1 2 3 4 5 6 7 8 9 10 11 12	Daniel McAuliffe (Arizona Bar No. 003435 <u>dmcauliffe@swlaw.com</u> Todd Feltus (Arizona Bar No. 019076) <u>tfeltus@swlaw.com</u> Snell & Wilmer L.L.P. One Arizona Center Phoenix, AZ 85004-2202 Telephone: (602) 382-6272 Facsimile: (602) 382-6070 Richard T. Mullineaux (Indiana Bar No. 98 <u>mullineaux@k-glaw.com</u> R. Jeffrey Lowe (Indiana Bar No. 21508-22 <u>ilowe@k-glaw.com</u> Kightlinger & Gray, LLP One Commerce Square 4106 Charlestown Road New Albany, IN 47150 Phone: (812) 949-2300 Facsimile: (812) 949-8556 Co-Counsel for Defendant and Counterclain Defendants James Furber, Nidrah Dial, The	74-22) 2) mant H. James Dial and
12	Loren Unruh and Gayle Unruh	
13		ATES DISTRICT COURT
		RICT OF ARIZONA
15	Best Western International, Inc., a non-profit Arizona corporation,	Case No. CV06-1537-PHX-DGC
16	Plaintiff,	
17	v.	
18	James Furber, an Internet website	DEFENDANT H. JAMES DIAL'S ANSWER TO PLAINTIFF'S
19	administrator; Teresa Furber; James Dial, an Internet website blogger and	REVISED SECOND AMENDED
20	Member of Best Western International, Inc.; Nidrah Dial, an Internet website	COMPLAINT
21	blogger and Member of Best Western International, Inc.; Loren Unruh, an	(The Heneralle Derid C. Correcter)
22	Internet website blogger and Member of Best Western International, Inc.;	(The Honorable David G. Campbell)
23	Mrs. Loren Unruh; Jane Does 1-X, Internet website bloggers and Members	
24	of Best Western International, Inc.; John Does 1-X, Internet website bloggers and	
25	Governors of Best Western International, Inc.,	
26	Defendants.	
27		
28		

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1	H. Jim Dial, an individual,			
2	Counterclaimant,			
3	V.			
4				
5	non-profit Arizona corporation, Nils Kindgren, an individual; Larry McRae, an individual; Roman J. Jaworowicz, an			
6	individual; Romai J. Jaworowicz, an individual; Bonnie McPeake, an individual; Charles Helm, an individual;			
7	Raymond Johnston, an individual; Dave Francis, an individual; and Jane Does			
8	1-7,			
9	Counterdefendants.			
10	Comes now the Defendant, H. James D	Comes now the Defendant, H. James Dial, by counsel, and for his Answer to the		
11	Plaintiff's Revised Second Amended Complaint, ¹ hereby states as follows: ²			
12	NAME OF THE ACTION			
13	1. With regard to the allegations con	tained in paragraph one of the Plaintiff's		
14	Revised Second Amended Complaint, the Defer	ndant denies he is engaged in a course of		
15	wrongful conduct, denies he has deliberately co	ntinuously or unlawfully used BWI's		
16	computer software or communication's equipment, BWI's protected name, denies that he			
17	has disclosed confidential and/or proprietary inf	has disclosed confidential and/or proprietary information and denies BWI has been		
18	damaged to any extent, and to the extent any of	the allegations contained in paragraph one		
19	of the Plaintiff's Revised Second Amended Cor	nplaint are not covered herein, they are		
20	denied.			
21				
22	¹ On August 21, 2007, the Second Amended			
23	Infringement and Unfair Competition claims— was filed with this court. The parties agree that	- ·		
24	which was lodged in Docket #135 is the	Complaint that should have been filed.		
25	Therefore, the Defendant now answers the Revi	sed Second Amended Complaint.		
26	² Many of the allegations contained in Plaintiff's Revised Second Amended Complain commence with the phrase: "BWI is informed and believes, and therefore, alleges			
27	informed of and believes. Therefore, the De			
28	without regard to that particular phrase.			

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- 2 -

2. With regard to the allegations contained in paragraph two of the Plaintiff's Revised Second Amended Complaint, the Defendant denies that he has breached or continues to breach his membership agreement or application, denies that he has materially breached or continues to materially breach BWI's rules and regulations, denies that he created the blog, denies that he has publicly disclosed BWI's confidential and/or proprietary information, admits he has posted on said blog, and to the extent any allegations contained in paragraph two of the Plaintiff's Revised Second Amended Complaint are not specifically referenced herein, they are denied.

