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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

10
11 In the Matter of:) FIL ORG ID.: 102063
12)
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
14)
Complainant,)
15 v.)
16)
BEST WESTERN INTERNATIONAL, INC.,)
17)
Respondent.)
18)
19)

20 The Commissioner of Business Oversight (Commissioner) and Best Western International,
21 Inc. (collectively, the Parties) enter this Consent Order with respect to the following facts:

22 **I.**
23 **Recitals**

24 A. The Commissioner is authorized to administer and enforce the provisions of the
25 Franchise Investment Law (Corporations Code section 31000, et seq.) (FIL) and the rules and
26 regulations promulgated thereunder which control the registration, offer and sale of franchises in
27 California.

28 B. Best Western International, Inc. is a non-profit corporation formed and existing under the
laws of the State of Arizona and authorized to do business in California. Best Western International,

1 Inc. has its principal place of business located at 6201 North 24th Parkway, Phoenix, Arizona 85016.

2 C. The members of Best Western International, Inc. have operated member hotels
3 throughout the United States since 1946. In California alone, there are currently over 400 member
4 hotels.

5 D. David T. Kong is the Chief Executive Officer of Best Western International, Inc. and, as
6 such, is authorized to enter into this Consent Order on Best Western International, Inc.’s behalf.

7 E. In 1988, the Department of Corporations (predecessor to the Department of Business
8 Oversight or DBO) filed a civil enforcement action against Best Western International, Inc. for
9 selling non-registered franchises, resulting in a Final Judgment for Permanent Injunction entered on
10 July 29, 1988 in the Superior Court for the State of California, Los Angeles County (the 1988
11 Injunction), requiring Best Western to comply with all aspects of the FIL in offering or selling
12 franchises, including that it file a notice of exemption under Corporations Code section 31101, if
13 applicable, or register its franchise offer with the Commissioner. The 1988 Injunction remains in
14 effect.

15 F. Since the 1988 Injunction, Best Western has not registered to offer and sell franchises
16 under the FIL in California. On April 10, 2018, BWI Licensing, Inc., a wholly owned subsidiary of
17 Best Western International, Inc., filed a franchise registration application with the DBO to convert
18 current California Best Western hotels into franchises and to offer and sell new hotel franchises in
19 California.

20 G. The DBO thereafter conducted an investigation into Best Western International, Inc.’s
21 activity in California from 1988 to 2018. The DBO determined that Best Western International, Inc.
22 filed no effective notices of exemption under Corporations Code section 31101 for the years 1991 to
23 2018.

24 H. The DBO concluded that, from 1988 to 2018, a period in which the 1988 Injunction
25 remained in effect, Best Western International, Inc. violated the provisions of the FIL by offering
26 and selling 145 franchises in California without such offers being registered or exempted, in
27 violation of Corporations Code section 31110.

28 I. It is the intention and desire of the Parties to resolve this matter without the necessity of a

1 hearing and/or other litigation.

2 J. The Commissioner finds that this action is appropriate, in the public interest, and
3 consistent with the purposes fairly intended by the policies and provisions of this law.

4 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
5 forth herein, the Parties agree as follows:

6 **II.**
7 **Terms and Conditions**

8 1. Purpose. The purpose of this Consent Order is to resolve the Commissioner’s
9 investigation into the violations of Corporations Code section 31110 discovered during her
10 examination of Best Western International, Inc. in a manner that avoids the expense of court
11 proceedings and a hearing, is in the public interest, protects consumers, and is consistent with the
12 purposes, policies, and provisions of the FIL.

13 2. Finality of Consent Order. Best Western International, Inc. hereby agrees to comply with
14 this Consent Order and, further, stipulates that this Consent Order is hereby deemed a final and
15 enforceable order.

16 3. Desist and Refrain Order. Best Western International, Inc. hereby stipulates that, in
17 accordance with Corporations Code section 31402, Best Western International, Inc. will desist and
18 refrain from violating Corporations Code section 31110.

19 4. Penalties. Best Western International, Inc. agrees to pay administrative penalties in the
20 amount of \$500,000.00. Such payment shall be made by Best Western International, Inc., within 10
21 days of the effective date of this Consent Order, as such date is defined in Paragraph 18, made
22 payable in the form of a cashier’s check or Automated Clearing House deposit to the “Department of
23 Business Oversight,” and transmitted to the attention of Accounting – Enforcement Division,
24 Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice
25 of all payments will be sent to Robert Lux, Senior Counsel, at Robert.Lux@dbo.ca.gov.

26 5. Investigative Costs. Best Western International, Inc. agrees to pay the Commissioner’s
27 investigative costs in the amount of \$10,000.00. Such payment shall be made by Best Western
28 International, Inc. within 10 business days of the effective date of this Consent Order, made payable
in the form of a cashier’s check or Automated Clearing House deposit to the “Department of

1 Business Oversight,” and transmitted to the attention of Accounting – Enforcement Division,
2 Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice
3 of all payments will be sent to Robert Lux, Senior Counsel, at Robert.Lux@dbo.ca.gov.

