



## **Parties**

4. Hanson is a New York City restaurateur and the former President and CEO of B.R. Guest Parent Holdings, LLC (“BRG”).

5. BRG owns and operates approximately 26 restaurants and bars in New York, New Jersey, and Florida.

6. Starwood Capital Group is a private, U.S.-based investment firm with a core focus on global real estate. Since the group’s inception in 1991, the firm has raised over \$22 billion of equity capital and, through its various funds, has invested \$13.7 billion representing \$44 billion in assets. Starwood Capital Group currently has approximately \$28 billion of assets under management.

7. Starwood invested in BRG as a joint venture partner with Hanson in 2007.

## **Background**

8. In 2007, Starwood invested \$36.2 million in BRG. At present, Starwood owns all preferred equity in BRG, which is approximately \$73.5 million, which has an accrued but unpaid return of approximately \$58.5 million, and has made loans to BRG in the principal amount of approximately \$5.8 million which has accrued but unpaid interest of approximately \$1.5 million.

9. Under Hanson’s direction as President and CEO, BRG has struggled financially.

10. Hanson owns only common equity in BRG, which is subordinated to the repayment in full of Starwood’s preferred equity and loans. As a result of BRG’s poor financial performance, the current value of BRG is far less than that of Starwood’s preferred equity and loans including accrued return and interest, as evidenced by recent efforts to sell BRG. As a

result, Hanson, although residually a co-owner of BRG, in reality his equity interest in BRG has zero value.

11. PriceWaterhouseCoopers (“PWC”) is currently performing a forensic audit of BRG’s financial information.

12. To date, the PWC audit is in the process of reviewing approximately 18 months of BRG financial information. However, the PWC audit already has revealed significant wrongdoing and self-dealing by Hanson at BRG.

13. As the PWC audit continues, and additional facts come to light daily, Starwood is convinced that the audit results of the past 18 months have only scratched the surface of Hanson’s abuses.

14. Specifically, the audit revealed that Hanson was continuing to expend funds for expenses that the Starwood appointed members of the Management Committee of BRG (“Starwood Representatives”) had expressly directed Hanson not to spend.

15. As BRG struggled financially, the Starwood Representatives instructed Hanson to cease paying employee bonuses, with certain limited exceptions, and cease making charitable donations out of BRG’s funds.

16. BRG did not have the surplus funds available to allow these expenditures.

17. Rather, Starwood was forced to advance funds to provide liquidity to BRG as it was running out of cash.

18. Both Hanson and his counsel agreed that Hanson would stop authorizing these charitable donations.

19. However, the PWC audit revealed that Hanson continued to make these expenditures out of BRG's funds.

20. Hanson paid out more than \$200,000 in such unauthorized expenditures between February 1, 2012 and August 31, 2013.

21. In reality, Hanson was spending Starwood's money that it had advanced to keep BRG running.

22. Hanson fraudulently attempted to hide from Starwood the material fact that he was ignoring the Starwood Representatives' directives and making donations out of BRG funds.

#### **Unauthorized Bonuses**

23. In 2012, BRG did not meet its financial goals, and, as a result, the Starwood Representatives instructed Hanson not to pay out bonuses to BRG corporate-level employees outside of the limited bonus plan.

24. Hanson agreed that no bonuses would be paid to BRG corporate-level employees, with certain limited exceptions.

25. However, Hanson ignored these instructions and breached his promise to the Starwood Representatives by purchasing over \$45,000 in AMEX gift cards using his personal credit card, which he handed out to BRG corporate-level employees in lieu of cash bonuses.

26. He then had BRG reimburse him for the credit card charges.

27. Hanson attempted to hide these payments by not running the \$45,000 through BRG's payroll, not withholding taxes on the gift cards, and not paying the bonuses in cash. The payment of these bonuses was intentionally made in the form of gift cards to mislead Starwood.

28. Hanson's actions in authorizing and accepting payments for these expenses violated direct orders of the Starwood Representatives to refrain from awarding additional bonuses due to BRG's flagging 2012 financial performance.