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

4. With regard to the allegations contained in paragraph four of the Plaintiff's 12 Revised Second Amended Complaint that pertain to him, the Defendant admits that he is a 13 member of BWI, but denies he has engaged in any wrongful conduct as a member, and 14 denies the damage alleged in said paragraph, denies that he has breached any contract with BWI, denies he has breached an implied covenant of good faith and fair dealing, denies he has breached any implied contract with BWI, denies he has committed defamation of the Plaintiff, and denies that he has engaged in tortious interference with business relations, and denies the remaining allegations contained in paragraph four of the 19 Plaintiff's Revised Second Amended Complaint.

JURISDICTION AND VENUE

5. 21 Defendant denies the allegations contained in paragraph five of Plaintiff's Revised Second Amended Complaint. 22

23 6. Defendant denies the allegations contained in paragraph six of Plaintiff's 24 Revised Second Amended Complaint.

25 7. Defendant denies the allegations contained in paragraph seven of Plaintiff's 26 Revised Second Amended Complaint.

27 8. With regard to the allegations contained in paragraph eight of Plaintiff's 28 Revised Second Amended Complaint, the Defendant admits that **Exhibit A** speaks for

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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 itself, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph.

PARTIES

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

13. With regard to the allegations contained in paragraph thirteen of the Plaintiff's Revised Second Amended Complaint, the Defendant denies that the Plaintiff 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.

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16. With regard to the allegations contained in paragraph sixteen of the 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 knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph sixteen.

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

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

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

20. Defendant denies the allegations contained in paragraph twenty of the 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.

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

GENERAL ALLEGATIONS

The Relationship Between BWI and Its Members

27. Defendant admits the allegations contained in paragraph twenty-seven of the Plaintiff's Revised Second Amended Complaint.

7 28. With regard to the allegations contained in paragraph twenty-eight of the 8 Plaintiff's Revised Second Amended Complaint, the Defendant denies that all BWI 9 members are owners and operators of hotels bearing BWI name and logo under license from BWI, but admits that the BWI name and logo are registered trademarks.

29. Defendant admits the allegations contained in paragraph twenty-nine of the Plaintiff's Revised Second Amended Complaint.

30. With regard to the allegations contained in paragraph thirty of the Plaintiff's Revised Second Amended Complaint, the Defendant denies that Nidrah Dial is a Member of BWI, admits that Exhibit A speaks for itself and, to the extent that any of the allegations contained in paragraph thirty are inconsistent with the terms of Exhibit A, they are hereby denied.

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

23 32. Defendant is without knowledge or information sufficient to form a belief as 24 to the truth of the allegations contained in paragraph thirty-two of the Plaintiff's Revised 25 Second Amended Complaint.

26 33. Defendant is without knowledge or information sufficient to form a belief as 27 to the truth of the allegations contained in paragraph thirty-three of the Plaintiff's Revised 28 Second Amended Complaint.

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.

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

40. Defendant denies the allegations contained in paragraph forty of Plaintiff's 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.

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47. Defendant denies the allegations contained in paragraph forty-seven ofPlaintiff's Revised Second Amended Complaint.

The Relationship Between BWI and its Governors

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

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

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

51. Defendant admits the allegations contained in paragraph fifty-one of the 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 Defendant admits the allegations contained in paragraph sixty-one of the 61. Plaintiff's Complaint. 11 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. 28

Snell & Wilmer LLP. - LLP. - LLP. - Dne Arizona Center, 400 E. Van Bur Phoenix, Arizona 850042202 68. Defendant denies the allegations contained in paragraph sixty-eight of Plaintiff's Revised Second Amended Complaint.

69. With regard to the allegations contained in paragraph sixty-nine of the Plaintiff's Revised Second Amended Complaint, the Defendant admits that BWI never authorized or approved the creation of the Blog, denies that the Blog is in no way associated with BWI, and denies that the Blog has used BWI's marks and/or BWI's name.

70. Defendant denies the allegations contained in paragraph seventy ofPlaintiff's Revised Second Amended Complaint.

9 71. Defendant is without knowledge or information sufficient to form a belief as
10 to the truth of the allegations contained in paragraph seventy-one of the Plaintiff's
11 Revised Second Amended Complaint.

