

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

JACK GAAL, INDIVIDUALLY;  
AND JACK'S PLACE BAR AND  
GRILL LLC,

Appellants,

vs.

LAS VEGAS 101, INC.,  
Respondent.

No. 83133

Electronically Filed  
Mar 09 2022 08:47 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**RESPONDENT LAS VEGAS 101, INC.'S APPENDIX**

**VOLUME I  
RA001-RA014**

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**JONES LOVELOCK**

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## INDEX TO RESPONDENT'S APPENDIX IN CHRONOLOGICAL ORDER

TAB	EXHIBIT DESCRIPTION	DATE	VOL	PAGE NOS.
1.	Register of Actions Case No. A-18-776982-C		I	RA001 – RA005
2.	Defendant's Pretrial Memorandum	05/07/2021	I	RA006 – RA014

Dated: March 9, 2022.

**JONES LOVELOCK**

*/s/ Stephen A. Davis, Esq.*

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*Attorneys for Respondent,*

*Las Vegas, 101, Inc.*

### **CERTIFICATE OF SERVICE**

This is to certify that on March 9, 2022, a true and correct copy of the foregoing **RESPONDENT LAS VEGAS 101, INC.'S APPENDIX, VOLUME I**, was served on the following by the Supreme Court Electronic Filing System. I further certify that counsel of record for all other parties to this appeal are either registered with the Court's electronic filing system or have consented to electronic service, and that electronic service shall be made upon and in accordance with the Court's Master Service List.

By: /s/ Lorraine Rillera  
An employee of Jones Lovelock

**REGISTER OF ACTIONS****CASE No. A-18-776982-C****Las Vegas 101 Inc, Plaintiff(s) vs. Jack Gaal, Defendant(s)**§  
§  
§  
§  
§  
§  
§Case Type: **Other Contract**Date Filed: **06/29/2018**Location: **Department 27**Cross-Reference Case Number: **A776982**Supreme Court No.: **83133****PARTY INFORMATION**

<b>Defendant</b>	<b>Jack Gaal</b>	<b>Lead Attorneys</b> <b>David J Winterton</b> <i>Retained</i> 7023630317(W)
<b>Defendant</b>	<b>Jack's Place Bar and Grill LLC</b>	<b>David J Winterton</b> <i>Retained</i> 7023630317(W)
<b>Plaintiff</b>	<b>Las Vegas 101 Inc <i>Doing Business As</i> First Choice Business Brokers</b>	<b>Stacy M. Rocheleau</b> <i>Retained</i> 702-914-0400(W)

**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**

06/16/2021	<b>Judgment Plus Interest</b> (Judicial Officer: Alf, Nancy) Debtors: Jack Gaal (Defendant), Jack's Place Bar and Grill LLC (Defendant) Creditors: Las Vegas 101 Inc (Plaintiff) Judgment: 06/16/2021, Docketed: 06/17/2021 Total Judgment: 100,000.00
08/30/2021	<b>Order</b> (Judicial Officer: Alf, Nancy) Debtors: Jack Gaal (Defendant), Jack's Place Bar and Grill LLC (Defendant) Creditors: Las Vegas 101 Inc (Plaintiff) Judgment: 08/30/2021, Docketed: 08/31/2021 Total Judgment: 49,110.25
08/30/2021	<b>Judgment Plus 18% Interest</b> (Judicial Officer: Alf, Nancy) Debtors: Jack Gaal (Defendant), Jack's Place Bar and Grill LLC (Defendant) Creditors: Las Vegas 101 Inc (Plaintiff) Judgment: 08/30/2021, Docketed: 08/31/2021 Total Judgment: 212,725.70

**OTHER EVENTS AND HEARINGS**

06/29/2018	<b>Complaint Doc ID# 1</b> [1] <i>Complaint</i>
07/06/2018	<b>Summons Electronically Issued - Service Pending Doc ID# 2</b> [2] <i>Summons</i>
08/27/2018	<b>Affidavit of Service Doc ID# 3</b> [3] <i>Affidavit of Service</i>
08/29/2018	<b>Affidavit of Service Doc ID# 4</b> [4] <i>Affidavit of Service</i>
09/04/2018	<b>Initial Appearance Fee Disclosure Doc ID# 5</b> [5] <i>Initial Appearance Fee Disclosure</i>
09/04/2018	<b>Affidavit in Support Doc ID# 6</b> [6] <i>Affidavit in Support of Motion to Stay Proceeding Pending Arbitration and to Compel Arbitration</i>
09/04/2018	<b>Motion Doc ID# 7</b> [7] <i>Motion to Stay Proceeding Pending Arbitration and to Compel Arbitration</i>
09/13/2018	<b>Opposition Doc ID# 8</b> [8] <i>Opposition to Motion to Stay Proceeding Pending Arbitration and to Compel Arbitration and Countermotion to Compel Mediation</i>
09/20/2018	<b>Reply to Opposition Doc ID# 9</b> [9] <i>Reply to Opposition to Motion to Stay Proceeding Pending Arbitration and to Compel Arbitration</i>
09/20/2018	<b>Affidavit in Support Doc ID# 10</b> [10] <i>Affidavit in Support of Reply to Opposition to Motion to Stay Proceeding Pending Arbitration and to Compel Arbitration</i>
10/10/2018	<b>Motion to Stay (9:00 AM)</b> (Judicial Officer Alf, Nancy) <i>Deft's Motion to Stay Proceeding Pending Arbitration and to Compel Arbitration</i> Result: Off Calendar
10/10/2018	<b>Opposition and Countermotion (9:00 AM)</b> (Judicial Officer Alf, Nancy) <i>Opposition to Motion to Stay Proceeding Pending Arbitration and to Compel Arbitration and Countermotion to Compel Mediation</i> Result: Off Calendar
10/10/2018	<b>All Pending Motions (9:00 AM)</b> (Judicial Officer Alf, Nancy) <a href="#">Parties Present</a>