29. Also, in early 2012, Hanson purchased another \$40,000 worth of AMEX gift cards, again using his personal credit card, which he also handed out to BRG employees, and he caused BRG to reimburse him for the \$40,000 he spent to purchase the gift cards.

30. In both cases, Hanson failed to have the appropriate taxes and other withholding taken out of these employee gift card payments.

31. The payment of these additional bonuses was intentionally made in the form of gift cards to mislead and to attempt to hide them from the Starwood Representatives and, thus, Starwood.

32. Hanson's actions have placed BRG at risk of further tax liability for failure to report this income to employees and/or appropriately withhold taxes and other deductions.

33. Hanson's actions constitute fraud. He was directed not to pay additional bonuses, but he did so anyway and hid it from the owners of BRG.

34. Moreover, Hanson's actions constitute a breach of BRG's LLC Agreement and his Employment Agreement because they amount to a Major Decision made without the Starwood Representatives' and Starwood's approval.

35. This fraudulent misconduct was a willful violation of the Starwood Representatives' directives, caused an irreparable breach of trust, and resulted in material harm to BRG.

36. The Starwood Representatives gave Hanson several material directives; he agreed to comply; and then he ignored them.

37. As a result, the Starwood Representatives and Starwood can no longer trust Hanson to perform his duties in the best interests of BRG.

38. This breach of trust has had a material adverse effect on BRG's continued operations as long as Hanson is CEO.

#### **Unlawful and Unauthorized Election Contributions**

39. The PWC audit also revealed that Hanson has violated and caused BRG to violate New York election contribution laws.

40. Under New York law, companies cannot contribute to New York City campaigns and cannot reimburse individuals for campaign donations.

41. To do so is a criminal violation both for the individual who is reimbursed and for the company.

42. To date, the PWC audit has identified at least six contributions made in Hanson's name to candidates for New York City council.

43. In July 2013, Hanson caused BRG to reimburse him for those contributions.

44. By causing BRG to reimburse him, Hanson put BRG at risk of criminal liability.

45. The campaign contribution forms that Hanson signed, and which accompanied the contributions, clearly stated that New York law prohibits Hanson being reimbursed for such contributions.

46. In fact, Hanson signed an affirmation that his contribution "is not being reimbursed in any manner."

47. Hanson attempted to hide from Starwood the material fact that he had caused BRG to illegally and improperly reimburse him for these campaign contributions.

48. By placing BRG in criminal jeopardy, by disobeying the Starwood Representatives' direct orders, and by lying to the Starwood Representatives about his intentions and defrauding them, Hanson caused material harm to BRG that cannot be cured or otherwise rectified by further actions on Hanson's part.

49. This pattern and practice of ignoring directives from the Starwood Representatives has caused an irreparable breach of trust and has resulted in a material harm to BRG.

**Misappropriation and/or Misuse of Company Funds**

50. In addition, the PWC audit has revealed numerous instances of unauthorized lavish spending on Hanson's part, especially for a business experiencing financial difficulties of the current and past magnitude under Hanson's leadership.

51. For instance, in March and April of 2013, Hanson submitted thousands of dollars of expense reimbursements for luxury hotel suites at the Setai hotel in Miami Beach and the Wynn Hotel in Las Vegas, which, in some instances, cost as much as \$1,300 per night. In addition, Hanson expensed thousands of dollars of spa treatments and room service during the same period.

52. These expenditures, and others still being uncovered by PWC, reflect gross irresponsibility on Hanson's part, if not outright misappropriation and theft of BRG funds, which are clearly contrary to acceptable corporate practices.

53. Moreover, Hanson attempted to hide these inappropriate reimbursements from the Starwood Representatives in an attempt to defraud BRG and Starwood.

#### **Hanson's Termination for Cause**

54. As a result of the PWC audit, the Starwood Representatives determined that Hanson had engaged in a pattern of grossly negligent and/or willful conduct that, in the aggregate, has had and will continue to have a material adverse effect on BRG and that Hanson could not have believed that these actions were in the best interests of BRG.

