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16 Co-Counsel for Defendant and Counterclaimant H. James Dial and
17 Defendants James Furber, Nidrah Dial, Theresa Furber,
18 Loren Unruh and Gayle Unruh

19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF ARIZONA**

21 Best Western International, Inc., a
22 non-profit Arizona corporation,

23 Plaintiff,

24 v.

25 James Furber, an Internet website
26 administrator; Teresa Furber; James
27 Dial, an Internet website blogger and
28 Member of Best Western International,
Inc.; Nidrah Dial, an Internet website
blogger and Member of Best Western
International, Inc.; Loren Unruh, an
Internet website blogger and Member of
Best Western International, Inc.;
Mrs. Loren Unruh; Jane Does 1-X,
Internet website bloggers and Members
of Best Western International, Inc.; John
Does 1-X, Internet website bloggers and
Governors of Best Western
International, Inc.,

Defendants.

Case No. CV06-1537-PHX-DGC

**DEFENDANT H. JAMES DIAL'S
ANSWER TO PLAINTIFF'S
REVISED SECOND AMENDED
COMPLAINT**

(The Honorable David G. Campbell)

1 H. Jim Dial, an individual,
2
3 Counterclaimant,
4
5 v.
6
7 Best Western International, Inc., a
8 non-profit Arizona corporation, Nils
9 Kindgren, an individual; Larry McRae,
10 an individual; Roman J. Jaworowicz, an
11 individual; Bonnie McPeake, an
12 individual; Charles Helm, an individual;
13 Raymond Johnston, an individual; Dave
14 Francis, an individual; and Jane Does
15 1-7,
16
17 Counterdefendants.

18 Comes now the Defendant, H. James Dial, by counsel, and for his Answer to the
19 Plaintiff’s Revised Second Amended Complaint,¹ hereby states as follows:²

20 **NAME OF THE ACTION**

21
22 1. With regard to the allegations contained in paragraph one of the Plaintiff’s
23 Revised Second Amended Complaint, the Defendant denies he is engaged in a course of
24 wrongful conduct, denies he has deliberately continuously or unlawfully used BWI’s
25 computer software or communication’s equipment, BWI’s protected name, denies that he
26 has disclosed confidential and/or proprietary information and denies BWI has been
27 damaged to any extent, and to the extent any of the allegations contained in paragraph one
28 of the Plaintiff’s Revised Second Amended Complaint are not covered herein, they are
denied.

¹ On August 21, 2007, the Second Amended Complaint that contained the Trademark Infringement and Unfair Competition claims—which have been previously dismissed—was filed with this court. The parties agree that the Revised Second Amended Complaint, which was lodged in Docket #135 is the Complaint that should have been filed. Therefore, the Defendant now answers the Revised Second Amended Complaint.

² Many of the allegations contained in Plaintiff’s Revised Second Amended Complaint commence with the phrase: “BWI is informed and believes, and therefore, alleges” See, e.g., ¶¶ 14-26. The Defendant does not, and indeed cannot, know what BWI is informed of and believes. Therefore, the Defendant will respond to these allegations, without regard to that particular phrase.

1 itself, but denies the remaining allegations contained in paragraph eight of the Plaintiff's
2 Revised Second Amended Complaint.

3 9. With regard to the allegations contained in paragraph nine of the Plaintiff's
4 Revised Second Amended Complaint, the Defendant admits that **Exhibit A** speaks for
5 itself, but is without knowledge or information sufficient to form a belief as to the truth of
6 the remaining allegations contained in said paragraph.

7 **PARTIES**

8 10. Defendant admits the allegations contained in paragraph ten of the
9 Plaintiff's Revised Second Amended Complaint.

10 11. Defendant admits the allegations contained in paragraph eleven of the
11 Plaintiff's Revised Second Amended Complaint.

12 12. Defendant admits the allegations contained in paragraph twelve of the
13 Plaintiff's Revised Second Amended Complaint.

14 13. With regard to the allegations contained in paragraph thirteen of the
15 Plaintiff's Revised Second Amended Complaint, the Defendant denies that the Plaintiff
16 does not know nor does not have reasonable information and belief regarding the true
17 names and/or capacities of the member and governor bloggers and denies any liability,
18 legal responsibility or legally caused injuries or damages as alleged in paragraph thirteen
19 of the Plaintiff's Revised Second Amended Complaint.