RA 001

[Minutes](#)  
Result: Matter Heard  
11/02/2018 **Order Doc ID# 11**  
[11] Order to Stay Proceeding Pending Mediation  
11/06/2018 **Notice of Entry of Order Doc ID# 12**  
[12] Notice of Entry of Order  
11/13/2018 **Order Setting Settlement Conference Doc ID# 13**  
[13] Order Setting Settlement Conference  
01/03/2019 **Settlement Conference** (10:30 AM) (Judicial Officer Bell, Linda Marie)  
**01/03/2019, 05/14/2019**  
[Minutes](#)  
01/03/2019 Reset by Court to 01/03/2019  
Result: Not Settled  
01/07/2019 **Status Report Doc ID# 14**  
[14] Status Report  
02/11/2019 **Miscellaneous Filing Doc ID# 15**  
[15] Exemption From Arbitration  
02/11/2019 **Notice of Early Case Conference Doc ID# 16**  
[16] Notice of Early Case Conference  
02/28/2019 **NRCP 16.1 Initial List of Witnesses and Documents Doc ID# 17**  
[17] Plaintiff's Initial List of Witnesses and Documents Pursuant to NRCP 16.1  
05/16/2019 **Three Day Notice of Intent to Default Doc ID# 18**  
[18] Three Day Notice Of Intent To Take Default  
05/21/2019 **Order Doc ID# 19**  
[19] Order to Appear for Mandatory Discovery Conference  
05/22/2019 **Answer Doc ID# 20**  
[20] Answer to Complaint  
06/05/2019 **Mandatory Rule 16 Conference** (9:00 AM) (Judicial Officer Allf, Nancy)  
[Parties Present](#)  
[Minutes](#)  
Result: Matter Heard  
06/17/2019 **ADR - Action Required Doc ID# 21**  
[21] ADR- Action Required-Exemption  
06/18/2019 **Request for Exemption From Arbitration Doc ID# 22**  
[22] Request for Exemption from Arbitration  
07/02/2019 **Commissioners Decision on Request for Exemption - Granted Doc ID# 23**  
[23] Commissioner's Decision on Request for Exemption - GRANTED  
01/13/2020 **Scheduling and Trial Order Doc ID# 24**  
[24] Order Setting Civil Bench Trial, and Calendar Call  
06/19/2020 **Stipulation and Order Doc ID# 25**  
[25] Stipulation and Order  
08/10/2020 **Notice of Deposition Doc ID# 26**  
[26] Notice of Deposition of Defendant Jack Gaal  
08/18/2020 **Amended Doc ID# 27**  
[27] Amended Notice of Deposition of Defendant Jack Gaal  
08/26/2020 **Stipulation and Order Doc ID# 28**  
[28] Stipulation and Order to Continue Bench Trial and Discovery Deadline  
08/27/2020 **Stipulation and Order Doc ID# 29**  
[29] Stipulation and Order Regarding Subpoena for Testimony and Subpoena Duces Tecum to Angel Soto  
08/27/2020 **Stipulation and Order Doc ID# 30**  
[30] Stipulation and Order Regarding Subpoena for Testimony and Subpoena Duces Tecum to Angel Soto  
08/27/2020 **Order Setting Civil Bench Trial Doc ID# 31**  
[31] ORDER RE-SETTING CIVIL BENCH TRIAL AND CALENDAR CALL  
08/27/2020 **Notice of Entry of Order Doc ID# 32**  
[32] Notice of Entry of Stipulation and Order  
09/01/2020 **Clerk's Notice of Nonconforming Document Doc ID# 34**  
[34] Clerk's Notice of Nonconforming Document  
09/01/2020 **Notice of Entry of Stipulation and Order Doc ID# 35**  
[35] Notice of Entry of Stipulation and Order Regarding Subpoena For Testimony and Subpoena Duces Tecum to Angel Soto  
09/18/2020 **Motion to Compel Doc ID# 36**  
[36] Plaintiff's Motion to Compel Discovery Responses  
09/18/2020 **Exhibits Doc ID# 37**  
[37] Exhibits in Support of Plaintiff's Motion to Compel Discovery Responses  
09/18/2020 **Clerk's Notice of Hearing Doc ID# 38**  
[38] Notice of Hearing  
09/21/2020 **Certificate of Service Doc ID# 39**  
[39] Certificate of Service  
10/01/2020 **Notice of Deposition Doc ID# 40**  
[40] Notice of Deposition of Angel Soto  
10/07/2020 **Opposition to Motion Doc ID# 41**  
[41] Opposition to Motion to Compel Discovery Responses  
10/15/2020 **Stipulation and Order Doc ID# 42**  
[42] Stipulation and Order to Dismiss Motion and Vacate Hearing  
10/15/2020 **Notice of Entry of Order Doc ID# 43**  
[43] Notice of Entry of Stipulation and Order  
10/21/2020 **CANCELED Motion to Compel** (9:00 AM) (Judicial Officer Allf, Nancy)  
Vacated - per Stipulation and Order  
Plaintiff's Motion to Compel Discovery Responses  
11/12/2020 **CANCELED Calendar Call** (10:30 AM) (Judicial Officer Allf, Nancy)  
Vacated  
11/16/2020 **CANCELED Bench Trial** (10:30 AM) (Judicial Officer Allf, Nancy)

