

IN THE CIRCUIT COURT OF EFFINGHAM, ILLINOIS  
FOURTH JUDICIAL CIRCUIT

David Gustafson,	)	
	)	
Plaintiff,	)	
	)	Case. No. 2025LA61
v.	)	
	)	
J&J VENTURES GAMING, LLC.	)	
	)	
Defendant.	)	

**COMPLAINT**

COMES NOW Plaintiff, David Gustafson (“***Plaintiff***”), by and through his attorneys, and for his Complaint against Defendant J&J Ventures Gaming, LLC (“***Defendant***”), alleges as follows:

**PARTIES**

1. Plaintiff is an individual residing in LaSalle, Illinois.
2. Defendant is a limited liability company organized under the laws of Illinois, with its principal place of business in Effingham County, Illinois.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this matter pursuant to the laws of the State of Illinois.
4. Venue is proper in this Court because the events giving rise to this Complaint occurred in Effingham County, Illinois, and Defendant conducts business in this jurisdiction.
5. This Court has jurisdiction pursuant to 735 ILCS 5/2-101 et seq. because the claims arise under Illinois contract and employment law.

6. Defendant is headquartered, conducts substantial business operations, and employs workers within the state of Illinois. Accordingly, this Court has personal jurisdiction over Defendant.

### **FACTUAL ALLEGATIONS**

7. On or about December 19, 2019, Plaintiff signed a contract outlining Plaintiff's commission and employment with Defendant.

8. In or about January 2020, Plaintiff began working for Defendant as an account manager, overseeing operations in Ottawa, Illinois.

9. As part of Plaintiff's job duties, Plaintiff was responsible for managing clients' accounts within his assigned region, developing and maintaining relationships with gaming establishments licensed by Defendant, securing new contracts and renewals for placement of distributed video gaming terminals, and protecting proprietary and confidential company information.

10. Due to satisfactory performance of his essential job functions, the parties renewed Plaintiff's contract on multiple occasions.

11. Plaintiff maintained high performance evaluations throughout his employment, including a mid-year 2024 review scoring 35/36.

12. On or about January 23, 2024, Plaintiff signed a contract with Defendant to continue his employment.

13. On or about December 16, 2024, Defendant informed Plaintiff of the termination of his employment and sent Plaintiff a Confidential Severance and Release Agreement ("*the Severance Agreement*").

14. On or about December 17, 2024, Plaintiff emailed Defendant's Talent Acquisition & Employee Relations Manager Torrey Fouts ("**Fouts**"), seeking clarification on benefits expiration, severance payout structure, commissions, and 401(k) rollover procedures.

15. At the time of his termination on December 16, 2024, Plaintiff had earned commissions that were not fully calculated or paid.

16. Plaintiff requested an accounting of all outstanding commissions, but Defendant failed to provide documentation or confirm the totals before requiring him to sign the Severance Agreement.

17. On or about January 3, 2025, Plaintiff advised Fouts that his position had been eliminated without warning and emailed Fouts proposing revisions to the Severance Agreement:

- A. To correct the "resignation" language to reflect position elimination,
- B. To reduce the non-compete duration or increase severance, and
- C. To have severance paid in a lump sum.

18. Later that day, Fouts responded, providing a revised severance agreement with some of the changes that Plaintiff requested.

19. On or about January 4, 2025, Plaintiff signed and submitted the revised severance agreement.

20. On or about January 6, 2025, Fouts confirmed receipt of Plaintiff's signed agreement.

21. As part of the agreement, Plaintiff agreed to return all of Defendant's property, maintain confidentiality regarding company information and the Severance Agreement, cooperate with the company post-employment, agree to 12 months non-compete and 24-month non-solicitation restrictions, and avoid disparaging the company.

22. As part of the agreement, Defendant agreed to pay Plaintiff three months' base salary, in the gross amount of \$16,443.98, on the first regular payday after the Effective Date, plus 50% of all outstanding commissions, amounting to \$13,053.79 gross, subject to withholdings.

23. Pursuant to the agreement, the Effective Date was eight days after the date executed by Plaintiff.

24. Defendant did not and to this day has not paid Plaintiff pursuant to the Severance Agreement.

25. Plaintiff completed all his obligations pursuant to the Severance Agreement.

26. On or about January 14, 2025, Defendant sent Plaintiff a letter stating he violated the Severance Agreement because he "improperly solicited, advised, or encouraged current customers of [Defendant] to terminate his, her or its relationship with [Defendant]" and "[u]ntil [Defendant] receives confirmation that you are no longer soliciting [Defendant's] customers, you will not receive the Severance Payments as set forth in the Severance Agreement."