20 14. With regard to the allegations of paragraph fourteen of Plaintiff's Revised
21 Second Amended Complaint, the Defendant admits that James Furber is responsible for
22 the operation and administration of the Blog but denies that James Furber was solely
23 responsible for the creation of the Blog as alleged in said paragraph.

24 15. With regard to the allegations contained in paragraph fifteen of the
25 Plaintiff's Revised Second Amended Complaint, the Defendant admits that he and James
26 Furber are responsible for the creation of the Blog, admits that James Furber is
27 responsible for the operation and administration of the Blog, but denies that Nidrah Dial is
28 responsible for the creation, operation and administration of the Blog.

1 16. With regard to the allegations contained in paragraph sixteen of the
2 Plaintiff's Revised Second Amended Complaint, the Defendant admits that he and Loren
3 Unruh are members of BWI, denies that Nidrah Dial is a member of BWI, admits that he,
4 Loren Unruh and Nidrah Dial may have posted comments on the Blog, but is without
5 knowledge or information sufficient to form a belief as to the truth of the remaining
6 allegations contained in said paragraph sixteen.

7 17. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of the allegations contained in paragraph seventeen of the Plaintiff's Revised
9 Second Amended Complaint.

10 18. Defendant denies the allegations contained in paragraph eighteen of
11 Plaintiff's Revised Second Amended Complaint.

12 19. Defendant admits the allegations contained in paragraph nineteen of the
13 Plaintiff's Revised Second Amended Complaint.

14 20. Defendant denies the allegations contained in paragraph twenty of the
15 Plaintiff's Revised Second Amended Complaint.

16 21. Defendant admits the allegations contained in paragraph twenty-one of the
17 Plaintiff's Revised Second Amended Complaint.

18 22. With regard to the allegations contained in paragraph twenty-two of the
19 Plaintiff's Revised Second Amended Complaint, the Defendant admits that he is a
20 member of BWI, denies that Nidrah Dial is a member of BWI, and admits that the Dials
21 have an ownership interest in Green Tree Investors, LLC, i.e., the company that owns the
22 Best Western Green Tree Inn in Clarksville, Indiana.

23 23. Defendant denies the allegations contained in paragraph twenty-three of the
24 Plaintiff's Revised Second Amended Complaint.

25 24. Defendant admits the allegations contained in paragraph twenty-four of the
26 Plaintiff's Revised Second Amended Complaint.

27 25. Defendant denies the allegations contained in paragraph twenty-five of the
28 Plaintiff's Revised Second Amended Complaint.

1 34. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of the allegations contained in paragraph thirty-four of the Plaintiff's Revised
3 Second Amended Complaint.

4 35. Defendant is without knowledge or information sufficient to form a belief as
5 to the truth of the allegations contained in paragraph thirty-five of the Plaintiff's Revised
6 Second Amended Complaint.

7 36. Defendant admits the allegations contained in paragraph thirty-six of the
8 Plaintiff's Revised Second Amended Complaint.

9 37. Defendant denies the allegations contained in paragraph thirty-seven of
10 Plaintiff's Revised Second Amended Complaint.

11 38. Defendant denies the allegations contained in paragraph thirty-eight of
12 Plaintiff's Revised Second Amended Complaint.

13 39. Defendant denies the allegations contained in paragraph thirty-nine of
14 Plaintiff's Revised Second Amended Complaint.

15 40. Defendant denies the allegations contained in paragraph forty of Plaintiff's
16 Revised Second Amended Complaint.

17 41. Defendant denies the allegations contained in paragraph forty-one of
18 Plaintiff's Revised Second Amended Complaint.

19 42. Defendant denies the allegations contained in paragraph forty-two of
20 Plaintiff's Revised Second Amended Complaint.

21 43. Defendant denies the allegations contained in paragraph forty-three of
22 Plaintiff's Revised Second Amended Complaint.

23 44. Defendant denies the allegations contained in paragraph forty-four of
24 Plaintiff's Revised Second Amended Complaint.

25 45. Defendant denies the allegations contained in paragraph forty-five of
26 Plaintiff's Revised Second Amended Complaint.

27 46. Defendant denies the allegations contained in paragraph forty-six of
28 Plaintiff's Revised Second Amended Complaint.

1 47. Defendant denies the allegations contained in paragraph forty-seven of
2 Plaintiff's Revised Second Amended Complaint.

3 The Relationship Between BWI and its Governors

4 48. Defendant admits the allegations contained in paragraph forty-eight of the
5 Plaintiff's Revised Second Amended Complaint.