Vacated

01/07/2021 **Pre-Trial Disclosure Doc ID# 44**  
[44] Plaintiff's NRCP 16.1(a)(3) Pre-Trial Disclosures

01/12/2021 **Trial Subpoena Doc ID# 45**  
[45] Trial Subpoena for Angel Soto

01/12/2021 **Trial Subpoena Doc ID# 46**  
[46] Trial Subpoena for David Winterton

01/12/2021 **Affidavit of Service Doc ID# 47**  
[47] Declaration of Service - Angel Soto

01/12/2021 **Affidavit of Service Doc ID# 48**  
[48] Declaration of Service - David Winterton

01/19/2021 **Minute Order (3:00 AM)** (Judicial Officer Allf, Nancy)  
Minute Order: Calendar Call set 2/4/2021 CONTINUED to 1/28/2021  
[Minutes](#)

Result: Minute Order - No Hearing Held

01/25/2021 **Notice of Appearance Doc ID# 49**  
[49] Notice of Appearance of Associate Counsel

01/27/2021 **Minute Order (3:00 AM)** (Judicial Officer Allf, Nancy)  
Minute Order: BlueJeans Appearance  
[Minutes](#)

Result: Minute Order - No Hearing Held

01/28/2021 **Calendar Call (10:30 AM)** (Judicial Officer Allf, Nancy)  
[Parties Present](#)  
[Minutes](#)

02/04/2021 *02/04/2021 Reset by Court to 01/28/2021*

Result: Matter Heard

02/03/2021 **Motion for Summary Judgment Doc ID# 50**  
[50] Defendant's Motion for Summary Judgment

02/04/2021 **Clerk's Notice of Hearing Doc ID# 51**  
[51] Notice of Hearing

02/08/2021 **CANCELED Bench Trial (10:30 AM)** (Judicial Officer Allf, Nancy)  
Vacated

02/10/2021 **Declaration Doc ID# 52**  
[52] Declaration of Jack Gaal in Support of Defendant's Motion for Summary Judgment

02/18/2021 **Opposition to Motion For Summary Judgment Doc ID# 53**  
[53] Plaintiff's Opposition to Defendant's [SIC] Motion for Summary Judgment

02/22/2021 **Errata Doc ID# 54**  
[54] Errata

02/26/2021 **Reply to Opposition Doc ID# 55**  
[55] Reply to Opposition to the Motion for Summary Judgment

03/09/2021 **Minute Order (3:00 AM)** (Judicial Officer Allf, Nancy)  
Minute Order: BlueJeans Appearance  
[Minutes](#)

Result: Minute Order - No Hearing Held

03/10/2021 **Motion for Summary Judgment (10:00 AM)** (Judicial Officer Allf, Nancy)  
Defendant's Motion for Summary Judgment  
[Parties Present](#)  
[Minutes](#)

Result: Denied

03/25/2021 **CANCELED Status Check (10:00 AM)** (Judicial Officer Allf, Nancy)  
Vacated  
Status Check: Trial Readiness  
*03/25/2021 Reset by Court to 03/25/2021*

03/29/2021 **CANCELED Bench Trial (9:00 AM)** (Judicial Officer Allf, Nancy)  
Vacated

04/15/2021 **CANCELED Calendar Call (10:30 AM)** (Judicial Officer Allf, Nancy)  
Vacated - Previously Decided