72. With regard to the allegations contained in paragraph seventy-two of Plaintiff's Revised Second Amended Complaint, the Defendant admits that in January of 2007 the Blog was password protected by himself and James Furber and denies the remaining allegations.

73. With regard to the allegations contained in paragraph seventy-three of
Plaintiff's Revised Second Amended Complaint, the Defendant admits that he and James
Furber distributed the password for the Blog but denies that BWI does not know to whom
the Blog password was distributed.

The Blogger's Actions:

74. With regard to the allegations contained in paragraph seventy-four of the
Plaintiff's Revised Second Amended Complaint, the Defendant admits that the Dials and
James Furber have posted on the Blog, admits that Loren Unruh may have posted on the
Blog and is without knowledge or information sufficient to form a belief as to the truth of
the remaining allegations contained in said paragraph.

26 75. Defendant denies the allegations contained in paragraph seventy-five 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

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

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

Count I

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

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

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

With regard to the allegations contained in paragraph ninety-five of 27 95. 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 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.

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

Defendant denies the allegations contained in paragraph one hundred one of 101. 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 Defendant denies the allegations contained in paragraph one hundred four of 104.

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

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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.

111. Defendant denies the allegations contained in paragraph one hundred elevenof Plaintiff's Revised Second Amended Complaint.

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

15 113. Defendant denies the allegations contained in paragraph one hundred16 thirteen of Plaintiff's Revised Second Amended Complaint.

17 114. Defendant denies the allegations contained in paragraph one hundred18 fourteen of Plaintiff's Revised Second Amended Complaint.

19 115. Defendant denies the allegations contained in paragraph one hundred fifteen20 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.

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120. Defendant denies the allegations contained in paragraph one hundred twenty of Plaintiff's Revised Second Amended Complaint.

121. Defendant denies the allegations contained in paragraph one hundred twenty-one of Plaintiff's Revised Second Amended Complaint.

Count II

Breach of Contract Against Defendants' Governor Bloggers

122. With regard to the allegations contained in paragraph one hundred twentytwo of the Plaintiff's Revised Second Amended Complaint, the Defendant realleges and incorporates herein by reference each and every answer to the allegations contained in paragraphs one through one hundred twenty-one of Plaintiff's Revised Second Amended Complaint as though fully set forth herein.

Defendant is without knowledge or information sufficient to form a belief as 123. to the truth of the allegations contained in paragraph one hundred twenty-three of the Plaintiff's Complaint.

Defendant denies the allegations contained in paragraph one hundred 124. twenty-four of Plaintiff's Revised Second Amended Complaint.

17 125. Defendant denies the allegations contained in paragraph one hundred 18 twenty-five of Plaintiff's Revised Second Amended Complaint.

19 126. Defendant denies the allegations contained in paragraph one hundred 20 twenty-six of Plaintiff's Revised Second Amended Complaint.

127. Defendant denies the allegations contained in paragraph one hundred 22 twenty-seven of Plaintiff's Revised Second Amended Complaint.

23 Defendant denies the allegations contained in paragraph one hundred 128. 24 twenty-eight of Plaintiff's Revised Second Amended Complaint.

25 129. Defendant denies the allegations contained in paragraph one hundred 26 twenty-nine of Plaintiff's Revised Second Amended Complaint.

