsel. Draft and send detailed email to attorney re status of	.4
10			case and possible effort by opp. counsel to depose.	
18	07/29	MPL	Draft and send detailed email to clients re discovery received from opp. counsel	.3
10	0=100		and the responses we need to provide thereto.	
19	07/29	MPL	Tel. call with client.	.3
20	07/31	MPL	Draft and send proposed language to clients relating to correspondence. Draft and send detailed email re same.	.5
20	07/31	MPL	Review supplemental list of witnesses and documents provided by Landlord.	.2
21	08/01	MPL	Review Defendant's 2d supplemental list of witnesses and documents. Review	1.0
	00/01	1,112	documents Trop 827-70.	1.0
22	08/01	MPL	Review numerous documents re expert report and rebutting pertinent items in	.8
			same.	
23	08/01	MPL	Exchange emails with client re document disclosures, rent issue, and other	.5
			matters.	
24	08/01	MPL	Exchange emails with client re additional document to provide and produce,	.6
	00/01) (DI	comparables, etc.	
25	08/01	MPL	Review emails from client re inconsistent CAM charges. Review additional email	.4
	08/08	MPL	and documents re same. Review letter re rent payment.	.4
26	08/09	MPL	Review email re transcript, and review transcript, re dispositive motion hearing.	.6
	08/14	MPL	Exchange emails with clients re rent issue and correspondence. Review various	.6 .5
27			additional correspondences from client re comp issues.	
	08/15	MPL	Review various notices of deposition served by Defendant.	.2
28	08/15	MPL	Exchange emails with clients re depositions.	.3
	08/20	MPL	Prepare for tel. conf. Tel. call with expert re expert report issues.	2.2
	08/22	MPL	Draft responses to requests for admission.	1.8
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1	08/22	MPL	Review numerous documents and arrange same for production.	1.4
2	08/22	MPL	Tel. calls with client re expert issues. Draft and send email to client re tel. conf. Review responding email re same.	1.5
-	08/22	MPL	Draft and send email to defense counsel re depositions and dates.	.2
3	08/22	MPL	Exchange emails with clients re roof issues. Exchange additional emails re discovery issues re same. Review additional emails from client re rent issues and prior rent correspondence.	1.0
4	08/23	MPL	Draft, revise and serve response to requests for admissions.	.7
ا ہ	08/25	MPL	Review email from client re additional documents for possible production.	.3
5	08/26	MPL	Review and arrange numerous documents for production.	1.4
6	08/26	MPL	Draft and serve requests for production of documents.	1.2
	08/26	MPL	Draft and send emails to client re discovery produced in the case and explaining same.	.6
7	08/26	MPL	Draft and send email to Jeff White re status and discovery responses.	.5
8	08/27 08/27	MPL MPL	Review email from expert re issues relating to possible report.	.3 .2
8	08/27	MPL	Review vague email from defense counsel. Review voicemail re same. Draft 1st supplemental list of witnesses and documents. Arrange various	1.0
9	00/27	WII L	documents being produced.	1.0
	08/27	MPL	Draft and send email to client re supplemental production and explaining same.	.6
10	08/28	MPL	Exchange emails with expert re various issues.	.3
	08/28	MPL	Exchange emails with client re rent payment issues.	.4
11	08/28	MPL	Draft and send detailed email addressing tender, acceptance, and various other matters.	1.0
12	08/30	MPL	Review notices of continued deposition.	.3
	08/30	MPL	Exchange numerous emails with defense counsel re his improper noticing of	1.0
13			depositions, and even his complete failure to even serve notices / subpoenas.	
			Research and review prior correspondence and disclosures to verify that no proper service provided by defense counsel.	
14	08/30	MPL	Tel. calls inquiring about possible service of subpoenas, etc. on third parties.	.8
	08/30	MPL	Tel. calls with clients re issues relating to defense counsel's improper service on	.5
15			third parties of subpoenas, etc.	
16	08/30	MPL	Exchange emails with clients re rent issues.	.3
16	08/30	MPL	Exchange emails with attorney re third party subpoena and related issues.	.5
17	09/03	MPL	Draft responses to document requests.	1.0
1 /	09/04	MPL	Draft responses to interrogatories. Draft verifications re same. Draft and send email to client re same.	2.0
18	09/05	MPL	Draft, revise and serve answers to interrogatories.	1.0
	09/05		Draft and serve counterdefendants' answers to interrogatories.	.8
19	09/05	MPL	Draft and send email to defense counsel re various discovery Reponses. Draft and send email to defense counsel re deposition scheduling issues.	.3
20	09/06	MPL	Draft, revise and serve responses to document requests.	.4
_	09/06	MPL	Draft, revise and serve counterdefendants' response to document requests.	.4
21	09/06	MPL	Draft and send detailed email to clients re discovery responses and explaining various issues re same.	1.0
22	09/09	MPL	Prepare for, and attend, status check hearing.	3.5
	09/09	MPL	Review subpoena re Eisman and notice of deposition re same.	.2
23	09/09	MPL	Exchange emails with defense counsel re deposition and related issues.	.4
	09/09	MPL	Draft and send detailed email re hearing and various related issues being impacted	.6
24	00/00	MDI	in the case.	2
	09/09 09/09	MPL MPL	Draft and send email to attorney re third party subpoena issues. Exchange emails with client re depositions, scheduling, and re damages	.3 1.0
25	09/09	MIFL	discovery.	1.0
	09/10	MPL	Draft and send email to clients to verify expert report issues.	.4
26	09/10	MPL	Tel. calls with client re expert report issues. Tel. call with expert re rebuttal report.	1.5
27	09/11	MPL	Review voicemail re expert issues. Draft and send email to clients re expert issues	1.0
27			and related voicemail. Review responding email re same. Draft and send email	
28	00/12	MDI	in response to same.	4
20	09/13	MPL	Review amended notice of deposition.	.1
	09/13 09/16	MPL MPL	Exchange emails with client re new deposition dates. Exchange emails with clients re meeting. Tel. call re same.	.3 .6
	09/10	1 VII L	Exchange emans with enems to incoming. Tel. can le same.	.0

1	09/17	MPL	Review rebuttal expert report. Draft and serve 2d supplemental list of witnesses	.8
2	09/17	MPL	and documents. Exchange emails with defense counsel re improper scheduling and deposition	.6
3	09/17	MPL	issues. Prepare for meeting, and mtg, with client-representative re deposition and case.	2.0
3	09/17	MPL	Begin drafting motion to compel production of documents.	.5
4	09/17	MPL	Research and review law re alleged agency nature of attorney client relationship in transactional settings. Review various other case law.	1.2
5	09/18	MPL	Prepare for, and attend and defend, deposition of Bruce Eisman.	3.5
3	09/18	MPL	Exchange emails with defense counsel re yet more improper scheduling, failure to notice, and various other improper deposition issues.	.8
6	09/18	MPL	Draft and send detailed email to Jeff White re status of the case, discovery and other issues.	.5
7	09/19	MPL	Prepare for, and attend and defend, deposition of Rule 30b6.	5.2
	09/19	MPL	Draft and send email to clients re additional discovery to obtain and produce.	.4
8	09/20	MPL	Prepare for meeting, and mtg, with client re various matters.	1.0
	09/20	MPL	Review correspondence from defense counsel. Draft responding correspondence.	.4
9	09/20	MPL	Review documents sent by clients.	.5
	09/23	MPL	Draft and revise response to defense correspondence.	.2
10	09/23	MPL	Draft and send email, and attached correspondence, to defense counsel	.3
11	09/23	MPL	responding to September 19 letter. Draft and send email to clients updating on status of various matters re deposition,	.8
	00/24	MDI	etc.	1.5
12	09/24	MPL	Research and review, and draft memo re same, re claims and counterclaims.	1.5
	09/25	MPL	Draft and revise motion to compel production of documents.	2.2
13	09/25	MPL	Exchange emails with clients re status of various matters, need to produce additional discovery.	.7
14	09/25	MPL	Draft 3d supplemental list of witnesses and docs and serve same.	1.0
1	09/26	MPL	Draft possible objections to various defense documents.	.8
15	09/26	MPL	Review voicemail re signed OST. Arrange for pickup. File motion to compel	.5
13			with signed OST. Draft and file notice of entry of order re same.	
16	09/26	MPL	Draft various arguments for lack of merit re counterclaims.	.5
16	09/26	MPL	Draft and send detailed email updating clients on OST and motion to compel, as	.6
17			well as hearing for same.	
17	09/27	MPL	Exchange emails with client arranging meeting. Review emails from client	.4
18	09/30	MDI	attaching various documents for possible production. Prepare for meeting, and mtg, with client re various matters.	1.5
10	09/30	MPL	Review Defendant's motion in limine re expert report.	
19	09/30	MPL		.5
17	09/30	MPL	Review Defendant's opposition re motion to compel. Review Defendant's 3d supplemental list of witnesses and documents.	.6 .5
20	09/30	MPL	Review numerous documents served by Defendant.	.4
20		MPL		.8
21	09/30	WIPL	Draft and send detailed email to clients re motion filed, and various other items relating to litigation strategy in the case.	.0
41	09/30	MPL	Draft and send email to client re discovery disputes and document purportedly	.5
22	09/30	WII L	being produced by Defendant.	.5
22	10/01	MPL	Draft, revise and file reply in support of motion to compel.	1.2
	10/01	MPL		
23			Review rent correspondence. Exchange emails with client re same.	.6 .2
	10/02	MPL	Review correspondence from defense counsel rent issue.	2.8
24		MPL	Prepare for, and attend, hearing for motion to compel production of documents.	
	10/02	MPL	Draft and send email to clients re additional motion to amend or correct.	.4
25	10/02	MPL	Review Defendant's motion for sanctions. Draft response. Draft and send email to clients re same.	1.5
ایا	10/02	MPL	Review Defendant's motion to amend or correct order. Begin drafting response.	1.0
26	10/02	MPL	Exchange emails with clients re preparations for hearing.	.5
	10/03	MPL	Draft order re motion to compel. Draft and send email to defense counsel re same.	.8
27	10/04	MPL		
			Draft oppn mot. amend or correct order.	1.3
28	10/04	MPL MDI	Review various emails from defense counsel re order and other matters.	.5
	10/07	MPL	Draft opposition motion amend or correct order. Draft opposition to motion for	1.0
	10/00	MDI	Sanctions.	
	10/08	MPL	Draft and revise order re motion to compel.	.5

1	10/08	MPL	Draft, revise and file opposition to motion to amend or correct order.	.3
2	10/08	MPL	Draft and submit correspondence re order. Draft and send email to defense counsel re same.	.4
	10/08	MPL	Draft, revise and file opposition to motion for sanctions.	1.0
3	10/08	MPL	Draft and send email to clients re various submissions and filings.	1.0
	10/08	MPL	Review email from court re proposed order. Draft and send email to defense counsel re correspondence from court and innocuous misstatements in same.	.4
4			Draft and revise order. Review correspondence from defense counsel re same.	
_	10/09	MPL	Tel. call re signed order. File same. Draft and file notice of entry of order.	.3
5	10/09	MPL	Draft and send detailed email to clients re hearing and numerous additional issues in the case.	.4
6	10/09	MPL	Review numerous documents served re CAMs.	.8
	10/09	MPL	File signed order. Draft and file notice of entry of order.	.2
7	10/09	MPL	Review email from client re roof and related issues.	.4
	10/09	MPL	Prepare for, and attend, hearing for Defendant's motion to amend or correct order.	2.0
8	10/11	MPL	Draft and send email to defense counsel re extension.	.1
	10/11	MPL	Review email from clients re Defendant' noncompliance with discovery order in	.3
9			various respects.	
	10/14	MPL	Review correspondence from client re numerous errors in defense expert report.	.4
10	10/15	MPL	Draft oppn to motion to strike expert report.	1.5
11	10/16	MPL	Draft, revise and file oppn to motion to strike expert report, prepare declaration and exhibits to same. Draft and send email to clients re same.	.8
11	10/16	MPL	Review email from client re possible meeting and various issues.	.3
12	10/21	MPL	Review voicemail from client re rent and other issues. Draft and send email to	.3
14			clients re same.	
13	10/22	MPL	Draft and send email, and attached correspondence, to defense counsel re payment	.4
13			issues. Review responding email from defense counsel re his client's payment of	
14	10/22		sanctions.	
	10/22	MPL	Review Defendant's pretrial disclosures.	1.0
15	10/22	MPL	Review correspondence from defense counsel re rent issue. Review	.3
	10/22	MPL	correspondence from JSJBD to landlord. Review Defendant's 4th supplemental disclosures.	.5
16	10/22	MPL	Review correspondence to Defendant.	.2
	10/22	MPL	Review proposed order sent by defense counsel.	.4
17	10/29	MPL	Review Defendant's reply in support of motion in limine re expert report.	.5
	10/29	MPL	Draft reply in support of countermotion re expert report.	1.0
18	10/30	MPL	Draft, revise and file reply in support of countermotion.	.4
	10/30	MPL	Draft and send correspondence to clients re reply brief and various additional	.8
19			issues.	
20	10/31	MPL	Research and review case law re CAM issues and litigation.	.5
20	10/31	MPL	Tel. call with client re litigation.	.5
21	10/31	MPL	Review proposed order. Draft changes to same. Draft and send email to defense counsel explaining changes to proposed order.	1.0
21	10/31	MPL	Review email from client re meeting with expert.	.2
22	11/01	MPL	Draft memo re CAM language in lease and related documents.	1.0
	11/01	MPL	Draft and send transcript request.	.1
23	11/04	MPL	Draft and send email to witness re trial date.	.2
	11/04	MPL	Review email from defense counsel re proposed order. Draft and revise proposed	.8
24			order consistent with prior proposed order. Draft and send email with Plaintiff's	
			proposed order.	
25	11/04	MPL	Prepare for, and attend, hearing for Landlord's motion in limine.	2.5
	11/06	MPL	Draft and file pretrial disclosures.	2.0
26	11/11	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and emails preparing for trial.	1.5
	11/12	MPL	Prepare for, and attend, calendar call hearing.	2.2
27	11/12	MPL	Draft and send email to witness updating re trial date.	.3
	11/12	MPL	Review order re defendant's motion for sanctions.	.5
28	11/12	MPL	Review Defendant's individual pretrial memorandum.	.6
	11/12	MPL	Review proposed order from defense counsel. Draft and send email re revisions	.5
			to be made pending receipt of transcripts.	
- 1	i .			

1	11/12	MPL	Tel. calls with clients re trial date, witnesses, documents, etc.	1.8
1	11/12	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and	4.0
2	11/13	MPL	emails preparing for trial. Prepare for trial. Prepare exhibits for use at trial. Numerous communications and	7.0
3	11/13	WII L	emails preparing for trial.	7.0
3	11/14	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and	6.0
4			emails preparing for trial. Exchange emails with defense counsel re his improper numbering, etc. Exchange emails re proposed order and various other trial	
5			matters. Draft and send email to law clerk re same. Tel. calls with clients re trial	
3			preparations. Draft and send various emails with exhibits, lists, etc. to clients. Draft and send email to Jeff White re status of trial and other matters.	
6	11/15	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and	5.0
٦			emails preparing for trial.	•
7	11/16	MPL	Prepare for mtg with client representatives. Prepare for trial. Mtg with client representatives in preparation for trial, trial testimony, etc.	3.0
8	11/17	MPL	Draft and revise proposed findings of fact and conclusions of law and related	3.5
	11/10	MDI	items. Draft and revise EDCR pretrial memorandum.	7.0
9	11/18	MPL	Finalize, revise and submit proposed findings of fact, conclusions of law, exhibits list and various other items. Exchange emails with law clerk re same. Review	5.0
10			emails from defense counsel re same. Revise and file EDCR pretrial	
	11/18	MPL	memorandum.	7.0
11	11/18	MPL	Prepare for, attend, and conduct trial. Prepare for, attend, and conduct trial.	8.5
12	11/20	MPL	Prepare for, attend, and conduct trial.	7.0
	11/21 11/22	MPL MPL	Prepare for, attend, and conduct trial.	7.0 6.0
13	11/22	MPL	Prepare for, attend, and conduct trial. Review notice of entry of order filed by Defendant.	.1
14	11/26	MPL	Review report re bookkeeping review of CAMs. Tel. calls with client re same.	1.6
17	11/27	MPL	Review rent correspondence.	.2
15	11/27	MPL	Research and review various arguments for attorney fee motion. Draft memo re same for future use.	2.5
1.0	12/05	MPL	Review FFCL. Exchange various emails with client. Tel. calls with client re	3.5
16	12/05	MDI	same.	0
17	12/05 12/09	MPL MPL	Research and review "part performance" case law. Review correspondence from defense counsel rent issues.	.8 .2
	12/10	MPL	Draft and file memorandum of costs.	2.0
18	12/10	MPL	Review Defendant's memorandum of costs. Draft notes for motion to retax.	1.0
	12/12	MPL	Review rent correspondence from client.	.2
19	12/12	MPL	Draft and file amendment to memorandum of costs. Tel. calls with client re same.	1.8
	12/13	MPL	Draft motion to retax costs.	2.0
20	12/13	MPL	Review Defendant's motion to retax costs.	.4
	12/16	MPL	Review notice of hearing re motion to retax.	.1
21	12/16	MPL	Draft motion for attorney fees and revise related memo re same.	2.0
	12/26	MPL	Review order to statistically close case.	.1
22	12/26	MPL	Draft motion for attorney fees. TOTAL	5.0 361.8
22			IVIAL	361.8
23				
- 1				

9. Accordingly, the total, combined, number of hours multiplied by the hourly rate of

\$350.00, results in an initial attorney fee figure of \$126,630.00.

10. The following costs were incurred in representing the Plaintiff and Counterdefendants from the inception of this case through December 26, 2019, with a few items that might not have been tallied from November 1, 2019 to present.

CERTIFICATE OF SERVICE

I hereby certify that, on September 3, 2020, I submitted **APPELLANTS' APPENDIX** for service via electronic service to the parties registered for service with the Nevada Supreme Court in this matter, including the following:

Terry A. Moore
Marquis Aurbach Coffing
10001 Park Run Dr.
Las Vegas, NV 89145
Attorneys for Defendant / Counterclaimant
Tropicana Investments, LLC

_____/s/ Mario Lovato
An employee of Lovato Law Firm, P.C.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JSJBD CORP, d/b/a Blue Dogs Pub, a) Case No.: 80849
Nevada corporation, STUART VINCENT,)
JEFFREY VINCENT, and JEFF) (Dist. Ct. No. A-18-785311-B)
WHITE)
)
Appellants,)
)
VS.)
)
TROPICANA INVESTMENTS, LLC, a)
California limited liability company,)
)
Respondent.)
)
)
AND CROSS-APPEAL.)

APPELLANTS' APPENDIX (VOL. 14)

MARIO P. LOVATO, ESQ. Nevada Bar No. 7427 LOVATO LAW FIRM, P.C. 7465 W. Lake Mead Blvd. Ste. 100 Las Vegas, Nevada 89128 (702) 979-9047 mpl@lovatolaw.com Attorney for Appellants JSJBD Corp., Stuart Vincent, Jeffrey Vincent, and Jeff White

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		•

1 **Marquis Aurbach Coffing** Terry A. Moore, Esq. 2 Nevada Bar No. 7831 Collin M. Jayne, Esq. 3 Nevada Bar No. 13899 10001 Park Run Drive 4 Las Vegas, Nevada 89145 Telephone: (702) 382-0711 5 Facsimile: (702) 382-5816 tmoore@maclaw.com 6 cjayne@maclaw.com Attorneys for Defendant/Counterclaimant, 7 Tropicana Investments, LLC 8 DISTRICT COURT 9 **CLARK COUNTY, NEVADA** 10 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation, 11 Plaintiff. 12 VS. 13 TROPICANA INVESTMENTS, LLC, a 14 California limited liability company, 15 Defendant. 16 TROPICANA INVESTMENTS, LLC, a California limited liability company, 17 Counterclaimant, 18 VS. 19 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada 20 corporation; STUART VINCENT, an individual; JEFFREY B. VINCENT, an individual; JEFF 21 WHITE, an individual; JOHN DOES I-X; and ROE CORPORATIONS. 22 Counterdefendants. 23 24 25 26 27

Electronically Filed 1/9/2020 10:02 AM Steven D. Grierson **CLERK OF THE COURT**

DEFENDANT/COUNTERCLAIMANT'S REPLY IN SUPPORT OF MOTION TO **RETAX COSTS**

A-18-785311-B

Hearing Date: January 17, 2020 (in chambers)

XI

Case No.:

Dept. No.:

Las Vegas, Nevada 89145 382-0711 FAX: (702) 382-5816

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DEFENDANT/COUNTERCLAIMANT'S REPLY IN SUPPORT OF MOTION TO RETAX COSTS

Defendant/Counterclaimant Tropicana Investments, LLC (hereinafter "Landlord") by and through its attorneys of record, the law firm of Marquis Aurbach Coffing, hereby submits this Reply in Support of Motion to Retax. This Reply is made and based on the papers and pleadings on file herein, the attached memorandum of points and authorities, and any oral argument the Court may choose to entertain at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. **INTRODUCTION**

The Opposition to Landlord's Motion to Retax Costs (the "Opposition") largely focuses on the same issue at the heart of Landlord's Motion to Retax, Motion for Attorneys' Fees, and Motion to Alter or Amend Judgment—who is the prevailing party in this case? The answer to this question is undeniably that Landlord prevailed, both in the monetary sense and in terms of prevailing on the major issues. As Landlord's Motion for Attorneys' Fees and Motion to Alter or Amend Judgment analyze this legal issue in detail, those briefs are incorporated herein by reference.

Despite the foregoing, Plaintiff and Counterdefendants (collectively, "Tenant") rely on fabrications of arguments Landlord did not make at trial, blatant misrepresentations of this Court's findings of fact and conclusions of law ("FFCL"), and irrelevant legal authority, in an effort to justify Tenant's position. For the reasons stated below, the Court should grant the Motion and disallow any costs to Tenant, because Tenant is not the prevailing party here, and therefore Tenant is not entitled to recover any costs.

II. **LEGAL ARGUMENT**

A. TENANT IS NOT THE PREVAILING PARTY.

First, as was detailed in Landlord's Motion to Retax (and every other post-trial motion in this case), Nevada law is clear that Tenant is not the prevailing party in this case, and as such Tenant has no legal entitlement to an award of costs. To summarize:

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- Nevada law requires that the prevailing party is the one who (1) prevailed on a significant issue, and (2) received a "net" monetary judgment after offsetting all damages awarded. See Valley Electric Ass'n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005); Robert J. Gordon Constr. v. Meredith Steel, 91 Nev. 434, 537 P.2d 1199 (1975); Parodi v. Budetti, 115 Nev. 236, 984 P.2d 172 (1999).
- Both Landlord and Tenant were awarded monetary judgments, but Landlord was awarded a larger amount, and thus Tenant did not receive a monetary judgment after offsetting all damages awarded. See FFCL at 18. Therefore, Tenant cannot be considered a prevailing party under Valley Electric.
- Moreover, the primary dispute between the parties, which consumed the vast majority of time spent in litigation and at trial, was the determination of rent for the option period. Landlord prevailed on that issue when the Court rejected Tenant's position that the rent was undecided and should be based on reasonable market rent. Rather, the Court adopted Landlord's position that the parties reached an agreement on rent, and that the option would be subject to that agreed-upon rent schedule. FFCL at ¶¶ 89–93, 105–109.

Tenant's arguments on this subject rely on misrepresentations including (1) that Landlord pursued a claim for eviction all the way up until trial, when in reality Landlord never requested eviction at trial because Landlord sought to enforce the lease at the agreed-upon rental rate; and (2) that Landlord's counterclaims were "adjudged in favor of the Counterdefendants," when this is demonstrably opposite to the truth as stated in the Court's FFCL at 18:19–24. Because Tenant is not the prevailing party, Tenant is not entitled to recover its costs of litigation under NRS 18.020.

B. IF TENANT IS AWARDED COSTS, THEY MUST BE RETAXED.

In the event the Court concludes that Tenant is the prevailing party in this case, the Motion to Retax should still be granted because Tenant has not established that several claimed costs were reasonable, necessary, or actually incurred.

First, Tenant recognizes that NRS 18.005(5) ordinarily limits recovery of expert fees to \$1,500 for each witness. Tenant's Verified Memorandum of Costs does not provide any basis

Page 2 of 5

¹ As analyzed in detail in Landlord's Motion to Alter or Amend Judgment and Opposition to Plaintiff's Motion for Attorney Fees and Costs, the Court may not award attorney's fees as special damages for Tenant's breach of implied covenant claim, both because that claim is not one of the "narrow exceptions" in which attorney's fees are awardable as special damages, and more importantly, because Tenant did not plead and prove attorney's fees as special damages at trial. *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 960, 35 P.3d 964, 971 (2001); *Pardee Homes of Nev. v. Wolfram*, 135 Nev. Adv. 173, 177–78 444 P.3d 423, 426 (2019).

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for the Court to amount costs exceeding the \$1,500 cap, and the Opposition only repeats that Mr. Lubawy's testimony was reasonable and necessary. As has been clearly set forth by the Nevada Court of Appeals, a party should analyze numerous factors relating to whether or not the expert's services were of such necessity as to warrant a larger recovery. Frazier v. Drake, 131 Nev. 632, 650, 357 P.3d 365, 377 (Nev. App. 2015). Nothing filed by Tenant has even cited Frazier, much less set forth facts or argument that would allow this Court to make the "express [and] careful" analysis required to find that Tenant has established the propriety of awarding more than \$1,500. See id. As such, Tenant has not met its burden of establishing anything more than the statutory cap of \$1,500 for Mr. Lubawy.

Similarly, Tenant's Opposition attempts to bootstrap the ambiguous "bookkeeping" costs as recoverable expert fees under NRS 18.005(5). No such justification was presented in Tenant's Memorandum of Costs, nor Tenant's "Amended" Memorandum of Costs filed two days later. Landlord submits that "Bookkeeping" is not enumerated as a taxable cost in NRS 18.005, and the only document submitted that relates to this cost is a "miscellaneous bill" for "Blue Dog Letter and Meetings," and thus the Court cannot determine whether the cost was reasonable or necessary. See Plaintiff's Amended Memorandum of Costs at Ex. 2. Thus, Tenant is not entitled to recover this cost because Tenant has not presented evidence establishing what these costs were really for, or how the costs were reasonable and necessary.

A bookkeeper is not an "expert" in the sense used in NRS 18.005(5), because that statute actually specifies "[r]easonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness," (emphasis added). Giving Tenant the benefit of the doubt that the \$600 bookkeeping cost falls under this statute, the Court should still disallow the cost, because Mr. Howard was not properly disclosed as an expert witness, nor was he actually utilized in this case. As detailed in Landlord's motion in limine regarding untimely disclosed experts, Tenant failed to disclose Mr. Howard until a week after the expert disclosure deadline, and that disclosure did not include any report, curriculum vitae, fee schedule, or testimony list for Mr. Howard. As such, Mr. Howard was precluded from offering any testimony. Because Page 3 of 5

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Tenant failed to comply with discovery rules in retaining this "expert witness," Tenant cannot establish that the expert's time was necessary in this case.

Tenant has not provided evidence that establishes the reasonableness or necessity of either Mr. Lubawy or Mr. Howard. Moreover, even if the Court agrees that Mr. Howard's costs are properly classified as "expert witness" fees, the Court should grant the Motion and disallow the \$600 bookkeeping cost entirely because Mr. Howard provided zero value to this case, and thus any fee charged by Mr. Howard was unnecessary.

III. **CONCLUSION**

Tenant was not a prevailing party here, so it is not entitled to recover its costs in this matter. Alternatively, if the Court is going to consider awarding costs to Tenant, the Court should retax the costs set forth in the untimely filed "Amended Memorandum of Costs," including the entirety of the expert witness fees and bookkeeping fees set forth therein. Accordingly, the Court should grant the instant motion to retax.

Dated this 9th day of January, 2020.

MARQUIS AURBACH COFFING

By	/s/ Terry A. Moore
•	Terry A. Moore, Esq.
	Nevada Bar No. 7831
	Collin M. Jayne, Esq.
	Nevada Bar No.13899
	10001 Park Run Drive
	Las Vegas, Nevada 89145
	Attorneys for Defendant/Counterclaimant
	Tropicana Investments LLC

Page 4 of 5

MARQUIS AURBACH COFFING

Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

I hereby certify that the foregoing <u>DEFENDANT/COUNTERCLAIMANT'S REPLY</u>

<u>IN SUPPORT OF MOTION TO RETAX COSTS</u> was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

Mario Lovato: mpl@lovatolaw.com

/s/ Rosie Wesp an employee of Marquis Aurbach Coffing

Page 5 of 5

² 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 2 3 4 5 6	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	Electronically Filed 1/9/2020 11:49 PM Steven D. Grierson CLERK OF THE COURT	
7	DISTRICT CO	OURT	
8	CLARK COUNTY,	NEVADA	
9 10 11	JSJBD CORP dba Blue Dogs Pub, a Nevada) corporation,) Plaintiff,)	CASE NO. A-18-785311-B DEPT 11	
12 13 14	vs.) TROPICANA INVESTMENTS, LLC, a California) limited liability company,) Defendant.)	HEARING DATE: 01/17/20 HEARING TIME: Chambers	
15 16 17	PLAINTIFF / COUNTERDEFENDANTS' REPLY IN SUPPORT OF MOTION TO RETAX COSTS		
18	Plaintiff JSJBD Corp. and Counterdefendants, through counsel, move for an Order		
19	awarding to them, and against Defendant Tropicana Investments, LLC, attorney fees and costs as		
20	prevailing parties, plus additional fees and costs as may be incurred.		
21	This Motion is based on the pleadings and papers on file, the attached Memorandum of		
22	Points and Authorities, the attached exhibits, and any oral argument that may be heard.		
23	L	OVATO LAW FIRM, P.C.	
24	_	/s/ Mario Lovato MARIO P. LOVATO	
25	N	Jevada Bar No. 7427	
26		Attorney for Plaintiff JSJBD Corp ba Blue Dogs Pub and Counterdefendants	
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT

A. PLAINTIFF JSJBD CORP, AND COUNTERDEFENDANTS, ARE THE PREVAILING PARTIES—AS THE ENTIRE CASE WAS PROMPTED BY LANDLORD'S 30-DAY NOTICE OF TERMINATION THAT SOUGHT TO EVICT AND ELIMINATE ALL INTEREST IN BLUE DOGS PUB.

JSJBD Corp paid \$500,000.00 to buy Blue Dogs Pub. It invested a great deal more turning it into Blue Dogs Pub, running and improving it over the years, and ensuring that it had option rights going forward. Landlord sought to eliminate all of JSJBD Corp's value and ownership interest in the bar by evicting it.

JSJBD Corp's gaming licensing, liquor licensing, real property improvements, and goodwill with customers who frequent Blue Dogs Pub are all tied to the location. This is what Landlord sought to eliminate with its 30-Day Notice of Termination, and its continued effort to prevail on its Eviction / Writ of Restitution claim in this case.

A party prevails "if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608 (2015), *quoting Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted). Importantly, even if a plaintiff is not successful on *all* disputed issues, but merely successful in proving *a significant issue* in litigation, then the plaintiff is a prevailing party for purposes of being awarded its attorney fees. *Id*.