55. Hanson's actions resulted in a breach of trust and loss of confidence, such that Starwood can no longer rely on Hanson to run BRG.

56. Under the LLC Agreement of BRG, Starwood and the Starwood Representatives have the authority, in their sole discretion, to determine whether the provisions of Hanson's Employment Agreement have been breached and whether he should be terminated for cause. A copy of the LLC Agreement is attached hereto as Exhibit A.

57. On October 30, 2013, Starwood and the Starwood Representatives made the decision to terminate Hanson for Cause, which they have the right and authority to do pursuant to the terms of the LLC Agreement. A copy of the written consents of the Starwood Representatives to terminate Hanson for cause is attached hereto at Exhibit B.

58. In addition, based on this pattern of harmful and misleading conduct, Starwood and the Starwood Representatives believe that Hanson will further disrupt or damage the business if he is permitted to remain employed by BRG in any capacity.

59. Hanson possesses and maintains control over access to BRG's office space, and the Starwood Representatives do not have keys to the premises.

60. Moreover, Hanson has worked with the employees of BRG for many years and has alienated employees who are not loyal to him.

61. Starwood believes that Hanson will refuse to leave the premises once terminated, will undermine and disparage Starwood to BRG's employees, and will seek to cause BRG employees to resign their positions with BRG and, in some instances, follow him to a competing venture.

62. Moreover, Hanson has time and time again forced a deadlock between himself and Starwood to attempt to improperly control BRG for his own purposes, even though Hanson

in reality has no economic interest in BRG. Starwood believes that Hanson will continue this pattern of behavior even after termination.

63. As a result, Starwood is contemporaneously with this Complaint seeking a temporary restraining order and preliminary injunction against Hanson.

#### **Hanson's Employment Agreement**

64. Hanson's Employment Agreement provides that to effect a termination for Cause, the following conditions must be met:

(i) Executive shall be given written notice by the Management Committee of the intention to terminate him for Cause, such notice (A) to state in detail the particular act or acts or failure or failures to act that constitute the grounds on which the proposed termination for Cause is based and (B) to be given within 60 days of any of the Starwood Representatives on the Management Committee learning of such act or acts of failure or failures to act and (ii) Executive shall be given 30 days after the date that such written notice has been given to Executive in which to cure such conduct, to the extent such cure is possible, and Executive shall have failed to effect such cure.

(Employment Agreement § 7(b), attached hereto as Exhibit C)

65. On October 30, 2013, BRG provided notice to Hanson that he has been terminated for Cause. The grounds for termination for "Cause" in Hanson's Employment Agreement include the following:

(A) any material breach by the Executive of the Executive's covenants under Section 6 or any other material provision of this Agreement;

(B) a substantial and continual refusal by Executive in breach of this Agreement to perform the duties, responsibilities or obligations assigned to Executive pursuant to the terms hereof, provided that such duties, responsibilities or obligations are consistent with his positions as President of the Company and are otherwise lawful and appropriate;

...

(D) gross negligence or willful misconduct on the part of the Executive in the performance of his duties as an employee, officer or director of the Company or any of its subsidiaries which has had a material adverse effect on the business of the Company and its subsidiaries, unless Executive reasonably believed in good faith that such act or nonact (other than a repeated act or repeated failure to act) was in or not opposed to the best interests of the Company.

(Employment Agreement § 7(b))

66. Here, Hanson's conduct, as described in the termination notice, satisfies these grounds for termination for Cause.

67. The Starwood Representatives and Starwood resolved to terminate Hanson for Cause and delivered notice of its intention to terminate Hanson for Cause on October 30, 2013.