05/06/2021 **Order Doc ID# 56**  
[56] Proposed Pretrial Order for Bench Trials

05/07/2021 **Pre-trial Memorandum Doc ID# 57**  
[57] Defendant's Pre-Trial Memorandum

05/10/2021 **Pre-trial Memorandum Doc ID# 58**  
[58] Plaintiff's Pre-trial Memo

05/14/2021 **Motion to Continue Doc ID# 59**  
[59] Emergency Motion to Continue Trial

05/14/2021 **Opposition to Motion Doc ID# 60**  
[60] Plaintiff's Opposition to the Emergency Motion to Continue Trial

05/14/2021 **Motion to Continue Trial (4:15 PM)** (Judicial Officer Allf, Nancy)  
Defendant's Emergency Motion to Continue Trial  
[Parties Present](#)  
[Minutes](#)

*06/16/2021 Reset by Court to 05/14/2021*

Result: Granted

05/14/2021 **Clerk's Notice of Hearing Doc ID# 61**  
[61] Notice of Hearing

05/14/2021 **Minute Order (3:00 AM)** (Judicial Officer Allf, Nancy)  
Minute Order: BlueJeans Appearance

	<a href="#">Minutes</a>
05/14/2021	Result: Minute Order - No Hearing Held <b>Notice of Hearing Doc ID# 62</b> <i>[62] Order: Notice of Hearing</i>
05/17/2021	<b>CANCELED Bench Trial</b> (11:00 AM) (Judicial Officer Allf, Nancy) <i>Vacated</i> <i>04/19/2021 Reset by Court to 05/17/2021</i>
05/18/2021	<b>Minute Order</b> (3:00 AM) (Judicial Officer Allf, Nancy) <i>Minute Order: BlueJeans Appearance</i> <a href="#">Minutes</a>
05/20/2021	Result: Minute Order - No Hearing Held <b>Status Check</b> (1:30 PM) (Judicial Officer Allf, Nancy) <a href="#">Parties Present</a> <a href="#">Minutes</a>
06/01/2021	Result: Matter Heard <b>Bench Trial</b> (10:00 AM) (Judicial Officer Allf, Nancy) <b>06/01/2021, 06/02/2021, 06/04/2021, 06/10/2021</b> <a href="#">Parties Present</a> <a href="#">Minutes</a>
06/08/2021	Result: Trial Continues <b>Minute Order</b> (3:00 AM) (Judicial Officer Allf, Nancy) <i>Minute Order: BlueJeans Appearance</i>
06/16/2021	<b>Findings of Fact, Conclusions of Law and Judgment Doc ID# 63</b> <i>[63] Findings of Fact and Conclusions of Law</i>
06/21/2021	<b>Notice of Entry Doc ID# 64</b> <i>[64] Notice of Entry of Findings of Fact and Conclusions of Law</i>
06/23/2021	<b>Notice of Appeal Doc ID# 65</b> <i>[65] Notice of Appeal</i>
06/23/2021	<b>Memorandum Doc ID# 66</b> <i>[66] Memorandum of Costs</i>
06/24/2021	<b>Objection Doc ID# 67</b> <i>[67] Objection to Memorandum of Costs</i>
07/06/2021	<b>Case Appeal Statement Doc ID# 68</b> <i>[68] Case Appeal Statement</i>
07/08/2021	<b>Motion for Fees Doc ID# 69</b> <i>[69] Plaintiff's Motion for Attorney Fees and Costs and Response/Opposition to Objection to Memorandum of Costs</i>
07/08/2021	<b>Clerk's Notice of Hearing Doc ID# 70</b> <i>[70] Notice of Hearing</i>
07/26/2021	<b>Opposition to Motion Doc ID# 71</b> <i>[71] Opposition to Plaintiff's Motion for Attorney Fees and Costs and Reply to Response/Opposition to Objection to Memorandum of Costs</i>
08/05/2021	<b>Notice of Rescheduling of Hearing Doc ID# 72</b> <i>[72] Notice of Rescheduling of Hearing</i>
08/06/2021	<b>Reply in Support Doc ID# 73</b> <i>[73] Plaintiff's Reply in Support of the Motion for Attorney Fees and Costs and Response/Opposition to Objection to Memorandum of Costs</i>
08/13/2021	<b>Motion for Attorney Fees and Costs</b> (10:00 AM) (Judicial Officer Allf, Nancy) <i>Plaintiff's Motion for Attorney Fees and Costs and Response/Opposition to Objection to Memorandum of Costs</i> <a href="#">Parties Present</a> <a href="#">Minutes</a> <i>08/11/2021 Reset by Court to 08/13/2021</i>
08/13/2021	Result: Granted in Part <b>Minute Order</b> (3:00 AM) (Judicial Officer Allf, Nancy) <i>Minute Order: BlueJeans Appearance</i> <a href="#">Minutes</a>
08/30/2021	Result: Minute Order - No Hearing Held <b>Order Doc ID# 74</b> <i>[74] Order For Attorney Fees And Costs</i>
08/30/2021	<b>Judgment Doc ID# 75</b> <i>[75] Judgment</i>
09/01/2021	<b>Notice of Entry of Order Doc ID# 76</b> <i>[76] Notice of Entry of Order for Attorney's Fees and Costs</i>
09/01/2021	<b>Notice of Entry of Judgment Doc ID# 77</b> <i>[77] Notice of Entry of Judgment</i>
09/17/2021	<b>Recorders Transcript of Hearing Doc ID# 78</b> <i>[78] Transcript of Proceedings, Bench Trial - Day 1, Heard on June 1, 2021</i>
09/17/2021	<b>Recorders Transcript of Hearing Doc ID# 79</b> <i>[79] Transcript of Proceedings, Bench Trial - Day 2, Heard on June 2, 2021</i>
09/17/2021	<b>Recorders Transcript of Hearing Doc ID# 80</b> <i>[80] Transcript of Proceedings, Bench Trial - Day 3, Heard on June 4, 2021</i>
09/17/2021	<b>Recorders Transcript of Hearing Doc ID# 81</b> <i>[81] Transcript of Proceedings, Bench Trial - Day 4, Heard on June 10, 2021</i>
09/23/2021	<b>Request Doc ID# 82</b> <i>[82] Request for Transcript of Proceedings</i>
10/05/2021	<b>Writ Electronically Issued Doc ID# 83</b> <i>[83] Writ of Execution</i>
10/05/2021	<b>Writ Electronically Issued Doc ID# 84</b> <i>[84] Writ of Execution</i>
12/23/2021	<b>Motion to Stay Doc ID# 85</b> <i>[85] Motion to Stay Pending Appeal and Order Shortening Time</i>