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

- 1 131. Defendant denies the allegations contained in paragraph one hundred thirty-2 one of Plaintiff's Revised Second Amended Complaint. 3 132. Defendant denies the allegations contained in paragraph one hundred thirty-4 two of Plaintiff's Revised Second Amended Complaint. 5 **Count III** 6 **Breach of Implied Covenant of Good Faith and Fair Dealing** 7 **Against the Dials, Unruh and Member Bloggers** 8 133. With regard to the allegations contained in paragraph one hundred thirty-9 three of the Plaintiff's Revised Second Amended Complaint, the Defendant realleges and 10 incorporates herein by reference each and every answer to the allegations contained in 11 paragraphs one through one hundred thirty-two of the Plaintiff's Revised Second 12 Amended Complaint as though fully set forth herein. 13 134. With regard to the allegations contained in paragraph one hundred thirty-14 four of Plaintiff's Revised Second Amended Complaint, the Defendant admits that he and 15 Loren Unruh are Members of BWI and may have posted on the Blog, denies that Nidrah 16 Dial is a Member of BWI and is without sufficient information upon which to form a 17 belief as to the truth of the remaining allegations contained in said paragraph. 18 135. With regard to the allegations contained in paragraph one hundred thirty-19 five of Plaintiff's Revised Second Amended Complaint, the Defendant admits that 20 Membership Agreements exist between himself, Loren Unruh and BWI, denies that a 21 Membership Agreement exists between Nidrah Dial and BWI, and is without sufficient 22 knowledge upon which to form a belief as to the truth of the remaining allegations 23 contained in said paragraph. 24 136. With regard to the allegations contained in paragraph one hundred thirty-six 25 of Plaintiff's Revised Second Amended Complaint, the Defendant denies that Nidrah Dial 26 is a Member of BWI, admits that Exhibit A speaks for itself and, to the extent that any of 27 the allegations contained in said paragraph are inconsistent, they are hereby denied.
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137. With regard to the allegations contained in paragraph one hundred thirtyseven 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 denied.

138. Defendant denies the allegations contained in paragraph one hundred thirtyeight 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 any of the allegations contained in said paragraph are inconsistent, they are hereby denied.

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

141. Defendant denies the allegations contained in paragraph one hundred fortyone of Plaintiff's Revised Second Amended Complaint.

Defendant denies the allegations contained in paragraph one hundred forty-142. 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.

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2 **Breach of Implied Covenant of Good Faith and Fair Dealing** 3 **Against Governor Bloggers** 4 With regard to the allegations contained in paragraph one hundred forty-148. 5 eight of the Plaintiff's Revised Second Amended Complaint, the Defendant realleges and 6 incorporates herein by reference each and every answer to paragraphs one through one 7 hundred forty-seven of the Plaintiff's Revised Second Amended Complaint as though 8 fully set forth herein. 9 Defendant is without knowledge or information sufficient to form a belief as 149. 10 to the truth of the allegations contained in paragraph one hundred forty-nine of the 11 Plaintiff's Revised Second Amended Complaint. 12 With regard to the allegations contained in paragraph one hundred fifty of 150. 13 the Plaintiff's Revised Second Amended Complaint, the Defendant admits that Exhibit B 14 speaks for itself, and to the extent that any of the allegations contained in paragraph one 15 hundred fifty are inconsistent with Exhibit B, they are hereby denied. 16 151. With regard to the allegations contained in paragraph one hundred fifty-one 17 of the Plaintiff's Revised Second Amended Complaint, the Defendant admits that Exhibit 18 B speaks for itself, and to the extent that any of the allegations contained in paragraph one 19 hundred fifty-one are inconsistent with Exhibit B, they are hereby denied. 20 Defendant denies the allegations contained in paragraph one hundred fifty-152. 21 two of Plaintiff's Revised Second Amended Complaint. 22 153. Defendant denies the allegations contained in paragraph one hundred fifty-23 three of Plaintiff's Revised Second Amended Complaint. 24 154. Defendant denies the allegations contained in paragraph one hundred fifty-25 four of Plaintiff's Revised Second Amended Complaint. 26 155. Defendant denies the allegations contained in paragraph one hundred fifty-27 five of Plaintiff's Revised Second Amended Complaint. 28

Count IV

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156. Defendant denies the allegations contained in paragraph one hundred fifty-2 six of Plaintiff's Revised Second Amended Complaint.

157. Defendant denies the allegations contained in paragraph one hundred fiftyseven of Plaintiff's Revised Second Amended Complaint.

Defendant denies the allegations contained in paragraph one hundred fifty-158. eight of Plaintiff's Revised Second Amended Complaint.

Defendant denies the allegations contained in paragraph one hundred fifty-159. nine of Plaintiff's Revised Second Amended Complaint.

Count V

Breach of Implied Contract Against the Dials, Unruh and Member Bloggers

160. With regard to the allegations contained in paragraph one hundred sixty of the Plaintiff's Revised Second Amended Complaint, the Defendant realleges and incorporates herein by reference each and every answer to paragraphs one through one hundred fifty-nine of the Plaintiff's Revised Second Amended Complaint as though fully set forth herein.