6 49. With regard to the allegations contained in paragraph forty-nine of the
7 Plaintiff's Revised Second Amended Complaint, the Defendant admits that Exhibit B
8 speaks for itself, and to the extent that any of the allegations contained in paragraph forty-
9 nine are inconsistent with Exhibit B, they are hereby denied.

10 50. With regard to the allegations contained in paragraph fifty of the Plaintiff's
11 Revised Second Amended Complaint, the Defendant admits that Exhibit B speaks for
12 itself, and to the extent that any of the allegations contained in paragraph fifty are
13 inconsistent with Exhibit B, they are hereby denied.

14 51. Defendant admits the allegations contained in paragraph fifty-one of the
15 Plaintiff's Revised Second Amended Complaint.

16 52. With regard to the allegations contained in paragraph fifty-two of the
17 Plaintiff's Revised Second Amended Complaint, the Defendant admits that Exhibits B and
18 C speak for themselves, and to the extent that any of the allegations contained in
19 paragraph fifty-two are inconsistent with Exhibits B and C, they are hereby denied.

20 53. Defendant denies the allegations contained in paragraph fifty-three of
21 Plaintiff's Revised Second Amended Complaint.

22 54. Defendant denies the allegations contained in paragraph fifty-four of
23 Plaintiff's Revised Second Amended Complaint.

24 55. Defendant denies the allegations contained in paragraph fifty-five of
25 Plaintiff's Revised Second Amended Complaint.

26 56. Defendant denies the allegations contained in paragraph fifty-six of
27 Plaintiff's Revised Second Amended Complaint.

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1 57. Defendant denies the allegations contained in paragraph fifty-seven of
2 Plaintiff's Revised Second Amended Complaint.

3 58. Defendant denies the allegations contained in paragraph fifty-eight of
4 Plaintiff's Revised Second Amended Complaint.

5 59. Defendant denies the allegations contained in paragraph fifty-nine of
6 Plaintiff's Revised Second Amended Complaint.

7 60. Defendant denies the allegations contained in paragraph sixty of Plaintiff's
8 Revised Second Amended Complaint.

9 For the Creation and Administration of the Blog

10 61. Defendant admits the allegations contained in paragraph sixty-one of the
11 Plaintiff's Complaint.

12 62. With regard to the allegations contained in paragraph sixty-two of the
13 Plaintiff's Revised Second Amended Complaint, the Defendant admits that he asked and
14 authorized James Furber to create the Blog, but denies the remaining allegations contained
15 in said paragraph..

16 63. Defendant admits the allegations contained in paragraph sixty-three of the
17 Plaintiff's Revised Second Amended Complaint.

18 64. Defendant denies the allegations contained in paragraph sixty-four of the
19 Plaintiff's Revised Second Amended Complaint.

20 65. Defendant admits the allegations contained in paragraph sixty-five of the
21 Plaintiff's Revised Second Amended Complaint.

22 66. With regard to the allegations contained in paragraph sixty-six of the
23 Plaintiff's Revised Second Amended Complaint, the Defendant admits that, until the Blog
24 was password protected in January of 2007, anyone who knew the site URL could post
25 any comment about BWI on the Blog.

26 67. Defendant denies the allegations contained in paragraph sixty-seven of
27 Plaintiff's Revised Second Amended Complaint.

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1 76. Defendant denies the allegations contained in paragraph seventy-six of
2 Plaintiff's Revised Second Amended Complaint.

3 77. Defendant denies the allegations contained in paragraph seventy-seven of
4 Plaintiff's Revised Second Amended Complaint.

5 78. Defendant denies the allegations contained in paragraph seventy-eight of
6 Plaintiff's Revised Second Amended Complaint.

7 79. Defendant denies the allegations contained in paragraph seventy-nine of
8 Plaintiff's Revised Second Amended Complaint.

9 80. Defendant denies the allegations contained in paragraph eighty of Plaintiff's
10 Revised Second Amended Complaint.

11 81. Defendant denies the allegations contained in paragraph eighty-one of
12 Plaintiff's Revised Second Amended Complaint.

13 82. Defendant denies the allegations contained in paragraph eighty-two of
14 Plaintiff's Revised Second Amended Complaint.

15 83. Defendant denies the allegations contained in paragraph eighty-three of
16 Plaintiff's Revised Second Amended Complaint.

17 84. Defendant denies the allegations contained in paragraph eighty-four of
18 Plaintiff's Revised Second Amended Complaint.

19 85. Defendant denies the allegations contained in paragraph eight-five of
20 Plaintiff's Revised Second Amended Complaint.