12/28/2021	<b>Opposition and Countermotion</b> <b>Doc ID# 86</b> [86] Opposition to Defendants' Motion to Stay Pending Appeal and Countermotion for Set Security for Stay at \$300,000.00
12/29/2021	<b>Clerk's Notice of Nonconforming Document</b> <b>Doc ID# 87</b> [87] Clerk's Notice of Nonconforming Document
12/30/2021	<b>Order Shortening Time</b> <b>Doc ID# 88</b> [88] Motion To Stay Pending Appeal On Order Shortening Time
12/30/2021	<b>Notice of Entry of Order</b> <b>Doc ID# 89</b> [89] Notice of Entry of Order Shortening Time on Motion to Stay Pending Appeal
01/03/2022	<b>Reply to Opposition</b> <b>Doc ID# 90</b> [90] Reply to Plaintiff's Opposition to the Defendant's Motion for a Stay Pending Appeal and Opposition to the Counter-motion
01/04/2022	<b>Motion to Stay</b> (10:30 AM) (Judicial Officer Allf, Nancy) Motion to Stay Pending Appeal on OST <a href="#">Parties Present</a> <a href="#">Minutes</a> Result: Granted
01/14/2022	<b>Order</b> <b>Doc ID# 91</b> [91] Order Re: Motion to Stay Pending Appeal
01/18/2022	<b>Notice of Entry of Order</b> <b>Doc ID# 92</b> [92] Notice of Entry of Order Re: Motion to Stay Pending Appeal
01/19/2022	<b>Notice of Posting Bond</b> <b>Doc ID# 93</b> [93] Notice of Posting Bond

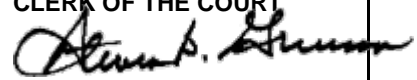
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**FINANCIAL INFORMATION**

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	<b>Defendant Jack Gaal</b>			
	Total Financial Assessment			477.00
	Total Payments and Credits			477.00
	<b>Balance Due as of 03/08/2022</b>			<b>0.00</b>
09/04/2018	Transaction Assessment			253.00
09/04/2018	Efile Payment	Receipt # 2018-58688-CCCLK	Jack Gaal	(253.00)
02/03/2021	Transaction Assessment			200.00
02/03/2021	Efile Payment	Receipt # 2021-06691-CCCLK	Jack Gaal	(200.00)
06/23/2021	Transaction Assessment			24.00
06/23/2021	Efile Payment	Receipt # 2021-39075-CCCLK	Jack Gaal	(24.00)
	<b>Plaintiff Las Vegas 101 Inc</b>			
	Total Financial Assessment			294.00
	Total Payments and Credits			294.00
	<b>Balance Due as of 03/08/2022</b>			<b>0.00</b>
07/03/2018	Transaction Assessment			270.00
07/03/2018	Efile Payment	Receipt # 2018-44174-CCCLK	Las Vegas 101 Inc	(270.00)
09/28/2021	Transaction Assessment			4.00
09/28/2021	Payment (Phone)	Receipt # 2021-60260-CCCLK	Legal Wings	(4.00)
10/06/2021	Transaction Assessment			10.00
10/06/2021	Efile Payment	Receipt # 2021-62084-CCCLK	Las Vegas 101 Inc	(10.00)
10/06/2021	Transaction Assessment			10.00
10/06/2021	Efile Payment	Receipt # 2021-62085-CCCLK	Las Vegas 101 Inc	(10.00)





**PMEM**  
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*Attorney for Jack Gaal, and  
Jack's Place Bar and Grill LLC*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

LAS VEGAS 101 INC., A NEVADA  
CORPORATION DOING BUSINESS AS  
FIRST CHOICE BUSINESS BROKERS,  
LAS VEGAS 101

Case No. A-18-776982-C

Depart. 27

Plaintiffs,

vs.

