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10 Attorneys for Plaintiff
11 Best Western International, Inc.

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 Best Western International, Inc., a non-)
15 profit Arizona corporation,)
16 Plaintiff,)

17 vs.)

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

Defendants.)

Jim Dial, an individual,)
Counterclaimants,)

vs.)

Best Western International, Inc., a non-)
profit Arizona corporation; Nils Kindgren,)
an individual; Larry McRae, an individual;)
Roman J. Jaworowicz, an individual;)
Bonnie McPeake, an individual; Charles)

Case No. CV06-1537-PHX-DGC

**SECOND AMENDED
COMPLAINT FOR BREACH OF
CONTRACT, BREACH OF AN
IMPLIED COVENANT OF
GOOD FAITH AND FAIR
DEALING, BREACH OF AN
IMPLIED CONTRACT,
BREACH OF FIDUCIARY
DUTY, DEFAMATION PER SE,
TRADEMARK
INFRINGEMENT, UNFAIR
COMPETITION, AND
TORTIOUS INTERFERENCE
WITH CONTRACTUAL
RELATIONS AND INJUNCTIVE
RELIEF**

(JURY TRIAL REQUESTED)

**(The Honorable David G.
Campbell)**

1 Helm, an individual; Raymond Johnston,)
2 an individual; Dave Francis, an individual;)
3 and Jane Does 1-7,)
4 Counterdefendants)

5 Plaintiff, Best Western International, Inc. (“BWI”), for its Complaint against
6 defendants James Furber, an Internet website administrator (“Furber”), Teresa Furber
7 (collectively Furber and Teresa Furber are referred to as the “Furbers”), James Dial, an
8 Internet website blogger and Member of Best Western International, Inc., Nidrah Dial, an
9 Internet website blogger and Member of Best Western International, Inc. (Mr. and Mrs.
10 Dial collectively are referred to as the “Dials”), Loren Unruh, an Internet website blogger
11 and Member of Best Western International, Inc. (“Unruh”), Mrs. Loren Unruh (Unruh
12 and his wife Mrs. Loren Unruh are collectively referred to as the “Unruhs”), and Jane
13 Does 1-X, Internet website bloggers and Members of BWI (“Member Bloggers”), and
14 John Does 1-X, Internet website bloggers and Governors of BWI (“Governor Bloggers”)
(hereinafter collectively referred to as “defendants”), inclusive, states:¹

15 NATURE OF THE ACTION

16 1. This action arises from an extensive and ongoing course of wrongful
17 conduct by defendants, who have collectively engaged in deliberate, continuous and
18 unlawful use of BWI’s computer software and communications equipment (“BWI’s
19 Equipment”), BWI’s protected name, and disclosure of confidential and/or proprietary
20 information, among other things, to BWI’s considerable detriment.

21 2. Upon information and belief, defendants have materially breached, and
22 continue to materially breach, their Membership Application and Agreement
23 (“Membership Agreement”), attached hereto as Exhibit A, and BWI’s Rules and
24 Regulations (“BWI’s Rules”), attached hereto as Exhibit B, which expressly regulate the
25 use of BWI’s Equipment, BWI’s trademarks, and BWI’s business information, by
26 creating an Internet blog and posting comments on that Internet blog in which defendants

27 ¹ BWI submitted its First Amended Complaint pursuant to the Court’s October 24, 2006 Order. BWI omitted the
28 claims that the Court dismissed in that Order, but BWI’s failure to allege those claims in the First Amended
Complaint was not intended as a waiver of those claims. Instead, BWI only complied with the Court’s October 24,
2006 Order dismissing those claims.

1 have publicly disclosed confidential and/or proprietary information during the course of
2 their membership, governorship, and business relationship with BWI.

3 3. Upon information and belief, all defendants have made written false
4 statements of purported fact regarding BWI, its business, and its Board of Directors to
5 third parties, and have harmed BWI's reputation and standing with its Members,
6 employees, customers and/or prospective customers, and current and/or prospective
7 business relationships.

8 4. Upon information and belief, the Dials, Unruh, Member Bloggers, and
9 Governor Bloggers have engaged in such wrongful conduct while Members and
10 Governors of BWI. Defendants' actions have caused and, unless enjoined by this Court,
11 will continue to cause immediate and irreparable injury to BWI, its Member relations, its
12 employee relations, its customer relationships, its business relations, its trademarks, and
13 its confidential and proprietary information. BWI asserts claims against defendant Furber
14 for defamation per se and tortious interference with business relations. BWI asserts
15 claims against defendants the Dials, Unruh, and Member Bloggers for breach of contract,
16 breach of an implied covenant of good faith and fair dealing, breach of an implied
17 contract, defamation per se, and tortious interference with business relations. BWI
18 asserts claims against defendants Governor Bloggers for breach of contract, breach of an
19 implied covenant of good faith and fair dealing, breach of an implied contract, breach of
20 fiduciary duty, defamation per se, and tortious interference with business relations.

21 **JURISDICTION AND VENUE**

22 5. Jurisdiction is proper in this Court under 28 U.S.C. § 1331, as there is a
23 federal question at issue between the parties.

24 6. Jurisdiction is proper in this Court under 28 U.S.C. § 1332, as there is
25 complete diversity of citizenship between the parties and the amount in controversy
26 exceeds \$75,000, exclusive of interest and costs.

27 7. Venue in this District is proper under 28 U.S.C. § 1391(a)(2), as a
28 substantial part of the events giving rise to BWI's claims herein occurred in this judicial
district and BWI resides in this State and in this district.

1 8. Arizona is the choice of law and forum state for the Membership
2 Agreement. Exhibit A, ¶¶ 37-38. The contract was executed and performed in Arizona.

3 9. Under BWI's Rules for the management of BWI, the laws of the State of
4 Arizona govern the rights and obligations of the Members of BWI, and Arizona law
5 governs any dispute between BWI and its Members and Governors concerning the
6 Members' and Governors' duties to BWI. *Id.*

7 **PARTIES**

8 10. BWI is a non-profit member corporation formed under the laws of the State
9 of Arizona, with its principal place of business in Phoenix, Arizona.

10 11. BWI's Members own and operate more than 2,400 hotels and other lodging
11 properties under the BWI name and marks.

12 12. BWI's Board of Directors communicates with BWI Members through
13 Regional Governors who are appointed to oversee a specific geographic district.
14 Governors are also Members of BWI.

15 13. The true names or capacities, whether individual, corporate, associate, or
16 otherwise, of defendants Member Bloggers, and Governor Bloggers are currently
17 unknown to BWI, who therefore sues said defendants by such fictitious names. When
18 their true names and capacities are known to BWI, BWI will amend this Complaint by
19 inserting their true names and capacities herein. BWI is informed and believes, and
20 therefore alleges, that each of the defendants designated herein is legally responsible in
21 some manner for the events and happenings herein referred to, and legally caused injury
22 and damages proximately thereby to BWI as herein alleged.