68. The notice detailed the acts that constituted the grounds for terminations as follows:

1. Unauthorized Employee Bonuses.

The Company's audit revealed that, in the past year, you purchased \$85,000 worth of AMEX gift cards, gave them to various Company employees for bonuses of one sort or another, and thereafter were reimbursed by the Company for the costs of those purchases. Your actions in authorizing and accepting payments for these expenses violated direct orders of the Starwood Representatives – orders with which you also had expressly agreed to comply – to refrain from awarding corporate level employee bonuses, except for certain limited pre-agreed bonuses, following the Company's flagging financial performance in 2012 and early 2013. The \$85,000 in bonuses were not approved and further constituted a breach of Section 1 of your Employment Agreement prohibiting you from making such Major Decisions (as defined in the LLC Agreement, Exhibit A) without the express approval of the Management Committee – which you failed to obtain. In addition, your actions have placed BRG in legal jeopardy for the Company having failed to report this income to employees, and/or appropriately to withhold taxes and other deductions. According to Company tax and legal advisors, BRG could be liable both for unpaid employee income taxes as well as the Company's employment taxes, plus penalties and even potential criminal sanctions depending on the nature and extent of the violations. Your misconduct in this regard was a further willful violation of Starwood

Representatives' directives and your Employment Agreement, has caused an irreparable breach of trust and has resulted in material harm to the Company.

2. Unlawful and Unauthorized Contributions and Donations.

Under New York City law (McKinney's Election Law section 14-116), companies cannot contribute to election campaigns of persons running for city office. Nor can companies reimburse their employees who make such contributions. Doing so can constitute criminal conduct on the part of both parties. To date, the Company's investigation has revealed six (6) donations you made to candidates for NYC city council, for which you thereafter authorized and received reimbursement from the Company. Your misconduct was willful. The campaign contribution forms, on their face, state clearly and unambiguously that contributors cannot seek reimbursement for their contributions. These actions have placed both you and the Company at risk of criminal liability. In addition, you also disregarded instructions from the Starwood Representatives (as defined in the LLC Agreement) to refrain from making or authorizing *any* Company charitable donations, due to the Company's current poor financial performance under your direction. You falsely told the Starwood Representatives that no further such donations would be made, yet you continued to cause the Company to make tens of thousands of dollars in charitable donations. By placing the Company in criminal jeopardy, by disobeying direct orders of the Starwood Representatives, and by lying to the Starwood Representatives about your intentions, you have caused material harm to the Company that cannot be cured or otherwise rectified by further actions on your part. This pattern and practice of ignoring directives from the Starwood Representatives has caused an irreparable breach of trust and has resulted in material harm to the Company.

3. Misappropriation and/or Misuse of Company Funds.

The Company's audit has revealed numerous instances of unauthorized lavish spending on your part, especially for a business experiencing financial difficulties of the current and past magnitude under your leadership. For instance, in March and April of 2013, you submitted thousands of dollars of luxury hotel suites at the Setai hotel in Miami Beach and the Wynn Hotel in Las Vegas, which, in some instances, cost as much as \$1,300 per night. In addition, you expensed thousands of dollars of spa treatments and room service during the same period. These expenditures, and others still being identified by our auditors, reflect gross irresponsibility on your part, if not outright misappropriation and theft of Company funds.

(Termination Notice at 1-3, attached hereto as Exhibit D)

69. Hanson's actions, as described in the termination notice were discovered as a result of the PWC audit, which remains ongoing.

70. The time between the discovery of Hanson's actions justifying termination for Cause and the sending of notice to Hanson was within the 60 day period as required by Hanson's Employment Agreement.

71. The termination notice further provided that:

By your egregious and disloyal misconduct as described above, you have caused material harm to the Company and its business, and fundamentally have lost the trust of the Starwood Representatives and Starwood to fulfill your responsibilities as an executive officer of the Company. Accordingly, pursuant to subsections (A), (B) and (D) of Section 7 of your Employment Agreement (definition of "Cause"), you are being terminated for Cause, effective immediately. Inasmuch as many of your actions are not susceptible to cure, under your Employment Agreement you have no cure rights that would enable you to retain your position with the Company. Further, pursuant to Section 9.2(b) of the LLC Agreement, with your termination for Cause you have lost your right to have Representatives (as defined in the LLC Agreement) on the Company's Management Committee. Accordingly, in conformance with Section 9.2(b) of the LLC Agreement, you and the BRG Representatives are hereby deemed to be automatically removed from the Management Committee, effective immediately.