4 6. Waiver of Hearing Rights. Best Western International, Inc. acknowledges that the
5 Commissioner is ready, willing, and able to proceed with the filing of an enforcement action on the
6 violations contained in this Consent Order, and Best Western International, Inc. hereby waives the
7 right to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded
8 pursuant to the FIL. Best Western International, Inc. further expressly waives any requirement for
9 the filing of any action under the Administrative Procedure Act, the Code of Civil Procedure, or any
10 other provision of law; and by waiving such rights, Best Western International, Inc. effectively
11 consents to this Consent Order becoming final.

12 7. Full and Final Settlement. The Parties hereby acknowledge and agree that this Consent
13 Order is intended to constitute a full, final, and complete resolution of the violations described herein
14 and that no further proceedings or actions will be brought by the Commissioner in connection with
15 these matters either under the FIL, or any other provision of law, excepting therefrom any
16 proceeding to enforce compliance with the terms of this Consent Order, or a proceeding or action
17 based upon discovery of new and further violations of the FIL which do not form the basis for this
18 Consent Order or which Best Western International, Inc. knowingly concealed from the
19 Commissioner.

20 8. Binding. This Consent Order is binding on all the Parties’ heirs, assigns, and/or successors
21 in interest.

22 9. Commissioner’s Duties. The Parties further acknowledge and agree that nothing contained
23 in this Consent Order shall operate to limit the Commissioner’s ability to assist any other agency
24 (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought by any
25 such agency against Best Western International, Inc. or any other person based upon any of the
26 activities alleged in these matters or otherwise.

27 10. Future Actions by Commissioner. This Consent Order may be revoked, and the
28 Commissioner may pursue any and all remedies available under law against Best Western

1 International, Inc. if the Commissioner later discovers that Best Western International, Inc.
2 knowingly or willfully withheld information used for and relied upon in this Consent Order.
3 Further, Best Western International, Inc. agrees that this Consent Order does not resolve any
4 penalties that may be assessed by the Commissioner upon discovery of new and further violations of
5 the FIL.

6 11. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it
7 has received independent advice from its attorney(s) and/or representatives with respect to the
8 advisability of executing this Consent Order.

9 12. Counterparts. The Parties agree that this Consent Order may be executed in one or more
10 separate counterparts, each of which when so executed, shall be deemed an original. Such
11 counterparts shall together constitute and be one and the same instrument.

12 13. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
13 Consent Order shall not operate to waive any other provision set forth herein. No waiver,
14 amendment, or modification of this Consent Order shall be valid or binding to any extent unless it is
15 in writing and signed by all of the Parties affected by it.

16 14. Headings and Governing Law. The headings to the paragraphs of this Consent Order are
17 inserted for convenience only and will not be deemed a part hereof or affect the construction or
18 interpretation of the provisions hereof. This Consent Order shall be construed and enforced in
19 accordance with and governed by California law.

20 15. Full Integration. Each of the Parties represents, warrants, and agrees that in executing
21 this Consent Order it has relied solely on the statements set forth herein and the advice of its own
22 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
23 Order it has placed no reliance on any statement, representation, or promise of any other party, or
24 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
25 person or entity to make any statement, representation or disclosure of anything whatsoever. The
26 Parties have included this clause: (a) to preclude any claim that any party was in any way
27 fraudulently induced to execute this Consent Order; and (b) to preclude the introduction of parol
28 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

1 16. Presumption from Drafting. In that the Parties have had the opportunity to draft, review
2 and edit the language of this Consent Order, no presumption for or against any party arising out of
3 drafting all or any part of this Consent Order will be applied in any action relating to, connected to,
4 or involving this Consent Order. Accordingly, the Parties waive the benefit of Civil Code section
5 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a
6 contract should be interpreted most strongly against the party who caused the uncertainty to exist.

7 17. Voluntary Agreement. Best Western International, Inc. enters this Consent Order
8 voluntarily and without coercion and acknowledges that no promises, threats or assurances have
9 been made by the Commissioner or any officer, or agent thereof, about this Consent Order.

10 18. Effective Date. This Consent Order shall not become effective until signed by all Parties
11 and delivered by the Commissioner’s counsel by email to Best Western International, Inc. counsel,
12 Mr. David Oppenheim at: oppenheimd@gtlaw.com.

13 19. Public Record. Respondent acknowledges that this Consent Order is a public record.

14 20. Authority to Execute. Each signatory hereto covenants that he/she possesses all
15 necessary capacity and authority to sign and enter this Consent Order.

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IN WITNESS WHEREOF, the Parties have approved and executed this Consent Order on the dates set forth opposite their respective signatures.

Dated: 3/29/19

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 3/28/19

BEST WESTERN INTERNATIONAL, INC.

By _____
DAVID T. KONG
Chief Executive Officer

APPROVED AS TO FORM AND CONTENT:

DAVID W. OPPENHEIM, ESQ.