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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JSJBD CORP. D/B/A BLUE DOG'S

PUB; STUART VINCENT, AN

INDIVIDUAL; JEFFREY B. VINCENT, Case No.: 80849

AN INDIVIDUAL; AND JEFF WHITE,

AN INDIVIDUAL,

Appellants/Cross-Respondents,

vs.

TROPICANA INVESTMENTS, LLC, A

CALIFORNIA LIMITED LIABILITY

COMPANY,

Respondent/Cross-Appellant.

Appeal from the Eighth Judicial District  
Court, the Honorable Elizabeth  
Gonzalez Presiding

**RESPONDENT/CROSS-APPELLANT, TROPICANA INVESTMENTS,  
LLC'S RESPONSE TO APPELLANTS/CROSS-RESPONDENTS' MOTION  
FOR LEAVE TO FILE SUPPLEMENTAL BRIEF**

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Respondent/Cross-Appellant, Tropicana Investments, LLC (“Tropicana”), by and through its counsel of record, Marquis Aurbach Coffing, hereby submits this Response to Appellants/Cross-Respondents JSJBD Corp., Stuart Vincent, Jeffrey Vincent, and Jeff White (collectively, “JSJBD”)’s Motion for Leave to File Supplemental Brief, filed April 9, 2021.

After attempting to file a sur-reply as a “notice of supplemental authorities” and having that filing stricken by the Court, JSJBD now, for a second time, seeks to improperly get the last word on a legal argument pertaining to Respondent’s cross-appeal. The proposed Supplemental Brief is not permitted under NRAP 28.1(c), and blatantly ignores this Court’s stated limitation that JSJBD may seek leave to file a supplemental brief only “to address arguments made in the reply brief on cross-appeal regarding arguments not raised in the district court.”<sup>1</sup> The Court should deny the Motion for Leave to File Supplemental Brief.

First, NRAP 28.1(c) provides that, in a case involving a cross-appeal, the following briefs are permitted: (1) Appellant’s Opening Brief on Appeal; (2) Respondent’s Answering Brief on Appeal and Opening Brief on Cross-Appeal; (3) Appellant’s Reply Brief on Appeal and Answering Brief on Cross-Appeal; and (4) Respondent’s Reply Brief on Cross-Appeal. Beyond these four specific briefs, “no further briefs may be filed” except if permitted by the Court.

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<sup>1</sup> Order Granting Motion to Strike, filed April 2, 2021 (emphasis added).

NRAP 28.1(c)(5). The last of these four briefs, Tropicana’s reply brief on cross-appeal, was filed in this case on February 5, 2021. Thus, the presumption is that “no further briefs may be filed.” NRAP 28.1(c)(5).

JSJBD has not presented any compelling reason to allow it to file a sur-reply. Rather, the Motion states that JSJBD disagrees with one of Tropicana’s legal arguments in the reply brief on cross-appeal (“Tropicana cites case law for a proposition for which it does not stand...”)<sup>2</sup> and that JSJBD disagrees with Tropicana’s recitation of the facts of the case (“Tropicana also fails to cite locations in the record ...”).<sup>3</sup> Neither of these points merits a supplemental brief, and, on the contrary, the Court’s finite briefing schedule must be adhered to, which permits Tropicana to have the last word in its reply brief on its own cross-appeal. Thus, the Court should deny the Motion.

Additionally, JSBJD’s Motion should be denied because the proposed Supplemental Brief entirely ignores the limitation of scope that this Court imposed on JSJBD for such a motion. In striking JSJBD’s prior attempt to get the last word on Tropicana’s cross-appeal, this Court specifically limited the scope in which JSJBD would be permitted to seek leave to file a supplemental brief: “If deemed warranted, within 7 days of the date of this order, appellant may file a motion for

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<sup>2</sup> Motion for Leave to File Supplemental Brief, at 2.

<sup>3</sup> *Id.*

leave to file a supplemental brief to address arguments made in the reply brief on cross-appeal regarding arguments not raised in the district court.”<sup>4</sup>

JSJBD’s proposed Supplemental Brief does not contain any allegation of arguments that were not raised in the district court. Rather, JSJBD seeks to file the Supplemental Brief for the stated purpose of “provid[ing] the correct case law and to provide proper citations to the record”<sup>5</sup> based on JSJBD’s apparent disagreement with Tropicana’s reply brief on cross-appeal. Therefore, JSJBD has not complied with the limited scope imposed by this Court, and has again ignored the Court’s directives<sup>6</sup> in filing the instant Motion. The Motion should be denied for this reason.

Finally, should the Court consider the substance of JSJBD’s proposed Supplemental Brief, JSJBD’s legal argument is misplaced, and should be disregarded. It is practically axiomatic that a point not urged in the trial court is deemed waived on appeal, with the exception of issues pertaining to jurisdiction. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Here, prior to appeal, JSJBD did not request attorneys’ fees under

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<sup>4</sup> Order Granting Motion to Strike, filed April 2, 2021 (emphasis added).

<sup>5</sup> Motion for Leave to File Supplemental Brief, at 2.

<sup>6</sup> As the Court will recall, JSJBD previously twice ignored this Court’s rules and directives in the untimely filing of its Opening Brief along with an untimely motion for an extension of time to file same and then doing the exact same thing for its Reply Brief.

NRS 18.010(2)(b) or NRS 18.010(3), and the district court did not make a finding that either NRS 18.010(2)(b) or NRS 18.010(3) entitled JSJBD to an award of attorneys' fees. Thus, JSJBD waived any argument suggesting that application of either of these statutes would have been proper. Alternatively, JSJBD's argument on this point is simply irrelevant to the issue of whether the award of attorneys' fees was proper, when neither of these statutes was discussed prior to appeal.

In sum, JSJBD's Motion seeks to improperly hijack Tropicana's right to the last word on its cross-appeal, and JSJBD has presented no compelling reason for the Supplemental Brief to be considered. Further, JSJBD's proposed Supplemental Brief entirely ignores the limitation on the proposed supplement that was clearly enunciated by this Court in striking JSJBD's previous attempt at filing a sur-reply. Finally, JSJBD's proposed Supplemental Brief seeks only to offer misplaced arguments and alleged corrections to the record, and, thus, the supplement does not warrant this Court's consideration. Therefore, JSJBD's Motion should be denied.

Dated this 16th day of April, 2021.

MARQUIS AURBACH COFFING

By: /s/ Terry A. Moore  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **RESPONDENT/CROSS-APPELLANT, TROPICANA INVESTMENTS, LLC'S OPPOSITION TO APPELLANTS/CROSS-RESPONDENTS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF** was filed electronically with the Nevada Supreme Court on the 16th day of April, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Mario Lovato, Esq.

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