JACK GAAL, individually; JACK'S  
PLACE BAR AND GRILL LLC; DOES I  
through X; and ROE CORPORATIONS XI  
through XX.

Defendants

**DEFENDANT'S PRETRIAL MEMORANDUM**

COMES NOW, JACK GAAL ("Gaal") and JACK' PLACE BAR AND GRILL, LLC,  
("JACK'S PLACE") (Collectively "Defendants"), by and through his counsel David J.  
Winterton & Associates Ltd. hereby files this Pre-Trial Memorandum. The parties have an  
agreement as to the issues of fact in this court which was the subject of a Motion for Summary  
Judgment. The parties have not conducted an EDCR 2.67 Conference, as a result, the Defendants  
hereby files an Individual Pre-Trial Memorandum.

**1. BRIEF STATEMENT OF FACTS**

Mr. Gaal, the owner of Jacks Place Bar and Grill, LLC ("Jacks Bar LLC") wanted to sell  
his business. The business was a bar and grill located at 544 Nevada Highway, Henderson  
Nevada ("Business Real Property"). Jacks Bar LLC is a limited liability company with two  
members. Jack Gaal and Katherine Gaal. Jacks Place Bar and Grill, LLC., operates out of a

RA 006

1 building owned by the John and Katherine Gaal Family Trust ("Gaal Trust"). According to the  
2 Clark County recorder's office, the Business's Real Property is owned by John Gaal and  
3 Katherine Gaal Trustees of the John and Katherine Gaal Family Trust. These are the true owners  
4 of the Real Property.

5 Mr. Gaal approached Mr. Gene Northup, a long time friend, to sell Jacks Place Bar and  
6 Grill, LLC . Mr. Northup is a licensed Realtor but does not hold a Business Broker's License.  
7 Mr. Northup stated he would work with another agent who does hold a Business Broker's  
8 License. That agent was a Mr. Phillip Neuenswander from First 1<sup>st</sup> Choice Business Brokers. If  
9 the real estate and the business were going to be sold together, Mr. Northup could sell the  
10 Business Real Property and Jacks Bar LLC without a Business Broker's License. If it was just  
11 Jacks Place Bar and Grill, LLC., then only First Choice could sell the business. It was to be both.  
12 It was agreed that Mr. Northup would get 40 percent of the commission and First Choice would  
13 get 60 percent of the commission.

14 On or about October 9, 2017, Jacks Place Bar and Grill, LLC., signed an Exclusive Right  
15 to Sell Listing Agreement ("Listing Agreement") with First 1<sup>st</sup> Choice Business Brokers ("First  
16 Choice"). The Listing Agreement was signed by the managing member of Jacks Place Bar and  
17 Grill, LLC. First Choice **NEVER** obtained a Listing Agreement with the Gaal Trust to sell the  
18 Business Real Property. First Choice **NEVER** obtained an agreement with the owners of the  
19 John and Katherine Gaal Family Trust to sell the real property owned by the Trust. First Choice  
20 was informed that the Listing Agreement was not correct and they needed to get the Trustee of  
21 the John and Katherine Gaal Family Trust to sign a Listing Agreement. The agent for First  
22 Choice stated they have been doing this for years and this is how they do it. There is no written  
23 agreement to sell the Business, nor a Listing Agreement to sell the Business Real Property that  
24 was signed by the Trustee of the John and Katherine Gaal Family Trust with regard to this  
25 transaction.

26 First Choice found a buyer. There is an issue as to whether or not the buyer qualified as a  
27 cash buyer. First Choice alleges that Jacks Place Bar and Grill, LLC., failed to timely provide  
28 documents so the sale fell through. As a result, they want a commission. The contract further

states "When Fees are Owed."

8. WHEN FEES ARE OWED; All fees owed to FCBB-101, regardless of whether it is owed for the sale of the Business, and, improvements on the land or for leasing arrangement, will be fully earned at the time of acceptance by Seller of any type of Purchase Agreement. **Payment is due to FCBB-101 without demand upon the earlier of (1) The closing fo the Transaction; (2) upon the occurrence of a Disposition fo the Business; (3) upon Buyer's possession of the property (4) upon transfer of the Business. ....**

None of the required events could occur because they did not have a contract with the owner of the Property. This is a lawsuit over the commission.