1. Landlord served a 30-Day Notice of Termination.

Here, Landlord's attempt to evict predated the Complaint and was the entire impetus for filing the Complaint. On November 14, 2018, Landlord posted and served a Thirty-Day Notice of Termination of the Lease. That 30-Day Notice disavowed any option to extend the Lease, treating

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the Blue Dogs Pub as being a holdover who only had a month-to-month lease that could supposedly be terminated on 1-months' notice.

2. Before the month was out, on November 30, 2018, JSJBD Corp filed its Complaint, which sought relief from any possible eviction / termination of the Lease and related option rights.

After detailing the various Lease documents, and the negotiations between the parties and that had not resulted in written replacement Lease documents demanded by Landlord, JSJBD provided the facts that Landlord had improperly served a 30-Day Notice of Termination. At paragraph 49 of the complaint, JSJBD stated: "Contrary to the Lease and related lease documents, Tropicana Investments served a 'Thirty Day Notice to Quit the Premises' dated November 14, 2018. Complaint ¶ 49. Paragraphs 50 and 51 of the Complaint detailed that JSJBD immediately sent its response in writing disagreeing with the Notice and confirming its option rights for successive five-year extensions.

From paragraphs 60 to 79 of the Complaint, JSJBD requested Declaratory Relief that would confirm its Lease and Option rights, and make determinations that would give meaning, value, and effectiveness to those rights.

JSJBD Corp requested attorney fees within such claim, it requested attorney fees within each of the other claims, it requested attorney fees in its Prayer for Relief, and its requested relief under all available statutes governing leases and alleged eviction claims (see Complaint at 14, citing "NRS Chapter 118C, NRS Chapter 40, and other chapters relating to landlord-tenant disputes, including disputes relating to commercial property.").

3. Landlord's Answer & Counterclaim

In Landlord's Answer, Landlord chose to include a Counterclaim for "Eviction / Writ of Possession." Landlord continued pursuing that claim to and through the conclusion of trial.

Thus, in the Answer and Counterclaim, Landlord filed a Counterclaim for Eviction and Issuance of a Writ of Possession. Landlord's Eviction Claim incorporated all prior paragraphs of the Counterclaim. It stated:

FOURTH CAUSE OF ACTION (Eviction and Issuance of Writ of Restitution)

- 66. Counterclaimant repeats and realleges Paragraphs 1–69 inclusive, as set forth hereinabove.
- 67. On or about November 15, 2018, Counterdefendant was served with a Thirty Day Notice to Quit the Premises pursuant to NRS 40.251. A true and accurate copy is attached hereto as Exhibit 16.
- 68. Notwithstanding the foregoing Notice to Quit the Premises, Counterdefendant remains in possession and occupation of the premises and continues to hold the same, notwithstanding its status as a holdover Tenant.
- 69. Counterdefendant has refused to surrender possession of the premises.
- 70. Counterdefendant unlawfully holds over and continues in possession of the premises by virtue of the foregoing defaults and breaches, and remains in possession without the permission of Counterclaimant.
- 71. Counterclaimant prays that the Court enter an order requiring restitution of the premises.

Landlord's Answer & Counterclaim (filed January 9, 2018).

In the Prayer for Relief, *Landlord made eviction his first requested remedy*. There, Landlord stated that Landlord was suing: "For restitution of the premises." Id. at 17.

Landlord never relented on the attempt to evict and thereby eliminate all of JSJBD's value and interest in Blue Dogs Pub. Prior to trial, parties are required to inform the Court regarding the claims that they continue to pursue, as well as the claims that they are abandoning. Landlord left no question but that Landlord continued to pursue its claim for Eviction / Writ of Possession.

4. Landlord's Pretrial Memorandum.

Thus, on November 8, 2019, Landlord filed its Individual Pre-Trial Memorandum. That Memorandum must be filed in compliance with EDCR 2.67, which requires, inter alia, that the filing party identify the claims for relief that are being pursued. Separately, EDCR 2.67 also requires the filing party to identify any and all claims that are being abandoned. In Landlord's Pretrial Memorandum, Landlord identified the following Counterclaims that Landlord was continuing to pursue:

- 1. First claim for Relief--Declaratory Relief
- 2. Second claim for Relief--Breach of Lease Agreement
- 3. Third Claim for Relief—Breach of the Implied Covenant of Good Faith and Fair Dealing
- 4. Fourth Claim for Relief—Eviction and Issuance of Writ of Restitution

See Landlord's Pretrial Memorandum at 7 (filed November 8, 2019) (emphasis added).

Further, and as required by EDCR 2.67, Landlord's Pretrial Memorandum has a section entitled, "LIST OF ALL CLAIMS OR DEFENSES TO BE ABANDONED." That section states: "[N]o claims or defenses are being abandoned by either party." Id. at 12 (emphasis added).

5. Trial, which led to the Findings of Fact and Conclusions of Law.

Landlord continued to present its Eviction claim to the conclusion of trial. At no time did Landlord dismiss the eviction claim. Unlike Plaintiff, who let the court know that it no longer sought damages for roof issues, and would voluntarily dismiss that portion of its claims, Landlord never dismissed its claim for Eviction.

Even at trial, JSJBD's counsel was required to cross-examine Landlord's principal, Jeff Chauncey, regarding the 30-Day Notice of Termination and Landlord's attempt to evict.

Even in closing argument, JSJBD's counsel had to address the counterclaim for eviction and that a determination should be made in favor of JSJBD Corp on such claim.

In the Court's Findings of Fact and Conclusions of Law, the Court makes a determination of the eviction claim, making a determination in favor of JSJBD Corp.

The Court entered Judgment in favor of JSJBD so as to confirm its Option rights. It entered Judgment against Landlord on the Eviction / Writ of Restitution Claim.

B. THE CLAIM WITH THE MOST IMPACT AND VALUE WAS DECLARATORY RELIEF CONFIRMING JSJBD CORP'S OPTION RIGHTS, AND ENTERING JUDGMENT AGAINST LANDLORD ON THE EVICTION / WRIT OF RESTITUTION CLAIMS THAT SOUGHT TO ELIMINATE ALL LEASE AND OPTION RIGHTS.

Plaintiff and Counterdefendants are the prevailing parties in succeeding on the significant issue—which was having the option rights confirmed and declaratory relief granted.

Further, Plaintiff Blue Dogs Pub prevailed as a party under NRS 18.020 who was required to assert claims to confirm its possessory right to real property under its Lease, and five-year options to extend such lease.

NRS 18.010(2)(a) states in pertinent part:

- 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
- (a) When the prevailing party has not recovered more than $\$20,000\ldots$

Plaintiff and Counterdefendants are the prevailing parties in this case.

C. LANDLORD FILED "COUNTERCLAIMS" AGAINST INDIVIDUALS WHO WERE NOT THE PLAINTIFF AND WHO SHOULD HAVE NEVER BEEN INCLUDED IN THIS CASE.

Landlord took the unusual step of not only asserting a Counterclaim against its tenant, JSJBD Corp dba Blue Dogs Pub. Rather, it chose to assert Counterclaims against third parties, Jeff White, Stuart Vincent, and Jeff Vincent.

Those claims failed, with the claims being adjudged in favor of the Counterdefendants.

Those individuals are prevailing parties on the Counterclaims.

D. JSJBD CORP, AND COUNTERDEFENDANTS, ARE PREVAILING PARTIES ENTITLED TO ATTORNEY FEES UNDER SANDY VALLEY AND ITS PROGENY.

In addition, "[The] Sandy Valley [case] discussed three scenarios in which attorney fees as special damages may be appropriate." *Pardee Homes of Nevada v. Wolfram*, 444 P.3d 423, 426, 135 Nev. Adv. Op. 22 (2019), *citing Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 957-58, 960, 35 P.3d 964, 970 (2001) (receded from on other grounds by Horgan v. Felton, 123 Nev. 577, 170 P.3d 982 (2007), and *Liu v. Christopher Homes*, *LLC*, 130 Nev. 147, 321 P.3d 875 (2014)).

1. Landlord needlessly chose to involve Counterdefenants in this dispute.

Parties are entitled to attorney fees in cases where they are prevailing parties and "when [such party] becomes involved in a third-party legal dispute as a result of a breach of contract or tortious conduct by the defendant." *Pardee Homes*, 44 P.3d at 426 n.3, *citing Sandy Valley*, 117 Nev. at 957, 35 P.3d at 970.

Counterdefendants Jeff White, Jeff Vincent, and Stuart Vincent did not file suit as Plaintiff.

They had no involvement in this case. When Landlord filed a "Counterclaim" that included them,

Landlord was suing new parties and joining them in a case that had nothing to do with them.

Further, Landlord's Eviction action sought to not only evict JSJBD Corp, it sought to impose damages for any such eviction on these individual Counterdefendants, who were not involved in the Lease negotiation dispute.

Only the Tenant JSJBD Corp was the Plaintiff. There was no good faith reason to include Jeff White, Jeff Vincent, and Stuart Vincent—personally and individually—as newly added defendants in a case that Landlord was asserting.

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2. Landlord repeatedly denied that JSJBD Corp possessed any option rights, and continued denying its option rights to the conclusion of trial, which entitles JSJBD Corp to its attorney fees incurred in confirming its real property rights.

Second, "cases in which a party incurred the fees in recovering real or personal property acquired through the wrongful conduct of the defendant or in clarifying or removing a cloud upon the title to property." Pardee Homes, 44 P.3d at 426 n.3, citing Sandy Valley, 117 Nev. at 957, 35 P.3d at 970 (partially abrogated by Horgan, 123 Nev. at 586, 170 P.3d at 988 (clarifying that "attorney fees [in actions to clear a clouded title] are now only available as special damages in slander of title actions").

Landlord's 30-Day Notice of Termination meant that Landlord disavowed all lease and option rights of JSJBD to the property. Even though there were at least three separate five-year options that continued in either full or part, Landlord disavowed all of them. The service by Landlord of the 30-Day Notice of Termination was Landlord's election to deny all title and lease rights of JSJBD to the property. That legal election of remedies—seeking to evict JSJBD Corp—failed. Because JSJBD Corp was required to file suit or risk being evicted, it is entitled to its attorney fees under *Sandy Valley* and its progeny.

3. Declaratory Relief.

"Third, injunctive or *declaratory relief actions compelled 'by the opposing party's bad faith conduct.*" *Pardee Homes*, 44 P.3d at 426 n.3, *citing Sandy Valley*, 117 Nev. at 958, 35 P.3d at 970. The right to attorney fees in the context of a declaratory relief claims is something that the Court has, no doubt, already realized in its Findings of Fact and Conclusions of Law, as it granted attorney fees relating to CAM costs.

The same basis applies to the main clam seeking Declaratory Relief that confirmed JSJBD Corp's Lease and Option rights. JSJBD Corp is entitled to attorney fees of the Declaratory Relief

claim it was required to pursue in light of Landlord's disavowing of all Lease and related option rights.

E. LANDLORD HAS COMPLETELY FAILED TO SHOW THAT ITS CLAIMED COSTS ARE ACTUAL, REASONABLE, NECESSARY, AND SUPPORTED BY RECEIPTS.

Aside from not being a prevailing party in regard to the claims between Plaintiff JSJBD Corp and Landlord, Landlord provides virtually no support in the Opposition for its claimed costs.

Landlord's Opposition is so devoid of any actual support that Landlord repeatedly resorts to arguing, without any support whatsoever, that the costs charges are "customary in the legal community." See Opp'n at 9. This comical terminology is precisely what the Nevada Supreme Court has prohibited when it comes to memoranda of costs.

Rather than making the showing required under Nevada law, reference to what is supposedly "customary" admits and concedes that the cost charges are invalid and must be retaxed against the party claiming them.

1. Process Server.

Landlord cannot charge for process server charges for suing additional individuals as "Counterclaimants" because Landlord lost on those claims. The charges should be disallowed.

2. Photocopies.

Landlord provides no receipts. Landlord charges more than 2.5 times what its profitseeking outside vendor charges. The costs are unsupported and are blatantly excessive under Landlord's own system of obtaining charges from vendors.

When Landlord responds by saying, "25 cents per page is customary in the legal community" as Landlord does at page 9, Landlord is openly admitting that the charges must be disallowed. Under Nevada Supreme Court authority, such an argument is plainly insufficient.

Aside from being insufficient, absolutely no factual or legal support is provided for the "customary in the legal community" argument. Landlord refuses to provide tabulations of paper and ink costs because they obviously would be nowhere near such amount.

3. Date Production Disks.

Landlord fails to provide any actual receipts.

Landlord fails to provide any factual support of the costs.

The amounts should be disallowed.

4. Laser Color Copies.

Landlord fails to provide any receipts. Landlord obviously does not have any.

Landlord just combines an argument with other cost amounts on page 10 of its Opposition, but fails to say anything meaningful about laser copies.

Because Landlord has done nothing to prove the amount, it must be disallowed.

5. Long Distance Telephone Calls.

Landlord charges for this antiquated amount, as if law firms are in the age of telegrams, carbon copies, and busy fax printers. Few clients allow these charges. They are falsely charged and not actual.

Landlord's counsel provides no proof of the charges. No receipts are provided. The charges should be disallowed.

6. Messenger service / Runner service.

Landlord fails to provide any receipts, run slips, or other evidence of actual out-of-pocket costs. Landlord's counsel knows full well that these amounts must actually be proven, that receipts must be provided, and that the charges need to be real. Despite knowing this, Landlord fails and refuses to provide the supporting evidence.

The charges claimed by Landlord must be disallowed.

7. Parking fees.

Landlord provides a few receipts in its Opposition. Only these receipts can be deemed to be legitimate amounts. Amazingly, Landlord sought the cost items in the first place without providing any receipts—even though receipts are available whenever you leave the parking structure next the Courthouse or use other available facilities.

8. Scanning charges.

These are plainly not allowed under NRS 18.005. Scanning involves no out-of-pocket or per-page cost whatsoever. These are completely invented costs.

Since the recession, many clients are known to refuse to pay these alleged "costs" because they are plainly false charges. They might as well replace the "nn" in the charge to "mm" as they are not actual costs. No reputable firm should be charging for them, especially since they are not even allowed under Nevada law.

When Landlord's counsel resorts to claiming, without support, that they are "customary in the community," (see Opp'n at 9) it is again obvious that he is conceding that they are utterly without support and must be retaxed against Landlord.

9. Secretary of State charges.

Landlord manages to provide a couple receipts for Secretary of State charges for copies. These documents, however, relate to Landlord's attempt to evict by claiming that JSJBD was an entirely different party than the tenant under the lease and that JSJBD was improperly assigned its interest, which is a frivolous argument. JSJBD merely changed its name, it provided the Secretary of State documents to Landlord prior to the case, and it produced the documents in the litigation.

Landlord's costs of obtaining copies from the Nevada Secretary of State involves amount on a claim that it specifically lost on, involved amounts that were entirely unnecessary and unreasonable, and should be disallowed.

10. Filing fees.

Landlord continues in its failure to distinguish the filing fees for the claims vis-a-vis the counterclaims. These should be simple and easy to track, as receipts are provided upon filing. Yet, Landlord completely fails to provide any support for these.

These amounts should be disallowed.

11. Expert witness fees.

These amounts are capped at \$1,500.00. Landlord seeks amounts for one expert. That amount should be limited to the statutory cap.

12. Holo Discovery outside copying costs.

Landlord essentially concedes that the vast majority of the copying costs were for CAM documents involving a claim on which Landlord lost. Further, Landlord's documents further exhibited Landlord's failure to properly comply with the Court's discovery Order requiring turnover of CAM documents and information in a proper and timely manner.

Landlord's Opposition primarily makes "whatabout" arguments about other matters. For example, Landlord claims that he did this out of a desire for a joint exhibit list—which is not even what Landlord proposed and included in Landlord's numerous additional binders of CAM documents. Such binders were Landlord's own individual trial exhibits.

Because Landlord lost on the CAM issue, and otherwise failed to comply with the discovery Order in the case, the costs should be disallowed.

13. Court reporter fees.

Landlord already sought court reporter fees as part of a "motion for sanctions" that Landlord filed. The Court denied Landlord's demand for fees relating to the depositions. landlord's counsel failed to properly set either of the depositions at issue, he has already lost on the issue, and there is usually no good reason (including here) to incur additional costs of court reporter fees in situations involving counsel's own failure to properly schedule dispositions where

he already has cooperation of the opposing attorney. Here, JSJBD Corp's counsel allowed depositions to subsequently take place even though they were never properly or timely scheduled, and even allowed them to occur after the discovery cut-off.

The costs for non-appearance transcripts should be disallowed.

When it comes to costs—and aside from Landlord not being the prevailing party—Landlord's Opposition only manages to provide a few receipts for parking. It provides nothing else that is actual, necessary, reasonable, and properly supported by receipts.

II.

CONCLUSION

JSJBD Corp and Coutnerdefendants' Motion to Retax Costs should be granted.

LOVATO LAW FIRM, P.C.

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

1 2 3 4 5 6	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 Co	Electronically Filed 1/10/2020 11:50 PM Steven D. Grierson CLERK OF THE COURT	
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8	CLARK COUNTY	, NEVADA	
9	JSJBD CORP dba Blue Dogs Pub, a Nevada corporation,) CASE NO. A-18-785311-B	
10	Plaintiff,	DEPT 11	
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12	VS.))	
13	TROPICANA INVESTMENTS, LLC, a California limited liability company,) HEARING DATE: 01/27/20	
14	Defendant.	HEARING TIME: 9:00 A.M.	
15	DI AINTEIE / COUNTEI		
16 17	PLAINTIFF / COUNTER OPPOSITION TO MOTION TO ALT		
18	Plaintiff JSJBD Corp. and Counterdefenda	nts (collectively, "JSJBD Corp"), through	
19	counsel, oppose Tropicana Investments, LLC's motion to alter or amend judgment.		
20	This Opposition is based on the pleadings and papers on file, the attached Memorandum		
21	of Points and Authorities, and any oral argument that may be heard.		
22		LOVATO LAW FIRM, P.C.	
23		/s/ Mario Lovato MARIO P. LOVATO	
24		Nevada Bar No. 7427 Attorney for Plaintiff JSJBD Corp	
25		dba Blue Dogs Pub and Counterdefendants	
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT

A. LANDLORD PROVIDES NO STANDARD FOR A MOTION TO ALTER OR AMEND—AND PROVIDES NO SUPPORT IN THE FORM OF TRIAL TRANSCRIPTS, TRIAL EVIDENCE, OR ANYTHING ELSE IN SUPPORT OF ITS MOTION.

Landlord's motion appears to be an early filing (7 days before the deadline) that was submitted in realization that Landlord had not timely filed a motion for attorney fees.

Apparently, Landlord filed the motion to alter or amend early in the belief that it would toll an unexpired motion for attorney fees—an argument that is no longer valid since NRCP 54 was changed to make the attorney fee deadline earlier than other post-trial motions and made attorney fee motions incapable of extension once they have expired.

Landlord's motion to alter or amend does not discuss any standard for reviewing or granting a motion to alter or amend. Normally, post-trial motions such as a motion to alter or amend attach substantial transcripts and trial exhibits. Remarkably, Landlord does not attach any evidence to the motion. No exhibits are attached at all.

Strangely, the motion primarily excerpts portions of the Complaint and Counterclaim, without comparing the Findings of Fact and Conclusions of Law to the evidence at trial, and case law addressing proper findings and conclusions. Landlord instead copies-and-pastes these into pages 4 to 11 of the motion, as if no trial has occurred.

Landlord's motion should be denied for failing to provide proper support for the relief requested. The motion simply reads like something pasted from other filings having nothing to do with post-trial motions. It fails to provide meaningful support for the relief it requests.

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B. MOST OF THE ARGUMENTS IN THE MOTION MERELY ADDRESS THE RIGHT TO ATTORNEY FEES, WHICH HAS ALREADY BEEN PRESENTED BY WAY OF JSJBD CORP'S MOTION FOR ATTORNEY FEES.

1. The motion appears to be an effort to address an attorney fee motion.

On December 26, 2019, JSJBD Corp filed its motion for attorney fees. The next day, Landlord frantically filed three documents, two of which appear to copy-and-paste from other documents, including pretrial documents (referencing the Complaint and Counterclaim) and *Sandy Valley* arguments that were likely made elsewhere.

The issue of attorney fees is already part of a dedicated motion for attorney fees filed by JSJBD Corp that was timely. They are properly addressed by way of JSJBD Corp's motion, Landlord's Opposition, and JSJBD Corp's reply. Including the same arguments in a wholly-unsupported motion to alter or amend is duplicative and vexatious.

Landlord's motion presents arguments about "prevailing party," about *Sandy Valley* and its progeny, and about the right to attorney fees as part of declaratory relief and other claims. Of course, these merely seek to respond to the motion for attorney fees that JSJBD Corp filed the day before, on December 26, which caused Landlord's counsel to realize that it had not timely filed a motion for attorney fees.

2. JSJBD Corp incorporates the arguments it makes in its attorney fee motion, and reply that will be submitted in support thereof, as if fully stated herein.

Landlord's arguments about attorney fees are not pertinent a motion to alter or amend.

Rather, it appears to be pasted from Landlord's planned filing of an opposition to a motion for attorney fees.

JSJBD Corp incorporates the arguments it has made in its motion for attorney fees, as well as the reply brief that it will be filing in response to Landlord's opposition that makes essentially

the same arguments being made here. Since JSJBD already and timely filed a motion for attorney fees on December 26, the issue is properly addressed as part of that motion.

C. LANDLORD'S REMAINING ARGUMENTS ARE MERITLESS AND OTHERWISE UNSUPPORTED.

At page 17, Landlord asserts that he sought the same Declaratory Relief that JSJBD Corp sought all along on the case, so Landlord should be declared a dual prevailing party, which obviously makes no sense. JSJBD Corp is the party that filed suit and sought a declaration. A Landlord-Counterclaimant that served a 30-Day Notice of Termination of Lease cannot claim that it merely sought the same relief as the tenant and claim to be a prevailing party when it has not succeeded in terminating all lease and option rights of the tenant, which is what it actually sought.

Much of the remainder of Landlord's arguments are difficult to follow since it references excepted allegations from the Complaint and Counterclaim, rather than specifically addressing findings in relation to evidence and testimony at trial. By all appearances, Landlord is simply demanding that it be declared the prevailing party, which is an issue already being addressed in the parties' timely filed motions to retax and in JSJBD Corp's motion for attorney fees.

When it comes to the dollar amounts in the Findings of Fact and Conclusions of Law, Landlord fails to provide any actual evidence for changing them. While Landlord quibbles with alleged calculations, it can just as easily be that the amounts going into the calculations were meant to be different—leading to a smaller rent amount or to the same overall rent amount if the numbers were adjusted. Landlord fails to provide any testimony, evidence, or court statements from trial to indicate which way it should go.

Finally, since JSJBD Corp in good faith sought a declaration of the rent that it was obligated to pay, and that it relied on the Court's own granting of partial summary judgment and Landlord's own expert's \$1.75 per square foot per month lease appraisal, any determination of rent should be combined with time to pay any adjustment. In fact, JSJBD Corp has already tendered and paid all

amounts referenced in the Findings of Fact and Conclusions of Law, has at all times sought to be in compliance with the Lease.

D. LANDLORD FAILS TO SHOW THAT THERE HAS BEEN A DOUBLE RECOVERY BY JSJBD CORP.

Landlord copies and pastes some quotations from cases involving the breach of implied covenant of good faith and fair dealing, and then, in entirely conclusory fashion, says there has been a double recovery by JSJBD Corp.

Landlord completely fails to show any double recovery. When anyone reviews the Findings of Fact and Conclusions of Law, there is no double amount that has been awarded.

Further, to the extent that Landlord argues that a court cannot make an award for breach of the implied covenant of good faith and fair dealing merely because there is a breach of contract claim in the case, Landlord has completely failed to provide legal authority to such effect.

II.

CONCLUSION

Landlord's motion should be denied. It has no exhibits, it makes no reference to the standard applying to such motion, and provides no trial transcripts, trial exhibits or the like. It has been filed with no support for the relief that it requests. It should be denied.

LOVATO LAW FIRM, P.C.

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

1 2 3 4 5 6	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 CO	Electronically Filed 1/10/2020 10:22 PM Steven D. Grierson CLERK OF THE COURT	
7	CLARK COUNTY		
8	JSJBD CORP dba Blue Dogs Pub, a Nevada	, 112 1121	
9	corporation,	CASE NO. A-18-785311-B	
10	Plaintiff,) DEPT 11)	
11	vs.))	
12 13	TROPICANA INVESTMENTS, LLC, a California) limited liability company,)) HEARING DATE: 01/31/20	
14	Defendant.	HEARING TIME: Chambers	
15			
16	PLAINTIFF / COUNTER OPPOSITION TO MOTION F		
17			
18	Plaintiff JSJBD Corp. and Counterdefendants, through counsel, oppose Tropicana		
19	Investments, LLC's motion for attorney fees.		
20	This Opposition is based on the pleadings and papers on file, the attached Memorandum		
21	of Points and Authorities, and any oral argument that may be heard.		
22	LOVATO LAW FIRM, P.C.		
23	,	/s/ Mario Lovato MARIO P. LOVATO	
24]	Nevada Bar No. 7427	
25		Attorney for Plaintiff JSJBD Corp dba Blue Dogs Pub and Counterdefendants	
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT

A. TROPICANA INVESTMENTS' MOTION FOR ATTORNEY FEES IS UNTIMELY, AND THE STRICT DEADLINE CANNOT BE EXTENDED.

1. The 21-day deadline of NRCP 54 expired on December 26.

On December 5, 2019, the Court had the Judicial Executive Assistant, Dan Kutinac, serve the Findings of Fact and Conclusions of Law. The Court did not direct either of the parties to serve it; in the age of electronic filing and electronic service rules, service is complete upon service on those who are registered for service. Dan Kutinac did not only serve the Findings of Fact and Conclusions of Law, he signed off on the Certificate of Service that certifies that such service was completed.

The Findings of Fact and Conclusions of Law expressly states that it is making judgment determinations. Both sides have treated it as setting deadlines for all post-trial matters. Tropicana Investments' counsel has consistently sought strict enforcement of deadlines—even for the vast majority of deadlines that are not strict.

The deadline for attorney fees is different, it contains language that expressly states that the deadline shall not be extended. Attorneys who read the rules are well aware that an attorney fee motion must be timely.

Landlord's counsel had numerous personnel who were served with the Court's Findings of Fact and Conclusions of Law. In contrast, on Plaintiff's side, the Court decision was served on Plaintiff's counsel alone. On the side of Tropicana Investments, there were a multitude of law firm personnel on whom it was served, including all counsel for Tropicana Investments. In light of Tropicana Investments' repeated demands for strict application of deadlines in the case, it knew full well that the deadlines would be strictly applied when it came to attorney fees.

A party has 21 days to file a motion for attorney fees. The pertinent rule, NRCP 54(d)(2)(B) requires that the motion be filed no later than 21 days after notice of the judgment has been served. The Court determination, which includes judgment terminology, was served in accordance with Nevada's electronic service rules on December 5, 2019.

Under NRCP 54(d)(2)(C), "The court may not extend the time for filing the motion after the time has expired."

This language could not be clearer. The deadline will not be extended. An expired deadline will stay expired.

This 21-day deadline is patently different from the 28-day deadline that applies to other post-trial motions. The purpose of the 21-day deadline, needless to say, is to have it expire before the 28-day deadlines that apply to other post-trial motions. *See, e.g.*, NRCP 52(b) (containing 28-day rule for moving to amend findings, which also cannot be extended). Hence, under Rule 54, the deadline will not be extended upon expiration.

2. Tropicana Investments' motion for attorney fees is untimely.

Properly measured from the date the Court served the Findings of Fact and Conclusions of Law, including the attached Certificate of Service, the deadline for both parties to serve a motion for attorney fees was December 26.

Landlord did not file its motion for attorney fees by December 26.

Instead, on December 27, Landlord engaged in a series of filings that not only show that it was untimely—but that it knew it was untimely, which was the reason for the unusual filings on December 27.

Because of language in the rule governing motions for attorney fees ("The court may not extend the time for filing the motion after the time has expired."), once the deadline has expired, the opportunity to file a motion is dead. It cannot be revived and extended. Old doctrines that

would allow an *unexpired* deadline to be extended do not apply—because the 21 day deadline expires before the other deadlines.

Landlord's motion for attorney fees is untimely. The deadline is a strictly-applied deadline. It cannot be extended. Landlord's motion for attorney fees must be denied..

3. After December 5, 2019, Landlord filed documents expressly stating Landlord's understanding that post-trial filing deadlines measured from the December 5 service of the Findings of Fact and Conclusions of Law.

Prior to the December 26, 2019 deadline, Landlord made arguments that made clear its full knowledge and understanding that the deadline for post-trial matters measured from the December 5, 2019 service of the Findings of Fact and Conclusions of Law.

Landlord asserted in its motion to retax costs—which responds to JSJBD's memorandum of costs and amended version thereof that the deadlines are measured by the Court's December 5 service of the FFCL.

At page 9 of Landlord's motion to retax costs, Landlord states:

The Court entered the FFCL on December 5, 2019. . . . Landlord timely field its Memorandum of Costs the afternoon of December 10th. Tenant filed its Memorandum of Costs at 11:11 pm on December 10, 2019 Two days later, on December 12, 2019, Tenant filed a Supplemental Memorandum of Costs adding [costs] . . Clearly, the additional \$12,624 in the supplement was untimely filed. The Court should therefore disregard and retax in their entirety the amounts set forth in the untimely supplemental filing.

Landlord's Motion to Retax Costs (filed December 13, 2019) at 9.

Landlord makes this argument regarding a timely filed document—the Memorandum of Costs—and attempts to even extend the deadline to a mere supplement to a timely filed document.

Nevertheless, this makes as clear as can be that Landlord knew, and was taking the position to all possible detriment to JSJBD that the Court's service of the Findings of Fact and Conclusions of Law set the post-trial filing deadlines. Landlord knew full well that the December 5 service of the FFCL set the deadline for filing a motion for attorney fees.

4. On December 27, 2019, Landlord engaged in a series of filings that display its full knowledge that it did not timely file its motion for attorney fees.

On December 26, 2019, JSJBD timely filed its motion for attorney fees. The Findings of Fact and Conclusion of Law already stated that JSJBD is entitled to attorney fees for the costs of, inter alia, the litigation regarding CAMs. The Findings of Fact and Conclusions of Law put all counsel on notice that the Court already expected litigation when it comes to attorney fees. Thus, the Findings of Fact and Conclusions of Law specifically informed all parties of the need to timely file their motion for attorney fees.

Landlord's counsel has repeatedly raised arguments about deadlines—making the arguments in situations that hold that such deadlines are not strictly enforced. The attorney fee deadline is one of the few deadlines, however, that has terminology suggesting it cannot be extended.

On December 27, Landlord's counsel exhibited its consciousness of missing the deadline by filing in quick succession: (1) a notice of entry of order; (2) a motion to alter or amend; and (3) a motion for attorney fees. Landlord filed all of these documents to try to avoid the December 26 deadline that the Court might apply.

a. Landlord's own service of a notice does not change the deadlines since they already commenced, as Landlord asserted to the Court, and notice only changes deadlines on those upon whom a notice is served.