23 14. BWI is informed and believes, and therefore alleges, that defendant Furber
24 is responsible for the creation, operation, and administration of an Internet weblog called
25 FreeWrites.net which was previously located at the Internet domain
26 <http://www.freewrites.net> and now is located at the Internet domain <https://freewrites.net/>
(the "Blog").

27 15. BWI is informed and believes, and therefore alleges, that defendant Furber
28 and the Dials are responsible for the creation, operation and administration of the Blog.

1 16. BWI is informed and believes, and therefore alleges, that the Dials, Unruh
2 and Member Bloggers are Members of BWI who are posting Internet blog comments on
3 the Blog.

4 17. BWI is informed and believes, and therefore alleges, that defendants
5 Governor Bloggers are Governors of BWI who are posting Internet blog comments on
6 the Blog.

7 18. Further, BWI is informed and believes, and therefore alleges, that
8 defendants are responsible for proximately causing BWI's damages as herein alleged.

9 19. BWI is informed and believes, and therefore alleges, that defendants Furber
10 and Teresa Furber reside in Indiana.

11 20. BWI is informed and believes, and therefore alleges, that at all material
12 times hereto, Furber was acting for and on behalf of his marital community.

13 21. BWI is informed and believes, and therefore alleges, that the Dials reside in
14 Indiana.

15 22. BWI is informed and believes, and therefore alleges, that the Dials are
16 Members of BWI, and own the Best Western Green Tree Inn in Clarksville, Indiana.

17 23. BWI is informed and believes, and therefore alleges, that at all material
18 times hereto, the Dials were acting for and on behalf of their marital community.

19 24. BWI is informed and believes, and therefore alleges, that the Unruhs reside
20 in Kansas.

21 25. BWI is informed and believes, and therefore alleges, that at all times
22 material hereto, Loren Unruh was acting for and on behalf of his marital community.

23 26. BWI is informed and beliefs, and therefore alleges, that Loren Unruh is a
24 Member of BWI, and is the owner of the Best Western Angus Inn in Great Bend, Kansas.

25 **GENERAL ALLEGATIONS**

26 **THE RELATIONSHIP BETWEEN BWI AND ITS MEMBERS**

27 27. As set forth above, BWI is in the hospitality business.
28

1 28. BWI Members are owners and operators of hotels, motels and resorts
2 bearing the BWI name and logo under license from BWI. The BWI name and logo are
3 registered trademarks.

4 29. In applying for and agreeing to membership in BWI, all members complete
5 and sign the Membership Agreement.

6 30. Pursuant to the Membership Agreement, the Dials, Unruh, and other
7 Members agree, among other things, to properly use BWI's Equipment. Exhibit A, ¶
8 16(a)(i). Members agree to use BWI's Equipment to make reservations and conduct
9 hotel operations.

10 31. Pursuant to the Membership Agreement, the Dials, Unruh, and other
11 Members agree, among other things, to properly use and preserve the integrity of the Best
12 Western name, logo, symbols, trademarks, service marks, and other identifying
13 information (the "BWI's Marks"). Exhibit A, ¶ 16(a)(i). The Dials, Unruh, and other
14 Members agree to use BWI's Marks only in connection with their properties and
15 according to the Brand Identity Manual.

16 32. BWI first adopted "Best Western" as its trade name in 1947. Shortly
17 thereafter, BWI adopted and began using "Best Western" as a trademark identifying hotel
18 services provided by member hotels that were affiliated with BWI. BWI has
19 continuously and extensively promoted its trade name and trademark in interstate
20 commerce since 1947. As a result of this extensive promotion, the trade name and
21 trademark have become famous among the public as a source-identifying symbol.

22 33. BWI owns numerous federal registrations for BWI's Marks, including
23 Registration No. 1,432,431 for the standard character mark BEST WESTERN, issued by
24 the United States Patent & Trademark Office on March 10, 1987. Many of BWI's
25 trademark registrations, including its "BEST WESTERN" registration, are in full force
26 and effect, unrevoked and uncanceled, and have become incontestable under 15 U.S.C. §
27 1065.

28 34. BWI has developed BWI's Marks at great expense over the past decades.

1 35. BWI's Marks are inherently distinctive and possess strong secondary
2 meaning.

3 36. BWI's Marks are the property of BWI.

4 37. Pursuant to their membership, the Dials, Unruh, and other Members are
5 entrusted with confidential and proprietary information pertaining to BWI's customers,
6 contracts, business relations, business transactions, and business development, as well as
7 the marketing and implementation of the same. As such, Dial and other Members are
8 afforded access to BWI's most valuable confidential and proprietary information
9 ("BWI's Confidential Information").

10 38. BWI's Confidential Information is BWI's property.

11 39. BWI's Confidential Information is not generally known to its customers,
12 contracting parties, and/or in the industry in which BWI competes.

13 40. BWI's Confidential Information is available to the Members of BWI by
14 virtue of their membership.

15 41. Because the Dials, Unruh, and other Members have access to BWI's
16 Confidential Information, BWI Members who have access to such information are aware
17 of the need to maintain and preserve the confidentiality of the information.

18 42. The confidentiality of BWI's Confidential Information must be preserved,
19 maintained, and kept by BWI from competitors.

20 43. BWI's Confidential Information is considered in the industry in which BWI
21 competes to be an important component of a company's goodwill.

22 44. BWI's Confidential Information would be of enormous benefit to anyone
23 now competing against BWI and, if disclosed to competitors, would cause significant
24 damage to BWI's business. Moreover, disclosure of BWI's Confidential Information
25 would deprive BWI of the benefits of the considerable time, energy, resources, and
26 personnel it expended to preserve the confidentiality of such information.

27 45. BWI has begun a crucial phase in its corporate and brand development.
28 Throughout the course of this year, BWI has formulated changes to its Bylaws and
methods of operation to enable BWI to compete more effectively in the industry in which

1 it competes and to yield increased benefits and profits for the Dials, Unruh, and the other
2 Members' investments in BWI.

3 46. BWI's actions are time sensitive and actions taken against BWI to
4 disparage the company and brand and actions which improperly and maliciously impede
5 action on the proposed Bylaw changes are causing, have caused, and will continue to
6 cause irreparable injury to BWI, such that all changes made to date will be ineffective
7 and all changes BWI hopes to make will be thwarted.

8 47. In addition, willful and malicious actions taken by defendants on the cusp
9 of the Annual Meeting in October 2006 further impeded BWI's hope to advance its
10 Members' ability to improve on their investments in BWI.

11 **THE RELATIONSHIP BETWEEN BWI AND ITS GOVERNORS**

12 48. BWI's Governors are appointed by BWI's Board of Directors to visit,
13 oversee, and communicate with hotel properties, owners, and others in the district in
14 which they were appointed to govern. Governors are largely liaisons between the Board
15 of Directors and the individual hotel properties and Members.