## **2. CLAIMS FOR RELIEF**

### **A. PLAINTIFF'S CLAIM:**

1. Breach of Contract
2. Breach of Implied covenant of good Faith and Fair Dealing

## **3. AFFIRMATIVE DEFENSES**

1. Plaintiff's claims on file herein fail to state a claim against Defendants, upon which relief can be granted.
2. Plaintiff's claims are barred by the doctrine of waiver, estoppel, unclean hands and other equitable defenses.
3. Plaintiff's claims are barred by the applicable statute of limitations and/or the doctrine of laches.
4. Defendants have fulfilled all their contractual and legal obligations due to Plaintiff, and thus does not owe Plaintiff anything.
5. Plaintiff is not entitled to any relief as Defendants have not breached any of their contractual or legal obligations to Plaintiff.
6. Plaintiff is not entitled to any relief as Plaintiff has breached its agreement with Defendants, thereby relieving Defendants from any obligation to pay Plaintiff.
7. Plaintiff has received full performance of all obligations and duties to which it is entitled under any agreement with Defendants.
8. Any and all contractual/legal obligations which Defendants did not perform were

- 1 discharged by frustration, unreasonable expectations, unforeseeable events, and/or  
2 mistake.
- 3 9. Plaintiff has received full performance of all obligations and duties to which it is  
4 entitled under any agreements with Defendants.
- 5 10. Some or all of the damages and losses, if any exist, which allegedly have been incurred  
6 by the Plaintiff were not and are not a foreseeable consequence of the acts complained of  
7 by Plaintiff, and therefore, Plaintiff should not be permitted to unjustly enrich itself  
8 thereby.
- 9 11. The losses or damage, if any, alleged here to have been sustained by Plaintiff is the  
10 result in whole or part, of Plaintiff's own negligence, carelessness, poor business  
11 judgment, and/or such acts or omissions of its authorized agents and are not the result of  
12 any breach of contract by Defendants.
- 13 12. Plaintiff has failed to use proper and reasonable efforts to mitigate the losses and  
14 damages allegedly incurred, and, therefore, Defendants have been released and  
15 discharged from any liability to Plaintiff.
- 16 13. Some or all of the damages and losses, if any exist, allegedly incurred by the Plaintiff  
17 were not and are not actually, directly, indirectly and/or proximately caused by any of  
18 Defendants' alleged actions.
- 19 14. Any and all of Defendants' actions and/or contractual/legal obligations which Plaintiff  
20 has complained upon were waived or ratified by Plaintiff.
- 21 15. Defendants are excused from their duties and obligations under any agreements with  
22 Plaintiff because of failure of consideration.
- 23 16. Defendants at all times acted reasonable and in good faith in discharging its  
24 obligations to Plaintiff.
- 25 17. Plaintiff is not entitled to any relief based on the doctrine of release.
- 26 18. Plaintiff is not entitled to any relief based on the failure of a condition precedent in the  
27 contract.
- 28

- 1 19. Plaintiff is not entitled to any relief based upon the Statute of Frauds.
- 2 20. Plaintiff did not fulfill their duty in getting a ready, willing, and able buyer.
- 3 21. Plaintiff has a duty to keep the Defendants informed of what is going on in a real estate
- 4 transaction. Plaintiff has failed to disclosure any loans, loan applications, or any other
- 5 information regarding the buyer's ability to get financing.
- 6 22. Plaintiff failed to inform the Defendants that they had not complied with the
- 7 documents in a timely manner but only produced the information as requested by
- 8 Defendants.
- 9 23. Plaintiff failed to inform the Defendants that they had not complied with the documents
- 10 in a timely manner but only produced the information as requested by Defendants.
- 11 24. Plaintiff misled the Defendants in that the Defendants was informed it could work with
- 12 Mr. Northup in the transaction.
- 13 25. Plaintiff was informed that the Purchase Agreement did not include the sale of the real
- 14 property and asked the Plaintiff to correct the issue. The Plaintiff refused to do so.
- 15 26. Plaintiff failed to properly create a contract for the sale of the real property.
- 16 27. Plaintiff failed to fulfill their duty under NRS 645 and as such they are not entitled to a
- 17 commission.
- 18 28. Pursuant to Rule 11, as amended all possible affirmative defenses may not have been
- 19 alleged herein insofar as sufficient facts were not available after reasonable inquiry upon
- 20 the filing of Defendants' answer and therefore, Defendants reserve the right to amend
- 21 their answer to allege additional affirmative defenses if subsequent investigations so
- 22 warrants.