Landlord's service of a notice of entry of the FFCL on December 5 merely exhibits Landlord's own knowledge that Landlord did not timely file its motion for attorney fees. It is an admission of untimely filing.

Landlord was not served with notice of something that has not previously been served on Landlord. Landlord cannot reopen an expired deadline by serving a notice on some other party. Under NRCP 54, the deadline has already expired.

Landlord's counsel's own certificates of service in this case contain a footnote that states that anyone who serves documents electronically in the case has consented to service of documents electronically. Thus, Landlord's counsel, who serves documents electronically in this case, has consented to service from the Court by electronic means.

Under the rules governing electronic service, service was complete and notice was imparted by the Court's own service of the Findings of Fact and Conclusions of Law. This was the position that Landlord was already taking in the case.

Landlord's filing of the attorney fee motion on December 27 further shows that Landlord counsel believes he missed the deadline. If Landlord's counsel really believed the service of two other documents on December 27 changed the deadlines, then Landlord would not have filed the motion for attorney fees on December 27. Instead, Landlord's counsel would have filed the motion either 21 days after the notice of entry of order. That is not what Landlord did. Instead, Landlord served the motion for attorney fees the same day as the notice of entry of order.

Landlord's motion for attorney fees must be denied as untimely.

b. Landlord also served a motion to alter or amend on December 27, but the current NRCP 54 makes the attorney fee motion deadline shorter than other deadlines and does not allow it to be extended once it has expired.

On December 27, 2019, just minutes before filing Landlord's motion for attorney fees, Landlord filed a motion to alter or amend. Landlord's counsel filed the motion to alter or amend to try to take advantage of a tolling rule that previously applied when the deadline for an attorney fee motion had not expired by the time that the deadline for other post-trial motions arrived—and such other post-trial motions were actually filed.

As background, it was formerly the rule in both federal court and state court that there was a two week deadline for all post-trial motions—whether the motion sought attorney fees, to alter or amend the judgment, or sought other relief. This followed a prior set of rules where there

was no NRCP deadline at all for a motion for attorney fees. Thus, with the deadlines the same (14 days), on the date that an attorney fee motion might be due, one would know whether some other motion had been filed to change the decision of the Court.

In 2005, the federal system entered the *Bailey v. County of Riverside* case, 414 F.3d 1023 (9th Cir. 2005), a decision that held that the filing of post-trial motions to change the Court's decision would toll, or suspend, the deadline for an attorney fee motion until two weeks after the Court decided the post-trial motion that sought to change its decision. A key to this decision, however, is that *the deadlines were the same*.

Also, in the *Bailey* case, the aggrieved party filed a post-trial motion to change the Court's decision, whereas *it was the other party who thereafter sought attorney fees*. It was not the party that missed the attorney fee deadline that filed a motion to alter / amend in order to reopen an already-expired deadline.

In 2015, the Nevada Supreme Court, in the *Hollier Trust v. Shack* case, 131 Nev. 582, 356 P.3d 1085, decided to follow the federal court's "tolling" decision in *Bailey v. County of Riverside. Hollier v. Shack* holds that the filing of a post-trial motion (such as a motion to alter or amend) suspends the deadline for filing a motion for attorney fees if a motion to alter / amend is filed before the attorney fee motion is due. The attorney fee motion is then tolled until a 14-day period after the other post-trial motion is decided and an order is served.

The reasoning in *Hollier Trust v. Shack* has no application in light of the shorter deadline for a motion for attorney fees and the language eliminating any possible extension once expired. In *Hollier Trust v. Shack*, the aggrieved party (Hollier) filed post-trial motions within 14 days after the decision at issue. The other side, Shack, filed its motion for attorney fees within 14 days after the Court decided the post-trial motions. No one argued that the deadline for attorney fee motions had already expired by the time that the post-trial motion to change the Court's decision had been

made—because the Hollier Trust filed its post-trial motions before the attorney fee motion deadline had expired.

Thus, the *Hollier v. Shack* case has no application here because: (1) JSJBD did not file a post-trial motion—and Landlord cannot reopen an already-expired deadline for attorney fee motions under NRCP 54; and (2) the deadline for filing attorney fee motions had already expired at the time that Landlord filed its motion for attorney fees.

Further, if Landlord believed that its motion to alter or amend actually extended the attorney fee motion until 21 days after the motion to alter or amend were decided, then Landlord would have waited to file the motion for attorney fees for a number of weeks. Instead, Landlord filed the motion for attorney fees only four minutes after filing the motion to alter or amend. That shows that Landlord knew that its motion for attorney fees is untimely.

Landlord's motion for attorney fees must be denied as untimely.

B. PLAINTIFF JSJBD CORP, AND COUNTERDEFENDANTS, ARE THE PREVAILING PARTIES—AS THE ENTIRE CASE WAS PROMPTED BY LANDLORD'S 30-DAY NOTICE OF TERMINATION THAT SOUGHT TO EVICT AND ELIMINATE ALL INTEREST IN BLUE DOGS PUB.

A party prevails "if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608 (2015), *quoting Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted). Importantly, even if a plaintiff is not successful on *all* disputed issues, but merely successful in proving *a significant issue* in litigation, then the plaintiff is a prevailing party for purposes of being awarded its attorney fees. *Id*.

1. The \$20,000 provision of NRS Chapter 18 applies to Plaintiffs, and, Plaintiff was required to file to avoid Landlord's attempted Eviction that would eliminate all value in Blue Dogs Pub.

JSJBD Corp paid \$500,000.00 to buy Blue Dogs Pub. It invested a great deal more turning it into Blue Dogs Pub, running and improving it over the years, and ensuring that it had option

rights going forward. Landlord sought to eliminate all of JSJBD Corp's value and ownership interest in the bar by evicting it.

JSJBD Corp's gaming licensing, liquor licensing, real property improvements, and goodwill with customers who frequent Blue Dogs Pub are all tied to the location. This is what Landlord sought to eliminate with its 30-Day Notice of Termination, and its continued effort to prevail on its Eviction / Writ of Restitution claim in this case.

2. Landlord seeks attorney fees based on a provision int he Lease, but Landlord cannot show the "default" that is required by the provision in the Lease.

Landlord's principal, Jeff Chauncey, was directly asked about the threat of default that he made to JSJBD, as well as the Thirty-Day Notice of Termination. He testified that these were a "mistake." When it came to the Eviction action that he asserted in the Counterclaim, he testified that the Claim was an "error." Landlord cannot claim a right to attorney fees for an alleged default when he testified at trial that the two main assertions of default—the Thirty-Day Notice of Termination and the Counterclaim for Eviction—were a "mistake" and an "error."

Further, JSJBD paid its rent at all times. It paid an amount that sought to ensure compliance with whatever might be determined by the Court.

A few months prior to trial, Landlord filed a motion for partial summary judgment. The Court denied Landlord's motion for partial summary judgment.

In response to Landlord's motion for partial summary judgment, JSJBD filed a countermotion for partial summary judgment. JSJBD prevailed on the motion for partial summary adjudication that confirmed that it had an option and that it was entitled to a determination of reasonable rent by the Court. The Court granted JSJBD's motion, not Landlord's motion.

JSJBD Corp prevailed on its Declaratory Relief claim. Since it had previously prevailed on its motion for partial summary judgment that would result in a court declaration, JSJBD is the prevailing party. JSJBD received declaratory relief that it possessed both Lease rights and

continuing option rights. These were rights that Landlord improperly disavowed from November 16, 2018, the date that Landlord served the 30-Day Notice of Termination, through to the conclusion of trial.

While the Court's determination of Declaratory Relief requires a payment by JSJBD Corp, any such declaration would be required to provide at least reasonable notice to actually pay such amount, *which JSJBD has already done*. On the flip-side, Landlord made no effort to tender payment of what the Court adjudged it liable for. To the contrary, Landlord continues to refuse to process the checks sent by JSJBD Corp, in the latest apparent effort to improperly seek Eviction despite the Court's determination in this case.

Landlord cannot show the default that is required under the Lease for Landlord to be a prevailing party. Landlord's motion should be denied.

a. Landlord served a 30-Day Notice of Termination.

Here, Landlord's attempt to evict predated the Complaint and was the entire impetus for filing the Complaint. On November 14, 2018, Landlord posted and served a Thirty-Day Notice of Termination of the Lease. That 30-Day Notice disavowed any option to extend the Lease, treating the Blue Dogs Pub as being a holdover who only had a month-to-month lease that could supposedly be terminated on 1-months' notice.

b. Before the month was out, on November 30, 2018, JSJBD Corp filed its Complaint, which sought relief from any possible eviction / termination of the Lease and related option rights.

After detailing the various Lease documents, and the negotiations between the parties and that had not resulted in written replacement Lease documents demanded by Landlord, JSJBD provided the facts that Landlord had improperly served a 30-Day Notice of Termination. At paragraph 49 of the complaint, JSJBD stated: "Contrary to the Lease and related lease documents, Tropicana Investments served a 'Thirty Day Notice to Quit the Premises' dated November 14, 2018. Complaint ¶ 49. Paragraphs 50 and 51 of the Complaint detailed that JSJBD immediately

sent its response in writing disagreeing with the Notice and confirming its option rights for successive five-year extensions.

From paragraphs 60 to 79 of the Complaint, JSJBD requested Declaratory Relief that would confirm its Lease and Option rights, and make determinations that would give meaning, value, and effectiveness to those rights.

JSJBD Corp requested attorney fees within such claim, it requested attorney fees within each of the other claims, it requested attorney fees in its Prayer for Relief, and its requested relief under all available statutes governing leases and alleged eviction claims (*see* Complaint at 14, citing "NRS Chapter 118C, NRS Chapter 40, and other chapters relating to landlord-tenant disputes, including disputes relating to commercial property.").

c. Landlord's Answer & Counterclaim

In Landlord's Answer, Landlord chose to include a Counterclaim for "Eviction / Writ of Possession." Landlord continued pursuing that claim to and through the conclusion of trial.

Thus, in the Answer and Counterclaim, Landlord filed a Counterclaim for Eviction and Issuance of a Writ of Possession. Landlord's Eviction Claim incorporated all prior paragraphs of the Counterclaim. It stated:

FOURTH CAUSE OF ACTION (Eviction and Issuance of Writ of Restitution)

- 66. Counterclaimant repeats and realleges Paragraphs 1–69 inclusive, as set forth hereinabove.
- 67. On or about November 15, 2018, Counterdefendant was served with a Thirty Day Notice to Quit the Premises pursuant to NRS 40.251. A true and accurate copy is attached hereto as Exhibit 16.
- 68. Notwithstanding the foregoing Notice to Quit the Premises, Counterdefendant remains in possession and occupation of the premises and continues to hold the same, notwithstanding its status as a holdover Tenant.

69. Counterdefendant has refused to surrender possession of the premises.

- 70. Counterdefendant unlawfully holds over and continues in possession of the premises by virtue of the foregoing defaults and breaches, and remains in possession without the permission of Counterclaimant.
- 71. Counterclaimant prays that the Court enter an order requiring restitution of the premises.

Landlord's Answer & Counterclaim (filed January 9, 2018).

In the Prayer for Relief, *Landlord made eviction his first requested remedy*. There, Landlord stated that Landlord was suing: "*For restitution of the premises*." *Id.* at 17.

Landlord never relented on the attempt to evict and thereby eliminate all of JSJBD's value and interest in Blue Dogs Pub. Prior to trial, parties are required to inform the Court regarding the claims that they continue to pursue, as well as the claims that they are abandoning. Landlord left no question but that Landlord continued to pursue its claim for Eviction / Writ of Possession.

d. Landlord's Pretrial Memorandum.

Thus, on November 8, 2019, Landlord filed its Individual Pre-Trial Memorandum. That Memorandum must be filed in compliance with EDCR 2.67, which requires, inter alia, that the filing party identify the claims for relief that are being pursued. Separately, EDCR 2.67 also requires the filing party to identify any and all claims that are being abandoned. In Landlord's Pretrial Memorandum, Landlord identified the following Counterclaims that Landlord was continuing to pursue:

- 1. First claim for Relief--Declaratory Relief
- 2. Second claim for Relief--Breach of Lease Agreement
- 3. Third Claim for Relief—Breach of the Implied Covenant of Good Faith and Fair Dealing
- 4. Fourth Claim for Relief—Eviction and Issuance of Writ of Restitution

See Landlord's Pretrial Memorandum at 7 (filed November 8, 2019) (emphasis added).

Further, and as required by EDCR 2.67, Landlord's Pretrial Memorandum has a section entitled, "LIST OF ALL CLAIMS OR DEFENSES TO BE ABANDONED." That section states: "[N]o claims or defenses are being abandoned by either party." Id. at 12 (emphasis added).

e. Trial, which led to the Findings of Fact and Conclusions of Law.

Landlord continued to present its Eviction claim to the conclusion of trial. At no time did Landlord dismiss the eviction claim. Unlike Plaintiff, who let the court know that it no longer sought damages for roof issues, and would voluntarily dismiss that portion of its claims, Landlord never dismissed its claim for Eviction.

Even at trial, JSJBD's counsel was required to cross-examine Landlord's principal, Jeff Chauncey, regarding the 30-Day Notice of Termination and Landlord's attempt to evict.

Even in closing argument, JSJBD's counsel had to address the counterclaim for eviction and that a determination should be made in favor of JSJBD Corp on such claim.

In the Court's Findings of Fact and Conclusions of Law, the Court makes a determination of the eviction claim, making a determination in favor of JSJBD Corp.

The Court entered Judgment in favor of JSJBD so as to confirm its Option rights. It entered Judgment against Landlord on the Eviction / Writ of Restitution Claim.

3. The claim with the most impact and value was Declaratory Relief confirming JSJBD Corp's option rights, and entering judgment against Landlord on the Eviction / Writ of Restitution claims that sought to eliminate all Lease and Option rights.

Plaintiff and Counterdefendants are the prevailing parties in succeeding on the significant issue—which was having the option rights confirmed and declaratory relief granted.

Further, Plaintiff Blue Dogs Pub prevailed as a party under NRS 18.020 who was required to assert claims to confirm its possessory right to real property under its Lease, and five-year options to extend such lease.

NRS 18.010(2)(a) states in pertinent part:

- 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
- (a) When the prevailing party has not recovered more than \$20,000...

Plaintiff and Counterdefendants are the prevailing parties in this case.

4. Landlord Filed "Counterclaims" Against Individuals Who Were Not The Plaintiff And Who Should Have Never Been Included In This Case.

Landlord took the unusual step of not only asserting a Counterclaim against its tenant, JSJBD Corp dba Blue Dogs Pub. Rather, it chose to assert Counterclaims against third parties, Jeff White, Stuart Vincent, and Jeff Vincent.

Those claims failed, with the claims being adjudged in favor of the Counterdefendants.

Those individuals are prevailing parties on the Counterclaims.

5. JSJBD Corp, and Counterdefendants, are prevailing parties entitled to attorney fees under *Sandy Valley* and its progeny.

In addition, "[The] Sandy Valley [case] discussed three scenarios in which attorney fees as special damages may be appropriate." *Pardee Homes of Nevada v. Wolfram*, 444 P.3d 423, 426, 135 Nev. Adv. Op. 22 (2019), *citing Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 957-58, 960, 35 P.3d 964, 970 (2001) (receded from on other grounds by Horgan v. Felton, 123 Nev. 577, 170 P.3d 982 (2007), and *Liu v. Christopher Homes*, *LLC*, 130 Nev. 147, 321 P.3d 875 (2014)).

a. Landlord needlessly chose to involve Counterdefenants in this dispute.

Parties are entitled to attorney fees in cases where they are prevailing parties and "when [such party] becomes involved in a third-party legal dispute as a result of a breach of contract or tortious conduct by the defendant." *Pardee Homes*, 44 P.3d at 426 n.3, *citing Sandy Valley*, 117 Nev. at 957, 35 P.3d at 970.

Counterdefendants Jeff White, Jeff Vincent, and Stuart Vincent did not file suit as Plaintiff.

They had no involvement in this case. When Landlord filed a "Counterclaim" that included them,

Landlord was suing new parties and joining them in a case that had nothing to do with them.

Further, Landlord's Eviction action sought to not only evict JSJBD Corp, it sought to impose damages for any such eviction on these individual Counterdefendants, who were not involved in the Lease negotiation dispute.

Only the Tenant JSJBD Corp was the Plaintiff. There was no good faith reason to include Jeff White, Jeff Vincent, and Stuart Vincent—personally and individually—as newly added defendants in a case that Landlord was asserting.

b. Landlord repeatedly denied that JSJBD Corp possessed any option rights, and continued denying its option rights to the conclusion of trial, which entitles JSJBD Corp to its attorney fees incurred in confirming its real property rights.

Second, "cases in which a party incurred the fees *in recovering real or personal property acquired through the wrongful conduct of the defendant or in clarifying or removing a cloud upon the title to property.*" *Pardee Homes*, 44 P.3d at 426 n.3, *citing Sandy Valley*, 117 Nev. at 957, 35 P.3d at 970 (partially abrogated by Horgan, 123 Nev. at 586, 170 P.3d at 988 (clarifying that "attorney fees [in actions to clear a clouded title] are now only available as special damages in slander of title actions").

Landlord's 30-Day Notice of Termination meant that Landlord disavowed all lease and option rights of JSJBD to the property. Even though there were at least three separate five-year options that continued in either full or part, Landlord disavowed all of them. The service by Landlord of the 30-Day Notice of Termination was Landlord's election to deny all title and lease rights of JSJBD to the property. That legal election of remedies—seeking to evict JSJBD Corp—failed. Because JSJBD Corp was required to file suit or risk being evicted, it is entitled to its attorney fees under *Sandy Valley* and its progeny.

c. Declaratory Relief.

"Third, injunctive or *declaratory relief actions compelled 'by the opposing party's bad faith conduct.*" *Pardee Homes*, 44 P.3d at 426 n.3, *citing Sandy Valley*, 117 Nev. at 958, 35 P.3d at 970. The right to attorney fees in the context of a declaratory relief claims is something that the Court has, no doubt, already realized in its Findings of Fact and Conclusions of Law, as it granted attorney fees relating to CAM costs.

The same basis applies to the main clam seeking Declaratory Relief that confirmed JSJBD Corp's Lease and Option rights. JSJBD Corp is entitled to attorney fees of the Declaratory Relief claim it was required to pursue in light of Landlord's disavowing of all Lease and related option rights.

E. LANDLORD CLAIMED ATTORNEY FEES ARE EXCESSIVE AND UNREASONABLE.

Aside from not being a prevailing party in regard to the claims between Plaintiff JSJBD Corp and Landlord, Landlord provides insufficient support for its attorney fees.

First, Landlord fails to provide evidentiary support for anyone but Terry Moore's fees.

Only one declaration is attached. Terry Moore is the only one who attested to his work in the case.

No other billing party attested to fees at all.

When it comes to Terry Moore's attestation of the fees for others, he provides no meaningful background or basis for fees other than to use terminology such as what is "customary," which fails to provide any support. The other types of attestations provided for others (and to a degree, to himself) are marketing matters that are typically provided to clients or third parties, rather that to courts (such as appearance in marketing materials and the like). In the end, only one declaration is provided for the billers. Those who have failed to attest to their fees and the *Brunzell* factors applying to such fees should have their fees disallowed for being completely unsupported.

In addition, the fees are excessive and unreasonable. In summary:

- 1. Landlord charges fees for Tony Sacco testifying as a witness at trial. All of these fees should be disallowed.
- 2. Landlord charged for two attorneys at trial in a relatively simple matter that should have been handled by one attorney. The fees for the second attorney should be disallowed as unreasonable in light of the circumstances and what was reasonably charged by JSJBD Corp's counsel.
- 3. The number of billers is excessive. Attorneys fees are billed for an attorney who never appeared at all. The paralegal fees and law clerk fees are overly extensive. Much of it appears to be nothing more than document preparation / exhibit productions. The fees for these should be reduced.
 - F. TO THE EXTENT THAT COSTS ARE CONSIDERED AS PART OF LANDLORD'S MOTION, JSJBD INCORPORATES ITS ARGUMENTS IN ITS MOTION TO RETAX COSTS AND THE REPLY THERETO.

The arguments regarding costs have already been exhaustively addresses. JSJBD has filed a motion to retax costs, as well as reply in support of such motion. Those arguments apply with equal force to any costs requested by Landlord in its attorney fee motion. JSJBD Corp incorporates its argument from its motion to retax costs (and reply) as if fully stated herein.

II.

CONCLUSION

Landlord's motion for attorney fees should be denied as untimely. The motion should be denied because Landlord is not the prevailing party per Nevada law. Landlord has failed to show "default" under the Lease. Finally, to the extent that the Court entertains any part of the motion, the fees are unsupported for all but one biller and are excessive as to the billers other than Terry Moore.

LOVATO LAW FIRM, P.C.

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

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

Hearing Date: January 27, 2020, 9:00 AM

DEFENDANT/COUNTERCLAIMANT'S REPLY IN SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT

Las Vegas, Nevada 89145 382-0711 FAX: (702) 382-5816

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$\frac{\textbf{DEFENDANT/COUNTERCLAIMANT'S REPLY IN SUPPORT OF MOTION TO}}{\textbf{ALTER OR AMEND JUDGMENT}}$

Defendant/Counterclaimant Tropicana Investments, LLC (hereinafter "Landlord") by and through its attorneys of record, the law firm of Marquis Aurbach Coffing, hereby submits this Reply in Support of Motion to Alter or Amend Judgment. This Reply is made and based on the papers and pleadings on file herein, the attached memorandum of points and authorities, and any oral argument the Court may choose to entertain at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. **INTRODUCTION**

Tenant's Opposition largely ignores the arguments in Landlord's Motion, in favor of setting up "straw-man arguments" about issues that are not before the Court. Landlord has presented thorough legal analysis for why the Court's judgment must be amended as to (1) the award of attorney fees as special damages which is improper when no evidence of attorney fees was pled or provided at trial; (2) an incorrect calculation of rent owed based on numbers in the Court's own findings; and (3) the party for whom judgment was entered on the declaratory relief claims, when the Court's findings and conclusions plainly favored Landlord's requested declarations over Tenant's requested declarations. Tenant has chosen not to respond to such arguments. Instead, Tenant argues that the motion is untimely, the motion does not cite NRCP 59(e), the motion does not cite the record or any evidence, and the motion is "difficult to follow." As this Opposition does not present any meritorious legal argument in opposition of the Motion, the Court should grant the Motion in full.

II. **LEGAL ARGUMENT**

Α. LANDLORD'S MOTIONS WERE TIMELY.

As a preliminary matter, the Court should disregard all of Tenant's inferences that Landlord's Motion was somehow untimely, or that Landlord has "treated [the FFCL] as setting

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deadlines for all post-trial matters," as Landlord has done no such thing. Tenant's Opposition to Landlord's Motion for Attorney's Fees reveals that Tenant's position is based on the misguided belief that the Court's e-service of the FFCL constituted notice of entry of the judgment. In reality, as this Court is aware, "notice of entry of judgment," as referenced in several rules of civil procedure, is a distinct concept from entry of the judgment itself. See NRCP 58(b) (advising that, after a judgment is approved and signed by the court and filed with the clerk, the court should designate a party to serve written notice of entry of judgment on the other parties); NRCP 58(e)(1) ("Within 14 days after entry of a judgment or an order, a party designated by the court under Rule 58(b)(2) must serve written notice of such entry, together with a copy of the judgment or order, upon each party who is not in default") (emphasis added).

Thus, while the Court staff entered judgment in this case by filing the FFCL on December 5, 2019, **notice of entry** of the judgment was not completed until Landlord filed and served a written Notice of Entry of Findings of Fact and Conclusions of Law on December 27, 2019. NRCP 59(e) provides that a motion to alter or amend a judgment "must be filed no later than 28 days after service of written notice of entry of judgment." As notice of entry was served on Tenant on December 27, 2019, Landlord's December 27, 2019 Motion to Alter or Amend was undeniably timely.

В. LANDLORD'S MOTION IS SUPPORTED BY ALL NECESSARY FACTS AND LEGAL ARGUMENT.

Tenant's second red-herring critique of the Motion to Alter or Amend is that Landlord did not attach any trial transcripts or evidence, and thus the Motion does not "read like" a posttrial motion. On the contrary, Landlord's Motion contains lengthy citations to the Court's FFCL (which is the judgment that Landlord is requesting be altered) and copious legal argument supported by caselaw. The flaws with the judgment which Landlord seeks to remedy are entirely legal issues which can be resolved without reference to any evidence presented at trial.

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¹ Tenant's Opposition to Motion for Attorney Fees, filed January 10, 2020, at 2:16.

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1. The Court need not consider any additional facts.

The sole argument in the Motion which even mentions evidence is the objection to the Court's award of attorney fees as special damages when there was a complete lack of evidence of any such fees presented at trial. No document or transcript could have been attached to the Motion that would show the absence of evidence presented at trial; thus, Landlord's mere reference to the absence of evidence—and citation to every relevant aspect of the FFCL, which lacks any finding of attorney fees Tenant incurred—was sufficient factual basis for this request. Moreover, if Tenant had any evidence that would contradict Landlord's statements that no evidence of attorney fees was disclosed or admitted, it would be Tenant's obligation to bring this to the Court's attention. Evidently no such documents exist, as Tenant's Opposition contained zero exhibits.

The other two aspects of Landlord's Motion do not require examining trial exhibits or evidence at all. The correction to the calculation of rent owed by Tenant is a simple math problem based on the Court's own findings as stated in the FFCL. The issue with determining who prevailed on the declaratory relief claims is based entirely on the Court's findings and conclusions, and what specifically was requested by each party in their respective declaratory relief claims. Because attaching filed documents as exhibits would be contrary to the local rules, Landlord's mere citation to the FFCL, the complaint, and the counterclaims was proper and sufficient. See EDCR 2.27(e) ("Copies of pleadings or other documents filed in the pending matter, cases, statutes, or other legal authority shall not be attached as exhibits....").

2. Landlord has established a basis to alter or amend the judgment.

The Motion also sufficiently sets forth the legal bases for the Court to alter or amend the judgment in each requested fashion. A motion to alter or amend a judgment need only state in writing the relief sought, and the grounds for the request with particularity. United Pac. Ins. Co. v. St. Denis, 81 Nev. 103, 105–06, 399 P.2d 135, 137 (1965).

Here, the Motion states that (1) the award of attorneys' fees is unsupported by Nevada law requiring that special damages be pled and proven by competent evidence (Mot. at 11), and Page 3 of 9

an award of damages will be overturned where it is "clearly wrong" (*Id.* at 13); (2) the amount of damages awarded to Landlord for the breach of contract counterclaim is based on a calculation mistake, which is plain error (*Id.* at 16); and (3) the stated judgment for Tenant, and against Landlord, on the parties' declaratory relief claims is clearly erroneous based on the actual findings and conclusions the Court reached which are in Landlord's favor, rather than Tenant's favor, on five of the six declarations requested (*Id.* at 19).

A motion to alter amend is properly granted in several scenarios, including when the amendment is necessary to correct manifest errors of law upon which the judgment rests, or when the motion is necessary to prevent manifest injustice. *See, e.g. Allstate Insurance Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir.2011). The reasons for Landlord's requested relief are stated clearly and with thorough legal support, and thus Tenant was fully aware of the legal bases for the Motion. However, should the Court conclude that not specifically citing NRCP 59(e) (which provides simply that "A motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment.") somehow prejudiced Tenant, then Landlord respectfully requests the Court allow Tenant additional time to respond in lieu of denying the Motion.

C. TENANT IS NOT ENTITLED TO ATTORNEY FEES AS SPECIAL DAMAGES, SO THE JUDGMENT MUST BE AMENDED TO OMIT ANY AWARD OF ATTORNEY FEES TO TENANT.

Next, Tenant chooses not to add anything on the subject of the propriety of attorney fees as special damages in the absence of any evidence of such damages being pled or presented at trial, incorporating by reference the arguments made in its Motion for Attorney Fees and Costs. While the legal arguments in that motion certainly touch on whether Tenant is a prevailing party, Landlord submits that Tenant has not filed a moving paper (motion, opposition, reply, or otherwise) which rebuts the clear Nevada caselaw precluding an award of attorney fees as special damages when such fees have not been pleaded and proven by competent evidence. *See Sandy Valley Assocs. v. Sky Ranch Estates Owners Assoc.*, 117 Nev. 948, 960, 35 P.3d 964, 971 (2001); *Pardee Homes of Nev. v. Wolfram*, 135 Nev. 173, 177–78, 444 P.3d 423, 426 (2019). As such, Page 4 of 9

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Tenant has failed to present any substantive opposition to this portion of the Motion to Alter or Amend, and the Court must grant the Motion in this regard.

D. TENANT FAILS TO COMPREHEND THE REST OF THE MOTION.

The last two pages of the Opposition fail to address the relief that is actually being requested by Landlord in the Motion or Landlord's legal analysis of Nevada law, and instead Tenant argues against strawman arguments apparently derived from Tenant's belief that the Motion is "difficult to follow."

1. Calculation of unpaid rent.

First, Tenant argues that the calculation error pointed out by Landlord's Motion is unsupported by any "actual evidence," and that the Court may have simply meant to have different numbers in the FFCL. As stated above, Landlord need not submit any "evidence" on this topic, because the Motion is not seeking to change the facts in the Court's findings, but rather to ensure that, presuming those numbers are correct, the calculation of the amount owed to Landlord is accurate. As such, the Motion's "evidence" is the simple math based on the amounts contained in the Court's own findings. If the FFCL did, for example, contain a clerical error as to the amounts in the Court's findings, this would explain why the calculation of rent owed was incorrect; however, Landlord has not argued this. The Motion simply seeks to have the judgment amended to be an accurate calculation based on the Court's findings. Presuming the Court accurately drafted the findings, the only explanation is that there was a simple math error.

2. **Declaratory relief claims.**

Second, the Opposition argues that Tenant and Landlord cannot be "dual prevailing part[ies]." Opp. at 4:6–8. Landlord whole-heartedly agrees. In fact, this notion forms the basis for Landlord's objection to Tenant claiming entitlement to attorney fees, because Nevada law allows only one prevailing party, to be determined after offsetting monetary judgments on all sides. See Mot. at 15–16; see also Landlord's Opposition to Tenant's Motion for Attorney Fees and Costs, filed Jan. 9, 2020.

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It appears that Tenant has misconstrued Landlord's request that the judgment be amended to either be in Landlord's favor on all declaratory relief claims, or "at least, be altered to reflect judgment in Landlord's favor on Landlord's declaratory relief claim, even if judgment is entered in Tenant's favor on Tenant's declaratory relief claim." Mot. at 20:18-20. The notion of the "prevailing party" is entirely different from a party who is stated to have judgment entered in their favor on any given claim. While there can only be one ultimately prevailing party, the Court can, of course, grant different claims in favor of different parties. What makes the declaratory relief claims difficult in this case is that each party requested six separate declarations, and neither party received all of their requested declarations.