21 86. Defendant denies the allegations contained in paragraph eighty-six of
22 Plaintiff's Revised Second Amended Complaint.

23 Anonymous Faxes:

24 87. Defendant is without knowledge or information sufficient to form a belief as
25 to the truth of the allegations contained in paragraph eighty-seven of the Plaintiff's
26 Revised Second Amended Complaint.

27 88. With regard to the allegations contained in paragraph eighty-eight of the
28 Plaintiff's Revised Second Amended Complaint, the Defendant admits that all identifying

1 information has been stripped from the faxes and is without knowledge or information
2 sufficient to form a belief as to the truth of the remaining allegations contained in said
3 paragraph.

4 89. Defendant is without knowledge or information sufficient to form a belief as
5 to the truth of the allegations contained in paragraph eighty-nine of the Plaintiff's Revised
6 Second Amended Complaint.

7 **Count I**

8 **Breach of Contract Against the Dials, Unruh, and Member Bloggers**

9 90. With regard to the allegations contained in paragraph ninety of the
10 Plaintiff's Revised Second Amended Complaint, the Defendant realleges and incorporates
11 herein by reference each and every answer to the allegations contained in paragraphs one
12 through eighty-nine of the Plaintiff's Revised Second Amended Complaint as though fully
13 set forth herein.

14 91. With regard to the allegations contained in paragraph ninety-one of
15 Plaintiff's Revised Second Amended Complaint, the Defendant admits that he requested
16 James Furber to administer the Blog, but denies all remaining allegations in paragraph
17 ninety-one of Plaintiff's Revised Second Amended Complaint..

18 92. Defendant denies the allegations contained in paragraph ninety-two of
19 Plaintiff's Revised Second Amended Complaint.

20 93. Defendant denies the allegations contained in paragraph ninety-three of
21 Plaintiff's Revised Second Amended Complaint.

22 94. With regard to the allegations contained in paragraph ninety-four of
23 Plaintiff's Revised Second Amended Complaint, the Defendant admits that he and Loren
24 Unruh are Members of BWI and may have posted on the website, denies that Nidrah Dial
25 is a Member of BWI, and is without knowledge or information sufficient to form a belief
26 as to the truth of the remaining allegations contained in said paragraph.

27 95. With regard to the allegations contained in paragraph ninety-five of
28 Plaintiff's Revised Second Amended Complaint, the Defendant denies that Nidrah Dial is

1 a Member of BWI, and admits that Exhibit A speaks for itself and to the extent that any of
2 the allegations contained in said paragraph are inconsistent, they are hereby denied.

3 96. With regard to the allegations contained in paragraph ninety-six of the
4 Plaintiff's Revised Second Amended Complaint, the Defendant admits that Exhibit A
5 speaks for itself and to the extent that any of the allegations contained in said paragraph
6 are inconsistent they are hereby denied.

7 97. Defendant denies the allegations contained in paragraph ninety-seven of
8 Plaintiff's Revised Second Amended Complaint.

9 98. Defendant denies the allegations contained in paragraph ninety-eight of
10 Plaintiff's Revised Second Amended Complaint.

11 99. Defendant denies the allegations contained in paragraph ninety-nine of
12 Plaintiff's Revised Second Amended Complaint.

13 100. Defendant denies the allegations contained in paragraph one hundred of
14 Plaintiff's Revised Second Amended Complaint.

15 101. Defendant denies the allegations contained in paragraph one hundred one of
16 Plaintiff's Revised Second Amended Complaint.

17 102. Defendant denies the allegations contained in paragraph one hundred two of
18 Plaintiff's Revised Second Amended Complaint.

19 103. With regard to the allegations contained in paragraph one hundred three of
20 the Plaintiff's Revised Second Amended Complaint, the Defendant denies that Nidrah
21 Dial is a Member of BWI, admits that Exhibit A speaks for itself and, to the extent that
22 any of the allegations contained in said paragraph are inconsistent, they are hereby denied.

23 104. Defendant denies the allegations contained in paragraph one hundred four of
24 Plaintiff's Revised Second Amended Complaint.

25 105. Defendant denies the allegations contained in paragraph one hundred five of
26 Plaintiff's Revised Second Amended Complaint.

27 106. Defendant denies the allegations contained in paragraph one hundred six of
28 Plaintiff's Revised Second Amended Complaint.

1 107. Defendant denies the allegations contained in paragraph one hundred seven
2 of Plaintiff's Revised Second Amended Complaint.