16 With regard to the allegations contained in paragraph one hundred sixty-one 161. 17 of Plaintiff's Revised Second Amended Complaint, the Defendant admits that he and 18 Loren Unruh are Members of BWI who may have posted on the website, denies that 19 Nidrah Dial is a Member of BWI, and is without sufficient knowledge upon which to form 20 a belief as to the truth of the remaining allegations contained in said paragraph.

21 162. With regard to the allegations contained in paragraph one hundred sixty-two 22 of the Plaintiff's Revised Second Amended Complaint, the Defendant denies that Nidrah 23 Dial is a Member of BWI, admits that Exhibit A speaks for itself and, to the extent that 24 any of the allegations contained in said paragraph are inconsistent, they are hereby denied.

25 163. Defendant denies the allegations contained in paragraph one hundred sixty-26 three of Plaintiff's Revised Second Amended Complaint.

27 164. Defendant denies the allegations contained in paragraph one hundred sixty-28 four of Plaintiff's Revised Second Amended Complaint.

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

166. Defendant denies the allegations contained in paragraph one hundred sixtysix of Plaintiff's Revised Second Amended Complaint.

167. Defendant denies the allegations contained in paragraph one hundred sixtyseven of Plaintiff's Revised Second Amended Complaint.

168. Defendant denies the allegations contained in paragraph one hundred sixtyeight of Plaintiff's Revised Second Amended Complaint.

9 169. Defendant denies the allegations contained in paragraph one hundred sixty10 nine of Plaintiff's Revised Second Amended Complaint.

170. Defendant denies the allegations contained in paragraph one hundred seventy of Plaintiff's Revised Second Amended Complaint.

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

172. Defendant denies the allegations contained in paragraph one hundred seventy-two of Plaintiff's Revised Second Amended Complaint.

173. Defendant denies the allegations contained in paragraph one hundred seventy-three of Plaintiff's Revised Second Amended Complaint.

<u>Count VI</u>

Breach of Implied Contract Against Governor Bloggers

174. With regard to the allegations contained in paragraph one hundred seventyfour of the Plaintiff's Revised Second Amended Complaint, the Defendant realleges and
incorporates herein by reference, each and every answer to paragraphs one through one
hundred seventy-three of Plaintiff's Revised Second Amended Complaint, as though fully
set forth herein.

26 175. With regard to the allegations contained in paragraph one hundred seventy27 five of the Plaintiff's Revised Second Amended Complaint, the Defendant admits that
28 Exhibit A and Exhibit B speak for themselves and to the extent the allegations contained

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

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

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

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

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

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

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

18 182. Defendant denies the allegations contained in paragraph one hundred19 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 eight25 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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187. Defendant denies the allegations contained in paragraph one hundred eighty-seven of Plaintiff's Revised Second Amended Complaint.

<u>Count VII</u>

Breach of Fiduciary Duty Against Governor Bloggers

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

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

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

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

17 192. Defendant denies the allegations contained in paragraph one hundred18 ninety-two of Plaintiff's Revised Second Amended Complaint.

19 193. Defendant denies the allegations contained in paragraph one hundred20 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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198. Defendant denies the allegations contained in paragraph one hundred ninety-eight of Plaintiff's Revised Second Amended Complaint.

199. Defendant denies the allegations contained in paragraph one hundred ninety-nine of Plaintiff's Revised Second Amended Complaint.

Count VIII

Defamation Per Se Against All Defendants

With regard to the allegations contained in paragraph two hundred of the 200. Plaintiff's Revised Second Amended Complaint, the Defendant realleges and incorporates herein by reference, each and every answer to paragraphs one through one hundred ninety-nine of Plaintiff's Revised Second Amended Complaint, as though fully set forth herein.

201. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph two hundred one of the Plaintiff's Revised Second Amended Complaint.

With regard to the allegations contained in paragraph two hundred two of 202. Plaintiff's Revised Second Amended Complaint, the Defendant admits that he and Loren 17 Unruh are BWI members who may have posted on the Blog but is without knowledge or 18 information sufficient to form a belief as to the truth of the remaining allegations 19 contained in paragraph two hundred two of the Plaintiff's Revised Second Amended 20 Complaint.

21 203. With regard to the allegations contained in paragraph two hundred three of 22 Plaintiff's Revised Second Amended Complaint, the Defendant admits that James Furber 23 posted on the Blog and that Loren Unruh may have posted on the Blog.