Tenant does not dispute that the Court's FFCL granted five of Landlord's requested declarations, and granted only one of Tenant's requested declarations. The fact that Landlord initially pleaded an alternative claim seeking to evict the Tenant if the Court were to find that the option were unenforceable does not change the fact that Landlord also requested the Court rule that the option was exercised, and that the parties agreed on the rent for the option period. As such, Tenant has not presented any cogent argument in opposition to Landlord's analysis.²

3. **Double recovery.**

Third, Landlord's Motion argues the following straightforward analysis for why Tenant is entitled to, at most, nominal damages for the breach of implied covenant of good faith and fair dealing claim relating to the CAMs issue: (1) Tenant is not entitled to attorney fees as special damages on this claim for several reasons, as such a claim only permits award of contract damages; (2) The FFCL already awards Tenant contract damages for the CAMs issue, in relation to Tenant's breach of contract claim; (3) the Court may not award Tenant the same contract damages again under the breach of implied covenant claim, as this would constitute a double

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² Tenant's Opposition also contains a brief statement that "JSJBD Corp has already tendered and paid all amounts referenced in the Findings of Fact and Conclusions of Law.... "Opp. at 4-5. While the relevance of this statement is questionable at best, it bears clarifying that Tenant did, in fact, attempt to send payment for the difference between the amounts awarded to Tenant and to Landlord in the FFCL. However, this payment was rejected by Landlord, based on the position that the amount is incorrect, for the reasons stated in the instant Motion.

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recovery; and (4) therefore, Tenant may only be awarded nominal damages, at best, on the breach of implied covenant claim, because no other damages are available. Mot. at 13–15. Tenant evidently construes this argument as "say[ing] there has been a double recovery by JSJBD Corp." Opp. at 5:7–8. Tenant has either completely missed the point of Landlord's argument, or is simply feigning confusion for lack of an honest response. Regardless, nothing in the Opposition rebuts the simple conclusion that the judgment can only award nominal damages, if anything, on Tenant's breach of implied covenant claim for these reasons.

III. **CONCLUSION**

The FFCL bears three manifest errors which must be remedied. First, the FFCL's award of attorney fees to Tenant for the breach of implied covenant claim is precluded by Nevada law, where the Tenant did not plead and prove such fees as special damages. Second, the calculation of the amount of rent owed under Landlord's breach of contract claim is incorrect, and must be re-examined and corrected. Finally, while Landlord largely takes no issue with the outcome of the Court's decision, the stated judgment in favor of Tenant, and against Landlord, on both parties' declaratory relief claims does not accurately reflect the Court's finding and conclusions, which plainly support judgment at least in Landlord's favor on its own declaratory relief claim, if not on all declaratory relief claims.

Tenant's Opposition fails to respond to any of the above arguments in any cogent manner. In fact, there is zero legal argument presented as to the propriety of attorney fees as special damages in this case, and Tenant has not enunciated any reason for the Court to maintain the currently inaccurate dollar amount stated in the FFCL as being owed to Landlord for past rent, nor the unsupported judgment in Tenant's favor on all declaratory relief claims. As such,

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the Motion should be granted in full, and the judgment should be altered or amended as detailed in Landlord's Motion.

Dated this 21st day of January, 2020.

MARQUIS AURBACH COFFING

By _____/s/Terry A. Moore
Terry A. Moore, Esq.
Nevada Bar No. 7831
Collin M. Jayne, Esq.
Nevada Bar No.13899
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendant/Counterclaimant,
Tropicana Investments, LLC

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MARQUIS AURBACH COFFING

Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

I hereby certify that the foregoing <u>DEFENDANT/COUNTERCLAIMANT'S REPLY</u>

<u>IN SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT</u> was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 21st day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:³

Mario Lovato: mpl@lovatolaw.com

/s/ Cally Hatfield an employee of Marquis Aurbach Coffing

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³ 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).

DISTRICT COURT CLARK COUNTY, NEVADA

Other Business Court Matters

COURT MINUTES

January 17, 2020

A-18-785311-B

JSJBD Corp, Plaintiff(s)

Tropicana Investments, LLC, Defendant(s)

January 17, 2020

3:00 AM

All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

PARTIES

None. Minute order only – no hearing held.

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 COSTS...

PLAINTIFF / COUNTERDEFENDANTS' MOTION TO RETAX

- ...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

PRINT DATE: 01/21/2020 Page 1 of 1 Minutes Date:

January 17, 2020

Electronically Filed 1/23/2020 9:18 AM Steven D. Grierson **CLERK OF THE COURT**

DEFENDANT/COUNTERCLAIMANT'S REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS

A-18-785311-B

Hearing Date: January 27, 2020, 9:00 AM

ΧI

Case No.:

Dept. No.:

Las Vegas, Nevada 89145 382-0711 FAX: (702) 382-5816

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$\frac{\text{DEFENDANT/COUNTERCLAIMANT'S REPLY IN SUPPORT OF MOTION FOR}}{\text{ATTORNEYS' FEES AND COSTS}}$

Defendant/Counterclaimant Tropicana Investments, LLC (hereinafter "Landlord") by and through its attorneys of record, the law firm of Marquis Aurbach Coffing, hereby submits this Reply in Support of Motion for Attorneys' Fees and Costs. This Reply is made and based on the papers and pleadings on file herein, the attached memorandum of points and authorities, and any oral argument the Court may choose to entertain at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. **INTRODUCTION**

Once again, Tenant has no meritorious response to Landlord's Motion. As the parties have already extensively briefed, Landlord is the prevailing party here, and is entitled to an award of its attorneys' fees by virtue of the attorney fee provision in the Lease and for recovering less than \$20,000. Tenant notably does not dispute the interpretation of the unambiguous attorneys' fees provision in the operative Lease, but instead invites the Court to ignore its own conclusions that Tenant did, in fact, breach the Lease. Finally, while Tenant suggests that Landlord's requested attorneys' fees are unsupported or unreasonable, Tenant has no concrete suggestions for what portion of Landlord's fees should not be allowed, and instead Tenant fabricates new hurdles which are not grounded in Nevada law which it believes Landlord should have to meet. In truth, Landlord has sufficiently documented its attorneys' fees, and more than sufficiently analyzed how the requested fees are reasonable under *Brunzell*, such that the Court is able to conclude that the fees are reasonable for this case. The Court should grant the Motion and award Landlord attorneys' fees of \$219,775.00 and costs of \$20,188.00.

II. **LEGAL ARGUMENT**

Α. LANDLORD'S MOTIONS WERE TIMELY.

As discussed in Landlord's Reply in Support of Motion to Alter or Amend Judgment, the Court should disregard all of Tenant's repeated inferences that Landlord's Motion for Attorneys' Fees was somehow untimely, or that Landlord has "treated [the FFCL] as setting deadlines for all Page 1 of 9

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post-trial matters," or that Landlord "knew [the Motion] was untimely," as these specious statements are based on a clear misunderstanding of the rules of civil procedure. The flaw in Tenant's position is that Tenant does not comprehend the difference between "entry of judgment" and "notice of entry of judgment." With this in mind, the Court may disregard the first seven-and-a-half pages of Tenant's Opposition as meritless, because the arguments therein simply seek to apply deadlines from the date of the judgment itself, instead of the notice of entry of that judgment.

Tenant's position is based on the misguided belief that the Court's e-service of the FFCL constituted notice of entry of the judgment. In reality, as this Court is aware, "notice of entry of judgment," as referenced in several rules of civil procedure, is a distinct concept from entry of the judgment itself. See NRCP 58(b) (advising that, after a judgment is approved and signed by the court and filed with the clerk, the court should designate a party to serve written notice of entry of judgment on the other parties); NRCP 58(e)(1) ("Within 14 days after entry of a judgment or an order, a party designated by the court under Rule 58(b)(2) must serve written **notice of such entry**, together with a copy of the judgment or order, upon each party who is not in default") (emphasis added).

Thus, while the Court staff entered judgment in this case by filing the FFCL on December 5, 2019, **notice of entry** of the judgment was not completed until Landlord filed and served a written Notice of Entry of Findings of Fact and Conclusions of Law on December 27, 2019. NRCP 54(d)(2)(B) provides that a motion for attorney fees must "be filed no later than 21 days after written notice of entry of judgment is served." As notice of entry was served on Tenant on December 27, 2019, Landlord's December 27, 2019 Motion for Attorneys' Fees and Costs was undeniably timely.

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¹ Opp. at 2:16.

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² *Id.* at 3:23–24; 4:6–28; 5:15–19; 5:23–25; 6:7–11.

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The Opposition doubles down on Tenant's timing argument, suggesting that Landlord "expressly stat[ed] Landlord's understanding that post-trial filing deadlines measured from the December 5 service of the Findings of Fact and Conclusions of Law." Opp. at 4:6–8. Tenant once again misses the mark. What Tenant has not realized is that the filing deadline for a memorandum of costs is different from the filing deadline for a motion for attorneys' fees. Specifically, while NRCP 54(d)(2)(B) counts days from when "written **notice of entry of judgment** is served," NRS 18.110(1) requires that a memorandum of costs be filed "within 5 days after the **entry of judgment**," In other words, the above analysis as to "notice of entry" being a separate document from the judgment itself does not pertain to memoranda of costs, nor motions to retax due to this statutory language. Thus, Landlord's quoted statements from its Motion to Retax were accurate as to the timeliness of that motion, which is derived from the December 5, 2019 date this Court issued its judgment; however, this deadline is not the same for a motion for attorney's fees, including the instant Motion. The Motion was timely, and the Court should not waste time on Tenant's meritless argument.

B. LANDLORD IS THE PREVAILING PARTY.

As has become the focus point for all post-trial briefing in this case, Tenant's Opposition is based on the stubborn insistence that Tenant must be the prevailing party simply because Landlord included an alternate claim in the event the option was found to be invalid. Landlord has thoroughly briefed this issue in its Motion to Retax, Motion to Alter or Amend, Motion for Attorneys' Fees, and Opposition to Tenant's Motion for Attorney's Fees, all of which are being considered by the Court concurrently, and all such arguments are expressly incorporated by reference herein.

To summarize, Landlord is the prevailing party, and Tenant is not a prevailing party, for the following three reasons:

1. Tenant cannot be awarded attorneys' fees as special damages on the CAMs issue, when attorneys' fees were not pled and proven by competent evidence at trial, and

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because a simple breach of implied covenant claim only entitles a party to contract damages.

- 2. There can be only one "prevailing party" for the purposes of awarding attorneys' fees under NRS 18.010, and Nevada law requires that this be the party who received some monetary judgment after offsetting all awards; the monetary judgment awarded to Landlord exceed that awarded to Tenant by several thousand dollars, rendering Landlord the prevailing party.
- 3. Even if the above "net damages" analysis were not required, Landlord prevailed on nearly every issue (including the most significant issue—setting rent for the option period), and Tenant prevailed only on one minor issue (overpayment of CAMs), so Landlord would still be the prevailing party.

Tenant's Opposition does not dispute that Landlord received a net damages award under \$20,000. Tenant further does not offer any argument in opposition to Landlord's argument that Landlord is entitled to recover attorneys' fees under NRS 18.010(2)(a). As such, the Court should grant the Motion for Attorneys' Fees and Costs in full, because Landlord is the prevailing party, and because Landlord recovered less than \$20,000.

C. LANDLORD IS ENTITLED TO ATTORNEYS' FEES INCURRED DUE TO TENANT'S DEFAULT UNDER THE APPLICABLE LEASE PROVISION.

There is no dispute that Landlord incurred attorneys' fees as a result of the Tenant's breach of the Lease in this case. As such, Landlord is plainly entitled to recover those fees even if Landlord is not the prevailing party, by virtue of Section 24 of the operative Lease which provides that "[i]n the event the Landlord finds it necessary to retain an attorney in connection with the 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." See Mot. at 7:12–22; Pltf's Trial Ex. 1.

Tenant's Opposition does not dispute the applicability or interpretation of Section 24 of the Lease. Instead, Tenant inexplicably suggests that Landlord did not establish Tenant's default Page 4 of 9

under the Lease. Quite to the contrary, the Court specifically concluded in the FFCL that Tenant did, in fact, breach the Lease by failing to pay rent as agreed. FFCL ¶¶ 92–93, 109. Moreover, this conclusion resulted in Landlord being awarded damages for the unpaid rent. *Id.* at 18:19–24.

As such, the Court has already reached the conclusion that Tenant was in default by failing to pay full rent. Because Landlord found it necessary to retain an attorney to assert its right to collect the unpaid rent, Tenant is required by the Lease to reimburse Landlord for all reasonable fees paid to Landlord's attorney. Thus, in addition to being a prevailing party, Landlord is entitled to an award of the full amount of attorneys' fees incurred in this action under the express provision of the Lease.

D. LANDLORD'S CLAIMED ATTORNEYS' FEES ARE REASONABLE.

Finally, Tenant's attempts to poke holes in Landlord's incurred attorneys' fees as "excessive and unreasonable." Opp. at 16:13. In addition to lacking any real analysis of *Brunzell v. Golden Gate Nat'l Bank*, the Opposition fails to set forth any particularized argument as to which fees are unreasonable.

1. <u>Landlord Addressed the *Brunzell* Factors; Tenant did Not.</u>

In *Brunzell*, the Nevada Supreme Court enumerated a set of factors which a district court must consider in determining whether requested attorneys' fees are reasonable. 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969). Specifically, the *Brunzell* Court stated that "good judgment would dictate that each of these factors be given consideration by the trier of fact and that no one element should predominate or be given undue weight." *Id.* As such, the district court is empowered to make its own determination of the reasonableness of any attorneys' fees being requested, and the party requesting the fees need only supply whatever information may be of assistance.

Here, Landlord submitted a declaration of Landlord's lead counsel, Terry A. Moore, Esq., wherein Mr. Moore provides testimony on each of the four *Brunzell* factors, relative to all of the fees Landlord incurred throughout this case. With this information, this Court is fully able to reach the conclusion that all of Landlord's attorneys' fees are reasonable.

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Tenant provides no legal basis for its suggestion that a party must provide "evidentiary support" for each attorney, paralegal, or law clerk who billed the client for services in the course of the litigation. On the contrary, lead counsel for a party is fully equipped to provide information on the qualities and experience of such personnel, the reasonableness of their billing rates, and any explanation for the work they provided. As such, the declaration of Mr. Moore is sufficient "evidentiary support" for the Court to determine whether the requested fees are reasonable.

Tenant falsely claims that Landlord is seeking to recover fees charged by attorney John M. Sacco, Esq.³ to testify as a witness at trial. The Court may recall that Mr. Sacco has been Landlord's attorney since before this litigation erupted, and as such, was intrinsically involved in discovery, motion practice, and trial preparation. However, a simple reading of the time entries attached to Landlord's Motion shows that Mr. Sacco did **not** charge for his time spent testifying at trial. Trial lasted from November 18, 2019 to November 22, 2019, and Mr. Sacco testified for a short time on the final day of trial, November 22. Landlord's attorneys' billing entries plainly show that Mr. Sacco did not bill for anything resembling witness testimony on that day. See Mot. at Ex. B, pp.13–14 (billing entries for 11/17/2019 through 12/9/2019). In fact, the only time entries by Mr. Sacco during trial were (1) legal research on November 19, and (2) assisting Mr. Moore in preparation of direct examination of witnesses on November 20. Id. Thus, Tenant's protestation is baseless and should be ignored.

Tenant Has No Grounds to Object to Landlord's Attorneys' Division 2. of Labor Decisions.

Tenant's suggestion that Landlord had too many "billers" is likewise groundless. As stated in the declaration of Landlord's counsel, all work performed was reasonably and necessarily incurred, and all attorneys working on Landlord's behalf exercised prudent billing judgment. See Mot. at Ex. A ¶16–17. The number of people who contributed to a winning case

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³ Tenant actually refers to "Tony Sacco," but this appears to be a typographical error, as Landlord's counsel does not employ anyone by that name. Opp. at 17:2–3.

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is immaterial to whether the actual fees billed by each professional are reasonable. Once again, the reasonableness of the actual fees is professed in the declaration of Mr. Moore, and this Court is able to determine whether the fees are reasonable under Brunzell.

Landlord further disagrees with Tenant's suggestion that this case was "a relatively simple matter" or that the presence of a second attorney at trial was somehow "unreasonable in light of the circumstances and what was reasonably charged by JSJBD Corp's counsel." Opp. at 17:5–9. Landlord maintains that since this case was complex enough to warrant business court treatment it certainly merited the use of second-chair trial counsel. Landlord further submits that the quality of the work performed and the level of preparedness by Landlord's attorneys were evident during the trial. Those points coupled with the result achieved speak volumes in support of the reasonableness and necessity of the requested attorneys' fees, including having two attorneys present at trial.

As such, the Court should conclude that Landlord's attorneys' fees are reasonable, based on the detailed analysis of the Brunzell factors set forth in the Motion, which were not rebutted in the Opposition. Thus, Landlord should be awarded the full \$219,775.00 in requested attorneys' fees.

III. **CONCLUSION**

For the reasons stated above, Landlord is the prevailing party and has recovered less than \$20,000, so Landlord is entitled to an award of its reasonable attorneys' fees and costs. Additionally, Tenant has not disputed that the Lease at issue entitles Landlord to recover attorneys' fees incurred in litigating the Tenant's default under the Lease, and this Court has already concluded that Tenant did, in fact, default. Finally, the Court has everything it needs to make the determination under Brunzell that Landlord's attorneys' fees were reasonable and

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necessary for this case. Therefore, the Court should grant the Motion for Attorneys' Fees and Costs, and award Landlord \$219,775.00 in attorneys' fees and \$20,188.00 in costs.

Dated this 23rd day of January, 2020.

MARQUIS AURBACH COFFING

Ву	/s/ Terry A. Moore
•	Terry A. Moore, Esq.
	Nevada Bar No. 7831
	Collin M. Jayne, Esq.
	Nevada Bar No.13899
	10001 Park Run Drive
	Las Vegas, Nevada 89145
	Attorneys for Defendant/Counterclaimant
	Tropicana Investments, LLC

Page 8 of 9

MARQUIS AURBACH COFFING

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT/COUNTERCLAIMANT'S REPLY** IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 23rd day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:4

Mario Lovato: mpl@lovatolaw.com

/s/ Cally Hatfield an employee of Marquis Aurbach Coffing

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⁴ 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	MARIO P. LOVATO Nevada Bar No. 7427	Electronically Filed 1/24/2020 12:05 PM Steven D. Grierson CLERK OF THE COURT		
2	LOVATO LAW FIRM, P.C. 7465 W. Lake Mead Blvd. Ste. 100			
3	Las Vegas, Nevada 89128 T: (702) 979-9047			
4 5	mpl@lovatolaw.com Attorney for Plaintiff JSJBD Corp			
6	dba Blue Dogs Pub and Counterdefendants			
7	DISTRICT COURT			
8	CLARK COUNTY, NEVADA			
9	JSJBD CORP dba Blue Dogs Pub, a Nevada			
10	corporation,) CASE NO. A-18-785311-B DEPT 11		
11	Plaintiff,			
12	vs.			
13	TROPICANA INVESTMENTS, LLC, a California) limited liability company,	HEARING (prev. 01/31/20)		
14	Defendant.	moved per minute order to: 01/27/20 9:00 a.m.		
15		<u>)</u>		
16	PLAINTIFF / COUNTERDEFENDANTS'			
17	REPLY IN SUPPORT OF MOTIO			
18	Plaintiff JSJBD Corp. and Counterdefendants, through counsel, replies in support of its			
19	motion for attorney fees and costs.			
20	This Reply is based on the pleadings and papers on file, the attached Memorandum of			
21	Points and Authorities, the attached exhibits, and any oral argument that may be heard.			
22	1	LOVATO LAW FIRM, P.C.		
23	-	/s/ Mario Lovato		
24]	MARIO P. LOVATO Nevada Bar No. 7427		
25		Attorney for Plaintiff JSJBD Corp dba Blue Dogs Pub and Counterdefendants		
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT

- A. ALL STATUTES AND RULES THAT PROVIDE GROUNDS FOR ATTORNEY FEES ARE "SUBSTANTIVE" GROUNDS FOR ATTORNEY FEES THAT CAN BE SOUGHT WITHIN THE 21-DAY TIME PERIOD AFTER A BENCH TRIAL PURSUANT TO NRCP 54, AND DEFENDANT FAILS TO PROVIDE ANY LEGAL AUTHORITY TO THE CONTRARY.
 - 1. Attorney fee motions are based on substantive laws that provide grounds for relief when there is a "sufficient basis" for granting such fees.

This case was presented by way of a bench trial. The case was presented before the Court. The post-trial motions are being presented directly to the Court by both sides in this case.

NRCP 54 provides a 21-day deadline for filing motions seeking attorney fees. The notion of whether a motion seeking attorney fees is seeking to enforce a substantive rule and remedy has long since been determined by the Nevada Supreme Court, which determined that these involve substantive laws. That "substantive" laws are being enforced does not require that the relief be sought during the course of a bench trial. This was made in clear in WPH Architecture, Inc. v. Vegas VP, LP when the Nevada Supreme Court stated:

Thus, the issue of whether attorney fees laws are procedural or substantive is one of first impression.

Federal courts have found state laws awarding attorney fees to be substantive. For example, the Ninth Circuit Court of Appeals has stated that state laws awarding attorney fees are generally considered to be substantive laws. Northon v. Rule, 637 F.3d 937, 938 (9th Cir.2011). Indeed, federal district courts in Nevada have found NRCP 68, NRS 17.115, and NRS 18.020 to all be substantive laws.¹

We see no reason to disagree with the federal courts on this issue. Therefore, we hold that NRCP 68, NRS 17.115, and NRS 18.020 are substantive laws...

¹ Case citations omitted.

WPH Architecture, Inc. v. Vegas VP, LP, 131 Nev. 884, 889, 360 P.3d 1145, 1148 (2015) (emphasis added).

Attorney fees are normally sought post-trial pursuant to NRCP 68, NRS 17.115, and NRS 18.020. Indeed, NRS 18.020 is one of the bases asserted by both sides in this case in their respective attorney fee motions.²

Needless to say, just because a motion for attorney fees asserts "substantive" rights does not mean that attorney fees need to be "disclosed" prior to the deadline under NRCP 54 for filing an attorney fee motion. They are disclosed when the motion is filed, and the responding party has 14 days to respond. Everyone in the case knows that attorney fees are being incurred and that the deadline for filing a motion, especially in a bench trial, comes 21 days after the Court's determination.

Next, the notion that the legal basis for attorney fees must be specially proven during the trial in the case has also been rejected by the Nevada Supreme Court. Rather, if there is "sufficient basis" for attorney fees, the District Court has full discretion to grant attorney fees. In *Tarkanian v. NCAA*, the Nevada Supreme Court actually found that the trial court properly granted attorney fees by way of post-trial motion—even though the trial court did not even grant fees that were requested in the course of the trial. What matters is that there is "sufficient basis" for granting attorney fees by way of post-trial motion. The Nevada Supreme Court stated:

A cause of action under § 1983 requires an allegation that someone deprived the plaintiff of a federal right under color of state law. Gomez v. Toledo, 446 U.S. 635, 638, 100 S.Ct. 1920, 1922, 64 L.Ed.2d 572 (1980). *Tarkanian's complaint met these criteria, even though his complaint did not mention § 1983.* This is a sufficient basis for obtaining attorney's fees. See Kirchberg v. Feenstra, 708 F.2d 991, 1000 (5th Cir.1983); Harradine v. Board of Supervisors, 73 A.D.2d 118, 425 N.Y.S.2d 182, 188 (1980) (plaintiff may recover attorney's fees pursuant to § 1988 in a state

² See JSJBD Corp and Counterdefendants' present Motion for Attorney Fees at 3.

court action which does not allege violation of § 1983, but seeks to enforce federal rights).

Tarkanian v. National Collegiate Athletic Ass'n, 103 Nev. 331, 341-42, 741 P.2d 1345, 1351-52 (1987). In the case, the Nevada Supreme Court made clear that it was affirming the Court's granting of attorney fees by way of post-trial motion when it stated that the District Court "denied Tarkanian's *claim* for attorney's fees as damages under state law. The trial court, however, did allow attorney's fees *as costs* pursuant to 42 U.S.C. § 1988." *Id*.

Thus, Tarkanian lost on a *claim* for relief for attorney fees at trial, yet prevailed in seeking attorney fees by way of *post-trial motion* in seeking them as costs pursuant to a statute he did not even cite throughout the case. This is because attorney fees are substantive rights that can be enforced post-trial when there is "sufficient basis."

2. Tropicana Investments cites no legal authority in its Opposition for its argument that attorney fees can only be sought during the course of a bench trial rather than within the time period of NRCP 54.

Despite the fact that Tropicana Investments has filed its own, untimely, motion for attorney fees post-trial, it asserts that attorney fees must be presented at trial. Yet, no legal authority whatsoever is cited anywhere in the Opposition in support of such proposition.

To make the showing required by its argument, Tropicana Investments must show that "the applicable substantive law requires attorney fees to be proved at trial as an element of damages." *See, e.g., Cruea v. Terry,* 2015 WL 9464587, at *2 (Nev. 2015) (rejecting such an argument).

In the Opposition, Tropicana Investments cites no legal authority whatsoever in support of such proposition.³ It appears that Tropicana Investments' primary citation is the *Pardee Homes* case, but that case is cited at length in JSJBD Corp's motion. Anyone reading it would

³ For example, Tropicana Investments makes the following argument with zero citation to any legal authority: "Nevada law does not allow attorney's fees to be awarded as special damages unless those fees are pled and proven at trial." Opp'n at 2. Nothing is cited after this, and no case is cited anywhere else in the Opposition in support of this statement.

see that it actually provides multiple grounds for *granting* attorney fees. It does not purport to stand for the proposition that a judge can only grant attorney fees by way of proof at trial, rather than by granting it by way of motion post-trial.

Finally, this leads the argument that is the pertinent argument, which has no application here: that someone sought attorney fees during trial in some substantial amount, which should supposedly preclude recover of attorney fees post-trial. But Tropicana Investments makes plain throughout its Opposition that JSJBD did not make any inconsistent or duplicative requests during trial by purporting to state various amounts of attorney fees. Instead, JSJBD did what Tropicana Investments has done, i.e., file a motion for attorney fees post-trial. Thus, there is no issue of inconsistent decisions—which was not even an issue to the Nevada Supreme Court when presented with such an issue in the *Tarkanian v. NCAA* case, above.

3. That Tropicana Investments has filed an untimely motion for attorney fees, whose deadline cannot be extended, further supports JSJBD Corp's right to attorney fees.

As anticipated, Tropicana Investments has argued that its own service of a document entitled "notice of entry of order" supposedly re-started the deadline for filing a motion for attorney fees. This exact argument has already been rejected by the Nevada Supreme Court in the 2018 case of *Kajioka v. Kajioka*, further discussed below, because a notice of entry only commences deadlines when one is the party upon whom the notice was served *and* no notice of entry (i.e. filing) has yet been served.

In Tropicana Investments' recent filing of a reply brief on January 23, 2020, it concedes that it was served with notice of entry of judgment for purposes of commencing deadlines for a memorandum of costs. The notice is provided by the Court's own service of the Findings of Fact and Conclusions of Law ("FFCL") on December 5, 2019 and the certificate of service attached thereto. Further, the FFCL that was served by the Court itself had been filed and had a file-stamp, which mean it has been "entered." The FFCL was served via the Court's system of

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electronic service, which further imparts notice as part of the email that is sent. Further, Tropicana Investments' admission that it was served with a "notice of judgment" that was entered also means that it was served with a notice that an "order" was entered, as the purported distinction between a "judgment" and an "order" makes no difference as a judgment would certainly qualify as an order.

Tropicana Investments has argued that the fact that it chose to file a "notice of entry of order" on December 27, 2019 means that it had another 21 days thereafter to file a motion for attorney fees. Of course, on December 27, 2019, Tropicana Investments immediately displayed its own knowledge of the lack of merit to such argument since it filed its motion for attorney fees only minutes after it served its own notice of entry of order. When this same argument—about a party serving a notice of entry supposedly receiving an additional period of time—was made before the Nevada Supreme Court in relation a notice of entry, the Nevada Supreme Court squarely rejected it.

In the case, Rene Kajioka argued she was entitled to an additional period of time in light of her own service of a notice of entry of order. The Nevada Supreme Court stated:

Even if Rene had properly preserved her NRCP 6(e) argument, we are skeptical that she could avail herself of this rule. In this case, the triggering event for NRCP 54(d)(2)(B)'s deadline was the "notice of entry" of the decree. Rene served the notice of entry electronically; she did not receive service of this notice nor was service made "upon" her.

Kajioka v. Kajioka, 2018 WL 3351978, at *3 n.5 (Nev. 2018) (emphasis added)

The Nevada Supreme Court further explained its decision in light of the terminology of NRCP 6(e), whose rule continues in pertinent part in the current NRCP 6(d). The Nevada Supreme Court stated:

NRCP 6(e) provides, in relevant part: "Whenever a party ... is required to do some act ... within a prescribed period after the service of a notice ... upon the party and the notice or paper is served upon the party by mail or by electronic means, 3 days shall be added to the prescribed period." (Emphasis added). NRCP 6(e) was designed "to provide an additional 3 days to act in response to a paper that is served by electronic means NRCP 6(e) drafter's notes to 2004 amendment (emphasis added). As the party who served the relevant notice, we would not conclude that Rene could avail herself of NRCP 6(e)'s three-day extension in these circumstances, were it properly preserved on appeal.

Id. (emphasis added).

Thus, when a party serves a notice of entry of order, such party makes clear that the serving party already had notice of the entry of the order. Further, under modern electronic rules, there is already a paper trail showing notice and service of the Court's filing of the FFCL.

Finally, the Nevada Supreme Court reasoned that the federal rules of civil procedure, and case law interpreting them, reach the same result. It stated:

The federal approach to this issue supports this interpretation. See Fed. R. Civ. P. 6 advisory committee's note to 2016 amendment (permitting the serving party to avail itself of the extension provided in FRCP 6(d) (the federal cognate to NRCP 6(e)) would mean that "a party who is allowed a specified time to act after making service can extend the time, by choosing one of the means of service specified in the rule, *something that was never intended* by the original rule or the amendment"); see also Dandino, Inc. v. U.S. Dep't of Transp., 729 F.3d 917, 921-22 (9th Cir. 2013) ("[T]he rules of procedure are written to allow responding parties the full benefit of the applicable time limits after receiving the document being served." (emphasis added)).

Id. (emphasis added).

Tropicana Investments' own motion for attorney fees is untimely. JSJBD Corp's motion for attorney fees should granted for such reason and for the additional reasons provided in JSJBD Corp's motion and the remainder of this Reply brief.

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B. TROPICANA INVESTMENTS FAILS TO MEANINGFULLY RESPOND TO THE THREE BASES FOR GRANTING ATTORNEY FEES UNDER SANDY VALLEY AND ITS PROGENY, INSTEAD AVOIDING THE ACTUAL GROUNDS WHEN IT COMES TO ALL THREE SUCH GROUNDS.

As stated in JSJBD Corp's motion, the "Sandy Valley [case] discussed three scenarios in which attorney fees as special damages may be appropriate." *Pardee Homes of Nevada v. Wolfram*, 444 P.3d 423, 426, 135 Nev. Adv. Op. 22 (2019), *citing Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 957-58, 960, 35 P.3d 964, 970 (2001) (receded from on other grounds by Horgan v. Felton, 123 Nev. 577, 170 P.3d 982 (2007), and *Liu v. Christopher Homes, LLC*, 130 Nev. 147, 321 P.3d 875 (2014)).