16 49. Pursuant to BWI's Rules, Governors are to communicate with the Board
17 when any Member violates his/her Membership Agreement. Exhibit B, § 200.3(D)(2).

18 50. Pursuant to BWI's Rules, Governors are to protect and properly use BWI's
19 Marks. Exhibit B, §§ 300.9, 300.11.

20 51. BWI's Marks are the property of BWI.

21 52. Pursuant to BWI's Rules, Governors are to abide by BWI's ethics policies.
22 Exhibit B, § 200.3(I). Pursuant to BWI's Human Resources Policy and Procedure on
23 Business Ethics ("Ethics Policy"), attached hereto as Exhibit C, all Governors must keep
24 confidential all information concerning BWI's business plans and strategies (hereinafter
25 included as part of BWI's Confidential Information).

26 53. Pursuant to their governorship, Governors are entrusted with confidential
27 and proprietary information pertaining to BWI's customers, contracts, business relations,
28 business transactions, and business development, as well as the marketing and

1 implementation of the same. As such, Governors are afforded access to BWI's
2 Confidential Information.

3 54. BWI's Confidential Information is BWI's property.

4 55. BWI's Confidential Information is not generally known to its customers,
5 contracting parties, and/or in the industry in which BWI competes.

6 56. BWI's Confidential Information is available to the Governors of BWI by
7 virtue of their governorship.

8 57. Because Governors have access to BWI's Confidential Information, BWI
9 Governors who have access to such information are aware of the need to maintain and
10 preserve the confidentiality of the information.

11 58. The confidentiality of BWI's Confidential Information must be preserved,
12 maintained, and kept secure from BWI's competitors.

13 59. BWI's Confidential Information is considered in the industry in which BWI
14 competes to be an important component of a company's goodwill.

15 60. BWI's Confidential Information would be of enormous benefit to anyone
16 now competing against BWI and, if disclosed to competitors, would cause significant
17 damage to BWI's business. Moreover, disclosure of BWI's Confidential Information
18 would deprive BWI of the benefits of the considerable time, energy, resources, and
19 personnel it expended to preserve the confidentiality of such information.

20 **THE CREATION AND ADMINISTRATION OF THE BLOG**

21 61. Upon information and belief, on or about May 1, 2006 www.freewrites.net,
22 the Blog, was created.

23 62. Upon information and belief, the Dials asked and authorized defendant
24 Furber to create the Blog.

25 63. Upon information and belief, on May 1, 2006, Furber registered the
26 freewrites.net domain name with the company LNH Inc., doing business as
27 hostmysite.com.

1 64. Upon information and belief, on or about June 14, 2006, defendant Furber
2 registered the freewrites.net domain name with the company Amadeus Software, doing
3 business as neomailbox.com.

4 65. Furber is the Site Administrator for the Blog.

5 66. Anyone can post any comment about BWI on the Blog.

6 67. The Blog does not have any Terms of Service or Conditions of Use (the
7 “Terms”) to regulate or limit the types of comments that are posted on the Blog. Nor
8 does the Blog have any Terms regarding when defamatory or confidential posts are to be
9 removed from the Blog.

10 68. Although the Blog recites that it is meant for the “Best Western Members,”
11 when the Blog was set up and continuing thereafter until at least early 2007 anyone with
12 knowledge of the Blog could access the Blog, including BWI’s competitors and others in
13 the industry in which BWI does business.

14 69. The Blog is in no way associated with BWI and BWI has never authorized
15 or approved the creation of the Blog under BWI’s name and using BWI’s Marks.

16 70. Upon information and belief, from May to mid-July 2006, Furber received
17 all submissions of postings for the Blog and posted all the submissions received on the
18 Blog.

19 71. Since its first posting on May 11, 2006, more than 665 comments have
20 been posted on the Blog.

21 72. Sometime in early 2007, the Blog was password protected by defendant
22 Furber and/or the Dials.

23 73. Defendant Furber and/or the Dials distributed the password for the Blog but
24 BWI does not know to whom the Blog password was distributed.

THE BLOGGERS’ ACTIONS

25 74. BWI believes and thereon alleges that the postings on the Blog are made by
26 Furber, the Dials, Unruh, Member Bloggers, and Governor Bloggers (collectively, the
27 “Bloggers”).
28

1 75. The defendant Bloggers have improperly, and without BWI's consent,
2 posted on the Blog BWI's Confidential Information.

3 76. From May 11, 2006 through November 9, 2006, the defendant Bloggers
4 posted on the Blog BWI's Mark at least 290 times, and have made numerous postings of
5 BWI's Marks on the Blog since.

6 77. As a result of defendants' improper activities and postings, the defendant
7 Bloggers have improperly used BWI's Equipment and BWI's Marks, and have done so in
8 violation of their obligations owed to BWI as Members and/or Governors of BWI.

9 78. Upon information and belief, defendants continue to possess and misuse
10 BWI's Equipment and BWI's Marks that the Bloggers are given access to as part of, and
11 in consideration for, their membership and continued membership and governorship with
12 BWI.

13 79. Upon information and belief, at least through the date the Blog was
14 password protected, defendant Bloggers continued to disclose and improperly use BWI's
15 Confidential Information, BWI's Equipment, and BWI's Marks and continued to harm
16 and damage BWI's goodwill and reputation in the industry in which BWI competes.

17 80. By engaging in such wrongful conduct, defendants have damaged and
18 continue to damage BWI financially and in the industry in which it competes, and have
19 deprived and continue to deprive BWI of the benefits, effectiveness, and integrity of
20 BWI's Equipment, BWI's Marks, and BWI's Confidential Information, among other
21 things.

22 81. In addition, defendants have deprived and continue to deprive BWI of the
23 benefits of the Membership Agreement and BWI's Rules.

24 82. Such deprivations and continued deprivations, damages, and other harms
25 have irreparably harmed and continue to irreparably harm BWI.

26 83. Upon information and belief, defendants have engaged in such conduct
27 with the intent to misuse BWI's Equipment, misappropriate BWI's Marks, and
28 improperly and without authorization disclosed (and/or continue to disclose) BWI's
Confidential Information, among other things.

1 84. Upon information and belief, defendants have acted with the intent to
2 damage BWI's reputation, success, goodwill, business relationships, and relationships
3 with its Members and prospective Members, Governors and prospective Governors,
4 employees and prospective employees, contracting parties and prospective contracting
5 parties, customers, prospective customers, and others with whom BWI does business in
6 the industry in which BWI competes.

7 85. In addition, defendants have made oral and/or written false statements of
8 purported fact regarding BWI and its business to an indefinite number of third parties,
9 which has harmed BWI's reputation, standing, and business relationships with its
10 Members and/or prospective Members, Governors and prospective Governors, employees
11 and prospective employees, contracting parties and prospective contracting parties,
12 customers, prospective customers, and others with whom BWI does business in the
13 industry in which BWI competes.