27. In or about late November or early December 2024, Barry S. Mason ("**Mason**"), who was Plaintiff's neighbor and owner of Winners\$ Circle, received an unsolicited sales call from representatives of Accel Entertainment ('**AE**') seeking to meet to discuss gaming services. Mason invited Plaintiff to attend as an observer.

28. Plaintiff informed his supervisor, Alex Plungis, regarding his plan to attend the meeting with Mason and AE as an observer, which Plungis approved.

29. At all relevant times, Plungis was the regional vice president of establishment sales for Defendant.

30. AE canceled the original meeting with Mason due to internal staffing issues.

31. On December 18, 2024, Plaintiff informed Mason about his termination.

32. AE rescheduled the meeting with Mason for January 7, 2025.

33. Mason again invited Plaintiff to attend the meeting with AE as an observer.

34. Plaintiff attended as an observer but did not solicit, advise, or encourage Mason to terminate his relationship with Defendant.

35. On or about January 27, 2025, the Plaintiff responded to the January 14, 2025 letter, reiterating that Defendant knew about the meeting and that the Plaintiff did not solicit business.

36. On or about February 10, 2025, Plaintiff provided Defendant with an affidavit signed by Mason on February 7, 2025, stating that Plaintiff did not breach any non-compete or solicitation obligations in connection with AE.

37. Despite the response, the fact that Plaintiff did not solicit Defendant's customers, and Mason's affidavit, Defendant never paid Plaintiff the agreed-upon payments under the Severance Agreement.

### **CAUSES OF ACTION:**

#### **COUNT I – DECLARATORY JUDGMENT (UNENFORCEABILITY OF NON-COMPETE)**

38. Plaintiff realleges the above-mentioned of the Petition as though fully set forth herein.

39. On or about January 6, 2025 Defendant and Plaintiff entered into a Confidential Severance and Release Agreement.

40. The agreement imposed a 12-month non-compete clause, barring Plaintiff from working for or assisting any business engaged in Illinois video gaming operations.

41. In exchange, Plaintiff was offered only three months of severance pay (\$16,443.98) and 50% of commissions (\$13,053.79), despite nearly five years of service with the company.

42. The Illinois Freedom to Work Act, as amended in 2022, requires that adequate and proportionate consideration support any restrictive covenant.

43. The three-month severance pay here is grossly inadequate consideration for a year-long prohibition from Plaintiff's chosen profession, rendering the covenant void under Illinois law.

44. Moreover, the non-compete is overbroad in geographic and industry scope, barring Plaintiff from any managerial or advisory position in an entire industry across the State of Illinois.

45. Accordingly, Plaintiff seeks a declaration that the non-compete and non-solicitation clauses are unreasonable, overbroad, unsupported by adequate consideration, and void as a matter of law.

WHEREFORE, Plaintiff respectfully requests that this Court declare the restrictive covenants in the Severance Agreement unenforceable and enjoin Defendant from asserting or enforcing them, and for such other relief as this Court deems just and proper.

## **COUNT II – BREACH OF CONTRACT**

46. Plaintiff realleges the above-mentioned of the Petition as though fully set forth herein.

47. In or about January 2025, the parties entered into the revised severance agreement.

48. Defendant offered Plaintiff the terms of the revised severance agreement.

49. Plaintiff accepted the terms of the revised severance agreement.

50. Under the terms of the agreement, Defendant agreed to:

- A. Honor the severance payments in exchange for Plaintiff's compliance with confidentiality and non-solicitation clauses;
  - B. Refrain from taking retaliatory action based on lawful post-employment conduct;
- and

C. Provide truthful employment records indicating his position was eliminated, not “resigned.”

51. Plaintiff fully performed his obligations:

A. He returned all company property and ceased representing Defendant.

B. He did not contact, solicit, or interfere with any of Defendant’s clients or employees; and

C. He complied with confidentiality requirements.

52. Despite Plaintiff’s full compliance, Defendant issued a Cease-and-Desist Letter in January 2025, accusing him of violating the non-compete clause without a factual basis.

53. The Barry Mason Affidavit executed on February 7, 2025, confirms that Plaintiff did not initiate or arrange any contact with Defendant’s competitor; instead, AE initiated the communication, and Mason invited Plaintiff as a passive observer.

54. By wrongfully accusing Plaintiff of contractual violations, Defendant breached the covenant of good faith and fair dealing implicit in every Illinois contract.

55. Defendant knew that Plaintiff did not violate the non-compete because his supervisor, Plungis, was aware of the meeting and approved of it prior to the termination of Plaintiff’s employment.