3 108. With regard to the allegations contained in paragraph one hundred eight of
4 Plaintiff's Revised Second Amended Complaint, the Defendant admits that he and Loren
5 Unruh are members of BWI and subject to Membership Agreements, but denies the
6 remaining allegations in said paragraph.

7 109. Defendant denies the allegations contained in paragraph one hundred nine of
8 Plaintiff's Revised Second Amended Complaint.

9 110. Defendant denies the allegations contained in paragraph one hundred ten of
10 Plaintiff's Revised Second Amended Complaint.

11 111. Defendant denies the allegations contained in paragraph one hundred eleven
12 of Plaintiff's Revised Second Amended Complaint.

13 112. Defendant denies the allegations contained in paragraph one hundred twelve
14 of Plaintiff's Revised Second Amended Complaint.

15 113. Defendant denies the allegations contained in paragraph one hundred
16 thirteen of Plaintiff's Revised Second Amended Complaint.

17 114. Defendant denies the allegations contained in paragraph one hundred
18 fourteen of Plaintiff's Revised Second Amended Complaint.

19 115. Defendant denies the allegations contained in paragraph one hundred fifteen
20 of Plaintiff's Revised Second Amended Complaint.

21 116. Defendant denies the allegations contained in paragraph one hundred
22 sixteen of Plaintiff's Revised Second Amended Complaint.

23 117. Defendant denies the allegations contained in paragraph one hundred
24 seventeen of Plaintiff's Revised Second Amended Complaint.

25 118. Defendant denies the allegations contained in paragraph one hundred
26 eighteen of Plaintiff's Revised Second Amended Complaint.

27 119. Defendant denies the allegations contained in paragraph one hundred
28 nineteen of Plaintiff's Revised Second Amended Complaint.

1 137. With regard to the allegations contained in paragraph one hundred thirty-
2 seven of Plaintiff’s Revised Second Amended Complaint, the Defendant denies that
3 Nidrah Dial is a Member of BWI, admits that Exhibit A speaks for itself and, to the extent
4 that any of the allegations contained in said paragraph are inconsistent, they are hereby
5 denied.

6 138. Defendant denies the allegations contained in paragraph one hundred thirty-
7 eight of Plaintiff’s Revised Second Amended Complaint.

8 139. With regard to the allegations contained in paragraph one hundred thirty-
9 nine of Plaintiff’s Revised Second Amended Complaint, the Defendant denies that Nidrah
10 Dial is a Member of BWI, admits that Exhibit A speaks for itself and, to the extent that
11 any of the allegations contained in said paragraph are inconsistent, they are hereby denied.

12 140. Defendant denies the allegations contained in paragraph one hundred forty
13 of Plaintiff’s Revised Second Amended Complaint.

14 141. Defendant denies the allegations contained in paragraph one hundred forty-
15 one of Plaintiff’s Revised Second Amended Complaint.

16 142. Defendant denies the allegations contained in paragraph one hundred forty-
17 two of Plaintiff’s Revised Second Amended Complaint.

18 143. Defendant denies the allegations contained in paragraph one hundred forty-
19 three of Plaintiff’s Revised Second Amended Complaint.

20 144. Defendant denies the allegations contained in paragraph one hundred forty-
21 four of Plaintiff’s Revised Second Amended Complaint.

22 145. Defendant denies the allegations contained in paragraph one hundred forty-
23 five of Plaintiff’s Revised Second Amended Complaint.

24 146. Defendant denies the allegations contained in paragraph one hundred forty-
25 six of Plaintiff’s Revised Second Amended Complaint.

26 147. Defendant denies the allegations contained in paragraph one hundred forty-
27 seven of Plaintiff’s Revised Second Amended Complaint.

28

1 in paragraph one hundred seventy-five of the Plaintiff's Revised Second Amended
2 Complaint are inconsistent with Exhibits A and B, they are hereby denied.

3 176. With regard to the allegations contained in paragraph one hundred seventy-
4 six of the Plaintiff's Revised Second Amended Complaint, the Defendant admits that
5 Exhibit A and Exhibit B speak for themselves and to the extent the allegations contained
6 in paragraph one hundred seventy-six of the Plaintiff's Revised Second Amended
7 Complaint are inconsistent with Exhibits A and B, they are hereby denied.

8 177. Defendant denies the allegations contained in paragraph one hundred
9 seventy-seven of Plaintiff's Revised Second Amended Complaint.