1. Third-party Counterdefendants that Tropicana Investments brought into the case.

As further stated in the present motion for attorney fee at page 3, the present motion seeks attorney fees based on the following: "First, 'cases when a plaintiff becomes involved in a third-party legal dispute as a result of a breach of contract or tortious conduct by the defendant." *Pardee Homes*, 44 P.3d at 426 n.3, *citing Sandy Valley*, 117 Nev. at 957, 35 P.3d at 970. This provides clear basis for the *Counterdefendants* to recover attorney fees since Defendant / Landlord brought each of them into a dispute that resulted from Landlord's own breach.

Thus, in JSJSBD Corp (and Coutnerdefedants') motion, attorney fees are sought for the third party Counterdefendants (Jeff White, Jeff Vincent, and Stuart Vincent) being brought into a dispute unnecessarily.

Tropicana Investments' Opposition avoids this straightforward argument. Plainly, Tropicana Investments did not need to file a counterclaim that added entirely new parties to the case. Jeff White, Jeff Vincent, and Stuart Vincent were not the plaintiff in the case. A

counterclaim did not need to be asserted against them. Certainly, no counterclaim needed to be asserted when JSJBD had been paying rent each and every month without fail.

Tropicana Investments' decision to bring third parties in the case gives rise to attorney fees under *Sandy Valley* and its progeny. In the Opposition, Tropicana Investments just ignores the problem raised by bringing in third parties, and merely pretends that there are no third parties, which is obviously false.

2. "[C]ases in which a party incurred the fees in recovering real or personal property acquired through the wrongful conduct of the defendant or in clarifying or removing a cloud upon the title to property."

As cited in the present motion, "[W]hen a plaintiff incurs attorney fees as a result of a defendant's intentional effort to cloud title, the plaintiff deserves the fees because he or she had no choice but to litigate." *Liu v. Christopher Homes, LLC*, 130 Nev. 147, 154, 321 P.3d 875, 879 (2014).

"Generally, an action to clarify or remove a cloud on title is either an action in equity or an action for declaratory relief." Id. Thus, there is no question that the Sandy Valley cases allow the granting of attorney fees for a Declaratory Relief action.

Tropicana Investments just avoids the argument by pretending that attorney fees are only being sought pursuant to the claim for breach of the implied covenant of good faith and fair dealing. Tropicana Investments makes such argument despite JSJBD Corp's motion expressly stating that attorney fees are being sought as a prevailing party in the Declaratory Relief action.

Tropicana Investments avoids the issue when it comes to its slander of JSJBD Corp's title / real property rights. JSJBD Corp had enforceable five-year options to extend its Lease. Tropicana Investments disavowed all such option rights. Tropicana Investments served a Thirty-Day Notice of Termination of all Lease rights. It asserted a Counterclaim of Eviction / Writ of Restitution. That provides clear grounds for granting attorney fees in favor of JSJBD Corp.

Landlord fails to show how, or when, it dismissed its claim for eviction, as it plainly never did so. Instead, it was left to the Court to make a determination against Landlord on the claim. That is shown in the express language of the FFCL itself.

3. Declaratory relief actions compelled by the opposing party's bad faith conduct.

As stated in the present motion, attorneys fees are sought because JSJBD Corp was require to seek "declaratory relief actions compelled 'by the opposing party's bad faith conduct." Pardee Homes, 44 P.3d at 426 n.3, citing Sandy Valley, 117 Nev. at 958, 35 P.3d at 970.

Here, "bad faith conduct" is shown by, inter alia, Landlord's disavowing of any right to lease the property at all, disavowing the five-year options, as well as failure to properly account for CAM costs.

In the Opposition, Landlord again ignores that Landlord continued seeking Eviction to the conclusion of trial. The claim was only determined by way of the Court's determination in the Findings of Fact and Conclusions of Law. Landlord's arguments in the Opposition essentially recognize that the claim should never have been made—while pretending, falsely, that the claim was not present in the case.

Indeed, Tropicana Investments continues on his quest to have the Court find breach, and to provide a framework for evicting. When the Court entered its determination on JSJBD Corp's declaratory relief action, and made a determination of the rent, JSJBD Corp promptly sent payment, which is minor in light of the continued threat of eviction by Landlord. In response, Tropicana Investments has refused the money, and sent it back. *See* Tropicana Investments' response (returning check sent by JSJBD Corp.), attached as **Ex. 2**. It has done so despite the FFCL entered by the Court. Thus, Tropicana Investments continues in its conduct, bad faith and otherwise, to attempt to support its threat of eviction.

C. FOR REASONS CITED IN PRIOR FILINGS, DEFENDANT / COUNTERCLAIMANT TROPICANA INVESTMENTS, LLC IS NOT A PREVAILING PARTY.

As stated in Plaintiff and Counterdefendants' motion to retax costs⁴—as well as their motion for attorney fees and costs⁵—Defendant / Counterclaimant Tropicana Investments, LLC is not a prevailing party.

Plaintiff and Counterdefendants are the prevailing parties in this case. JSJBD Corp was served with a Thirty-Day Notice of Termination prior on November 14, 2018. Such Thirty-Day Notice disavowed any option to extend the Lease, treating the Blue Dogs Pub as being a holdover who only had a month-to-month lease that could supposedly be terminated on 1-month's notice.

D. TROPICANA INVESTMENTS' ARGUMENTS FOR APPORTIONMENT FAIL TO ADDRESS THE ISSUE AT HAND—AS LEGAL THEORIES-OF-THE-CASE RARELY APPEAR IN ATTORNEY BILLINGS, BUT RATHER, ARE A MATTER THAT THE COURT CAN ADDRESS IN LIGHT OF THE PROCEEDINGS TAKING PLACE BEFORE THE COURT.

Tropicana Investments primarily attacks apportionment of time expended on CAM issues by engaging in a word search of attorney billings that seeks reference to "CAM" or something similar. Tropicana Investments then concludes that all other attorney billings must be for "rent" issues in the case. Such argument is utterly devoid of merit. Anyone reviewing attorney billings in litigation would know that such billing do not state a specific legal theory in virtually all of the billing entries.

This case was litigated by way of multiple hearings, several of which directly dealt with Tropicana Investments' refusal to provide CAM documents, failure to comply with Court Order requiring production of CAM documents, and involved trial of CAM issues. The Court is well aware that a substantial court time expended on such issues. If one reviewed this by number of

⁴ Filed herein on December 13, 2019.

⁵ Filed herein on December 26, 2019.

hearings, or by reference to exhibits in trial binders, the portion of the case dedicated to CAM issues was far more than one-third.

If one engaged in the same routine of conducting a search of "rent" or "appraisal," one would see that few entries even reference such terms. Yet, the "rent" issue is what Landlord claims was virtually the sole issue in the case.

What is left after removing reface to "rent" billings is virtually all of the billing that actually occurred in the litigation. This is obviously because the billing references the ligation of the case, and is not going to specifically discuss each theory of the case. Approximately 343 of the 361 hours would remain if one removed reference "rent" that Tropicana Investments claims is the primary issue in the case. *See* Exhibit 3 (which presents the same attorney fee billings referring to "rent" and "appraisal" are removed). In other words, Tropicana Investments' "word search" routine is a meritless argument for apportioning attorney fees to legal theories in a litigation matter. With Tropicana Investments having failed to present a meaningful argument in response to the motion, the apportionment presented in the motion should be granted.

II.

CONCLUSION

Plaintiff and Counterdefendants request entry of an Order granting fees and costs in the amount of fees of \$148,378,97, costs of \$21,748.97, equaling a total of **\$148,378,97**. In addition, appropriate interest should be awarded as well.

LOVATO LAW FIRM, P.C.

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

EXHIBIT 1

(ATTORNEY FEES— AFTER REMOVING REFERENCE TO "RENT")

DATE		DESCRIPTION	HRS
07/17	MPL	Tel. call with Lucas Grower re new matter. Review email and documents sent by	.5
		Grower.	
07/23	MPL	Exchange correspondence with Grower about possible conf. call and initial	.5
		consultation with clients.	
07/24	MPL	Tel. conf. with clients re potential matter.	.3
07/24	MPL	Exchange emails with Grower re tel. conf.	.2
07/25	MPL	Initial consultation meeting with clients.	1.0
07/25	MPL	Draft and send email to Grower re meeting.	.2
07/25	MPL	Draft and send retainer agreement to potential client.	.5
07/27	MPL	Draft and send finalized retainer agreement to client. Draft and send email to	0
		Grower re status. Review email from client re retainer agreement and retainer	
		check.	_
07/30	MPL	Exchange emails with Grower re delivery of file.	.2
07/31	MPL	Review email from Grower re electronic files that will be delivered.	.2
08/01	MPL	Exchange emails with Lucas Grower re time for drop off of file.	.1
08/20	MPL	Draft letter to send to opp. counsel.	2.2
08/20	MPL	Draft and send email to client for review and approval of draft. Review	.2
00/54		responding email from Grower re same.	_
08/21	MPL	Review email from client re changes to be made to the letter to Sacco.	.2
09/04	MPL	Draft and revise letter to be sent to opp. counsel re status of the case and breaches	.4
00/04) (D)	committed by Landlord. Draft and send email to client re same.	
09/04	MPL	Draft and send email to prior counsel re client contact information. Tel. call to	.2
0040		client discussing letter.	_
09/10	MPL	Draft and send email to client re clearance to send letter to opp. counsel.	.1
09/25	MPL	Draft and send email to client re letter to go out. Review and revise letter, and	.3
10/0	LEDY	send to opp. counsel. Draft and send email to client re same.	
10/05	MPL	Draft and send email to client re correspondence from opp. counsel, and brief	.8
10/00) (DI	analysis re same.	
10/08	MPL	Tel. call to opp. counsel, leave voicemail.	.1
10/08	MPL	Draft and send email confirming tel. call and the proposals made by client.	.5
10/08	MPL	Draft and send email to client re status.	.2
10/09	MPL	Exchange emails with client re date / time for tel. conf.	.2
10/12	MPL	Review appraisal forwarded by client. Review voicemail from client.	.3
10/12	MPL	Draft and send email to client re same.	.2
10/17	MPL	Draft and revise Complaint.	.5 .3
10/18	MPL	Draft and send email to client re the next steps in the case. Review responding	.3
10/10	MDI	email from client re same.	2
10/19	MPL	Review email from client re payments being made, and setting up meeting. Draft	.3
10/24	MPL	and send responding email re same. Mtg with client to discuss possible case filing, etc.	1.0
10/24	MPL	Review email from client with photo of attic space and issues re evaporative	
10/20	MIL		.2
11/08	MPL	cooler. Pariary October 17 letter cent by Landlard's council. Droft and cond detailed	1.2
11/00	MIL	Review October 17 letter sent by Landlord's counsel. Draft and send detailed letter responding to same.	1.2
11/08	MPL	Draft and send email to client re same.	.2
11/08	MPL	Draft and revise Complaint in accordance with letter and legal research conducted.	2.0
11/03	MPL	Review email from client re period of unavailability of client.	.1
11/15	MPL	Research and review NRS Chapter 118C statutes re repairs, rent, and other issues.	1.2
11/10	MPL	Draft and send additional email to opp. counsel with copy of appraisal obtained by	.2
11/17	WII L	client, in light of possible issue with email service.	.2
11/19	MPL	Review responding email from opp. counsel that the prior email was received.	.1
11/19	MPL	Revise complaint. Draft and send email to client re status.	.5
11/29	MPL	Tel. conf. with client re status of case and impending filing of complaint.	.3
11/30	MPL	Draft, revise and file Complaint in Business Court.	2.0
11,50	1,11	21, 10 and the complaint in Business Court.	2.0

11/30	MPL	Draft and send email to client re same.	.1
12/03	MPL	Review file-stamped copy of Complaint.	
12/03	MPL	Draft and send email to client re judge assignment and next steps.	.6
12/03	MPL	Review detailed email from client re allegations of Complaint	.4
12/03	MPL	Tel. call with client re Complaint and whether to amend allegations.	.3
12/03	MPL	Review email from clerk's office. Tel. call with clerk's office re same.	.3
12/03	MPL	Draft and submit amended Business Court cover sheet, as requested by clerk's	.2
		office.	
12/04	MPL	Draft and submit Summons for approval by court clerk.	.3
12/05	MPL	Review Summons accepted and signed by court clerk.	.2 .2
12/05	MPL	Draft and send email to opp. counsel with copy of the Complaint and Summons	.2
		and inquiring whether counsel would be willing to sign an Acceptance of Service	
		of same.	
12/05	MPL	Draft and send email to client updating client on the status of the Complaint and	.2
		Summons and possible service of same.	
12/06	MPL	Arrange for service of process of Complaint and Summons. Tel. call with runner	.4
		re completed service.	
12/06	MPL	Draft and send email to client re service of Complaint and Summons.	.2
12/06	MPL	Draft affidavit of service for signature / completion by process server.	.2
12/11	MPL	Draft and file summons with affidavit of service.	.3
12/18	MPL	Review email from opp. counsel requesting extension. Draft and send responding	.2
		email granting requested extension.	
12/27	MPL	Review email from client re landlord's visit to property and sign issue.	.1
01/02	MPL	Review email from client re sign issues. Draft and send responding email re	.2
		same.	
01/02	MPL	Review email from client re landlord's request for tenant estoppel certificate.	.2
		Draft and send email to client re same.	
01/03	MPL	Review email from client, forwarding landlord email.	.2
01/03	MPL	Tel. call with client re same.	.3
01/03	MPL	Review additional email, and attachment, from client re sign issues.	.2
01/04	MPL	Draft and send detailed email to client re possible settlement discussions.	.5
01/04	MPL	Review responding email re same.	.2
01/07	MPL	Review email from client re settlement and negotiation issues.	.2
01/07	MPL	Draft and send email to opp. counsel re extension required from opp. counsel and	.2 .2
		the date when a response will be due from Defendant.	
01/09	MPL	Review answer and counterclaim filed by landlord.	.8
01/09	MPL	Draft and send detailed email to client re same.	.5
01/10	MPL	Review email from client re possible discussion or meeting. Draft and send email	.2
		to client setting up tel. conf.	
01/11	MPL	Tel. conf. with client.	.5
01/11	MPL	Review email sent by landlord to client re various issues.	.2
01/17	MPL	Review voicemail from opp. counsel re settlement issues.	.1
01/17	MPL	Draft and send detailed email to client re voicemail and re approach to settlement	.5
		issues.	
01/23	MPL	Review business court order setting initial case conference hearing.	.5
01/23	MPL	Draft and send detailed email to client re same.	.4
01/23	MPL	Legal research re favorable case law in Nevada re enforceability of option.	.5
01/24	MPL	Draft memorandum re Defendant's admissions in the Answer.	.5
01/25	MPL	Tel. call with client re issue concerning additional counterdefendants.	.5
01/25	MPL	Tel. call with Jeff White, discussing non-representation and the issues in the case.	.5
01/25	MPL	Draft and send detailed email to Jeff White confirming non-representation and	.2
· - ·		other issues.	.2
01/25	MPL	Draft reply to Counterclaim.	1.5
01/28	MPL	Tel. call with client discussing initial case conference.	.3
01/28	MPL	Draft and send detailed email re same.	.3
01/28	MPL	Review email from Plaintiffs' counsel re his being late to hearing.	.1
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01/28	MPL	Research and review rules governing deposit of monies with Court where allegedly in dispute.	.6
01/29	MPL	Prepare for, and attend, initial case conference with judge. Meet with client representatives at hearing.	3.0
01/29	MPL	Draft and send email re case conference hearing to Jeff White. Review responding email re same.	.2
01/31	MPL	Draft, revise and file answer to counterclaim.	1.2
02/05	MPL	Draft, revise and file reply to counterclaim.	2.2
02/05	MPL	Draft and send email to client re filing of reply.	.2
02/05	MPL	Review business court order setting discovery and trial dates.	.3
02/03	MPL	Exchange emails with client re CAM issues and re a meeting in preparation for	.3
02/12	WII E	settlement conference.	.5
02/25	MPL	Review documents served by Defendant. Review roof video served by Defendant.	1.5
02/20		Review additional initial disclosures.	110
02/27	MPL	Review Defendant's initial disclosures.	.2
03/11	MPL	Review supplemental production of discovery by Defendant / Counterclaimant in	.3
00/11		the case.	
03/15	MPL	Review various documents and deadlines in the case. Draft and send email to	2.4
03/13	1,11 5	client re same. Begin drafting settlement conference brief. Review additional	2
		email from client.	
03/18	MPL	Meeting with clients in preparation for settlement conference.	1.2
03/21	MPL	Finalize settlement conference brief.	3.5
03/21	MPL	Tel. call to court re drop-off of brief.	.1
03/21	MPL	Draft and send email to client re settlement conference.	.2
03/22	MPL	Prepare for, and attend, settlement conference with Judge Denton, client	3.5
		representatives and opposing counsel.	
04/09	MPL	Review email from client re tel. conf.	.1
04/09	MPL	Review email from Jeff White re status.	.1
04/10	MPL	Draft and send email to client re possible tel. conf. Review responding email re	.2
		same.	
04/11	MPL	Review email from Jeff White re service of Counterclaim.	.1
04/11	MPL	Tel. call to Jeff White re same.	.6
04/15	MPL	Review affidavit of service filed by Defendant.	.1
04/23	MPL	Review email from Jeff White re Counterclaim.	.2
04/23	MPL	Review email from Stuart Vincent re Counterclaim served upon him.	.2
04/23	MPL	Draft and send email to Stuart Vincent re Counterclaim.	.2
04/26	MPL	Draft and send emails to Jeff White re representation and possible reply to	.6
		counterclaim. Review additional emails from Jeff White re same.	
05/02	MPL	Review affidavit of attempted service re Jeff Vincent.	.1
05/06	MPL	Review email from client re possible meeting.	.1
05/07	MPL	Draft and send email to client with possible meeting, and discussing various filings to be made.	.2
05/07	MPL	Draft reply to counterclaim for Counterdefendants. File same. Draft and send	1.2
03/07	WII L	detailed email to clients re same.	1.2
05/07	MPL	Research and review law re responses to arguments about enforceability of option,	3.5
03/07	WII L	of "including but not limited to" terminology, re other provisions of Lease	3.3
		documents. Draft memorandum for use in dispositive motion practice.	
05/08	MPL	Meeting with clients to discuss litigation strategy, etc.	1.5
05/08	MPL	Draft, revise and file reply to counterclaim.	.3
05/08	MPL	Review possible bases for using offer of judgment procedure to support motion	1.0
05/00	.,,,,	for attorney fees.	1.0
05/08	MPL	Draft arguments in support of possible motion for summary judgment. Research	1.3
22,30		and review law in support of same.	1.5
05/22	MPL	Draft and send email to client re facts that we are looking to establish in support of	.3
		opposition and countermotion.	.5
05/22	MPL	Draft and send additional email to client re tel. conf. Review responding email re	.1

		same.	
05/22	MPL	Review Defendant's motion for partial summary judgment.	.5
05/23	MPL	Draft and send email to client re tel. conf. Attend tel. conf. with client re drafting	.5
05/23	MPL	of opposition and countermotion. Draft arguments in support of a countermotion for partial summary judgment.	1.5
03/23	WII L	Research and review law re real property options to extend / renew.	1.5
05/24	MPL	Review emails sent by client for possible use in opposition and countermotion.	.6
05/24	MPL	Research and review law re interpretations of various Lease provisions.	1.4
05/28	MPL	Review email from client re date of meeting with witness. Tel. call with client re same.	.5
06/04	MPL	Review email from client from Joe Velarde.	.1
06/04	MPL	Draft opposition to MSJ.	.5
06/04	MPL	Meeting with client, meeting with witness. Draft declaration of Van Aken.	4.0
06/05	MPL	Draft and send correspondence requesting extension of time for filing of	.2
		opposition brief. Review responding email re same. Review responding email re same.	
06/05	MPL	Review documents sent by client. Draft and send email inquiring about attorney	.5
		letter that has no signature from several years ago.	
06/05	MPL	Review additional documents sent by client.	.2
06/06	MPL	Draft and send email to client re formatting of documents for use in litigation.	.1
06/07	MPL	Review Tom Harper correspondence with opp. side in years past.	.1
06/10	MPL	Draft and send email to client re status of hearing and brief.	.2
06/10	MPL	Draft and revise opposition and countermotion.	2.5
06/10	MPL	Draft and send email to opp. counsel re two day extension.	.1
06/10 06/10	MPL	Review correspondence sent by client involving Chauncey and others.	.8 .2
06/10	MPL MPL	Review correspondence form opp. counsel re changes to scheduling order. Draft and revise opposition and countermotion.	3.0
06/11	MPL	review email from opp. counsel re possibly moving various deadlines.	.1
06/11	MPL	Exchange emails with client re documents being sent.	.2
06/12	MPL	Review historical correspondence between the parties. Draft and send email to	.5
0 0, 12		client re documents needed.	
06/12	MPL	Research and review case law dealing with amending lease situation, including	1.5
06/12	MPL	McLane v. Prudential. Draft and send email to client re same.	.3
00/12	WIFL	Exchange numerous emails with clients re documents, exhibits, etc. Review additional documents sent by client. Draft and send email to client re change of hearing date.	.3
06/12	MPL	Draft and revise oppn MSJ	3.2
06/12	MPL	Review additional emails forwarded by client.	.2
06/13	MPL	Review draft Stipulation and Order.	.2
06/13	MPL	Draft and revise oppn MSJ.	1.0
06/14	MPL	Exchange emails with opp. counsel re stipulation, etc.	.2
06/14	MPL	Review email from opp. counsel about status of various items in case.	.1
06/14	MPL	Draft and revise oppn MSJ.	4.5
06/18	MPL	Draft and revise oppn and countermotion.	3.0
06/18	MPL	Draft and revise stipulation and order to continue hearing.	.2
06/18	MPL	Tel. call to law clerk re oppn and countermotion, and re incoming stipulation to continue hearing.	.2
06/18	MPL	Review additional documents sent by opp. party.	.3
06/17	MPL	Draft oppn and countermotion	3.0
06/19	MPL	Draft and send email to client re declaration and opposition.	.4
06/19	MPL	Draft and send email to client with revised version of declaration.	.2
06/19	MPL	Draft and send email to opp. counsel with copy of opposition and countermotion.	.2
06/19	MPL	Draft, revise and file opp. to motion for summary judgment.	1.0
06/19	MPL	Exchange emails with opp. counsel re stipulation and order not signed by court. Review email from court re same.	.2
06/19	MPL	Exchange emails with opp. counsel re splitting stipulation and order into two	.2

		parts. Review and revise stipulations.	
06/20	MPL	Draft and send detailed email to client re opposition and countermotion, date and	.4
00,20	1,112	preparation for hearing, and re discovery to disclose and produce.	• • • • • • • • • • • • • • • • • • • •
06/20	MPL	Exchange additional emails with client re discovery to be produced.	.7
06/20	MPL	Review email from court re stipulation ready for pickup.	.2
06/20	MPL	Tel. call with client re status of the case and discovery issues.	.3
06/21	MPL	File Order. Draft and file notice of entry of order.	.2
06/21	MPL	Review email from client re discovery issues.	.2 .2
06/24	MPL	Draft initial list of witnesses and documents.	.8
06/25	MPL	Review email from client re fire at shopping center location.	.1
06/26	MPL	Draft and send email to client re article in newspaper about fire.	.2
06/27	MPL	Exchange emails with opp. counsel re judge's non-agreement re stipulation.	.2
07/01	MPL	Review email from opp. counsel re rebuttal reports and discovery issues. Draft	.2
		and send responding email re same.	
07/01	MPL	Draft Van Aken Declaration. Draft and send email to client re same.	.5
07/01	MPL	Review reply brief filed by Defendant. Draft notes for use in reply to	2.0
		counterclaim.	
07/01	MPL	Draft and send detailed email to client re same.	.3
07/01	MPL	Revise Jeff Vincent declaration. Draft and send email to client re same.	.2
07/02	MPL	Review voicemail from client re Aken declaration. Draft and send responding	.3
		email re methods for obtaining possible signature.	
07/02	MPL	Draft and send additional emails to clients re possible declarations.	.3
07/03	MPL	Draft, revise and file reply in support of counterclaim.	5.5
07/03	MPL	Draft and send email to clients re reply brief, copy of same, and preparations for	.5
		hearing.	
07/08	MPL	Prepare for, and attend, hearing for competing motions for summary judgment.	3.5
07/08	MPL	Draft and send email to prior counsel re hearing in light of comments made at	.4
		hearing re attorney.	
07/08	MPL	Tel. call to prior counsel re comments at hearing and possible attempt by defense	.1
		counsel to depose.	
07/09	MPL	Draft and send email for transcripts, etc.	.1
07/09	MPL	Draft and send detailed email to Jeff White re status of the case.	.4
07/09	MPL	Draft and send detailed email to clients re litigation strategy and next steps in case.	.4
07/09	MPL	Exchange emails with client re tel. conf.	.1
07/10	MPL	Exchange emails with client re tel. conf.	.1
07/10	MPL	Prepare for, and attend tel. conf. with clients.	1.0
07/10	MPL	Review email from clients re potential offer of judgment.	.2
07/11	MPL	Tel. conf. with clients re status of the case and next steps, etc.	.5
07/16	MPL	Review email from client re rebuttal report.	.2
07/18	MPL	Review expert witness designation from opp. counsel.	.4
07/22	MPL	Draft and revise Order denying Landlord's motion for partial summary judgment	1.0
		and granting countermotion for partial summary judgment.	
07/22	MPL	Tel. call to expert witness re report, etc.	.4
07/22	MPL	Review report drafted and served by Landlord.	.3
07/22	MPL	Draft offer of judgment.	.2
07/22	MPL	Draft request for production of documents re CAMs	1.0
07/22	MPL	Draft list of witnesses and documents.	1.2
07/23	MPL	Draft and revise proposed Order for the Court. Deliver to Court.	.5
07/24	MPL	Review Order entered by court. Draft and send detailed email to client re	.3
		additional interlineation by Court.	
07/24	MPL	Review email from opp. counsel inquiring about Order.	.1
07/24	MPL	Draft and send responding email re Order.	.1
07/24	MPL	Tel. call with expert re drafting of report.	.4
07/24	MPL	Draft and send email to clients re setting up a tel. conf. with expert.	.1
07/24	MPL	Draft and send email to clients re possible expert on accounting issues.	.1
07/24	MPL	Review detailed email from client re errors in opp. party's expert report.	.2

07/04	MDI		.1	
07/24	MPL	Draft and file notice of entry of order.		
07/24	MPL	Review CV and testimony log from expert.		
07/25	MPL	Review email from court reporter re availability of transcripts.		
07/25	MPL	Review email from client re additional errors in Landlord's expert report.	.2	
07/26	MPL	Draft and send responding email to court reporter re transcripts.	.1	
07/26	MPL	Draft and send email to client re tel. conf.	.1	
07/26	MPL	Draft and serve initial disclosures and productions.	.5	
07/26	MPL	Draft and serve document requests on Landlord.	.6	
07/26	MPL	Draft and send detailed email to client re discovery that has been served.	.3	
07/26	MPL	Draft and send email to client re availability in early August.	.1	
07/26	MPL	Review Landlord's document requests and interrogatories. Draft initial response and notes re same.	1.0	
07/26	MPL	Review Landlord's request for admissions. Draft initial response to same.	1.0	
07/29	MPL	Draft and serve email to client re additional documents to be sent by client to this attorney's office.	.2	
07/29	MPL	Tel. call with prior counsel. Draft and send detailed email to attorney re status of case and possible effort by opp. counsel to depose.	.4	
07/29	MPL	Draft and send detailed email to clients re discovery received from opp. counsel	.3	
07/29	MPL	and the responses we need to provide thereto. Tel. call with client.	.3	
07/31	MPL	Draft and send proposed language to clients relating to correspondence. Draft and	.5	
07/31	WII L	send detailed email re same.	.5	
07/31	MPL	Review supplemental list of witnesses and documents provided by Landlord.	.2	
08/01	MPL	Review Defendant's 2d supplemental list of witnesses and documents. Review	1.0	
		documents Trop 827-70.		
08/01	MPL	Review numerous documents re expert report and rebutting pertinent items in same.	.8	
08/01	MPL	Exchange emails with client re additional document to provide and produce, comparables, etc.	.6	
08/01	MPL	Review emails from client re inconsistent CAM charges. Review additional email and documents re same.	.4	
08/09	MPL	Review email re transcript, and review transcript, re dispositive motion hearing.	.6	
08/15	MPL	Review various notices of deposition served by Defendant.	.2	
08/15	MPL	Exchange emails with clients re depositions.	.3	
08/20	MPL	Prepare for tel. conf. Tel. call with expert re expert report issues.	2.2	
08/22	MPL	Draft responses to requests for admission.	1.8	
08/22	MPL	Review numerous documents and arrange same for production.	1.4	
08/22	MPL	Tel. calls with client re expert issues. Draft and send email to client re tel. conf.	1.5	
00/22	WII L	Review responding email re same.	1.3	
08/22	MPL	Draft and send email to defense counsel re depositions and dates.	.2	
08/22	MPL	Exchange emails with clients re roof issues. Exchange additional emails re	1.0	
06/22	WIFL	discovery issues re same. Review additional emails from client re rent issues and	1.0	
00/22	MDI	prior rent correspondence.	7	
08/23	MPL	Draft, revise and serve response to requests for admissions.	.7	
08/25	MPL	Review email from client re additional documents for possible production.	.3	
08/26	MPL	Review and arrange numerous documents for production.	1.4	
08/26	MPL	Draft and serve requests for production of documents.	1.2	
08/26	MPL	Draft and send emails to client re discovery produced in the case and explaining same.	.6	
08/26	MPL	Draft and send email to Jeff White re status and discovery responses.	.5	
08/27	MPL	Review email from expert re issues relating to possible report.	.3	
08/27	MPL	Review vague email from defense counsel. Review voicemail re same.	.2	
08/27	MPL	Draft 1st supplemental list of witnesses and documents. Arrange various documents being produced.	1.0	
08/27	MPL	Draft and send email to client re supplemental production and explaining same.	.6	
08/28	MPL	Exchange emails with expert re various issues.	.3	
00,20	1,11 17	Zirininge chiano wan expert to various issues.	.5	

