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

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Best Western International, Inc., an
Arizona non-profit corporation,

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No. CV-08-1740-PHX-DGC

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Plaintiff,

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ORDER

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vs.

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Niagara River Hotels, Inc., a Canadian
corporation; and Mangat Verma,

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Defendants.

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Plaintiff Best Western International, Inc. filed a complaint against Defendants Niagra River Hotels, Inc. and Mangat Verma asserting various state and federal law claims arising from Defendants' alleged unlawful use of Plaintiff's marks and alleged failure to pay monies owed to Plaintiff. Dkt. #1. Plaintiff has filed a motion for default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure. Dkt. #23. For reasons that follow, the Court will deny the motion without prejudice.

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Because Defendants' default has been properly entered under Rule 55(a) (*see* Dkt. ##17-20), the Court has discretion to grant default judgment against Defendants pursuant to Rule 55(b). *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986). Factors the Court should consider in deciding whether to grant default judgment include (1) the possibility of prejudice to Plaintiff, (2) the merits of the claims, (3) the sufficiency of the complaint, (4) the amount of money at stake, if any,

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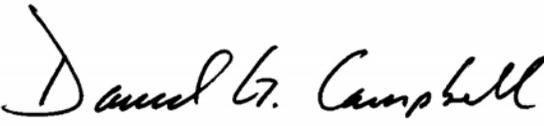
1 (5) the possibility of a dispute concerning material facts, (6) whether default was due to
2 excusable neglect, and (7) the policy favoring a decision on the merits. *See Eitel v. McCool*,
3 782 F.2d 1470, 1471-72 (9th Cir. 1986).

4 Because Plaintiff does not address the *Eitel* factors (*see* Dkt. ##23-24), the Court
5 will deny the motion for default judgment without prejudice. Plaintiff shall have until
6 **May 29, 2009** to refile the motion. The new motion shall fully address each *Eitel* factor and
7 also shall include an explanation and evidence sufficient to support any calculation of
8 damages, including the mean of the Hotel's room rates, the number of rooms, and the number
9 of days the Hotel used Plaintiff's marks after termination of the parties' agreement. *See*
10 *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (factual allegations of the
11 complaint relating to the amount of damages are not taken as true on a motion for default
12 judgment); Fed. R. Civ. P. 8(b)(2)(6) ("An allegation – other than one relating to the amount
13 of damages – is admitted if a responsive pleading is required and the allegation is not
14 denied.").

15 **IT IS ORDERED:**

- 16 1. Plaintiff's motion for default judgment (Dkt. #23) is **denied** without prejudice.
- 17 2. Plaintiff shall have until **May 29, 2009** to file a new motion for default
18 judgment consistent with this order.

19 DATED this 14th day of May, 2009.

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David G. Campbell
United States District Judge