14 86. As a direct and proximate result of all defendants' wrongful acts described
15 herein, BWI sustained and continues to sustain immediate and irreparable harm and
16 injury including, but not limited to, substantial loss of profits, loss of goodwill, loss of
17 business relations with existing and future business prospects, and loss of competitive
18 business advantage, opportunity, and/or expectancy.

19 **ANONYMOUS FAXES**

20 87. In addition to the specific actions described above, BWI has been informed
21 of a series of mass distribution of anonymous faxes to its Members.

22 88. All identifying information in these faxes has been stripped. BWI knows
23 neither the author(s) nor distributor(s) of these faxes.

24 89. However, BWI believes, and thereon alleges, that these faxes are authored
25 by and are being distributed by those who are also Bloggers and defendants herein.

26 **COUNT ONE**

27 **(Breach Of Contract Against the Dials, Unruh, and Member Bloggers)**

28 90. BWI incorporates each and every allegation previously set forth herein as if
fully set forth in this Count One.

1 91. Upon information and belief, the Dials have requested defendant Furber to
2 administer the Blog on their behalf and on behalf of other Members.

3 92. Upon information and belief, the Dials have allowed defendant Furber to
4 use BWI equipment to administer the Blog and have thereby breached either or both the
5 Membership Agreement and BWI Rules.

6 93. At all material times hereto, defendant Furber has acted as an agent of the
7 Dials and on the Dials' behalf and at the Dials' direction.

8 94. Upon information and belief, the Dials, Unruh, and Member Bloggers are
9 also BWI Members.

10 95. Pursuant to the Membership Agreement, the Dials, Unruh, and the other
11 Members are to fulfill and uphold their obligations with regard to BWI's Equipment,
12 BWI's Marks, and BWI's Confidential Information, among other things.

13 96. Thus, according to the express language in the Agreement, BWI is entitled
14 to the protection and preservation of BWI's Equipment, BWI's Marks, and BWI's
15 Confidential Information.

16 97. During the course of their membership with BWI, the Dials, Unruh, and the
17 other Members acquired access to BWI's Equipment, BWI's Marks, and BWI's
18 Confidential Information.

19 98. BWI entrusted BWI's Equipment, BWI's Marks, and BWI's Confidential
20 Information to the Dials, Unruh, and the other Members in the performance of their
21 duties, responsibilities, and obligations as BWI Members.

22 99. BWI's Equipment and BWI's Marks are essential to the current and
23 continued operation, success, goodwill, and integrity of BWI and its relationships with its
24 current and prospective Members, Governors, employees, contracting parties, customers,
25 prospective customers, and others with whom BWI does business in the industry in which
26 BWI competes.

27 100. BWI's Confidential Information is sufficiently secret to derive economic
28 value, actual or potential, from not being generally known to other persons who can
obtain economic value from its disclosure or use.

1 101. BWI's Equipment and BWI's Marks are the subject of efforts and
2 ownership of BWI that are reasonable under the circumstances to protect and prevent
3 their continued misuse and dilution of value.

4 102. BWI's Confidential Information is the subject of efforts by BWI that
5 are reasonable under the circumstances to maintain its secrecy or confidentiality.

6 103. As set forth above, the Dials, Unruh, and the other Members promised, by
7 entering into the Membership Agreement with BWI, that they would not improperly
8 utilize BWI's Equipment or BWI's Marks or divulge BWI's Confidential Information.

9 104. Despite this, upon information and belief, the Dials, Unruh, and Member
10 Bloggers have misused, and continue to misuse, BWI's Equipment to conduct improper
11 Internet activities.

12 105. Upon information and belief, the Dials, Unruh, and Member Bloggers have
13 misused, and continue to misuse, BWI's Marks in these improper Internet activities.

14 106. Additionally, upon information and belief, the Dials, Unruh, and Member
15 Bloggers have used, and continue to misuse, BWI's Equipment and BWI's Marks to
16 improperly post BWI's Confidential Information on the Internet.

17 107. In their activities, upon information and belief, the Dials, Unruh, and
18 Member Bloggers knew or had reason to know that they were contractually obligated not
19 to improperly use BWI's Equipment and BWI's Marks and not to improperly use or
20 disclose BWI's Confidential Information

21 108. Upon information and belief, the promises made by and the obligations of
22 the Dials, Unruh, and Member Bloggers in the Membership Agreement have not expired.

23 109. BWI has not given defendants Dial and Member Bloggers express or
24 implied consent to disclose or use BWI's Confidential Information on the Internet in the
25 manner in which such information has been used and posted.

26 110. BWI has not given the Dials, Unruh, and Member Bloggers express or
27 implied consent to disclose or use BWI's Marks on the Internet in the manner in which
28 such information has been used and posted.

1 111. BWI has not given the Dials, Unruh, and Member Bloggers express or
2 implied consent to use BWI's Equipment in the manner described herein.

3 112. BWI has performed any and all conditions precedent to the enforcement of
4 the promises made by the Dials, Unruh, and Member Bloggers in the Membership
5 Agreement. Therefore, enforcement of the Membership Agreement is just and
6 reasonable.

7 113. Upon information and belief, the Dials, Unruh, and the other Member
8 Bloggers have materially breached (and continue to materially breach) the Membership
9 Agreement by engaging in the wrongful acts described herein including, but not limited
10 to: (a) wrongfully, intentionally, and willfully utilizing BWI's Equipment for improper
11 activities; (b) wrongfully, intentionally, and willfully utilizing BWI's Marks for improper
12 activities; and, (c) wrongfully, intentionally, willfully, and improperly utilizing and/or
13 disclosing BWI's Confidential Information at least through the date the Blog was
14 password protected in early 2007.

15 114. The wrongful, intentional, willful, and improper acts described herein have
16 proximately injured and impaired BWI, and continue to proximately injure and impair
17 BWI.

18 115. As a direct and proximate result of the wrongful acts described herein, BWI
19 sustained and continues to sustain immediate and irreparable harm and injury including,
20 but not limited to, substantial loss of profits, loss of goodwill, loss of business relations
21 with existing and future Members, with existing and future Governors, with existing and
22 future employees, with existing and future contracting parties, with existing and future
23 business prospects, and loss of competitive business advantage, opportunity, and/or
24 expectancy.

25 116. BWI has no adequate remedy at law.

26 117. There is a substantial risk that the Dials, Unruh, and Member Bloggers will
27 continue to irreparably injure BWI unless they and others acting in concert with them are
28 preliminarily and/or permanently enjoined.

1 existing and future employees, with existing and future contracting parties, with existing
2 and future business prospects, and loss of competitive business advantage, opportunity,
3 and/or expectancy.

4 127. BWI has no adequate remedy at law.

5 128. There is a substantial risk that defendants Governor Bloggers will continue
6 to irreparably injure BWI unless they and others acting in concert with them are
7 preliminarily and/or permanently enjoined.