08/28	MPL	Draft and send detailed email addressing tender, acceptance, and various other matters.	1.0
08/30	MPL	Review notices of continued deposition.	.3
08/30	MPL	Exchange numerous emails with defense counsel re his improper noticing of	1.0
		depositions, and even his complete failure to even serve notices / subpoenas.	
		Research and review prior correspondence and disclosures to verify that no proper	
		service provided by defense counsel.	
08/30	MPL	Tel. calls inquiring about possible service of subpoenas, etc. on third parties.	.8
08/30	MPL	Tel. calls with clients re issues relating to defense counsel's improper service on	.5
00/20) (DI	third parties of subpoenas, etc.	_
08/30	MPL	Exchange emails with attorney re third party subpoena and related issues.	.5
09/03	MPL	Draft responses to document requests.	1.0
09/04	MPL	Draft responses to interrogatories. Draft verifications re same. Draft and send email to client re same.	2.0
09/05	MPL	Draft, revise and serve answers to interrogatories.	1.0
09/05	MPL	Draft and serve counterdefendants' answers to interrogatories.	.8
09/05	MPL	Draft and send email to defense counsel re various discovery Reponses. Draft and	.3
		send email to defense counsel re deposition scheduling issues.	
09/06	MPL	Draft, revise and serve responses to document requests.	.4
09/06	MPL	Draft, revise and serve counterdefendants' response to document requests.	.4
09/06	MPL	Draft and send detailed email to clients re discovery responses and explaining	1.0
		various issues re same.	
09/09	MPL	Prepare for, and attend, status check hearing.	3.5
09/09	MPL	Review subpoena re Eisman and notice of deposition re same.	.2
09/09	MPL	Exchange emails with defense counsel re deposition and related issues.	.4
09/09	MPL	Draft and send detailed email re hearing and various related issues being impacted	.6
		in the case.	
09/09	MPL	Draft and send email to attorney re third party subpoena issues.	.3
09/09	MPL	Exchange emails with client re depositions, scheduling, and re damages discovery.	1.0
09/10	MPL	Draft and send email to clients to verify expert report issues.	.4
09/10	MPL	Tel. calls with client re expert report issues. Tel. call with expert re rebuttal	1.5
09/11	MPL	report. Review voicemail re expert issues. Draft and send email to clients re expert issues	1.0
09/11	MIL	and related voicemail. Review responding email re same. Draft and send email in	1.0
		response to same.	
09/13	MPL	Review amended notice of deposition.	.1
09/13	MPL	Exchange emails with client re new deposition dates.	.3
09/16	MPL	Exchange emails with clients re meeting. Tel. call re same.	.6
09/17	MPL	Review rebuttal expert report. Draft and serve 2d supplemental list of witnesses	.8
		and documents.	
09/17	MPL	Exchange emails with defense counsel re improper scheduling and deposition	.6
		issues.	
09/17	MPL	Prepare for meeting, and mtg, with client-representative re deposition and case.	2.0
09/17	MPL	Begin drafting motion to compel production of documents.	.5
09/17	MPL	Research and review law re alleged agency nature of attorney client relationship in	1.2
		transactional settings. Review various other case law.	
09/18	MPL	Prepare for, and attend and defend, deposition of Bruce Eisman.	3.5
09/18	MPL	Exchange emails with defense counsel re yet more improper scheduling, failure to	.8
00/19	MDI	notice, and various other improper deposition issues. Droft and sand datailed amail to Loff White restatus of the case, discovery and	£
09/18	MPL	Draft and send detailed email to Jeff White re status of the case, discovery and other issues.	.5
09/19	MPL	Prepare for, and attend and defend, deposition of Rule 30b6.	5.2
09/19	MPL	Draft and send email to clients re additional discovery to obtain and produce.	.4
09/19	MPL	Prepare for meeting, and mtg, with client re various matters.	1.0
09/20	MPL	Review correspondence from defense counsel. Draft responding correspondence.	.4
09/20	MPL	Review documents sent by clients.	.5
			.5

09/23	MPL	Draft and revise response to defense correspondence.	.2
09/23	MPL	Draft and send email, and attached correspondence, to defense counsel responding	
		to September 19 letter.	
09/23	MPL	Draft and send email to clients updating on status of various matters re deposition, etc.	.8
09/24	MPL	Research and review, and draft memo re same, re claims and counterclaims.	1.5
09/25	MPL	Draft and revise motion to compel production of documents.	2.2
09/25	MPL	Exchange emails with clients re status of various matters, need to produce additional discovery.	.7
09/25	MPL	Draft 3d supplemental list of witnesses and docs and serve same.	1.0
09/26	MPL	Draft possible objections to various defense documents.	.8
09/26	MPL	Review voicemail re signed OST. Arrange for pickup. File motion to compel with signed OST. Draft and file notice of entry of order re same.	.5
09/26	MPL	Draft various arguments for lack of merit re counterclaims.	.5
09/26	MPL	Draft and send detailed email updating clients on OST and motion to compel, as well as hearing for same.	.6
09/27	MPL	Exchange emails with client arranging meeting. Review emails from client	.4
00/20) (D)	attaching various documents for possible production.	1.5
09/30	MPL	Prepare for meeting, and mtg, with client re various matters.	1.5
09/30	MPL	Review Defendant's motion in limine re expert report.	.5
09/30	MPL	Review Defendant's opposition re motion to compel.	.6
09/30	MPL	Review Defendant's 3d supplemental list of witnesses and documents.	.5
09/30	MPL	Review numerous documents served by Defendant.	.4
09/30	MPL	Draft and send detailed email to clients re motion filed, and various other items relating to litigation strategy in the case.	.8
09/30	MPL	Draft and send email to client re discovery disputes and document purportedly being produced by Defendant.	.5
10/01	MPL	Draft, revise and file reply in support of motion to compel.	1.2
10/02	MPL	Prepare for, and attend, hearing for motion to compel production of documents.	2.8
10/02	MPL	Draft and send email to clients re additional motion to amend or correct.	.4
10/02	MPL	Review Defendant's motion for sanctions. Draft response. Draft and send email to clients re same.	1.5
10/02	MPL	Review Defendant's motion to amend or correct order. Begin drafting response.	1.0
10/03	MPL	Exchange emails with clients re preparations for hearing.	.5
10/04	MPL	Draft order re motion to compel. Draft and send email to defense counsel re same.	.8
10/04	MPL	Draft oppn mot. amend or correct order.	1.3
10/04	MPL	Review various emails from defense counsel re order and other matters.	.5
10/07	MPL	Draft opposition motion amend or correct order. Draft opposition to motion for sanctions.	1.0
10/08	MPL	Draft and revise order re motion to compel.	.5
10/08	MPL	Draft, revise and file opposition to motion to amend or correct order.	.3
10/08	MPL	Draft and submit correspondence re order. Draft and send email to defense counsel re same.	.4
10/08	MPL	Draft, revise and file opposition to motion for sanctions.	1.0
10/08	MPL	Draft and send email to clients re various submissions and filings.	1.0
10/08	MPL	Review email from court re proposed order. Draft and send email to defense counsel re correspondence from court and innocuous misstatements in same.	.4
10/00) (Tr	Draft and revise order. Review correspondence from defense counsel re same.	-
10/09	MPL	Tel. call re signed order. File same. Draft and file notice of entry of order.	.3
10/09	MPL	Draft and send detailed email to clients re hearing and numerous additional issues in the case.	.4
10/09	MPL	Review numerous documents served re CAMs.	.8
10/09	MPL	File signed order. Draft and file notice of entry of order.	.2
10/09	MPL	Review email from client re roof and related issues.	.4
10/09	MPL	Prepare for, and attend, hearing for Defendant's motion to amend or correct order.	2.0
10/11	MPL	Draft and send email to defense counsel re extension.	.1

10/11	MPL	Review email from clients re Defendant' noncompliance with discovery order in various respects.	.3
10/14	MPL	Review correspondence from client re numerous errors in defense expert report.	.4
10/15	MPL	Draft oppn to motion to strike expert report.	1.5
10/16	MPL	Draft, revise and file oppn to motion to strike expert report, prepare declaration	.8
10/10	WII L	and exhibits to same. Draft and send email to clients re same.	.0
10/16	MPL	Review email from client re possible meeting and various issues.	.3
10/22	MPL	Draft and send email, and attached correspondence, to defense counsel re payment	.4
10/22	WII L	issues. Review responding email from defense counsel re his client's payment of	.+
		sanctions.	
10/22	MPL	Review Defendant's pretrial disclosures.	1.0
10/22	MPL	Review Defendant's 4th supplemental disclosures.	
10/22	MPL	Review Correspondence to Defendant.	.5
10/22	MPL		.2 .4
		Review proposed order sent by defense counsel.	
10/29	MPL	Review Defendant's reply in support of motion in limine re expert report.	.5
10/29	MPL	Draft reply in support of countermotion re expert report.	1.0
10/30	MPL	Draft, revise and file reply in support of countermotion.	.4
10/30	MPL	Draft and send correspondence to clients re reply brief and various additional	.8
10/21	MDI	issues.	_
10/31	MPL	Research and review case law re CAM issues and litigation.	.5
10/31	MPL	Tel. call with client re litigation.	.5
10/31	MPL	Review proposed order. Draft changes to same. Draft and send email to defense counsel explaining changes to proposed order.	1.0
10/31	MPL	Review email from client re meeting with expert.	.2
11/01	MPL	Draft memo re CAM language in lease and related documents.	1.0
11/01	MPL	Draft and send transcript request.	.1
11/04	MPL	Draft and send email to witness re trial date.	.2
11/04	MPL	Review email from defense counsel re proposed order. Draft and revise proposed	.8
		order consistent with prior proposed order. Draft and send email with Plaintiff's	
		proposed order.	
11/04	MPL	Prepare for, and attend, hearing for Landlord's motion in limine.	2.5
11/06	MPL	Draft and file pretrial disclosures.	2.0
11/11	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and	1.5
		emails preparing for trial.	
11/12	MPL	Prepare for, and attend, calendar call hearing.	2.2
11/12	MPL	Draft and send email to witness updating re trial date.	.3
11/12	MPL	Review order re defendant's motion for sanctions.	.5
11/12	MPL	Review Defendant's individual pretrial memorandum.	.6
11/12	MPL	Review proposed order from defense counsel. Draft and send email re revisions	.5
		to be made pending receipt of transcripts.	
11/12	MPL	Tel. calls with clients re trial date, witnesses, documents, etc.	1.8
11/12	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and	4.0
		emails preparing for trial.	
11/13	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and	7.0
		emails preparing for trial.	
11/14	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and	6.0
		emails preparing for trial. Exchange emails with defense counsel re his improper	
		numbering, etc. Exchange emails re proposed order and various other trial	
		matters. Draft and send email to law clerk re same. Tel. calls with clients re trial	
		preparations. Draft and send various emails with exhibits, lists, etc. to clients.	
		Draft and send email to Jeff White re status of trial and other matters.	
11/15	MPL	Prepare for trial. Prepare exhibits for use at trial. Numerous communications and	5.0
11/13	1711 L	emails preparing for trial.	5.0
11/16	MPL	Prepare for mtg with client representatives. Prepare for trial. Mtg with client	3.0
11/10	1711 1	representatives in preparation for trial, trial testimony, etc.	3.0
11/17	MPL	Draft and revise proposed findings of fact and conclusions of law and related	3.5
11/1/	1411 T	Drait and fevise proposed findings of fact and conclusions of faw and feracti	5.5

		items. Draft and revise EDCR pretrial memorandum.	
11/18	MPL	Finalize, revise and submit proposed findings of fact, conclusions of law, exhibits	5.0
		list and various other items. Exchange emails with law clerk re same. Review	
		emails from defense counsel re same. Revise and file EDCR pretrial	
		memorandum.	
11/18	MPL	Prepare for, attend, and conduct trial.	7.0
11/19	MPL	Prepare for, attend, and conduct trial.	8.5
11/20	MPL	Prepare for, attend, and conduct trial.	7.0
11/21	MPL	Prepare for, attend, and conduct trial.	7.0
11/22	MPL	Prepare for, attend, and conduct trial.	6.0
11/22	MPL	Review notice of entry of order filed by Defendant.	.1
11/27	MPL	Research and review various arguments for attorney fee motion. Draft memo re	2.5
		same for future use.	
12/05	MPL	Review FFCL. Exchange various emails with client. Tel. calls with client re	3.5
		same.	
12/05	MPL	Research and review "part performance" case law.	.8
12/10	MPL	Draft and file memorandum of costs.	2.0
12/10	MPL	Review Defendant's memorandum of costs. Draft notes for motion to retax.	1.0
12/12	MPL	Draft and file amendment to memorandum of costs. Tel. calls with client re same.	1.8
12/13	MPL	Draft motion to retax costs.	2.0
12/13	MPL	Review Defendant's motion to retax costs.	.4
12/16	MPL	Review notice of hearing re motion to retax.	.1
12/16	MPL	Draft motion for attorney fees and revise related memo re same.	2.0
12/26	MPL	Review order to statistically close case.	.1
12/26	MPL	Draft motion for attorney fees.	5.0
		TOTAL	343.6

EXHIBIT 2

Tropicana Investments, LLC

Post Office Box 50170 Lighthouse Point, FL 33074 954/943-1880

January 10, 2020

Mr. Stuart Vincent President JSJBD 3430 E. Tropicana Avenue Suites 27, 28, 29 Las Vegas, NV 89121

Dear Stuart:

We are in receipt of your Check #5617, in the amount of \$8400.00. We are returning same to you herewith.

It appears your calculation of this amount is based on the Court's judgment dated December 5, 2019. As explained, in detail, in Tropicana Investments' post-trial motions, the judgment has several errors that must be amended, including the calculation of the amount JSJBD owes in back rent.

As such, we believe it is prudent to wait on payment of back rent until the post-trial motions have been resolved so that we are certain of the proper amount.

Sincerely,

rc/enc.



REAL ESTATE SERVICES

2860 E. Flamingo Rd., Suite B Las Vegas, NV 89121

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1	RTRAN	Otem A.
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4		
5	DISTRICT	COURT
6	CLARK COUNTY, NEVADA	
7	JSJBD CORP,) Plaintiff,)	CASE NO: A-18-785311-B
9	VS.	DEPT. XI
10	TROPICANA INVESTMENTS, LLC,	
12	Defendant.	
13		
14	BEFORE THE HONORABLE	·
15	DISTRICT COURT J MONDAY, JANUARY	
16	RECORDER'S TRANSCR	RIPT OF HEARING RE:
17	ALL PENDING	MOTIONS
18	APPEARANCES:	
19		
20	For the Plaintiff:	MARIO P. LOVATO, ESQ.
21		
22	For the Defendant:	TERRY A. MOORE, ESQ.,
23		COLLIN M. JAYNE, ESQ.
24		
25	RECORDED BY: JILL HAWKINS, CO	OURT RECORDER

1	Las Vegas, Nevada; Monday, January 27, 2020
2	
3	[Hearing commenced at 11:07 a.m.]
4	THE COURT: To JBSD [sic].
5	[Colloquy between the Court and counsel]
6	MR. MOORE: Good morning, Your Honor.
7	THE COURT: Good morning.
8	MR. LOVATO: Good morning.
9	MR. JAYNE: Good morning.
10	THE COURT: My first discussion is I pulled an old case,
11	because the last time I had this issue come up, where I was
12	uncomfortable with who the prevailing party was, and made a decision
13	that people got attorney's fees under two different bases, and therefore I
14	had two prevailing parties. And, I pulled the case to see what the
15	Supreme Court did and they affirmed me in an unpublished decision.
16	So, I wanted to have a discussion with you, which is one of the reasons I
17	moved you to my oral calendar about who is the prevailing party and
18	why, and then to have a discussion about the attorney fees awards that
19	you may each be entitled to if I determine that each of you prevailed on
20	a basis which entitles you to attorney's fees. Who wants to go first since
21	it's not the discussion you thought it was?
22	MR. MOORE: I'll go first, I don't care.
23	THE COURT: Okay, Mr. Moore.
24	MR. MOORE: So, what

THE COURT: You have a contract.

1	MR. MOORE: what do you want me to what do you want
2	me to say, here? Why I'm entitled to fees?
3	THE COURT: It's like a mechanic's lien.
4	MR. MOORE: Why
5	THE COURT: You got a contract; it doesn't say you have to
6	be a prevailing party.
7	MR. MOORE: It's you're absolutely correct. It just says I
8	need
9	THE COURT: Paragraph 24 just says you have to have had
10	the default issue.
11	MR. MOORE: Correct, which we did
12	THE COURT: Yeah.
13	MR. MOORE: which you've specifically found in Findings of
14	Fact, Conclusion of Law paragraph 109. There was a default, there was
15	a breach, you're we were awarded judgment for that matter. We're
16	entitled to our attorney's fees. Pretty straight and clear. We're also
17	entitled to our attorney's fees, we believe under 18.010, since we
18	recovered less than \$20,000 on the amount that you awarded us as an
19	alternative basis. I think that's pretty that's I do you want me to
20	address theirs or you just want me to talk about why I'm
21	THE COURT: I want to address why you're the prevailing
22	party and are entitled to attorney's fees.
23	MR. MOORE: That's exactly why, Your Honor.
24	THE COURT: You got a contract and under paragraph 24,
25	you get them regardless of whether you win or not.

MR. MOORE: And, we did win -- so yes, and we did win.

THE COURT: And, you sort of won.

MR. MOORE: We won on more issues than none.

THE COURT: Mr. Lovato?

MR. LOVATO: Addressing their motion for attorney fees.

First off, when it comes to their motion it requires default and that it was necessary to retain an attorney. Default and necessary to retain an attorney under a commercial Lease like this is saying, an eviction action, that you have to obtain an attorney to bring a case. I asked Mr. Chauncey on the stand about his assertion of default, and he said that was a mistake. I asked about his eviction claim, and he said that was an error. They even filed a motion for summary judgment trying to disavow the entire Lease, the 15 years of options; they lost on that. They continue pushing it even after *Cassinari* was cited, which makes clear that there are in -- that these five-year-extensions or rights of renewal are enforceable even if there is not an agreement on rent. They can't show default.

Also, this Court made a finding on declaratory relief, which was the main claim being sought. It was being sought in response to the Thirty-Day Notice of Termination, termination of all Lease rights of 15 years of renewal options. Those were worth an excess of \$500,000 because that's what the Plaintiff paid for these rights. When he bought the property, he obtained these options, he made sure to get three additional ones, there was already one that was pending, the three additional ones would commence in 2016. Someone disavowing all of

these rights gets into the case law that we cited under *Sandy Valley* and its progeny, and *Liu versus Christopher Homes*, that makes clear that the Plaintiff is the one entitled to attorney fees and having to file a case as a result of the Landlord's bad faith conduct in disavowing real property rights. In *Liu versus Christopher Homes*, it specifically goes through that it has to do with either recovery, real or personal property, or in clarifying or removing a cloud on title. Again, that would be because you haven't lost it yet, but someone has done something to interfere with your title rights, your rights to possession of the property.

This complaint in this case was filed not because of two years of negotiations and discussions, not because of full payments of rent at the amount being demanded by the Landlord, but because the Landlord decided to post and served a Thirty-Day Notice of Termination. That is the big elephant in the room; that's the big elephant that caused this case to get filed. When someone serves you with something saying you have no rights to the property whatsoever, I'm going to deprive you of all your value in it.

This Court, on all three claims, found in favor of the Plaintiff on their claims in the complaint. It found on one of the claims, in the counterclaim, on behalf of the Defendant, but what it was referencing in regard to that were the payments that were made that were somewhat lowered during the case. After this Court granted partial summary judgment for this Plaintiff, and after we received an expert report from the other side that asserted 175 per square foot as the maximum fair rental value, or reasonable rent, that the Landlord was claiming. Now,

that was done in reliance on what had occurred in the case from the Court and from the other side's, the Landlord's, expert witness. That said, that relates back to the declaratory relief claim. That was exactly what was being sought, as far as, tell us what the rent is.

But, moreover, as is stated in the declaratory relief claim, we were seeking a declaration from the Court that there are enforceable option rights, and that this Thirty-Day Notice of Termination is invalid; clearly, it's invalid. Anyone reading *Cassinari v. Mapes* would see it's invalid. That claim for eviction -- that counterclaim for eviction, the Landlord kept pursuing all throughout the case. I kept discussing it, even in the closing argument to make sure that there was no judgment on eviction that would eliminate over \$500,000 in value.

Now, the other argument I presented in the opposition was the timing. There's a 21-day time limit for filing a motion for attorney fees. The one argument that was made for why it's not untimely is because Landlords served a Notice of Entry of Order on December 27th.

THE COURT: You know Notice of Entry's a term of art, really. You know that. They don't really have Notice of Entry with a small "N" until they get a capital "N" Notice of Entry that they serve themselves. I understand your position and I've had this discussion with people, but it's a term of art that is used.

MR. LOVATO: I haven't seen a reference to that in a Nevada Supreme Court case saying that there must be a document that says --

THE COURT: You or me, either.

MR. LOVATO: What it tends to refer to -- I think what it clearly

refers to is the practice that's -- that was followed for decades and is still followed in most situations involving orders that are signed. Which is, we have a hearing here, the Court says someone's drafting it up, it gets a pass to the other side, either they sign off on it, or they don't, or they send their competing order. Orders are sent to the Court. Then, a call comes through, sometimes an email these days, saying that someone's proposed order's been signed. That party sends a runner to go pick it up. They pick it up and they file it. If they do it the old-school way, which is the way I think most attorneys still do it, it gets filed without being served. And then, you attach the final stamped copy to a Notice of Entry of Order. That's the very first time that someone receives, on the other side, a copy of the Court's order. That's not what happened here. Instead, we have new rules for deadlines on filing a motion for attorney fees that makes clear that once it expires, it can't be extended any further.

When it comes to notice, we know what notice is because there're even additional rules now on the electronic filing system that makes clear that service through the electronic filing system is notice; it's good service. Included along with that is an email that everyone receives that makes clear that service has been effectuated. You can look at these rules, I believe it's Electronic Filing Rule 9, makes clear that service of a document is effective service; it imparts notice. Notice of Entry of Order, entry means that something's been filed.

What we received on December 5th was a file-stamped document that had a Certificate of Service on it. The other side made

clear already in filings before they filed their motion for attorney fees, that that set the deadline for filing a memorandum of costs, because that's notice of a judgment. Notice of a judgment is exactly the same as a Notice of an Entry of Order. They knew that was the deadline, that's the whole reason they decided to try this charade of serving a Notice of Entry of Order pretending that that reset the deadlines for 21 days after, and then a few minutes later, they go ahead and file their motion for attorney fees late.

But, Kajioka versus Kajioka addresses that issue where someone served a Notice of Entry of Order and claimed that that extended the deadlines because that was the first Notice of Entry of Order that went out; Nevada Supreme Court rejected that. Your own service of a Notice of Entry of Order doesn't give you time --

[Colloquy between counsel]

MR. LOVATO: -- more time. It has to be because you first received Notice of the Entry of Order; you're the one receiving it, not the one serving it. The very fact that you served it shows that you already had it.

We're the prevailing party on the major claim that caused this case, which was the Landlord trying to evict this tenant because of a negotiating dispute to eliminate 15 years of options, eliminate all value in this. That is the major claim here, that's why we're the prevailing party, and that's why the other side is not entitled to their attorney fees.

THE COURT: Thank you. Anybody else have anything you want to tell me real quick?

 MR. MOORE: Very briefly, Your Honor, since I didn't use very much of my time. Couple of things; let's not confuse service with Notice of Entry of an Order. 54(b) -- (d)(2)(B), counts days from when "written notice of entry of judgment is served", whereas the memo of cost rule pertains to when the entry of judgment, just the entry of judgment. So, our motion was absolutely timely, our memo of costs was timely, our motion to alter or amend was timely.

Also, this is the epitome of revisionist's history, you sat through five days of trial, listened to everything, you heard who prevailed, you ruled on who prevailed. You ruled that the Landlord, on five of the Landlord's six claims for dec-relief, five of the six allegations, we prevailed on and they only prevailed on one of their six. So, that was why we brought our motion to alter or amend to clarify that we were in fact the prevailing party on the declaratory relief action.

[Colloquy between counsel]

MR. MOORE: This is the essential of putting a square peg into a round hole. They keep citing *Sandy Valley* and saying somehow they've -- they were trying to remove a cloud on title; they weren't on title. There's no scenario in *Sandy Valley* or under *Pardee Homes* where they are entitled to attorney's fees. And, not to mention the fact that they didn't plead and prove attorney's fees as special damages at trial.

I think when you look at the purpose and what you said in your Findings of Fact, I think that answer's very succinctly who the prevailing party was, and who you clearly prevailed meant it -- that to be the

Landlord.

THE COURT: Thank you. The motion to alter or amend is denied. I 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.

On the motions to re-tax, the Court grants both of the motions to re-tax; neither party is entitled to expert witness fees. The Plaintiff is not entitled to any expenses for the bookkeeper entry that includes in the Plaintiff -- or the counter -- I'm sorry, the Defendant is not entitled to any of their scanning expenses. After evaluating the *Brunzell* factors, the Plaintiff is awarded the attorney's fees requested of \$126,630. I am not going to award the full amount of the 219,775 requested by the Defendant's counsel because I do not believe it is appropriate to award for two attorneys for the trial. For that reason, I need you to give me a reduction, Mr. Moore, that includes the reduction of the second attorney's time for trial on a sheet, send it to Mr. Lovato, so I can look at it, and then I will finish what the number is that I am awarding you under paragraph 24 of the Lease.

Both of you have argued apportionment, I certainly understand your positions, but everything was interrelated in this case.

MR. MOORE: Do you mean the time --

THE COURT: Collin doesn't get to have his time for trial.

1	MR. MOORE: Sitting at trial or helping he helped me prep.
2	THE COURT: Right, sitting at trial. Helping you be ready
3	helping you get ready and doing some of that work isn't
4	MR. MOORE: Okay.
5	THE COURT: is work that would not have been duplicated.
6	Merely sitting at trial with two people, I'm not going to give you the
7	second person at trial.
8	MR. MOORE: Even though he did a witness?
9	THE COURT: I didn't need two lawyers for this trial, sorry.
10	MR. MOORE: Okay.
11	THE COURT: He didn't not that he didn't do a good job, I'm
12	just not giving you two lawyers for the trial.
13	MR. MOORE: Well, that's that's what I'm going to tell my
14	clients, though.
15	[Colloquy between the Court and the Clerk]
16	THE COURT: How long is that going to take you?
17	MR. MOORE: I'll have it to you this afternoon.
18	THE COURT: So, we're going to put it on Friday for
19	Chamber's ruling on what the amount is for the attorney's fees for the
20	Defendant.
21	Now, you're going to each give me a revised judgment that
22	includes whatever amount you won in the trial, plus your attorney's fees,
23	and your adjusted costs. And then, I assume you're going to have a set-
24	off between the two of you and somebody's going to win when you do
25	that. Don't know who that's going to be, good luck, bye.

1	MR. LOVATO: I need
2	MR. MOORE: Do you want those in Word?
3	MR. LOVATO: I need a little more time. That was quick
4	talking; I just need to get a transcript
5	THE COURT: You didn't like my
6	MR. LOVATO: or a recording what's that?
7	THE COURT: You don't get more time. You can have as
8	long as you need. He's got he says this afternoon; I'm giving him until
9	Friday, because he's got more work to do. You have no more work to
10	do except submitting a judgment. He has more work to do before I get a
11	number. I'm not doing the math on the set-off. The last
12	MR. LOVATO: Yes, I
13	THE COURT: time I did the math on the set-off, I screwed
14	up, so I'm not doing it again. I also don't do interest calculations.
15	MR. LOVATO: I just need to get a recording so that I have
16	the numbers and all of that that was said.
17	THE COURT: You both won on every motion that was filed
18	except for the motion to alter or amend.
19	MR. MOORE: If I if I may
20	[Colloquy between counsel]
21	MR. MOORE: the rent number, Your Honor? The motion to
22	alter or amend also had the issue about the rent being miscalculated.
23	THE COURT: I don't think it's miscalculated.
24	MR. MOORE: We showed you it was.
25	THE COURT: I don't think it's miscalculated. I did a

1	spreadsheet and everything.
2	MR. MOORE: So did we, it's in our motion
3	THE COURT: What exhibit number?
4	MR. MOORE: it's actually the it's in the actual motion,
5	Your Honor. Give me two seconds, and I'll tell you. It's on our
6	motion it's on page page 17 of our motion.
7	THE COURT: Mr. Lovato, do you agree with the calculation
8	that's on page 17 of the motion?
9	MR. LOVATO: I do not agree with it; it was hard to follow. We
10	actually tendered payment of the net amount awarded to us vis-a-vis
11	what was awarded to them, and they refused it and sent it back.
12	MR. MOORE: The way
13	MR. LOVATO: I couldn't find reasoning for why the Court's
14	determination was wrong, instead of us just quibbling.
15	MR. MOORE: Well, if I may, Your Honor.
16	THE COURT: So, you can "may" as much as you want, but I
17	am not inclined to grant it.
18	MR. MOORE: Well, with all due respect, Your Honor
19	THE COURT: It's okay to
20	MR. MOORE: your calculation was wrong because you
21	didn't I don't know how you reached your calculation, but when you
22	look at the amounts
23	THE COURT: I did math. Remember I'm a Judge?
24	MR. MOORE: The I
25	THE COURT: Before that, I was a lawyer.

. .

MR. MOORE: That's why I'm trying --

THE COURT: I didn't do math for a long time.

MR. MOORE: -- that's why I was trying to do it as quick -- as easily and as straightforward -- from 9/8 -- 9 -- September 2018 to July of 2019, they were supposed to be paying 8,610; they only paid 8,400. That's \$210 a month deficit times 11 months. That's \$2,310. Then, from in August of 2019, they only paid \$5,150 according to your Findings of Fact, when they should have been paying \$8,610; that's a deficit of \$3,460 for one month. And then, from September of 2019 through November of 2019, the rent increased under the schedule you provided to 8,820 a month and they only paid 5,150 a month, and that's a deficit of \$3,670 per month times three months equals the \$11,010 we put in there. And then, when you add those all -- those three numbers up, it's 16,780.

THE COURT: So, here is the reason that I am not going to amend the Findings of Fact, I went through the exhibits with the amounts that were paid based upon the testimony, and based upon that amount, and I believe that I addressed it in paragraph 61 of the findings, but I'm not looking at a filed copy, and as a result, after I did that math -- hold on -- in footnote 6 is how I did the calculation.

MR. MOORE: And, I understand that and what I'm telling you -- again, with all due respect, is your calculation in 6 is incorrect.

THE COURT: The calculation in 6 is based upon the evidence that was admitted at trial and my interpretation of the testimony that was given. There may be something else you're using for this chart,

1	but
2	MR. MOORE: I was not. I was using the exhibits that was
3	introduced which was their letters to us saying that they were paying
4	less. We
5	THE COURT: I understand. I'm not granting your motion. I
6	believe that footnote 6 accurately represents the testimony in exhibits
7	that were admitted. There may be a different interpretation that you
8	could use, but that's the one I went with.
9	MR. MOORE: Okay.
10	MR. LOVATO: Okay.
11	THE COURT: Anything else?
12	MR. LOVATO: No.
13	THE COURT: So
14	MR. MOORE: So
15	THE COURT: before Friday, you're going to give me a
16	chart that deletes the second attorney sitting for trial, not prep time, not
17	other work
18	MR. MOORE: Do you want a chart or just a number? An
19	explanation?
20	THE COURT: So, I want Mr. Lovato to have the opportunity if
21	he disagrees with it to say something. Just giving me a number doesn't
22	give him that.
23	MR. MOORE: No, I understand, I'll give an explanation.
24	THE COURT: Okay.
25	MR. MOORE: I'll send him an email I'll send him a letter,

1	and then once he says okay, then I'll send it to you.
2	THE COURT: Perfect.
3	MR. MOORE: Okay.
4	THE COURT: That's a great way. And then, each of you,
5	after I finish that, you'll be in a position to do your judgment, you can do
6	your judgment when you're ready, and then I will sign both and then you
7	will have at it.
8	MR. MOORE: You want the judgments in Word emailed to
9	your Clerk?
10	THE COURT: Only if you can't agree.
11	MR. MOORE: Are you you're saying we should have one
12	judgment?
13	THE COURT: Each of you get your own judgment.
14	MR. MOORE: But, are we submitting two separate judgments
15	to you?
16	THE COURT: He's going to give me a judgment for him;
17	you're going to give me a judgment for you.
18	MR. MOORE: Okay, that's what I thought. Okay. And then,
19	we're going to have
20	THE COURT: I did Findings of Fact and Conclusions of Law
21	that set forth the reason, including what you believe is my flawed math ir
22	footnote 6.
23	MR. MOORE: Okay. Okay.
24	THE COURT: I understand, but that's the math I did.
25	MR. MOORE: Okay.