23 **4. CLAIMS OR DEFENSES TO BE ABANDONED**

24 None at this time.

25 **5. LIST OF EXHIBITS**

26 Defendant's Exhibits

- 27 1. Exclusive right to Sell Listing Agreement
- 28

1	2.	Limited Liability Company Resolution to Sell
2	3.	Document Request
3	4.	Duties Owed
4	5.	Consent to Act
5	7.	Contingency non-release
6	8.	Listing data Input sheet
7	9.	Seller's Discretionary Earning Worksheet
8	10.	Limited Liability company Resolution to Sell
9	11.	Business License Information & Seller Certification
10	12.	Financial and Property Disclosures
11	13.	Business Valuation
12	14.	Confidential Business Questionnaire
13	15.	Buyer's Profile
14	16.	Buyer's Duties Owed
15	17.	Buyer's Consent to Act
16	18.	Bulk Sales Checklist
17	19.	Asset Purchase Agreement
18	20.	Earnest Money Deposit Check
19	21.	Due diligence list
20	22.	Counter-Offer to Asset Purchase Agreement
21	23.	Tax Full
22	24.	Jared R. Johnson. letter
23	25.	Bank Statements Bate Stamp 94 - 184
24	26.	Insurance Documents Bate Stamp 185 - 270
25	27.	Permits Bate Stamp 271 - 289
26	28.	Merchant account records Bate Stamp 290 - 373
27	30.	Real Property Records Bate Stamp 274 - 379 B.
28	31.	Deposition of Mr. Nyman, Broker

- 1 32. Answers to Request for Admissions
- 2 33. Answers to Interrogatories
- 3 34. Ansswers to Request for Production of Documents.
- 4 35. Any and all documents that the Plaintiff has identified or produced in this case..
- 5 **6. AGREEMENTS ON EXCLUSION OR LIMITATION OF EVIDENCE**
- 6 None at this time.
- 7 **7. LIST OF WITNESSES**
- 8 **Defendants' Witnesses**
- 9 A. JACK GAAL c/o David J. Winterton & Assoc, Ltd., 7881 W. Charleston Blvd.,
- 10 Suite 220, Las Vegas, Nevada 89117.
- 11 B. MRS GAAL c/o David J. Winterton & Assoc, Ltd., 7881 W. Charleston Blvd.,
- 12 Suite 220, Las Vegas, Nevada 89117.
- 13 C. PHIL NEUENSWANDER c/o c/o Rocheleau Law Group. P.C. 600 South
- 14 Tonopah Drive, Suite 300, Las Vegas, Nevada 89106.
- 15 D. ACCELERATED ESCROW the Person Most Knowledgeable located at 624 S.
- 16 10<sup>th</sup> Street, Las Vegas, Nevada 89101.
- 17 E. JARED R. JOHNSON, 1057 Whitney Ranch Drive, Suite #350, Henderson,
- 18 Nevada 89014.
- 19 F. MR. NYMAN BROKER LAS VEGAS 101 INC dba FIRST CHOICE
- 20 BUSINESS BROKERS, LAS VEGAS 101 c/o Rocheleau Law Group. P.C. 600
- 21 South Tonopah Drive, suite 300, Las Vegas, Nevada 89106.
- 22 G. ANGEL SOTO c/o Rocheleau Law Group. P.C. 600 South Tonopah Drive, suite
- 23 300, Las Vegas, Nevada 89106.
- 24 H. GENE NORTHUP c/o David J. Winterton & Associates, Ltd. 7881 W. Charleston
- 25 Blvd, Suite 220, Las Vegas, Nevada 89117.
- 26 I. KYLE NORTHUP c/o David J. Winterton & Associates, Ltd. 7881 W.
- 27 Charleston Blvd, Suite 220, Las Vegas, Nevada 89117.
- 28 J. ROBERT EVENS, BOULDER DAM CREDIT UNION 530 Ave G, Boulder City

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Nevada 89006.

K. BOULDER DAM CREDIT UNION, Person Most Knowledgeable, 530 Ave G,  
Boulder City Nevada 89006.

**8. ISSUES OF LAW**

- A. Whether or not the Plaintiff meets the statutory elements to be entitled to a commission
- B. Whether or not there was a breach of contract
- C. Whether or not there is a breach of covenant of good faith and fair dealing.

**9. TIME FOR TRIAL**

The parties estimate the time for trial is 3 days.

**10. OTHER ISSUES**

Equipment to hook up a power point presentation.

Dated this 7th day of May, 2021.

DAVID J. WINTERTON & ASSOCIATES LTD.

By: /s/: David J. Winterton Esq.  
David J. Winterton Esq.  
Nevada Bar No. 004142  
7881 W. Charleston Blvd., Suite 220  
Las Vegas, Nevada 89117



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CERTIFICATE OF MAILING

I HEREBY CERTIFY that I Electronically Served a true and accurate copy of the foregoing Defendant’s Pre-Trial Memorandum, on the 7th day of May, 2021, addressed as follows:

Rock Rocheleau, Esq.  
600 S. Tonopah Drive, Suite 300  
Las Vegas, Nevada 89106

/s/: Autumn G. Wheeler  
Employee of David J. Winterton & Assoc., Ltd.