8 129. Unless defendants Governor Bloggers' wrongful acts described herein are
9 preliminarily and/or permanently enjoined, BWI will continue to sustain immediate and
10 irreparable harm and injury.

11 130. In the alternative and in addition to the irreparable harm and injury
12 described herein, upon information and belief, as a direct and proximate result of
13 defendants Governor Bloggers' wrongful acts described herein, BWI has suffered actual
14 and consequential damages in an amount which BWI believes exceeds \$75,000.

15 131. Upon information and belief, the acts described herein were so willful and
16 malicious that they warrant an award of exemplary damages to BWI pursuant to A.R.S. §
17 44-403(b).

18 132. BWI is entitled to recover its reasonable attorneys' fees and costs incurred
19 herein.

20 **COUNT THREE**

21 **(Breach of Implied Covenant of Good Faith and Fair Dealing 22 Against the Dials, Unruh and Member Bloggers)**

23 133. BWI incorporates each and every allegation set forth above as if fully set
24 forth in this Count Three.

25 134. Upon information and belief, the Dials, Unruh, and Member Bloggers are
26 also BWI Members.

27 135. As alleged herein, upon information and belief, a Membership Agreement
28 exists between the Dials, Unruh, and Member Bloggers and BWI.

1 136. The Dials, Unruh, and Member Bloggers have a duty to render performance
2 under the Membership Agreement.

3 137. The Dials, Unruh, and Member Bloggers have a duty to affirmatively
4 perform their obligations under the Membership Agreement and fulfill the goals and
5 purposes of that contract.

6 138. The Dials, Unruh, and Member Bloggers are also bound by an implied
7 covenant of good faith and fair dealing.

8 139. The purpose of the Membership Agreement is to govern the interactions
9 between the Dials, Unruh, and Member Bloggers and BWI and outline the rights and
10 obligations of each party.

11 140. Upon information and belief, the Dials, Unruh, and Member Bloggers
12 breached the covenant of good faith and fair dealing in the Membership Agreement
13 alleged above by failing to satisfy their obligations under the contract and by interfering
14 with other Members' rights under the Agreement as described herein.

15 141. As a direct and proximate result of the wrongful acts described herein, BWI
16 sustained and continues to sustain immediate and irreparable harm and injury including,
17 but not limited to, substantial loss of profits, loss of goodwill, loss of business relations
18 with existing and future Members, with existing and future Governors, with existing and
19 future employees, with existing and future contracting parties, with existing and future
20 business prospects, and loss of competitive business advantage, opportunity, and/or
21 expectancy.

22 142. BWI has no adequate remedy at law.

23 143. There is a substantial risk that the Dials, Unruh, and Member Bloggers will
24 continue to irreparably injure BWI unless they and others acting in concert with them are
25 preliminarily and/or permanently enjoined.

26 144. Unless the Dials, Unruh, and Member Bloggers' wrongful acts described
27 herein are preliminarily and/or permanently enjoined, BWI will continue to sustain
28 immediate and irreparable harm and injury.

1 145. In the alternative and in addition to the irreparable harm and injury
2 described herein, upon information and belief, as a direct and proximate result of the
3 Dials, Unruh, and Member Bloggers' wrongful acts described herein, BWI has suffered
4 actual and consequential damages in an amount which BWI believes exceeds \$75,000.

5 146. Upon information and belief, the acts described herein were so willful and
6 malicious that they warrant an award of exemplary damages to BWI pursuant to A.R.S. §
7 44-403(b).

8 147. BWI is entitled to recover its reasonable attorneys' fees and costs incurred
9 herein.

10 **COUNT FOUR**

11 **(Breach of Implied Covenant of Good Faith and Fair Dealing** 12 **Against Governor Bloggers)**

13 148. BWI incorporates each and every allegation set forth above as if fully set
14 forth in this Count Four.

15 149. Upon information and belief, certain of defendants Governor Bloggers are
16 also BWI Governors.

17 150. As alleged herein, defendants Governor Bloggers have a duty to render
18 performance under BWI's Rules. Defendants Governor Bloggers have a duty to
19 affirmatively perform their obligations under BWI's Rules and fulfill the goals and
20 purposes of that contract. Defendants Governor Bloggers are also bound by an implied
21 covenant of good faith and fair dealing.

22 151. The purpose of BWI's Rules is to govern the interactions between
23 defendants Governor Bloggers and BWI and outline the rights and obligations of each
24 party.

25 152. Upon information and belief, defendants Governor Bloggers breached the
26 covenant of good faith and fair dealing in BWI's Rules alleged above by failing to satisfy
27 their obligations under the contract and by interfering with other Governors' and
28 Members' rights as described herein.

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153. As a direct and proximate result of the wrongful acts described herein, BWI sustained and continues to sustain immediate and irreparable harm and injury including, but not limited to, substantial loss of profits, loss of goodwill, loss of business relations with existing and future Members, with existing and future Governors, with existing and future employees, with existing and future contracting parties, with existing and future business prospects, and loss of competitive business advantage, opportunity and/or expectancy.

154. BWI has no adequate remedy at law.

155. There is a substantial risk that defendants Governor Bloggers will continue to irreparably injure BWI unless they and others acting in concert with them are preliminarily and/or permanently enjoined.

156. Unless defendants Governor Bloggers' wrongful acts described herein are preliminarily and/or permanently enjoined, BWI will continue to sustain immediate and irreparable harm and injury.

157. In the alternative and in addition to the irreparable harm and injury described herein, upon information and belief, as a direct and proximate result of defendants Governor Bloggers' wrongful acts described herein, BWI has suffered actual and consequential damages in an amount which BWI believes exceeds \$75,000.

158. Upon information and belief, the acts described herein were so willful and malicious that they warrant an award of exemplary damages to BWI pursuant to A.R.S. § 44-403(b).

159. BWI is entitled to recover its reasonable attorneys' fees and costs incurred herein.

COUNT FIVE
(Breach of an Implied Contract Against the Dials, Unruh,
and Member Bloggers)

160. BWI incorporates and realleges the allegations set forth herein as if fully set forth in this Count Five.

1 161. As alleged herein, a Membership Agreement exists between the Dials,
2 Unruh, and the Member Bloggers and BWI.

3 162. Upon information and belief, BWI has an implied contract with the Dials,
4 Unruh, and Member Bloggers by way of the Membership Agreement and other BWI
5 policies and procedures for conducting business with BWI and within the BWI corporate
6 structure and by way of the relationship between the Dials, Unruh, and Member Bloggers
7 and BWI.

8 163. Inherent within these contracts and the Dials, Unruh, and Member
9 Bloggers' relationship with BWI is an agreement to preserve and protect BWI's
10 Confidential Information.

11 164. In consideration for agreeing to preserve and protect BWI's Confidential
12 Information, the Dials, Unruh, and Member Bloggers were granted Member status with
13 BWI.

14 165. BWI has performed of all its obligations pursuant to the Membership
15 Agreement and other policies and procedures.