1	MR. LOVATO: And then, Madam Court Reporter, as soon as
2	you could have a CD available, I'd appreciate it.
3	THE COURT: Okay.
4	MR. LOVATO: Thank you.
5	MR. MOORE: Thank you.
6	THE COURT: Bye guys. And, if I haven't told you before, you
7	all did a good job during trial. Thank you.
8	MR. MOORE: Thank you.
9	[Hearing concluded at 11:28 a.m.]
10	* * * * *
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21	ATTEST: I do hereby certify that I have truly and correctly transcribed the
22	audio/video proceedings in the above-entitled case to the best of my ability.
23	ability.
24	Kaiblaherndt
25	Kaihla Berndt Court Recorder/Transcriber

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

The Court finds that Defendant is entitled to recover its reasonable attorneys' fees incurred in this litigation, regardless of whether Defendant is a prevailing party, under Section 24 of the Lease which provides that "In the event the Landlord finds it necessary to retain an attorney in connection with the 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." Defendant asserted a counterclaim for breach of the Lease, and this Court found in Defendant's favor on this claim, concluding that Plaintiff breached the Lease. Thus, Defendant is entitled to recover reasonable attorneys' fees.

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

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

Page 2 of 3

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

Therefore,

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

Dated this _____ day of February, 2020.

THE HONORABLE ELIZABETH GONZALEZ

DISTRICT COURT JUDGE

Respectfully submitted by: MARQUIS AURBACH COFFING Approved as to form:
LOVATO LAW FIRM, P.C.

By

Terry A. Moore, Esq.
Nevada Bar No. 7831
Collin M. Jayne, Esq.
Nevada Bar No. 13899
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendant/Counterclaimant
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

Page 3 of 3

MAC:08732-032 3959522_1

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1 **Marquis Aurbach Coffing** Terry A. Moore, Esq. 2 Nevada Bar No. 7831 10001 Park Run Drive 3 Las Vegas, Nevada 89145 Telephone: (702) 382-0711 Facsimile: (702) 382-5816 4 tmoore@maclaw.com 5 Attorneys for Tropicana Investments, LLC **DISTRICT COURT** 6 7 **CLARK COUNTY, NEVADA** 8 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation, 9 Case No.: Dept. No.: Plaintiff, 10 VS. 11 TROPICANA INVESTMENTS, LLC, a 12 NOTICE OF ENTRY OF ORDER California limited liability company, 10001 Park Run Drive Las Vegas, Nevada 89145 382-0711 FAX: (702) 382-5816 13 Defendant. 14 15 TROPICANA INVESTMENTS, LLC, a California limited liability company, 16 Counterclaimant, 17 VS. 18 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada 19 corporation; STUART VINCENT, an individual; JEFFREY B. VINCENT, an individual; JEFF 20 WHITE, an individual; JOHN DOES I-X; and ROE CORPORATIONS, 21 Counterdefendants. 22 23 24 25 26

Electronically Filed 2/13/2020 11:02 AM Steven D. Grierson **CLERK OF THE COURT**

XI

A-18-785311-B

Page 1 of 3

MAC:08732-032 3970648_1 2/13/2020 9:27 AM

MARQUIS AURBACH COFFING

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

10001 Park Run Drive Las Vegas, Nevada 891. (702) 382-0711 FAX: (702) 3 Page 2 of 3

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

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

Page 3 of 3

MAC:08732-032 3970648_1 2/13/2020 9:27 AM

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).

02-03-20A11:38 RCVD

Page 1 of 3

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

The Court finds that Defendant is entitled to recover its reasonable attorneys' fees incurred in this litigation, regardless of whether Defendant is a prevailing party, under Section 24 of the Lease which provides that "In the event the Landlord finds it necessary to retain an attorney in connection with the 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." Defendant asserted a counterclaim for breach of the Lease, and this Court found in Defendant's favor on this claim, concluding that Plaintiff breached the Lease. Thus, Defendant is entitled to recover reasonable attorneys' fees.

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

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

Page 2 of 3 MAC:08732-032 3959522_1

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

Therefore,

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

Dated this _____ day of February, 2020.

THE HONORABLE ELIZABETH GONZALEZ

DISTRICT COURT JUDGE

Respectfully submitted by: MARQUIS AURBACH COFFING Approved as to form:
LOVATO LAW FIRM, P.C.

By Terry A. Moore, Esq.

Nevada Bar No. 7831 Collin M. Jayne, Esq.

Nevada Bar No. 13899

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for Defendant/Counterclaimant

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

Page 3 of 3

MAC:08732-032 3959522_1

Electronically Filed 2/19/2020 8:56 AM Steven D. Grierson CLERK OF THE COURT

A-18-785311-B

Date of Hearing: January 27, 2020

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO

This matter having come before the Court on January 27, 2020 for a hearing regarding Plaintiff JSJBD Corp.'s Motion to Retax Costs, with Mario P. Lovato, Esq. of Lovato Law Firm, P.C. appearing for Plaintiff JSJBD Corp ("Plaintiff"); and Terry A. Moore Esq. and Collin M.

Page 1 of 3

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Coffing Marquis Aurbach appearing the law firm of Jayne, Esq. ofDefendant/Counterclaimant Tropicana Investments, LLC ("Defendant"); and the Court, having entertained the arguments of counsel, considered the points and authorities thereof, and for good cause appearing, the Court hereby finds and orders that Plaintiff's Motion to Retax Costs is granted in part and denied in part, as follows:

The Court finds that Defendant is not entitled to recover scanning expenses under NRS 18.005, as Defendant has not established that such costs were reasonable and necessary in this action. Further, Defendant has not established that the circumstances surrounding its expert's testimony were of such necessity as to require fees beyond the \$1,500 cap provided by NRS 18.005(5), so Defendant's expert fees will be reduced to \$1,500. Frazier v. Drake, 131 Nev. 632, 357 P.3d 365 (Nev. App. 2015).

Defendant has properly established that all other requested costs were reasonable, necessary, and actually incurred in this action. Cadle Company v. Woods & Erickson LLP, 131 Nev. 120-21, 345 P.3d 1049, 1054 (2015).

Accordingly, the Court grants Plaintiff's motion by excluding the \$552.50 requested for scanning charges and by limiting Defendant's recoverable expert fees to \$1,500, resulting in a total costs award of \$13,835.50.

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Page 2 of 3

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Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

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Therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Retax is GRANTED IN PART and DENIED IN PART. Defendant's recoverable costs are retaxed as stated above, resulting in recoverable costs totaling \$13,835.50.

Dated this A day of February, 2020.

THE HONORABLE ELIZABETH GONZALEZ

Respectfully submitted by: MARQUIS AURBACH COFFING Approved as to form: LOVATO LAW FIRM, P.C.

Terry A. Moore, Esq. Nevada Bar No. 7831

Collin M. Jayne, Esq. Nevada Bar No. 13899

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for Defendant/Counterclaimant

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

Page 3 of 3

MAC:08732-032 3971886_1

Steven D. Grierson **CLERK OF THE COURT** 1 **Marquis Aurbach Coffing** Terry A. Moore, Esq. 2 Nevada Bar No. 7831 10001 Park Run Drive 3 Las Vegas, Nevada 89145 Telephone: (702) 382-0711 Facsimile: (702) 382-5816 4 tmoore@maclaw.com 5 Attorneys for Tropicana Investments, LLC **DISTRICT COURT** 6 7 **CLARK COUNTY, NEVADA** 8 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation, 9 Case No.: A-18-785311-B Dept. No.: Plaintiff, XI 10 VS. 11 TROPICANA INVESTMENTS, LLC, a 12 NOTICE OF ENTRY OF ORDER California limited liability company, 10001 Park Run Drive Las Vegas, Nevada 89145 382-0711 FAX: (702) 382-5816 13 Defendant. 14 15 TROPICANA INVESTMENTS, LLC, a California limited liability company, 16 Counterclaimant, 17 VS. 18 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada 19 corporation; STUART VINCENT, an individual; JEFFREY B. VINCENT, an individual; JEFF 20 WHITE, an individual; JOHN DOES I-X; and ROE CORPORATIONS, 21 Counterdefendants. 22 23 24 25 26 27

Page 1 of 3

MAC:08732-032 3973995_1 2/19/2020 8:48 AM

Electronically Filed 2/19/2020 9:07 AM

MARQUIS AURBACH COFFING

NOTICE OF ENTRY OF ORDER

Please take notice that an Order Granting in Part and Denying in Part Plaintiff's Motion to Retax Costs was entered in the above-captioned matter on the 19th day of February, 2020, a copy of which is attached hereto.

Dated this 19th 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

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

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 19th 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

Page 3 of 3

MAC:08732-032 3973995_1 2/19/2020 8:48 AM

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).

Electronically Filed 2/19/2020 8:56 AM Steven D. Grierson CLERK OF THE COURT

Date of Hearing: January 27, 2020

Time of Hearing: 9:00 a.m.

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO

This matter having come before the Court on January 27, 2020 for a hearing regarding Plaintiff JSJBD Corp.'s Motion to Retax Costs, with Mario P. Lovato, Esq. of Lovato Law Firm, P.C. appearing for Plaintiff JSJBD Corp ("Plaintiff"); and Terry A. Moore Esq. and Collin M.

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Coffing Marquis Aurbach appearing the law firm of Jayne, Esq. of Defendant/Counterclaimant Tropicana Investments, LLC ("Defendant"); and the Court, having entertained the arguments of counsel, considered the points and authorities thereof, and for good cause appearing, the Court hereby finds and orders that Plaintiff's Motion to Retax Costs is granted in part and denied in part, as follows:

The Court finds that Defendant is not entitled to recover scanning expenses under NRS 18.005, as Defendant has not established that such costs were reasonable and necessary in this action. Further, Defendant has not established that the circumstances surrounding its expert's testimony were of such necessity as to require fees beyond the \$1,500 cap provided by NRS 18.005(5), so Defendant's expert fees will be reduced to \$1,500. Frazier v. Drake, 131 Nev. 632, 357 P.3d 365 (Nev. App. 2015).

Defendant has properly established that all other requested costs were reasonable, necessary, and actually incurred in this action. Cadle Company v. Woods & Erickson LLP, 131 Nev. 120-21, 345 P.3d 1049, 1054 (2015).

Accordingly, the Court grants Plaintiff's motion by excluding the \$552.50 requested for scanning charges and by limiting Defendant's recoverable expert fees to \$1,500, resulting in a total costs award of \$13,835.50.

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Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

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Therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Retax is GRANTED IN PART and DENIED IN PART. Defendant's recoverable costs are retaxed as stated above, resulting in recoverable costs totaling \$13,835.50.

Dated this ____ day of February, 2020.

THE HONORABLE ELIZABETH GONZALEZ

Respectfully submitted by: MARQUIS AURBACH COFFING

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

Terry A. Moore, Esq. Nevada Bar No. 7831

> Collin M. Jayne, Esq. Nevada Bar No. 13899

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for Defendant/Counterclaimant

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

Page 3 of 3

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Electronically Filed 2/24/2020 5:42 PM Steven D. Grierson **CLERK OF THE COURT**

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,	Case No.: Dept. No.:
VS.	
TROPICANA INVESTMENTS, LLC, a California limited liability company,	Date of He Time of He
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.	

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

A-18-785311-B

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, Page 1 of 2

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

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

Dated this 21 day of February, 2020.

THE HONORABLE ELIZABETH GONZALEZ

Respectfully submitted by: MARQUIS AURBACH COFFING

LOVATO LAW FIRM, P.C.

Mario P. Lovato Esq.

Approved as to form:

Terry A. Møore, Esq.
Nevada Bar No. 7831
Collin M. Jayne, Esq.
Nevada Bar No. 13899
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendant/Counterclaimant
Tropicana Investments, LLC

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

Electronically Filed 2/24/2020 4:37 PM Steven D. Grierson CLERK OF THE COURT MARIO P. LOVATO Nevada Bar No. 7427 2 LOVATO LAW FIRM, P.C. 7465 W. Lake Mead Blvd. Ste. 100 Las Vegas, Nevada 89128 T: (702) 979-9047 4 mpl@lovatolaw.com 5 Attorney for Plaintiff JSJBD Corp dba Blue Dogs Pub and Counterdefendants 6 DISTRICT COURT CLARK COUNTY, NEVADA 8 JSJBD CORP dba Blue Dogs Pub, a Nevada 9 corporation, CASE NO. A-18-785311-B 10 DEPT 11 Plaintiff, 11 12 TROPICANA INVESTMENTS, LLC, a California 13 limited liability company, 14 Defendant. 15 TROPICANA INVESTMENTS, LLC, a California 16 limited liability company, 17 Counterclaimant. 18 VS. 19 JSJBD CORP. dba Blue Dogs Pub, a Nevada 20 corporation; STUART VINCENT; JEFFREY B. VINCENT; and JEFF WHITE, 21 Counterdefendants. 22 23 ORDER GRANTING PLAINTIFF / COUNTERDFEFENDANTS' 24 MOTION FOR ATTORNEY FEES AND COSTS 25 On January 27, 2020, a hearing took place for Plaintiff / Counterdefendants' Motion for 26 Attorney Fees and Costs, the parties appearing through their respective counsel of record and 27 parties / party-representatives Stuart Vincent and Bruce Eisman also appearing, the Court, having 28

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reviewing the briefing and arguments of counsel, and good cause appearing:

THE COURT HEREBY FINDS that:

- 1. Plaintiff JSJBD Corp was, and is, the prevailing party in this matter as pertains to the claims in the Complaint filed by JSJBD Corp and as determined in the Court's Findings of Fact and Conclusions of Law entered herein on December 5, 2019.
- 2. Under Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 455 P.2d 31 (1969), when courts determine the appropriate fee to award in civil cases, they must consider various factors: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.
- 3. The *Brunzell* factors support the award of attorney fees. Mr. Lovato is a business litigator who has appeared before the Court on numerous occasions, has worked at reputable law firms in Las Vegas, Nevada, has charged a reasonable billing rate in this matter; the character of the work involved the filing of motions and related pleadings, appearance at hearings, appearance at trial, the drafting and service of written discovery and related work, which is commensurate with the requested billable rate; the work performed by such counsel, was reasonable; and the result obtained supports the fees.
- 4. The following attorney fees and costs of Plaintiff JSJBD Corp and Counterdefendants should be, and are, approved as being reasonable, and being necessarily and actually incurred in the litigation of this matter from its inception up to December 26, 2019 (the date of filing of the motion for attorney fees and costs: (a) attorney fees in the amount of \$126,630.00; and (b) costs in the amount stated in, and separately addressed by, the Order addressing Defendant / Counterclaimant's Motion to Retax Costs.

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

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

Dated: February 2, 2020.

THE HONORABLE ELIZABETH GONZALEZ

DISTRICT COURT JUD

Submitted by:

LOVATO LAW FIRM/P.C.

MARIO P. LOVATO, ESQ.

Nevada Bar No. 7427

Attorney for Plaintiff JSJBD Corp. and

Counterdefendants

Approved as to form:

MARQUIS AURBACH COFFING

TERRY A. MOORE, ESQ.

Nevada Bar NO. 7831

COLLIN M. JAYNE, ESQ.

Nevada Bar No. 13899

10001 Park Run Dr.

Las Vegas, NV 89145

Attorneys for Defendant / Counterclaimant

Tropicana Investments, LLC

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Electronically Filed 2/25/2020 9:29 AM Steven D. Grierson CLERK OF THE COURT

1	Marquis Aurbach Coffing
	Terry A. Moore, Esq.
2	Nevada Bar No. 7831
	Collin M. Jayne, Esq.
3	Nevada Bar No. 13899
	10001 Park Run Drive
4	Las Vegas, Nevada 89145
	Telephone: (702) 382-0711
5	Facsimile: (702) 382-5816
	tmoore@maclaw.com
6	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,	Date of Hearing: January 27, 2020 Time of Hearing: 9:00 a.m.
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.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO RETAX COSTS

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

Page 1 of 3

MAC:08732-032 3959501_1

02-20-20P01:37 RCVD

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

The Court finds that Plaintiff is not entitled to recover "bookkeeping" expenses under NRS 18.005, as Plaintiff has not established that such costs were reasonable and necessary. Further, Plaintiff has not established that the circumstances surrounding its expert's testimony were of such necessity as to require fees beyond the \$1,500 cap provided by NRS 18.005(5), so Plaintiff's expert fees will be reduced to \$1,500. Frazier v. Drake, 131 Nev. 632, 357 P.3d 365 (Nev. App. 2015).

Accordingly, the Court grants Defendant's motion by excluding the \$600 requested for "BHI Bookkeeping," and by limiting Plaintiff's recoverable expert fees to \$1,500, resulting in a total costs award of \$7,124.97.

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Retax is GRANTED IN PART and DENIED IN PART. Plaintiff's recoverable costs are retaxed as stated above, resulting in recoverable costs totaling \$7,124.97.

Dated this ____ day of February, 2020.

THE HONORABLE ELIZABETH GONZALEZ

Respectfully submitted by: MARQUIS AURBACH COFFING

By Terry A. Moore, Esq.

Nevada Bar No. 7831 Collin M. Jayne, Esq.

Nevada Bar No. 13899

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for Defendant/Counterclaimant

Tropicana Investments, LLC

Approved as to form:

LOVATO LAW FIRM, P.C.

Mario P. Lovato, Esq.

Nevada Bar No. 7427

7465 W. Lake Mead Blvd., #100

Las Vegas, Nevada 89128

Attorney for Plaintiff JSJBD and

Counterdefendants

Page 3 of 3

MAC:08732-032 3959501_1

2/25/2020 11:00 AM Steven D. Grierson **CLERK OF THE COURT** 1 **Marquis Aurbach Coffing** Terry A. Moore, Esq. 2 Nevada Bar No. 7831 10001 Park Run Drive 3 Las Vegas, Nevada 89145 Telephone: (702) 382-0711 Facsimile: (702) 382-5816 4 tmoore@maclaw.com 5 Attorneys for Tropicana Investments, LLC **DISTRICT COURT** 6 7 **CLARK COUNTY, NEVADA** 8 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation, 9 Case No.: A-18-785311-B Dept. No.: Plaintiff, XI 10 VS. 11 TROPICANA INVESTMENTS, LLC, a 12 AMENDED NOTICE OF ENTRY OF California limited liability company, ORDER 13 Defendant. 14 15 TROPICANA INVESTMENTS, LLC, a California limited liability company, 16 Counterclaimant, 17 VS. 18 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada 19 corporation; STUART VINCENT, an individual; JEFFREY B. VINCENT, an individual; JEFF 20 WHITE, an individual; JOHN DOES I-X; and ROE CORPORATIONS, 21 Counterdefendants. 22 23 24 25 26 27

Page 1 of 3

Electronically Filed

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

AMENDED NOTICE OF ENTRY OF ORDER

Please take notice that an Order Granting in Part and Denying in Part Defendant's Motion to Retax Costs was entered in the above-captioned matter on the 25th day of February, 2020, a copy of which is attached hereto. The prior Notice of Entry of Order filed on February 24, 2020 inadvertently omitted attaching a filed order.

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

Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

I hereby certify that the foregoing <u>AMENDED NOTICE OF ENTRY OF ORDER</u> 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

Page 3 of 3

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).

Electronically Filed 2/25/2020 9:29 AM Steven D. Grierson CLERK OF THE COURT

١	Marquis Aurbach Coffing
1	Terry A. Moore, Esq.
١	Nevada Bar No. 7831
I	Collin M. Jayne, Esq.
١	Nevada Bar No. 13899
	10001 Park Run Drive
١	Las Vegas, Nevada 89145
١	Telephone: (702) 382-0711
1	Facsimile: (702) 382-5816
١	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,	Date of Hearing: January 27, 2020 Time of Hearing: 9:00 a.m.
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.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO RETAX COSTS

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

Page 1 of 3

MAC:08732-032 3959501_1

02-20-20P01:37 RCVI

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

The Court finds that Plaintiff is not entitled to recover "bookkeeping" expenses under NRS 18.005, as Plaintiff has not established that such costs were reasonable and necessary. Further, Plaintiff has not established that the circumstances surrounding its expert's testimony were of such necessity as to require fees beyond the \$1,500 cap provided by NRS 18.005(5), so Plaintiff's expert fees will be reduced to \$1,500. Frazier v. Drake, 131 Nev. 632, 357 P.3d 365 (Nev. App. 2015).

Accordingly, the Court grants Defendant's motion by excluding the \$600 requested for "BHI Bookkeeping," and by limiting Plaintiff's recoverable expert fees to \$1,500, resulting in a total costs award of \$7,124.97.

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Page 2 of 3

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Retax is GRANTED IN PART and DENIED IN PART. Plaintiff's recoverable costs are retaxed as stated above, resulting in recoverable costs totaling \$7,124.97.

Dated this ____ day of February, 2020.

THE HONORABLE ELIZABETH GONZALEZ

Respectfully submitted by: MARQUIS AURBACH COFFING Approved as to form:

LOVATO LAW FIRM, P.C.

By Terry A. Moore, Esq.

Nevada Bar No. 7831

Collin M. Jayne, Esq.

Nevada Bar No. 13899

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for Defendant/Counterclaimant

Tropicana Investments, LLC

Mario P. Lovato, Esq.

Nevada Bar No. 7427

7465 W. Lake Mead Blvd., #100

Las Vegas, Nevada 89128

Attorney for Plaintiff JSJBD and

Counterdefendants

Electronically Filed 2/25/2020 11:44 AM Steven D. Grierson CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

FINAL JUDGMENT

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

Page 1 of 3

Final Judgment - MAC:08732-032 3960157_1

02-03-20A11:38 RCVI)

10001 Park Run Drive s Vegas, Nevada 89145

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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

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

IT IS SO ORDERED.

Dated this <u>U</u> day of February, 2020.

THE HONORABLE ELIZABETH GONZALEZ

DISTRICT COURT JUI

JSJBD v. Tropicana

Respectfully submitted by: 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

Attorneys for Defendant/Counterclaimant

Tropicana Investments, LLC

Electronically Filed 2/25/2020 1:23 PM Steven D. Grierson CLERK OF THE COURT MARIO P. LOVATO, ESQ. 1 Nevada Bar No. 7427 LOVATO LAW FIRM, P.C. 2 7465 W. Lake Mead Blvd. Ste. 100 Las Vegas, Nevada 89128 3 TEL: (702) 979-9047 mpl@lovatolaw.com 4 Attorney for Plaintiff / Counterdefendant JSJBD Corp dba Blue Dogs Pub and 5 the individual Counterdefendants 6 DISTRICT COURT 7 **CLARK COUNTY, NEVADA** 8 9 JSJBD CORP, d/b/a Blue Dogs Pub, a Nevada corporation, Case No.: A-18-785311-B 10 Plaintiff, 11 **BUSINESS COURT** 12 VS. 13 TROPICANA INVESTMENTS, LLC, a California limited liability company, 14 Defendant. 15 16 AND COUNTERCLAIMS. 17 18 NOTICE OF ENTRY OF ORDER 19 TAKE NOTICE that an Order was entered by the Court in the above-referenced case on 20 February 24, 2020, a copy of which is attached. 21 LOVATO LAW FIRM, P.C. 22 /s/ Mario Lovato 23 MARIO P. LOVATO Nevada Bar No. 7427 24 Attorney for Plaintiff / Counterdefendant 25 JSJBD Corp dba Blue Dogs Pub and the individual Counterdefendants 26 27 28

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

Electronically Filed 2/24/2020 4:37 PM Steven D. Grierson CLERK OF THE COURT MARIO P. LOVATO Nevada Bar No. 7427 2 LOVATO LAW FIRM, P.C. 7465 W. Lake Mead Blvd. Ste. 100 Las Vegas, Nevada 89128 T: (702) 979-9047 4 mpl@lovatolaw.com 5 Attorney for Plaintiff JSJBD Corp dba Blue Dogs Pub and Counterdefendants 6 DISTRICT COURT 7 CLARK COUNTY, NEVADA 8 JSJBD CORP dba Blue Dogs Pub, a Nevada 9 corporation, CASE NO. A-18-785311-B 10 DEPT 11 Plaintiff, 11 12 TROPICANA INVESTMENTS, LLC, a California 13 limited liability company, 14 Defendant. 15 TROPICANA INVESTMENTS, LLC, a California 16 limited liability company, 17 Counterclaimant. 18 VS. 19 JSJBD CORP. dba Blue Dogs Pub, a Nevada 20 corporation; STUART VINCENT; JEFFREY B. VINCENT; and JEFF WHITE, 21 Counterdefendants. 22 23 ORDER GRANTING PLAINTIFF / COUNTERDFEFENDANTS' 24 MOTION FOR ATTORNEY FEES AND COSTS 25 On January 27, 2020, a hearing took place for Plaintiff / Counterdefendants' Motion for 26 Attorney Fees and Costs, the parties appearing through their respective counsel of record and 27 parties / party-representatives Stuart Vincent and Bruce Eisman also appearing, the Court, having

d Bruce Eisman also appearing, the Court, having

reviewing the briefing and arguments of counsel, and good cause appearing:

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02-20-20P02:59 RCVD

THE COURT HEREBY FINDS that:

- 1. Plaintiff JSJBD Corp was, and is, the prevailing party in this matter as pertains to the claims in the Complaint filed by JSJBD Corp and as determined in the Court's Findings of Fact and Conclusions of Law entered herein on December 5, 2019.
- 2. Under Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 455 P.2d 31 (1969), when courts determine the appropriate fee to award in civil cases, they must consider various factors: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.
- 3. The *Brunzell* factors support the award of attorney fees. Mr. Lovato is a business litigator who has appeared before the Court on numerous occasions, has worked at reputable law firms in Las Vegas, Nevada, has charged a reasonable billing rate in this matter; the character of the work involved the filing of motions and related pleadings, appearance at hearings, appearance at trial, the drafting and service of written discovery and related work, which is commensurate with the requested billable rate; the work performed by such counsel, was reasonable; and the result obtained supports the fees.
- 4. The following attorney fees and costs of Plaintiff JSJBD Corp and Counterdefendants should be, and are, approved as being reasonable, and being necessarily and actually incurred in the litigation of this matter from its inception up to December 26, 2019 (the date of filing of the motion for attorney fees and costs: (a) attorney fees in the amount of \$126,630.00; and (b) costs in the amount stated in, and separately addressed by, the Order addressing Defendant / Counterclaimant's Motion to Retax Costs.

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

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

Dated: February 2, 2020.

THE HONORABLE ELIZABETH GONZALEZ

DISTRICT COURT JUD

Submitted by:

LOVATO LAW FIRM/P.C.

MARIO P. LOVATO, ESO.

Nevada Bar No. 7427

Attorney for Plaintiff JSJBD Corp. and

Counterdefendants

Approved as to form:

MARQUIS AURBACH COFFING

TERRY A. MOORE, ESQ.

Nevada Bar NO. 7831

COLLIN M. JAYNE, ESQ.

Nevada Bar No. 13899

10001 Park Run Dr.

Las Vegas, NV 89145

Attorneys for Defendant / Counterclaimant

Tropicana Investments, LLC

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28

1 **Marquis Aurbach Coffing** Terry A. Moore, Esq. 2 Nevada Bar No. 7831 10001 Park Run Drive 3 Las Vegas, Nevada 89145 Telephone: (702) 382-0711 Facsimile: (702) 382-5816 4 tmoore@maclaw.com 5 Attorneys for Tropicana Investments, LLC **DISTRICT COURT** 6 7 **CLARK COUNTY, NEVADA** 8 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation, 9 Plaintiff, 10 VS. 11 TROPICANA INVESTMENTS, LLC, a 12 California limited liability company, 10001 Park Run Drive Las Vegas, Nevada 89145 382-0711 FAX: (702) 382-5816 13 Defendant. 14 15 TROPICANA INVESTMENTS, LLC, a California limited liability company, 16 Counterclaimant, 17 VS. 18 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada 19 corporation; STUART VINCENT, an individual; JEFFREY B. VINCENT, an individual; JEFF 20 WHITE, an individual; JOHN DOES I-X; and ROE CORPORATIONS, 21 Counterdefendants. 22 23 24 25

Electronically Filed 2/25/2020 1:23 PM Steven D. Grierson **CLERK OF THE COURT**

NOTICE OF ENTRY OF FINAL

XI

A-18-785311-B

Case No.:

Dept. No.:

JUDGMENT

Page 1 of 3

MAC:08732-032 3979074_1 2/25/2020 1:13 PM

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

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

Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

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

Page 3 of 3

MAC:08732-032 3979074_1 2/25/2020 1:13 PM

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).

Electronically Filed 2/25/2020 11:44 AM Steven D. Grierson CLERK OF THE COURT

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

FINAL JUDGMENT

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

Page 1 of 3

Final Judgment - MAC:08732-032 3960157_1

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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

By

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

IT IS SO ORDERED.

Dated this <u>U</u> day of February, 2020.

THE HONORABLE ELIZABETH GONZALEZ

DISTRICT COURT JU

JSJBD v. Tropicana

Respectfully submitted by: 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

Attorneys for Defendant/Counterclaimant

Tropicana Investments, LLC

28

1 **Marquis Aurbach Coffing** Terry A. Moore, Esq. 2 Nevada Bar No. 7831 10001 Park Run Drive 3 Las Vegas, Nevada 89145 Telephone: (702) 382-0711 Facsimile: (702) 382-5816 4 tmoore@maclaw.com 5 Attorneys for Tropicana Investments, LLC **DISTRICT COURT** 6 7 **CLARK COUNTY, NEVADA** 8 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation, 9 Case No.: Dept. No.: Plaintiff, 10 VS. 11 TROPICANA INVESTMENTS, LLC, a 12 California limited liability company, 13 Defendant. 14 15 TROPICANA INVESTMENTS, LLC, a California limited liability company, 16 Counterclaimant, 17 VS. 18 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada 19 corporation; STUART VINCENT, an individual; JEFFREY B. VINCENT, an individual; JEFF 20 WHITE, an individual; JOHN DOES I-X; and ROE CORPORATIONS, 21 Counterdefendants. 22 23 24 25 26

Electronically Filed 2/25/2020 11:00 AM Steven D. Grierson CLERK OF THE COURT

NOTICE OF ENTRY OF ORDER

XI

A-18-785311-B

Page 1 of 3

MAC:08732-032 3979070_1 2/25/2020 10:18 AM

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

10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816 Page 2 of 3

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

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

Page 3 of 3

MAC:08732-032 3979070_1 2/25/2020 10:18 AM

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).

Electronically Filed
2/24/2020 5:42 PM
Steven D. Grierson
CLERK OF THE COURT

1]	
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 Inv	estments, 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,	Date of Hearing: January 27, 2020 Time of Hearing: 9:00 a.m.
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.