10 178. Defendant denies the allegations contained in paragraph one hundred
11 seventy-eight of Plaintiff's Revised Second Amended Complaint.

12 179. Defendant denies the allegations contained in paragraph one hundred
13 seventy-nine of Plaintiff's Revised Second Amended Complaint.

14 180. Defendant denies the allegations contained in paragraph one hundred eighty
15 of Plaintiff's Revised Second Amended Complaint.

16 181. Defendant denies the allegations contained in paragraph one hundred
17 eighty-one of Plaintiff's Revised Second Amended Complaint.

18 182. Defendant denies the allegations contained in paragraph one hundred
19 eighty-two of Plaintiff's Revised Second Amended Complaint.

20 183. Defendant denies the allegations contained in paragraph one hundred
21 eighty-three of Plaintiff's Revised Second Amended Complaint.

22 184. Defendant denies the allegations contained in paragraph one hundred
23 eighty-four of Plaintiff's Revised Second Amended Complaint.

24 185. Defendant denies the allegations contained in paragraph one hundred eight-
25 five of Plaintiff's Revised Second Amended Complaint.

26 186. Defendant denies the allegations contained in paragraph one hundred
27 eighty-six of Plaintiff's Revised Second Amended Complaint.

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1 187. Defendant denies the allegations contained in paragraph one hundred
2 eighty-seven of Plaintiff’s Revised Second Amended Complaint.

3 **Count VII**

4 **Breach of Fiduciary Duty Against Governor Bloggers**

5 188. With regard to the allegations contained in paragraph one hundred eighty-
6 eight of the Plaintiff’s Revised Second Amended Complaint, the Defendant realleges and
7 incorporates herein by reference, each and every answer to paragraphs one through one
8 hundred eighty-seven of Plaintiff’s Revised Second Amended Complaint, as though fully
9 set forth herein.

10 189. Defendant is without knowledge or information sufficient to form a belief as
11 to the truth of the allegations contained in paragraph one hundred eighty-nine of the
12 Plaintiff’s Complaint.

13 190. Defendant denies the allegations contained in paragraph one hundred ninety
14 of Plaintiff’s Revised Second Amended Complaint.

15 191. Defendant denies the allegations contained in paragraph one hundred
16 ninety-one of Plaintiff’s Revised Second Amended Complaint.

17 192. Defendant denies the allegations contained in paragraph one hundred
18 ninety-two of Plaintiff’s Revised Second Amended Complaint.

19 193. Defendant denies the allegations contained in paragraph one hundred
20 ninety-three of Plaintiff’s Revised Second Amended Complaint.

21 194. Defendant denies the allegations contained in paragraph one hundred
22 ninety-four of Plaintiff’s Revised Second Amended Complaint.

23 195. Defendant denies the allegations contained in paragraph one hundred
24 ninety-five of Plaintiff’s Revised Second Amended Complaint.

25 196. Defendant denies the allegations contained in paragraph one hundred
26 ninety-six of Plaintiff’s Revised Second Amended Complaint.

27 197. Defendant denies the allegations contained in paragraph one hundred
28 ninety-seven of Plaintiff’s Revised Second Amended Complaint.

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THIRD AFFIRMATIVE DEFENSE

The Defendant is protected from any and all claims by way of the doctrine of qualified immunity.

FOURTH AFFIRMATIVE DEFENSE

The Defendant claims the defense of truth to any claim of defamation and/or defamation per se.

FIFTH AFFIRMATIVE DEFENSE

The Defendant states there has been no publication of any alleged defamatory content.

SIXTH AFFIRMATIVE DEFENSE

The Defendant claims that the alleged defamatory statements, if any, are statements of opinion, not fact, and not actionable as defamation and/or defamation per se.

SEVENTH AFFIRMATIVE DEFENSE

The Defendant claims that any and all speech on the Blog is constitutionally protected speech, which is not actionable.

EIGHTH AFFIRMATIVE DEFENSE

There has been no claim of illegal activity required to find a tortious interference with the perspective business advantage or relationship.

REQUEST FOR TRIAL BY JURY

Comes now the Defendant, H. James Dial, by counsel, and requests a trial by jury on all issues so triable.

1 RESPECTFULLY SUBMITTED this 10th day of September, 2007.

2 SNELL & WILMER L.L.P.

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25 Co-Counsel for H. James Dial, James Furber,
26 Nidrah Dial, Theresa Furber, Loren Unruh, and
27 Gayle Unruh

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2007, I electronically transmitted the attached document to the Clerk's office using the ECF system for filing. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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