16 166. In authoring comments and submitting them for posting on the Blog that
17 disclose and were intended to disclose BWI's Confidential Information, the Dials, Unruh,
18 and Member Bloggers have failed to perform their corresponding obligations.

19 167. As a direct and proximate result of the wrongful acts described herein, BWI
20 sustained and continues to sustain immediate and irreparable harm and injury including,
21 but not limited to, substantial loss of profits, loss of goodwill, loss of business relations
22 with existing and future Members, with existing and future Governors, with existing and
23 future employees, with existing and future contracting parties, with existing and future
24 business prospects, and loss of competitive business advantage, opportunity, and/or
25 expectancy.

26 168. BWI has no adequate remedy at law.

27 169. There is a substantial risk that the Dials, Unruh, and Member Bloggers will
28 continue to irreparably injure BWI unless they and others acting in concert with them are
preliminarily and/or permanently enjoined.

1 170. Unless the Dials, Unruh, and Member Bloggers' wrongful acts described
2 herein are preliminarily and/or permanently enjoined, BWI will continue to sustain
3 immediate and irreparable harm and injury.

4 171. In the alternative and in addition to the irreparable harm and injury
5 described herein, upon information and belief, as a direct and proximate result of the
6 Dials, Unruh, and Member Bloggers' wrongful acts described herein, BWI has suffered
7 actual and consequential damages in an amount which BWI believes exceeds \$75,000.

8 172. Upon information and belief, the acts described herein were so willful and
9 malicious that they warrant an award of exemplary damages to BWI pursuant to A.R.S. §
10 44-403(b).

11 173. BWI is entitled to recover its reasonable attorneys' fees and costs incurred
12 herein.

13 **COUNT SIX**

14 **(Breach of an Implied Contract Against Governor Bloggers)**

15 174. BWI incorporates and realleges the allegations set forth herein as if fully set
16 forth in this Count Six.

17 175. As alleged herein, a Membership Agreement and a contractual relationship
18 pursuant to BWI's Rules exist between defendants Governor Bloggers and BWI.

19 176. Upon information and belief, BWI has an implied contract with defendants
20 Governor Bloggers by way of the Membership Agreement, BWI's Rules, and other BWI
21 policies and procedures for conducting business with BWI and within the BWI corporate
22 structure and by way of the relationship between defendants Governor Bloggers and
23 BWI.

24 177. Inherent within these contracts and defendants Governor Bloggers'
25 relationship with BWI is an agreement to preserve and protect BWI's Confidential
26 Information.

27 178. In consideration for agreeing to preserve and protect BWI's Confidential
28 Information, defendants Governor Bloggers were granted Member and Governor status
with BWI.

1 179. BWI has performed of all its obligations pursuant to the Membership
2 Agreement, BWI's Rules, and other policies and procedures.

3 180. In authoring comments and submitting them for posting on the Blog that
4 disclose and were intended to disclose BWI's Confidential Information, defendants
5 Governor Bloggers have failed to perform their corresponding obligations.

6 181. As a direct and proximate result of the wrongful acts described herein, BWI
7 sustained and continues to sustain immediate and irreparable harm and injury including,
8 but not limited to, substantial loss of profits, loss of goodwill, loss of business relations
9 with existing and future Members, with existing and future Governors, with existing and
10 future employees, with existing and future contracting parties, with existing and future
11 business prospects, and loss of competitive business advantage, opportunity, and/or
12 expectancy.

13 182. BWI has no adequate remedy at law.

14 183. There is a substantial risk that defendants Governor Bloggers will continue
15 to irreparably injure BWI unless they and others acting in concert with them are
16 preliminarily and/or permanently enjoined.

17 184. Unless defendants Governor Bloggers' wrongful acts described herein are
18 preliminarily and/or permanently enjoined, BWI will continue to sustain immediate and
19 irreparable harm and injury.

20 185. In the alternative and in addition to the irreparable harm and injury
21 described herein, upon information and belief, as a direct and proximate result of
22 defendants Governor Bloggers' wrongful acts described herein, BWI has suffered actual
23 and consequential damages in an amount which BWI believes exceeds \$75,000.

24 186. Upon information and belief, the acts described herein were so willful and
25 malicious that they warrant an award of exemplary damages to BWI pursuant to A.R.S. §
26 44-403(b).

27 187. BWI is entitled to recover its reasonable attorneys' fees and costs incurred
28 herein.

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COUNT SEVEN

(Breach of Fiduciary Duty Against Governor Bloggers)

188. BWI incorporates and realleges the allegations set forth herein as if fully set forth in this Count Seven.

189. Upon information and belief, certain of defendants Governor Bloggers are also BWI Governors.

190. As Governors of BWI, defendants Governor Bloggers owed and continue to owe fiduciary duties of loyalty and care to BWI to act in BWI's best interests and not intentionally damage BWI, its corporate image, structure, and business relationships.

191. Defendants Governor Bloggers additionally owed and continue to owe duties not to engage in activities which would breach their fiduciary duties to BWI and not to allow, aid, or promote others' breach of their duties to BWI.

192. During the continued course of their governorship, defendants Governor Bloggers have breached and continue to breach their express and implied fiduciary duties to BWI by, among other things, (i) creating the Blog which is intended for the distribution of BWI's Marks, BWI's Confidential Information, defamatory, disparaging, false, misleading, improper, and otherwise tortious material; (ii) posting on the Blog BWI's Marks, BWI's Confidential Information, defamatory, disparaging, false, misleading, improper, and otherwise tortious material; (iii) diverting and encouraging others to divert from business relationships, contracts, and other involvements in and/or with BWI; and (iv) generally scheming and conspiring to damage BWI, its business, its relationships, its contracts, and its corporate and business marketing, advertising, outreach, and development.

193. As a direct and proximate result of the wrongful acts described herein, BWI sustained and continues to sustain immediate and irreparable harm and injury including, but not limited to, substantial loss of profits, loss of goodwill, loss of business relations with existing and future Members, with existing and future Governors, with existing and future employees, with existing and future contracting parties, with existing and future

1 business prospects, and loss of competitive business advantage, opportunity and/or
2 expectancy.

3 194. BWI has no adequate remedy at law.

4 195. There is a substantial risk that defendants Governor Bloggers will continue
5 to irreparably injure BWI unless they and others acting in concert with them are
6 preliminarily and/or permanently enjoined.

7 196. Unless defendants Governor Bloggers' wrongful acts described herein are
8 preliminarily and/or permanently enjoined, BWI will continue to sustain immediate and
9 irreparable harm and injury.

10 197. In the alternative and in addition to the irreparable harm and injury
11 described herein, upon information and belief, as a direct and proximate result of
12 defendants Governor Bloggers' wrongful acts described herein, BWI has suffered actual
13 and consequential damages in an amount which BWI believes exceeds \$75,000.