(Termination Notice at 3, Ex. D)

72. Because Hanson's conduct has, in part, constituted criminal violations attributable both to Hanson and to BRG, and otherwise has caused a loss of trust in him by Starwood and the Starwood Representatives, his conduct is not susceptible to cure.

73. As a result, the 30 day cure period as described in the Employment Agreement, which is only applicable "to the extent such cure is possible," does not apply here.

74. Because Hanson has been terminated for Cause, he remains bound by all post-employment restrictive covenants and other restrictions set forth in the Employment Agreement and also set forth in the Limited Liability Company Agreement of B.R. Guest Parent Holdings, LLC dated as of December 30, 2008 (the "LLC Agreement"). (Employment Agreement § 10(i))

75. These restrictive covenants and restrictions include the obligation “not disparage the Company and/or its subsidiaries or their respective employees, officers, directors, customers or owners,” (Employment Agreement § 6(e)), and that he not disclose confidential BRG information. (*Id.* § 6(d)) Under the Employment Agreement, these restrictions apply whether or not Hanson has been terminated for cause. (*Id.*)

76. Once terminated for cause, Hanson’s Employment Agreement provides for a two year non-compete.

77. For two years following termination, Hanson shall not, within any jurisdiction or marketing area in which BRG or any of its subsidiaries is doing business, directly or indirectly, own, manage, operate, control, be employed by or participate in the ownership, management, operation or control of, any business of the type and character engaged in or competitive with BRG. (*Id.* § 6(a))

78. Also, for the same two year period, whether or not he was terminated for cause, Hanson may not directly or indirectly, (i) employ, solicit for employment or otherwise contract for the services of any individual who is an employee of BRG or any of its subsidiaries; or (ii) otherwise induce or attempt to induce any employee of BRG or any of its subsidiaries to leave the employ of BRG or such subsidiary, or in any way knowingly interfere with the relationship between BRG or any such subsidiary and any employee respectively thereof. (*Id.* § 6(b))

79. Both Hanson and BRG “acknowledge that the time, scope, geographic area and other provisions of this Section 6 have been specifically negotiated by sophisticated commercial parties and agree that they consider the restrictions and covenants contained in this Section 6 to

be reasonable and necessary for the protection of the interests of the Company and its subsidiaries.” (Employment Agreement § 6(j)).

80. Starwood has serious concerns that Hanson may breach the provisions of Section 6 of his employment agreement now that he has been terminated for Cause.

81. Hanson has control over access to BRG’s office space and unlimited access to BRG’s confidential information and employees.

82. Hanson may refuse to leave the premises, bar the Starwood Representatives and other representatives and agents of Starwood from the premises, seek to disparage Starwood to BRG’s employees, solicit BRG employees to resign and join him in a competing venture, and/or abscond with BRG’s confidential information, all in violation of his Employment Agreement.

**COUNT I  
DECLARATORY JUDGMENT**

83. Starwood re-alleges and incorporates by reference paragraphs 1-82 as if fully set forth herein.

84. By reason of the facts set forth above, an actual, present, and justiciable controversy exists between Starwood and Hanson regarding the enforcement of his Employment Agreement.

85. Starwood seeks a declaratory judgment for the purpose of determining this actual controversy between the parties.

86. As set forth above, a dispute has arisen between Starwood and Hanson with respect to his Employment Agreement.

87. Starwood seeks a declaration regarding the parties' respective rights and obligations relating to Hanson's Employment Agreement, including declarations that:

- (a) Hanson has breached the terms and conditions of his Employment Agreement as set forth above;
- (b) Starwood and the Starwood Representatives properly terminated Hanson for Cause within the meaning of the Employment Agreement;
- (c) Because Hanson has been terminated for Cause, he remains bound by all post-employment restrictive covenants and other restrictions set forth above.

WHEREFORE, Starwood respectfully requests a declaratory judgment in its favor as set forth above, injunctive relief enforcing the termination and the terms of the Employment Agreement, and such other and further relief as this Court deems just and proper.

Dated: October 30, 2013  
New York New York

Respectfully Submitted,

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