24 204. Defendant denies the allegations contained in paragraph two hundred four of 25 Plaintiff's Revised Second Amended Complaint.

26 205. Defendant denies the allegations contained in paragraph two hundred five of 27 Plaintiff's Revised Second Amended Complaint.

2 Plaintiff's Revised Second Amended Complaint. 3 207. Defendant denies the allegations contained in paragraph two hundred seven 4 of Plaintiff's Revised Second Amended Complaint. 5 Defendant denies the allegations contained in paragraph two hundred eight 208. 6 of Plaintiff's Revised Second Amended Complaint. 7 Defendant denies the allegations contained in paragraph two hundred nine 209. 8 of Plaintiff's Revised Second Amended Complaint. 9 Defendant denies the allegations contained in paragraph two hundred ten of 210. 10 Plaintiff's Revised Second Amended Complaint. 11 211. Defendant denies the allegations contained in paragraph two hundred eleven 12 of Plaintiff's Revised Second Amended Complaint. 13 212. Defendant denies the allegations contained in paragraph two hundred twelve 14 of Plaintiff's Revised Second Amended Complaint. 15 Count IX 16 **Tortious Interference with Prospective Economic Advantage Against All Defendants** 17 213. With regard to the allegations contained in paragraph two hundred thirteen 18 of the Plaintiff's Revised Second Amended Complaint, the Defendant realleges and 19 incorporates herein by reference, each and every answer to paragraphs one through two 20 hundred twelve of Plaintiff's Revised Second Amended Complaint, as though fully set 21 forth herein. 22 Defendant denies the allegations contained in paragraph two hundred 214. 23 fourteen of Plaintiff's Revised Second Amended Complaint. 24 215. Defendant denies the allegations contained in paragraph two hundred fifteen 25 of Plaintiff's Revised Second Amended Complaint. 26 216. Defendant denies the allegations contained in paragraph two hundred 27 sixteen of Plaintiff's Revised Second Amended Complaint. 28

Defendant denies the allegations contained in paragraph two hundred six of

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1 217. Defendant denies the allegations contained in paragraph two hundred 2 seventeen of Plaintiff's Revised Second Amended Complaint. 3 218. Defendant denies the allegations contained in paragraph two hundred 4 eighteen of Plaintiff's Revised Second Amended Complaint. 5 219. Defendant denies the allegations contained in paragraph two hundred 6 nineteen of Plaintiff's Revised Second Amended Complaint. 7 Defendant denies the allegations contained in paragraph two hundred twenty 220. 8 of Plaintiff's Revised Second Amended Complaint. 9 Defendant denies the allegations contained in paragraph two hundred 221. 10 twenty-one of Plaintiff's Revised Second Amended Complaint. 11 222. Defendant denies the allegations contained in paragraph two hundred 12 twenty-two of Plaintiff's Revised Second Amended Complaint. 13 223. Defendant denies the allegations contained in paragraph two hundred 14 twenty-three of Plaintiff's Revised Second Amended Complaint. 15 Defendant denies the allegations contained in paragraph two hundred 224. 16 twenty-four of Plaintiff's Revised Second Amended Complaint. 17 Count X 18 **Tortious Interference with Contract against James Furber** 19 225. With regard to the allegations contained in paragraph two hundred twenty-20 five of the Plaintiff's Revised Second Amended Complaint, the Defendant realleges and 21 incorporates herein by reference, each and every answer to paragraphs one through two 22 hundred twenty-four of Plaintiff's Revised Second Amended Complaint, as though fully 23 set forth herein. 24 226. With regard to the allegations contained in paragraph two hundred twenty-25 six of the Plaintiff's Revised Second Amended Complaint, the Defendant admits that he 26 and Loren Unruh have valid contracts with BWI, denies that Nidrah Dial has a contract 27 with BWI, and is without sufficient knowledge upon which to form a belief as to the truth 28 of the remaining allegations contained in said paragraph.