14 198. Upon information and belief, the acts described herein were so willful and
15 malicious that they warrant an award of exemplary damages to BWI pursuant to A.R.S. §
16 44-403(b).

17 199. BWI is entitled to recover its reasonable attorneys' fees and costs incurred
18 herein.

19 **COUNT EIGHT**

20 **(Defamation Per Se Against All Defendants)**

21 200. BWI incorporates and realleges the allegations previously set forth herein
22 as if fully set forth in this Count Eight.

23 201. Upon information and belief, certain of defendant Bloggers are also BWI
24 Governors.

25 202. Upon information and belief, certain of defendant Bloggers are also BWI
26 Members.

27 203. Furber and Unruh also made posts to the Blog.

28 204. On the Blog, upon information and belief, defendants made oral and/or
written false statements of purported fact regarding BWI and its business that tend to

1 harm BWI's reputation and standing with its Members and/or prospective Members,
2 Governors and/or prospective Governors, employees and/or prospective employees,
3 contracting parties and/or prospective contracting parties, and customers and/or
4 prospective customers, and have harmed BWI's reputation and standing with its
5 Members and/or prospective Members, employees and/or prospective employees,
6 contracting parties and/or prospective contracting parties, and customers and/or
7 prospective customers.

8 205. Upon information and belief, defendants communicated such statements to
9 a certain third party or parties via the Internet, and/or intentionally made such statements
10 on the Blog via the Internet, which is (and was) accessible to third-parties with
11 knowledge of the Blog.

12 206. As a direct and proximate result of the wrongful acts described herein, BWI
13 sustained and continues to sustain immediate and irreparable harm and injury including,
14 but not limited to, substantial losses in revenues, loss of profits, loss of goodwill, loss of
15 business relations with existing and future business prospects, and loss of competitive
16 business advantage, opportunity, and/or expectancy.

17 207. As a direct and proximate result of the wrongful acts described herein, BWI
18 sustained and continues to sustain immediate and irreparable harm and injury including,
19 but not limited to, substantial loss of profits, loss of goodwill, loss of business relations
20 with existing and future Members, with existing and future Governors, with existing and
21 future employees, with existing and future contracting parties, with existing and future
22 business prospects, and loss of competitive business advantage, opportunity and/or
23 expectancy.

24 208. BWI has no adequate remedy at law.

25 209. There is a substantial risk that defendants will continue to irreparably injure
26 BWI unless they and others acting in concert with them are preliminarily and/or
27 permanently enjoined.
28

1 Confidential Information, and otherwise disparaging BWI and discouraging other
2 Members, Governors, and employees to conduct business with BWI.

3 219. All defendants have no trademark rights in or license to use BWI's Marks
4 outside the scope of the operation of BWI's hotels and the Brand Identity Manual.

5 220. All defendants nonetheless have used and continue to use BWI's Marks in
6 commerce without authority and without BWI's consent.

7 221. All defendants' use of BMI's Marks is likely to cause consumer confusion
8 as to the source of the Blog.

9 222. All defendants' use and continued use of BWI's Marks violates BWI's
10 exclusive rights in BWI's Marks within the meaning of § 32(1) of the Federal Trademark
11 Act, 15 U.S.C. § 1114(1), and at common law.

12 223. As a direct and proximate cause of all defendants' actions, BWI has been
13 irreparably harmed and damaged.

14 224. There is a substantial risk that all defendants will continue to irreparably
15 injure BWI unless they and others acting in concert with them are preliminarily and/or
16 permanently enjoined.

17 225. Unless all defendants' wrongful acts described herein are preliminarily
18 and/or permanently enjoined, BWI will continue to sustain immediate and irreparable
19 harm and injury.

20 226. In the alternative and in addition to the irreparable harm and injury
21 described herein, upon information and belief, as a direct and proximate of all
22 defendants' wrongful acts described herein, BWI has suffered actual and consequential
23 damages and other appropriate statutory damages in an amount which BWI believes
24 exceeds \$75,000.

25 227. BWI is entitled to recover its reasonable attorneys' fees and costs incurred
26 herein in accordance with § 35(b) of the Federal Trademark Act, 15 U.S.C. § 1117(b).

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COUNT TEN

(Unfair Competition Against All Defendants)

228. BWI incorporates and realleges the allegations set forth herein as if fully set forth in this Count Ten.

229. All defendants have engaged in acts of unfair competition under § 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a), and at common law.

230. BWI's Marks as used by all defendants in commerce in the manner hereinabove alleged is likely to confuse or deceive the public as to the source, sponsorship, creation, administration, operations, and approval of the activities, disclosures, and comment of defendants.

231. Such actions by all defendants and confusion by the public has caused and continues to cause BWI immediate, continuous, and irreparable injury for which there is no adequate remedy at law.

232. The nature and probable tendency and effect of the improper use of BWI's Marks in the manner hereinabove alleged is to enable defendants to confuse or deceive the public by creating "initial interest confusion." Such conduct constitutes unfair competition with BWI at common law and is causing and, unless enjoined, will continue to cause BWI immediate and irreparable injury for which it has no adequate remedy at law.

233. Unless enjoined by this Court, all defendants will continue to infringe on BWI's Marks, thereby deceiving the public and causing BWI immediate and irreparable injury for which it has no adequate remedy at law.

234. There is a substantial risk that all defendants will continue to irreparably injure BWI unless they and others acting in concert with them are preliminarily and/or permanently enjoined.

235. Unless all defendants' wrongful acts described herein are preliminarily and/or permanently enjoined, BWI will continue to sustain immediate and irreparable harm and injury.

1 236. In the alternative and in addition to the irreparable harm and injury
2 described herein, upon information and belief, as a direct and proximate of all
3 defendants' wrongful acts described herein, BWI has suffered actual and consequential
4 damages and other appropriate statutory damages in an amount which BWI believes
5 exceeds \$75,000.

6 237. BWI is entitled to recover its reasonable attorneys' fees and costs incurred
7 herein in accordance with § 35(b) of the Federal Trademark Act, 15 U.S.C. § 1117(b).

8 **COUNT ELEVEN**

9 **(Tortious Interference With Prospective Economic Advantage**
10 **Against All Defendants)**

11 238. BWI incorporates and realleges the allegations set forth herein as if fully set
12 forth in this Count Eleven.

13 239. BWI has a valid business relationship with customers, Members, and others
14 with whom BWI does business and a reasonable expectation of a valid business
15 relationship with customers, prospective customers, Members, prospective Members, and
16 others with whom BWI does business or with whom BWI may reasonably expect to do
17 business in the hotel industry, as described herein. This expectancy is based, in part, on
18 the considerable time, energy, resources, and personnel it takes to develop and run a
19 hotel, develop, create, and maintain the goodwill and reputation associated with BWI's
20 Marks and name, and to maintain confidential and proprietary information and customer
21 relations.

22 240. At all material times hereto, all defendants were aware of these valid
23 business relationships and/or prospective economic business advantages, opportunities,
24 and/or expectancies.