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, Page 1 of 2

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

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

Dated this 2 day of February, 2020.

THE HONORABLE ELIZABETH GONZALEZ

Respectfully submitted by: MARQUIS AURBACH COFFING

Terry A. Møore, Esq.

Nevada Bar No. 7831 Collin M. Jayne, Esq.

Nevada Bar No. 13899

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for Defendant/Counterclaimant

Tropicana Investments, LLC

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

Mario P. Lovato Esq.

Nevada Bar No. 7407

7465 W. Lake Mead Blvd., #100

Las Vegas, Nevada 89128

Attorney for Plaintiff JSJBD and

Counterdefendants

Electronically Filed 3/16/2020 2:23 PM Steven D. Grierson CLERK OF THE COURT MARIO P. LOVATO, ESQ. 1 Nevada Bar No. 7427 LOVATO LAW FIRM, P.C. 2 7465 W. Lake Mead Blvd. Ste. 100 Las Vegas, Nevada 89128 3 TEL: (702) 979-9047 mpl@lovatolaw.com 4 Attorney for Plaintiff / Counterdefendant JSJBD Corp dba Blue Dogs Pub and 5 the individual Counterdefendants 6 DISTRICT COURT 7 **CLARK COUNTY, NEVADA** 8 9 JSJBD CORP, d/b/a Blue Dogs Pub, a Nevada corporation, Case No.: A-18-785311-B 10 Plaintiff, 11 **BUSINESS COURT** VS. 12 13 TROPICANA INVESTMENTS, LLC, a California limited liability company, 14 Defendant. 15 TROPICANA INVESTMENTS, LLC, a California 16 limited liability company, 17 Counterclaimant, 18 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada 19 corporation; STUART VINCENT, an individual; JEFFREY B. VINCENT, an individual; JEFF 20 WHITE, an individual, 21 Counterdefendants. 22 23 NOTICE OF APPEAL 24 NOTICE is hereby given that all Plaintiff / Counterdefendants (i.e. JSJBD Corp dba Blue 25 Dogs Pub, Stuart Vincent, Jeffrey B. Vincent, and Jeff White) in the above-referenced case hereby 26 appeal—as to Defendant / Counterdefendant Tropicana Investments, LLC—to the Supreme Court 27

of Nevada from any adverse Orders / Judgments / Findings of Fact and Conclusions of Law,

including the following:

TITLE	ENTERED	NOTICE SERVED
Final Judgment	02/25/20	02/25/20
Order Granting Pl./Counterdefs.' Motion for Attorney Fees and Costs	02/24/20	02/25/20
Order Granting in Part And Denying in Part Def.'s Motion to Retax Costs	02/25/20	02/25/20
Order Granting in Part and Denying in Part Pl.'s Motion to Retax Costs	02/19/20	02/19/20
Order Granting in Part Def.'s Motion To [sic] For Attorneys' Fees and Costs	02/13/20	02/13/20
Findings of Fact and Conclusions of Law	12/05/19	12/05/19
Order Granting Def.'s Motion in Limine and Denying Pl.'s Countermotion	11/18/19	11/20/19
Order Regarding Def.'s Motion for Sanctions	11/08/19	11/08/19

While certain of the above-referenced Orders may be deemed substantially favorable to the appealing parties, such may be, or are, interrelated with various other Orders in the case.

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

CERTIFICATE OF SERVICE IT IS HEREBY CERTIFIED that, on March 16, 2020, the above and foregoing NOTICE OF APPEAL was served via the Court's system of electronic service on all parties registered and listed for such service, including upon by the following:

7 Terry A. Moore
Marquis Aurbach Coffing
10001 Park Run Dr.
Las Vegas, NV 89145
9 Attorneys for Defendant / Counterclaimant
Tropicana Investments, LLC

/s/ Mario Lovato

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1 **Marquis Aurbach Coffing** Terry A. Moore, Esq. 2 Nevada Bar No. 7831 Collin M. Jayne, Esq. Nevada Bar No. 13899 3 10001 Park Run Drive Las Vegas, Nevada 89145 4 Telephone: (702) 382-0711 5 Facsimile: (702) 382-5816 tmoore@maclaw.com 6 cjayne@maclaw.com Attorneys for Tropicana Investments, LLC 7 **DISTRICT COURT** 8 **CLARK COUNTY, NEVADA** 9 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada 10 Corporation, Case No.: A-18-785311-B 11 Plaintiff. Dept. No.: ΧI 12 VS. 13 TROPICANA INVESTMENTS, LLC, a California limited liability company, 14 Defendant. 15 TROPICANA INVESTMENTS, LLC, a 16 California limited liability company, 17 Counterclaimant. 18 vs. 19 JSJBD CORP, d/b/a Blue Dog's Pub, a Nevada corporation; STUART VINCENT, an individual; 20 JEFFREY B. VINCENT, an individual; JEFF WHITE, an individual, JOHN DOES I-X; and 21 ROE CORPORATIONS, 22 Counterdefendants. 23 NOTICE OF CROSS-APPEAL 24

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,

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

MARQUIS AURBACH COFFING

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

Las Vegas, Nevada 89145 382-0711 FAX: (702) 382-5816

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 <u>25th</u> 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

Page 3 of 3

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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

vs.

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

TROPICANA INVESTMENTS, LLC, a

California limited liability company,

AND RELATED CLAIMS

Plaintiff.

Defendant.

Case No.: A-18-785311-B

Dept.:

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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

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.

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

FINDINGS OF FACT

- 1. Plaintiff JSJBD Corp ("JSJBD") is a Nevada corporation doing business in Clark County, Nevada.
- 2. Defendant Tropicana Investments, LLC ("Tropicana Investments") is a California limited liability company doing business in Clark County, Nevada.
 - 3. JSJBD was formed on March 8, 2007.
- 4. JSJBD was formerly named JSJ, LLC that filed Articles of Conversion under NRS 92A.205 with the Nevada Secretary of State on March 6, 2014, which changed the name of the entity and converted it to a corporation.
- 5. Tropicana Investments owns the commercial shopping center commonly referred to as Tropicana Plaza located at 3430 East Tropicana Avenue, Las Vegas, Nevada, 89121.
- 6. JSJBD does business as Blue Dog's Pub, and owns and operates a tavern in Suites 27, 28, and 29 comprising a space of approximately 4,200 square feet ("Subject Premises") in Tropicana Plaza.
- 7. On or about July 9, 1996, Walter L. Schwartz ("Schwartz"), as lessor, and Mark S. Van Aken ("Van Aken"), as tenant, entered into a written Lease ("Lease") for the Subject Premises.

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

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

- 8. Tropicana Investments is the successor-in-interest and current landlord under the Lease entered into on July 9, 1996, and various Amendments/Addenda, for the Subject Premises.
- 9. Plaintiff is the successor-in-interest and current tenant under the Lease, and various Amendments/Addenda for the Subject Premises.
- 10. The Lease provided for a tenancy lasting for a term of five years and five months, commencing April 1, 1996, and terminating on August 31, 2001.
- 11. During the initial term of the Lease, from April 1, 1996 to August 31, 2001, the minimum monthly rent began at \$3,150 per month, and this monthly rent increased by \$210 at the beginning of every year of the five-year and five month term.
- 12. The 1996 Lease referenced \$500 per month in "estimated" common area maintenance ('CAM") charges, which were subject to the quarterly accounting of actual CAM costs.
 - 13. The CAM costs are defined in the Lease:

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

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

Common Areas and Parking Lot. A reasonable allowance to Landlord for Landlord's 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.

(various errors in original).

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

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

- 15. Under paragraph 9 of the Lease, Roof expenses are carved-out and made the sole obligation of the Landlord. The Lease states: "Landlord shall at his sole cost and expense, keep and maintain in good repair, (excluding painting) of extension walls and roof repairs" (emphasis added).
 - 16. Section 24 of the Lease contains an attorney's fees provision.⁴
- 17. The Lease did not include any options to extend the term of the Lease. A separate Option Agreement was executed by the original landlord and tenant ("1996 Option Agreement").
- 18. The 1996 Option Agreement provided two (2) five-year options if the tenant was in full compliance with the terms of the Lease. The first option provided that the tenant would be entitled to renew the Lease for a five-year period commencing on September 1, 2001. The second option provided that the tenant would be entitled to renew the Lease for a second five-year period commencing on September 1, 2006.
- 19. The options provided by the 1996 Option Agreement were to be "at a market rental rate and terms as agreed by Landlord and Tenant."
- 20. On April 16, 2001, Van Aken exercised the first option under the 1996 Option Agreement. As a result of the exercise of that Option, an Amendment to Retail Building Lease Dated July 9, 1996 ("2001 Amendment") was executed. The 2001 Amendment extended the Lease term for five (5) years, from September 1, 2001 through August 31, 2006. During the extended term, the parties agreed that the base rent would begin at \$5,670 per month, and that this

In the event the Landlord finds it necessary to retain an attorney in connection with the 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.

That section states:

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

- 21. Paragraph 4 of the 2001 Amendment changed the documentation and accounting for CAM expenses from quarterly to annual.
- 22. On March 7, 2006, Van Aken exercised the second option under the 1996 Option Agreement. The Addendum to Retail Building Lease Dated July 9, 1996 ("2006 Addendum") extended the tenancy for a term of five (5) years, from September 1, 2006 through August 31, 2011. During the extended term, it was agreed that the base rent would begin at \$6,720 per month for the 2006–2007 year, and that this monthly rent would increase by \$210 at the beginning of every year, ending at \$7,560 per month for the final year.
- 23. The 2006 Addendum gave Van Aken an option to extend the Lease term for "one (1) final extension term of five (5) years," to begin on September 1, 2011, and provided that such extension term would be "under terms and conditions to be negotiated."
- 24. In approximately 2007, Van Aken, sold the assets of his bar located in the Subject Premises to JSJ, LLC.
- 25. Defendant, Van Aken, as assignor, and Plaintiff as assignee, entered into a Lease Assignment and Modification agreement executed by all parties in June 2007 ("2007 Lease Modification").
- 26. As part of the negotiations leading up to the 2007 Lease Modification, JSJ, LLC attempted to add a term of "fair market value" for the rental rate in the Lease. The addition of this term was rejected by Defendant.
- 27. After the Defendant rejected "fair market value" as a term, Plaintiff signed the 2007 Lease Modification with the wording requiring "rental increases."

- 28. The 2007 Lease Modification stated that it is the desire of all parties to allow Van Aken to assign the Lease, the 2001 Amendment, and 2006 Addendum to the Assignee, Plaintiff, under terms and conditions as set forth in the 2007 Lease Modification.
- 29. The 2007 Lease Modification provided a new provision conditionally granting the Plaintiff three additional options to extend the Lease by five years at a time:

...Landlord agrees to conditionally grant Assignee, J.S.J., LLC, three (3) additional five (5) year options to renew the term of the Lease under terms and conditions, including but not limited to 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.

- 30. The 2007 Lease Modification regarding the three five-year options does not include the term "fair market value."
- 31. The 2007 Lease Modification was entered into after the exercise of all prior options by Plaintiff's predecessor in interest.
- 32. The 2007 Lease Modification changed the "estimated" CAM charge to \$1,176 per month, but did not otherwise alter or change the accounting obligation of Defendant and/or the other obligations of Defendant to properly charge for actual CAM expenses under the Lease.
- 33. The 2007 Lease Modification provided that Van Aken would pay Defendant ten percent (10%) of the total sales price of the business as consideration for the Defendant offering Plaintiff the three additional five-year options.
- 34. Concurrently with the execution of the 2007 Lease Modification, the three managers of JSJ, LLC—Jeffrey Vincent, Stuart Vincent, and Jeff White—each executed a personal guaranty of JSJ, LLC's obligations under the Lease.

- 35. On or about February 22, 2011, Defendant and Plaintiff entered into a written Addendum II to Retail Building Lease ("2011 Addendum") which gave effect to the option⁵ exercised by Plaintiff and set forth the amount of rent that was agreed upon for the term.
- 36. The 2011 Addendum extended the term of the Lease from September 1, 2011 to August 31, 2016.
- 37. In the 2011 Addendum, Defendant and Plaintiff agreed that the monthly rent for the first two years of the first option term (September 2011 through August 2012, and September 2012 through August 2013) would remain at the same rate as was paid the prior year (September 2010 through August 2011), and that the regular annual increases of monthly rent by \$210 would resume thereafter at the beginning of each of the remaining three (3) years of the option (from September 1, 2013, through August 31, 2016). Monthly rent remained at \$7,560 through August 31, 2013; increased by \$210 on September 1, 2013, to \$7,770; increased by \$210 on September 1, 2014 to \$7,980; and increased by \$210 on September 1, 2015 to \$8,190.
- 38. On February 26, 2016, Plaintiff notified Defendant that it was exercising its option available under the 2007 Lease Modification, to commence on September 1, 2016.
- 39. During the negotiations on the terms of the modification to implement the option, Plaintiff requested a \$2,500 reduction in monthly rent a 30% reduction in the rental rate.
 - 40. Defendant did not accept this request.
- 41. Defendant informed Plaintiff that, instead of exercising another addenda or amendment as the parties had done in the past to effectuate the exercise of options, Defendant preferred to execute an entirely new form of Lease to replace the outdated form of lease.

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

- 42. On June 15, 2016, Defendant's authorized agent, Commercial Investment Real Estate Services, extended an offer in writing to Plaintiff that, among other terms, proposed the amount of base rent for the initial year of the lease extension to remain the same as the previous year (2015–2016), which amounted to \$8,190 per month with 3% annual increases thereafter.
- 43. On August 2, 2016, Lesley B. Miller, Esq. of the law firm Kaempfer Crowell, notified Landlord that she represented Plaintiff. Miller requested that the payment of base rent for the first year of the five-year renewal term would remain the same as the previous year (9/1/2015–8/31/2016).
- 44. On August 31, 2016, Miller again reiterated the exercise of the option rights under the Lease to renew for an additional five-year term. Miller attached a proposed amendment to the Lease which provided for the following rent schedule:

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09/01/16 to 08/31/17 - $8,400 per month, $100,500 per annum 09/01/17 to 08/31/18 - $8,400 per month, $100,500 per annum 09/01/18 to 08/31/19 - $8,610 per month, $103,320 per annum 09/01/19 to 08/31/20 - $8,820 per month, $105,840 per annum 09/01/20 to 08/31/21 - $9,030 per month, $108,360 per annum
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- 45. On September 7, 2016, Defendant's counsel, John M. Sacco, Esq., sent correspondence to Miller discussing several other issues including: parking, CAMs, security patrols, and issues related to personal guaranties. No mention of rejecting the amount of rent was set forth in Sacco's letter. He confirmed that the parking, CAMs, security patrols and guaranty-related issues were the "final matters" that the parties were attempting to work through.
- 46. Sacco called Miller to let her know that the Defendant agreed with the rent schedule as she had proposed in her August 31st addendum and he reiterated that he thought the other issues set forth in his letter were the final matters that needed to be resolved.
- 47. Consistent with the parties' agreement, the Plaintiff began paying \$8,400 per month in September 2016. The Plaintiff paid this sum through August 2017. These monthly

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

- 48. At no point during the first year of the Option Term (9/1/16 8/31/17) did the Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it was making such payments to preserve its rights under the option agreements.
- 49. Although the parties reached an agreement on the rent amounts for the option term, and Plaintiff then paid consistent with that agreement, Plaintiff and Defendant, through their respective counsel, exchanged drafts of a proposed updated standardized lease form during the next twelve months in an attempt to update the remaining non-rent portions of the twenty-year old Lease.
- 50. During that time frame, the parties' conduct was consistent with the parties having agreed to the rent term of the Option, as Plaintiff paid the full amount of rent in accordance with the agreement reached in September 2016, Plaintiff continuously occupied the Premises, and both Plaintiff and Defendant performed their obligations under the Lease without protest or dispute.
- 51. On August 7, 2017, Plaintiff, through new counsel, Lucas A. Grower, Esq., sent Defendant correspondence advising that Grower would be representing Plaintiff.
- 52. On August 31, 2017, the Plaintiff, through its new counsel, demanded that Lease negotiations be restarted for the base rent on the basis of "market rental rate and terms".
- 53. Defendant's attorney disagreed with Plaintiff's new position, maintaining that the parties had reached an agreement as to rent, and that the option did not provide for negotiations based on market rental rate.

- 54. Beginning in September of 2017, Plaintiff continued to pay monthly rent of \$8,400. Payment of this amount was consistent with the second year of the rent schedule that had been agreed upon by the parties.
- 55. At no point during the second year of the Option Term (9/1/17 8/31/18) did the Plaintiff ever note any objection or protest on any of the \$8,400 monthly rent checks it sent to the Defendant, nor did the Plaintiff send anything else to the Defendant or its attorney indicating it was making such payments to preserve its rights under the option agreements.
- 56. On November 30, 2018, 27 months after the Option term commenced, Plaintiff filed the instant lawsuit.
- 57. At trial, Plaintiff presented an expert witness, Matthew Lubawy, who testified to his opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was \$1.05 per square foot per month, or monthly rent of \$4,410.
- 58. Defendant presented an expert witness, Charles E. Jack IV, who testified to his opinion that the fair market rental rate of the Subject Premises as of September 1, 2016, was \$1.75 per square foot per month, or monthly rent of \$7,350.
- 59. The Court determines that both expert witnesses provided credible testimony. However, the Court finds that the comparables utilized by Jack were more applicable to the conditions of the Subject Premises.
- 60. \$8,400 per month is not an unreasonable amount of rent for the option period, as this comports with the terms of the option exercised by Plaintiff, as well as the understanding of the parties that rent would increase during the option periods, and reflects the schedule Plaintiff's attorneys proposed and Defendant accepted.

- 61. After receiving Jack's expert report that opined that \$1.75 per square foot per month was the market rental rate, Plaintiff reduced the amount it was paying monthly from August 2019 through November 2019, from \$8400 to \$5150.
- 62. Defendant did not present sufficient evidence that Plaintiff was previously undercharged for its water usage within the Leased Premises. The Court finds that the methodology utilized by Defendant in determining the amount of the Plaintiff's pro-rata water usage was not reasonable, and not credible.
- 63. From the date of the assignment of the Lease in approximately 2007 to present, Plaintiff has paid the "estimated" CAM of \$1,176 for each and every month.
- 64. Defendant did not present sufficient evidence that it incurred \$239,803 in CAM expenses from 2012 through 2018 that were not previously assessed to the Plaintiff.
- 65. The list of items to be included in CAMS does not include the category used by Defendant for "reserves".
- 66. Defendant has failed to provide a CAM accounting including the accounting of the various "reserves" referenced in the annual Statements produced by Defendant in this case.
- 67. As a result of Defendants inclusion of "reserve" funds in the CAMS, Plaintiff has overpaid the CAM expense and is entitled to reimbursement.
- 68. Defendant did not breach the Lease by failing to provide quarterly accounting CAM costs as that provision was modified in writing by the 2001 Amendment to an annual accounting.
- 69. Defendant has charged amounts in excess of the CAM charges, for which restitution and reimbursement should be made to Plaintiff.
- 70. Defendant has not breached its obligation to repair and maintain the premises, including the roof, the HVAC system, and other portions of the premises.

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.

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- 79. The elements of a claim for breach of contract are: (1) the parties entered into a valid and existing contract; (2) Plaintiff performed or was excused from performance; (3) Defendant breached; and (4) Plaintiff sustained damages as a result of the breach.
- 80. A contract must contain all essential terms to be enforceable, and rent is an essential term of an option agreement.
- 81. Interpretation of a contract is a question of law. The Court looks at the plain language in the contract.
- 82. Nevada has recognized an exception for a lease extension option containing all terms except for rent, holding that such an option should be enforced at an agreed rent or at a court-fixed reasonable rent. *Cassinari v. Mapes*, 91 Nev. 778, 781 (1975).
- 83. A commercial tenant may affirm the option rights and seek judicial determination of the amount of rent where the parties have been unable to agree. *Cassinari* at 781.
- 84. The terms of the 2007 Lease Modification are plain and unambiguous and may be interpreted as a matter of law. Under these clear terms, the five-year options were expressly and unambiguously made conditional upon "terms and conditions, including but not limited to rental increases, to be negotiated."
- 85. The language in the 2007 Lease Modification related to rent after the execution of the Option is unambiguous.
- 86. As the Plaintiff contends that the parties failed to come to an agreement as to the amount of rent for the option period beginning September 1, 2016, the Court is empowered to declare the amount of rent applicable to that option period. The evidence and the terms of the 2007 Lease Modification do not support Plaintiff's position that the contract permits a lower "fair market value" to be established.

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

- 88. The language of the 2007 Lease Modification states that the rent for the option period would be "under terms and conditions, including but not limited to rental increases to be negotiated." The parties agree that all essential terms other than rent are provided elsewhere in the 2007 Lease Modification, leaving only the rent to be negotiated. Thus, if no agreement was reached as to rent, all essential terms of the option are present except the rental rate, and *Cassinari* would apply to render the option enforceable based on a reasonable rental amount to be determined by this Court.
- 89. Based on the facts presented, the Court determines that an agreement was reached and that the reasonable rent is \$8,400 per month for the first two years of the second option term under the 2007 Lease Modification increasing by \$210 every year starting on September 1, 2018. The Plaintiff agreed to the 2007 Lease Modification option language which requires that any options be based on "rental increases," so it would not be reasonable for rent to decrease.
- 90. The rent agreed to by the parties and reflected in this schedule based upon the evidence before the Court, reflects a reasonable amount of rent under *Cassinari*.
- 91. After hearing and weighing the evidence the Court sets the rent as the schedule agreed to and partially performed by the parties:

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

- 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

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	Less	Revised	Square	Plaintiffs	Less	Difference
	Expense	Disallowed	Operating	Foot	Pro Rata	Payments	}
		Reserve	Expense	Rate	Share	Made	
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
2015 2016 2017 2018 Total	385363	32500	352863	3.05	12810	14112	-1302
Total							-4578

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.

- 99. The elements of a claim for breach of the implied covenant of good faith and fair dealing are: (1) Plaintiff and defendant were parties to a contract; (2) Defendant owed a duty of good faith to plaintiff; (3) Defendant breached that duty by performance in a manner that was unfaithful to the purpose of the contract; and (4) Plaintiff's justified expectations were thus denied.
 - 100. In every contract there is an implied promise of good faith and fair dealing.
- 101. Where the terms of a contract are literally complied with, but one party to the contract deliberately contravenes the intention and spirit of the contract, that party can incur liability for breach of the implied covenant of good faith and fair dealing.
- 102. When one party performs a contract in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied, damages may be awarded against the party who does not act in good faith.
- 103. Whether the controlling party's actions fall outside the reasonable expectations of the dependent party is determined by the various factors and special circumstances that shape these expectations.
- 104. The use of reserves as part of the CAM expenses is a breach of the covenant of good faith and fair dealing.
- 105. Substantial evidence was submitted establishing beyond a preponderance of the evidence that, based on the contractual language negotiated and agreed to by the parties as part of the 2007 Lease Modification, as well as the subsequent negotiations and conduct of the parties, the appropriate rent applicable to the option period cannot be based on market rental rate or fair market value.
- 106. The doctrines of part performance and/or estoppel preclude the Plaintiff from arguing that no agreement existed. In general, principles of part performance and/or estoppel

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

- of all relevant facts. Plaintiff's conduct of paying this amount of rent was designed to be relied upon, in that Plaintiff intended for Defendant to accept the full amount of rent as payment under the Lease, in exchange for being allowed to continue to occupy the Premises. Plaintiff's significant delay in asserting any dispute or protest as to the amounts being paid demonstrate the Defendant had no idea of Plaintiff's purported hidden understanding that it did not agree to the rent. Defendant detrimentally relied on Plaintiff's position, as Defendant kept the property off the market instead of attempting to find a new tenant willing to pay full rent. The Plaintiff is estopped from now taking a contrary position as to the amount of rent that Plaintiff offered, agreed to, and did, in fact, perform.
- 108. As there were good faith disputes related to the amount of rent for the option period presented for determination to the Court, the Court finds that there has been no breach of the implied covenant of good faith and fair dealing on that issue.
- 109. Judgment in Defendant's favor is appropriate on Defendant's counterclaim for breach of Lease, as Plaintiff's failure to pay the agreed-upon amount of rent from August 2019 through November 2019 constituted a breach of Plaintiff's obligations under the Lease and Counterdefendants' obligations under the Guaranties.
- 110. If any conclusions of law are properly findings of fact, they shall be treated as if appropriately identified and designated.

Based upon the foregoing Findings of Fact and Conclusions of Law

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

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

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

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

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

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

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

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

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.
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5	DATED this 5 th day of December, 2019.
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8	Commo 0
9	Elizabeth Gonzalez, District Court Judge
10	Certificate of Service
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12	I hereby certify that on the date filed, a copy/of the foregoing Findings of Fact and Conclusions of 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 1 st Floor of the RJC for;
16	·
17	☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at their last known address(es):
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20	Dan Kutinac
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Exhibit B

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Steven D. Grierson
CLERK OF THE COURT

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

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. INVESTMENTS, TROPICANA LLC. 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,

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, Page 1 of 2

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Counterdefendants.

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

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

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

Dated this 21 day of February, 2020.

Respectfully submitted by:

Nevada Bar No. 7831

Collin M. Jayne, Esq.

Nevada Bar No. 13899

10001 Park Run Drive

Las Vegas, Nevada 89145

Tropicana Investments, LLC

Attorneys for Defendant/Counterclaimant

MARQUIS AURBACH COFFING

THE HONORABLE ELIZABETH GONZALEZ

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Approved as to ferm: LOVATO LAW/FIRM, P.C.

Mario P. Lovato Esq.

Nevada Bar No. 7407

7465 W. Lake Mead Blvd., #100

Las Vegas, Nevada 89128

Attorney for Plaintiff JSJBD and

Counterdefendants

Page 2 of 2

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Exhibit C

Electronically Filed 2/24/2020 4:37 PM Steven D. Grierson CLERK OF THE COURT MARIO P. LOVATO Nevada Bar No. 7427 2 LOVATO LAW FIRM, P.C. 7465 W. Lake Mead Blvd. Ste. 100 Las Vegas, Nevada 89128 T: (702) 979-9047 mpl@lovatolaw.com 5 Attorney for Plaintiff JSJBD Corp dba Blue Dogs Pub and Counterdefendants 6 DISTRICT COURT 7 CLARK COUNTY, NEVADA 8 JSJBD CORP dba Blue Dogs Pub, a Nevada 9 corporation, CASE NO. A-18-785311-B 10 DEPT 11 Plaintiff, 11 VS. 12 TROPICANA INVESTMENTS, LLC, a California 13 limited liability company, 14 Defendant. 15 TROPICANA INVESTMENTS, LLC, a California 16 limited liability company, 17 Counterclaimant. 18 VS. 19 JSJBD CORP. dba Blue Dogs Pub, a Nevada 20 corporation; STUART VINCENT; JEFFREY B. VINCENT; and JEFF WHITE, 21 Counterdefendants. 22 23 ORDER GRANTING PLAINTIFF / COUNTERDFEFENDANTS' 24 MOTION FOR ATTORNEY FEES AND COSTS 25

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:

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THE COURT HEREBY FINDS that:

- 1. Plaintiff JSJBD Corp was, and is, the prevailing party in this matter as pertains to the claims in the Complaint filed by JSJBD Corp and as determined in the Court's Findings of Fact and Conclusions of Law entered herein on December 5, 2019.
- 2. Under Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 455 P.2d 31 (1969), when courts determine the appropriate fee to award in civil cases, they must consider various factors: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.
- 3. The *Brunzell* factors support the award of attorney fees. Mr. Lovato is a business litigator who has appeared before the Court on numerous occasions, has worked at reputable law firms in Las Vegas, Nevada, has charged a reasonable billing rate in this matter; the character of the work involved the filing of motions and related pleadings, appearance at hearings, appearance at trial, the drafting and service of written discovery and related work, which is commensurate with the requested billable rate; the work performed by such counsel, was reasonable; and the result obtained supports the fees.
- 4. The following attorney fees and costs of Plaintiff JSJBD Corp and Counterdefendants should be, and are, approved as being reasonable, and being necessarily and actually incurred in the litigation of this matter from its inception up to December 26, 2019 (the date of filing of the motion for attorney fees and costs: (a) attorney fees in the amount of \$126,630.00; and (b) costs in the amount stated in, and separately addressed by, the Order addressing Defendant / Counterclaimant's Motion to Retax Costs.

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

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

Dated: February 21, 2020.

THE HONORABLE ELIZABETH GONZALEZ

DISTRICT COURT JUD

Submitted by:

LOVATO LAW FIRM, P.C.

MARIO P. LOVATO, ESQ.

Nevada Bar No. 7427

Attorney for Plaintiff JSJBD Corp. and

Counterdefendants

Approved as to form:

MARQUIS AURBACH COFFING

TERRY A. MOORE, ESQ.

Nevada Bar NO. 7831

COLLIN M. JAYNE, ESQ.

Nevada Bar No. 13899

10001 Park Run Dr. Las Vegas, NV 89145

Attorneys for Defendant / Counterclaimant

Tropicana Investments, LLC

Exhibit D

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

The Court finds that Defendant is entitled to recover its reasonable attorneys' fees incurred in this litigation, regardless of whether Defendant is a prevailing party, under Section 24 of the Lease which provides that "In the event the Landlord finds it necessary to retain an attorney in connection with the 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." Defendant asserted a counterclaim for breach of the Lease, and this Court found in Defendant's favor on this claim, concluding that Plaintiff breached the Lease. Thus, Defendant is entitled to recover reasonable attorneys' fees.

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

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

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

Therefore,

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

Dated this _____ day of February, 2020.

THE HONORABLE ELIZABETH GONZALEZ

DISTRICT COURT JUDGE

Respectfully submitted by: MARQUIS AURBACH COFFING Approved as to form: LOVATO LAW FIRM, P.C.

By .

Terry A. Moore, Esq.
Nevada Bar No. 7831
Collin M. Jayne, Esq.
Nevada Bar No. 13899
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendant/Counterclaimant
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

Page 3 of 3

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Exhibit E

MARQUIS AURBACH COFFING

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FINAL JUDGMENT

A-18-785311-B

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

XI

Page 1 of 3

Final Judgment - MAC:08732-032 3960157_1

MARQUIS AURBACH COFFING

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

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

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10. Vincent, and Jeff White, jointly and severally in the amount of \$98,006.46, with interest	st
accruing at the rate of 6.75% per annum until paid in full.	
IT IS SO ORDERED.	
Dated this day of February, 2020.	

THE HONORABLE ELIZABETH GONZALEZ

DISTRICT COURT JU A-18-785311-B JSJBD v. Tropicana

Respectfully submitted by: 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

Attorneys for Defendant/Counterclaimant

Tropicana Investments, LLC

CERTIFICATE OF SERVICE

I hereby certify that, on September 3, 2020, I submitted **APPELLANTS' APPENDIX** for service via electronic service to the parties registered for service with the Nevada Supreme Court in this matter, including the following:

Terry A. Moore
Marquis Aurbach Coffing
10001 Park Run Dr.
Las Vegas, NV 89145
Attorneys for Defendant / Counterclaimant
Tropicana Investments, LLC

_____/s/ Mario Lovato
An employee of Lovato Law Firm, P.C.