56. Defendant knew that Plaintiff did not violate the non-compete because Plaintiff provided Defendant with the Barry Mason Affidavit.

57. As a result, Plaintiff suffered economic losses due to lost employment opportunities in the gaming industry, emotional distress and reputational harm from baseless accusations, and attorney’s fees and costs incurred to protect his legal rights.

58. WHEREFORE, Plaintiff demands judgment against Defendant for breach of contract, including compensatory damages, pre-judgment interest, attorneys' fees, and all other relief deemed just.

**COUNT III – VIOLATION OF THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT**

59. Plaintiff incorporates all prior paragraphs as if set forth herein.

60. Plaintiff's compensation included a commission component calculated as a percentage of revenues generated from accounts he managed or secured.

61. At the time of his termination on December 16, 2024, Plaintiff had earned commissions that were not fully calculated or paid.

62. Plaintiff requested an accounting of all outstanding commissions, but Defendant failed to provide documentation or confirm the totals.

63. Defendant violated the Illinois Wage Payment and Collection Act by failing to pay all earned commissions and misrepresenting the outstanding amounts.

64. Plaintiff seeks payment of all unpaid commissions, plus statutory penalties, interest, and attorneys' fees as provided under 820 Ill. Comp. Stat. 115/14.

WHEREFORE, Plaintiff requests judgment in his favor and against Defendant for all unpaid commissions and interest; statutory penalties; attorneys' fees and costs; and such other and further relief as this Court deems proper.

**COUNT IV: FAILURE TO PAY CONTRACTUAL SEVERANCE UNDER THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT**

65. Plaintiff incorporates all prior paragraphs as if set forth herein.

66. On or about December 16, 2024, Defendant offered Plaintiff a written Confidential Severance and Release Agreement, which expressly promised specific monetary payments in



exchange for Plaintiff's execution of a release of claims and compliance with certain post-employment obligations.

67. The Agreement required Defendant to pay Plaintiff three months of base salary totaling \$16,443.98, less applicable deductions, beginning on the first regular payroll date following the Effective Date, and fifty percent (50%) of all outstanding commissions due, in the amount of \$13,053.79, less applicable deductions.

68. Plaintiff accepted and executed the Agreement on January 4, 2025, did not revoke it, and thereby satisfied all conditions precedent to payment. The Agreement became effective on or about January 12, 2025.

69. Plaintiff fully performed all obligations required under the Agreement, including executing and not revoking the Agreement; Returning all company property; Complying with all confidentiality and non-solicitation provisions; and providing post-employment cooperation as requested.

70. Under 820 Ill. Comp. Stat. 115/2, the Illinois Wage Payment and Collection Act defines "final compensation" as: "wages, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays, and any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the 2 parties."

71. Plaintiff's contractually promised severance constitutes "final compensation."

72. The severance and commission payments owed to Plaintiff under the written Agreement were contractual wages within the meaning of the Act.

73. Defendant failed to timely and fully pay the severance and commission amounts as promised.

74. The Agreement required payment on the first payroll date following its effective date, yet Defendant delayed or failed to make those payments.

75. Defendant failed to provide the reconciliation or itemized accounting that Plaintiff requested in writing on December 18, 2024, before signing.

76. Defendant's subsequent Cease and Desist Letter indicated an intent to withhold or claw back severance payments based on unfounded non-compete allegations.

77. Defendant's actions constitute an unlawful failure to pay final compensation and unauthorized withholding of wages in violation of 820 Ill. Comp. Stat. 115/4, 115/5, which require employers to pay all earned compensation upon separation, without condition or deduction not required by law.

78. Defendant unilaterally withheld payment without justification.

79. Defendant's refusal or delay in paying contractual severance constitutes a knowing violation of the IWPCA, entitling Plaintiff to statutory penalties and attorneys' fees under 820 Ill. Comp. Stat. 115/14(a).

80. As a direct and proximate result, Plaintiff has suffered economic losses, delayed income, and expenses in pursuing payment of the severance wages contractually owed.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendant, awarding Payment of all unpaid or withheld severance and commission amounts owed under the Agreement; Statutory penalties of 2% of the underpayment per month pursuant to 820 Ill. Comp. Stat. 115/14(a); Pre- and post-judgment interest; Reasonable attorneys' fees and costs; and Such other and further relief as the Court deems just and proper.

#### **JURY DEMAND**

81. Plaintiff demands a trial by jury on all claims so triable.

Dated: December 31, 2025

Respectfully Submitted,

/s/ Michelle Faron  
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