25 241. As described herein, all defendants intentionally and/or purposefully
26 interfered with BWI's valid business relationships and/or prevented BWI's business
27 expectancy from ripening by unlawfully interfering with BWI's economic business
28 advantages, opportunities, and expectancies.

1 242. The wrongful acts of interference described herein proximately impaired
2 and/or are likely to continue to impair BWI's valid business relationships and BWI's
3 prospective economic business advantages, opportunities, and/or expectancies in the
4 hotel industry with customers and others who, as a result of the wrongful acts described
5 herein, have refused or may refuse to do business with BWI.

6 243. As a direct and proximate result of the wrongful, improper, and intentional
7 interference with BWI's valid business relationships and/or BWI's prospective economic
8 business advantages, opportunities, and/or expectancies described herein, BWI sustained
9 and continues to sustain immediate and irreparable harm and injury including, but not
10 limited to, substantial losses in revenues, loss of profits, loss of goodwill, loss of business
11 relations with existing and future business prospects, and loss of competitive business
12 advantage, opportunity, and/or expectancy.

13 244. There is a substantial risk that all defendants will continue to tortiously
14 interfere with BWI's valid business relationships and BWI's prospective economic
15 business advantages, opportunities and/or expectancies unless all defendants are
16 preliminarily and/or permanently enjoined.

17 245. BWI has no adequate remedy at law.

18 246. There is a substantial risk that all defendants will continue to irreparably
19 injure BWI unless they and others acting in concert with them are preliminarily and/or
20 permanently enjoined.

21 247. Unless all defendants' wrongful acts described herein are preliminarily
22 and/or permanently enjoined, BWI will continue to sustain immediate and irreparable
23 harm and injury.

24 248. In the alternative and in addition to the irreparable harm and injury
25 described herein, upon information and belief, as a direct and proximate result of all
26 defendants' wrongful acts described herein, BWI has suffered actual and consequential
27 damages in an amount which BWI believes exceeds \$75,000.
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1 249. Upon information and belief, the acts described herein were so willful and
2 malicious that they warrant an award of exemplary damages to BWI pursuant to A.R.S. §
3 44-403(b).

4 **COUNT TWELVE**

5 **(Tortious Interference With Contract**
6 **Against Defendant Furber**

7 250. BWI incorporates and realleges the allegations set forth herein as if fully set
8 forth in this Count Twelve.

9 251. BWI has a valid contract with the Dials, Unruh, Member Bloggers and
10 Governor Bloggers.

11 252. As an employee of the Dials and based upon his relationship with the Dials,
12 defendant Furber is aware of BWI's valid contracts with the Dials, Unruh, Member
13 Bloggers and Governor Bloggers. Thus, at all material times hereto, defendant Furber
14 was aware of these valid contracts.

15 253. As described herein, defendant Furber intentionally and/or purposefully
16 interfered with BWI's valid contracts.

17 254. The wrongful acts of interference described herein proximately impaired
18 and/or are likely to continue to impair BWI's valid contracts

19 255. As a direct and proximate result of the wrongful, improper, and intentional
20 interference with BWI's valid contracts described herein, BWI sustained and continues to
21 sustain immediate and irreparable harm and injury including, but not limited to,
22 substantial losses in revenues, loss of profits, loss of goodwill, loss of business relations
23 with existing and future business prospects, and loss of competitive business advantage,
24 opportunity, and/or expectancy.

25 256. There is a substantial risk that all defendant Furber will continue to
26 tortiously interfere with BWI's valid contracts unless preliminarily and/or permanently
27 enjoined.

28 257. BWI has no adequate remedy at law.

1 258. There is a substantial risk that defendant Furber will continue to irreparably
2 injure BWI unless he and others acting in concert with them are preliminarily and/or
3 permanently enjoined.

4 259. Unless Furber's wrongful acts described herein are preliminarily and/or
5 permanently enjoined, BWI will continue to sustain immediate and irreparable harm and
6 injury.

7 260. In the alternative and in addition to the irreparable harm and injury
8 described herein, upon information and belief, as a direct and proximate result of
9 Furber's wrongful acts described herein, BWI has suffered actual and consequential
10 damages in an amount which BWI believes exceeds \$75,000.

11 261. Upon information and belief, the acts described herein were so willful and
12 malicious that they warrant an award of exemplary damages to BWI pursuant to A.R.S. §
13 44-403(b).

14 **WHEREFORE**, BWI prays for judgment against all defendants, jointly and
15 severally, as follows:

16 A. For a preliminary and permanent injunction enjoining and restraining the
17 Furbers, the Dials, the Unruhs, Member Bloggers, and Governor Bloggers, from:

- 18 (1) engaging in acts that are a further material breach of the Membership
19 Agreement;
20 (2) engaging in acts that are a further material breach of BWI's Rules;
21 (3) operating the Blog or similar Blogs;
22 (4) operating the Blog or similar Blogs under its current goals and
23 purposes;
24 (5) posting comments on the Blog;
25 (6) posting comments on the Blog which violate the legal rights of BWI;
26 (7) violating BWI's Confidential Information;
27 (8) infringing on BWI's exclusive rights to BWI's Marks under § 32(1)
28 of the Federal Trademark Act, 15 U.S.C. § 1114(a), and at common law;

1 (9) competing unfairly with BWI under § 42(a) of the Federal
2 Trademark Act, 15 U.S.C. § 1125(a), and at common law;

3 (10) falsely using BWI's Marks to create "initial interest confusion";

4 (11) using BWI's Marks in a manner which is likely to cause confusion
5 within the meaning of § 2(d) of the Federal Trademark Act, 15 U.S.C. § 1052(d); and

6 (12) otherwise injuring BWI and its business reputation by using BWI's
7 Marks and posting BWI's Confidential Information on the Blog.

8 B. For an order directing Furber and the Dials to temporarily, preliminarily,
9 and/or permanently shut down the Blog.

10 C. For an order directing Furber, the Dials, Unruh, Member Bloggers, and
11 Governor Bloggers to perform the obligations they covenanted to perform in their
12 agreements with BWI.

13 D. For an award of general, compensatory, and special damages, if any, in an
14 amount exceeding \$75,000.

15 E. For an award of exemplary damages pursuant to A.R.S. § 44-403(b).

16 F. For an award of BWI's attorneys' fees and costs incurred herein on all
17 Counts;

18 G. For an award of the attorneys' fees and costs incurred therein in accordance
19 with § 35(b) of the Federal Trademark Act, 15 U.S.C. § 1117(b) on Counts Nine and Ten;
20 and

21 H. For such other and further relief as the Court deems appropriate and
22 equitable under the circumstances.
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(c) of the Federal Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this 17th day of July, 2007.

s/Cynthia A. Ricketts
Cynthia A. Ricketts
Allison L. Harvey
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Attorneys for Plaintiff
Best Western International, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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