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1 227. Defendant denies the allegations contained in paragraph two hundred 2 twenty-seven of Plaintiff's Revised Second Amended Complaint. 3 228. Defendant denies the allegations contained in paragraph two hundred 4 twenty-eight of Plaintiff's Revised Second Amended Complaint. 5 229. Defendant denies the allegations contained in paragraph two hundred 6 twenty-nine of Plaintiff's Revised Second Amended Complaint. 7 230. Defendant denies the allegations contained in paragraph two hundred thirty 8 of Plaintiff's Revised Second Amended Complaint. 9 Defendant denies the allegations contained in paragraph two hundred thirty-231. 10 one of Plaintiff's Revised Second Amended Complaint. 11 232. Defendant denies the allegations contained in paragraph two hundred thirty-12 two of Plaintiff's Revised Second Amended Complaint. 13 233. Defendant denies the allegations contained in paragraph two hundred thirty-14 three of Plaintiff's Revised Second Amended Complaint. 15 234. Defendant denies the allegations contained in paragraph two hundred thirty-16 three of Plaintiff's Revised Second Amended Complaint. 17 235. Defendant denies the allegations contained in paragraph two hundred thirty-18 five of Plaintiff's Revised Second Amended Complaint. 19 236. Defendant denies the allegations contained in paragraph two hundred thirty-20 six of Plaintiff's Revised Second Amended Complaint. 21 FIRST AFFIRMATIVE DEFENSE 22 As an affirmative defense, the Defendant pleads the defenses of waiver, estoppel, 23 latches, and unclean hands. 24 SECOND AFFIRMATIVE DEFENSE 25 The Plaintiff's Revised Second Amended Complaint fails to state a claim upon 26 which relief can be granted against this Defendant. 27 28

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1	THIRD AFFIRMATIVE DEFENSE
2	The Defendant is protected from any and all claims by way of the doctrine of
3	qualified immunity.
4	FOURTH AFFIRMATIVE DEFENSE
5	The Defendant claims the defense of truth to any claim of defamation and/or
6	defamation per se.
7	FIFTH AFFIRMATIVE DEFENSE
8	The Defendant states there has been no publication of any alleged defamatory
9	content.
10	SIXTH AFFIRMATIVE DEFENSE
11	The Defendant claims that the alleged defamatory statements, if any, are statements
12	of opinion, not fact, and not actionable as defamation and/or defamation per se.
13	SEVENTH AFFIRMATIVE DEFENSE
14	The Defendant claims that any and all speech on the Blog is constitutionally
15	protected speech, which is not actionable.
16	EIGHTH AFFIRMATIVE DEFENSE
17	There has been no claim of illegal activity required to find a tortious interference
18	with the perspective business advantage or relationship.
19	REQUEST FOR TRIAL BY JURY
20	Comes now the Defendant, H. James Dial, by counsel, and requests a trial by jury
21	on all issues so triable.
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1	RESPECTFULLY SUBMITTED this 10th day of September, 2007.
2	SNELL & WILMER L.L.P.
3	
4	<u>s/Todd Feltus</u> Daniel McAuliffe (Arizona Bar No. 003435)
5	<u>dmcauliffe@swlaw.com</u>
6	Todd Feltus (Arizona Bar No. 023158) tfeltus@swlaw.com
7	One Arizona Center
8	Phoenix, AZ 85004-2202 Telephone: (602) 382-6000
9	Facsimile: (602) 382-6070
10	Co-Counsel for H. James Dial, James Furber, Nidrah Dial, Theresa Furber, Loren Unruh, and
11	Gayle Unruh
12	Richard T. Mullineaux (Indiana Bar No. 9874-22)
13	<u>rmullineaux@k-glaw.com</u> R. Jeffrey Lowe (Indiana Bar No. 21508-22)
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17	Phone: (812) 949-2300 Facsimile: (812) 949-8556
18	Co-Counsel for H. James Dial, James Furber,
19	Nidrah Dial, Theresa Furber, Loren Unruh, and Gayle Unruh
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1	CERTIFICATE OF SERVICE
2	
3	I hereby certify that on September 10, 2007, I electronically transmitted the
4	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
5	system. Parties may access this filing through the Court's system.
6	Cynthia Ann Ricketts
7	DLA Piper US LLP 2415 East Camelback Road, Suite 700
8	Phoenix, Arizona 85016
9	Cindy.Ricketts@dlapiper.com
10	Allison Harvey
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13	Robert E. Yen
14	Yen, Pilch, Komadina & Flemming, P.C. 6017 North 15th Street
15	Phoenix, Arizona 85014
10	J. Grant Woods
	Grant Woods, P.C. 1726 North 7th Street
18	Phoenix, Arizona 85006
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21	By: s/Todd Feltus
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