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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Bright LLC,

10 Plaintiff,

11 v.

12 Best Western International Incorporated,

13 Defendant.
14

No. CV-17-00463-PHX-ROS

ORDER

15 Bright is a Kansas entity that operates a hotel in Lenexa, Kansas. Bright applied to
16 become a member of Best Western and to operate its hotel as a Best Western hotel.
17 Pursuant to the parties' executed agreements, Best Western conditionally granted
18 membership to Bright. In order for full membership to vest, Bright was required to perform
19 certain renovations to its hotel by a deadline. Bright requested and received multiple
20 extensions to the deadline. However, in December 2015, Best Western denied Bright's
21 final extension request and terminated Bright's conditional membership. Bright sued Best
22 Western for breach of contract, breach of the covenant of good faith and fair dealing, unjust
23 enrichment, and promissory estoppel. Best Western brought counterclaims for breach of
24 contract and breach of the covenant of good faith and fair dealing. Best Western now
25 moves for summary judgment on Bright's claims and Best Western's counterclaim for
26 breach of contract. For the following reasons, Best Western's Motion for Summary
27 Judgment (Doc. 127) is granted in part and denied in part.
28

1 **BACKGROUND**

2 Best Western International (“Best Western”) is an Arizona non-profit organization
3 that licenses the Best Western brand and reservation system to independent member
4 hotels.¹ (Doc. 131 at 2.) Best Western is governed by a seven-member Board of Directors.
5 (Doc. 131-1 at 16.) Bright LLC (“Bright”) is a Kansas entity owned by Jayesh Koshiya
6 (42%), Sanjay Koshiya (28%), and Ila Patel (30%). (Doc. 139-1 at 36.) In March 2013,
7 Bright owned a hotel in Lenexa, Kansas, operating under the Suburban Extended Stay
8 brand (the “Hotel”). (Docs. 131 at 3; 139 at 4.) Jayesh Koshiya (“Koshiya”) was the
9 manager of Bright. (Doc. 139-1 at 35.) Koshiya testified he was also “the owner or part
10 owner of about at least a half dozen or seven hotels.” (Doc. 139-3 at 16.)

11 In March 2013, Bright applied to become a Best Western member and to convert
12 the Hotel to the Best Western brand. (Docs. 131 at 3; 139 at 4.) Koshiya signed the
13 application as Bright’s authorized representative. (Doc. 131-1 at 19–20.) The Membership
14 Application stated: “By submitting this Membership Application (‘Application’) [you] are
15 requesting that Best Western International, Inc. (‘Best Western’) consider your request to
16 affiliate the property identified in this Application (‘Property’) with the Best Western
17 brand.” (Doc. 131-1 at 19.) The Application further stated: “In the event the Application
18 is approved by the Board, and as a prior condition to your membership, you will be required
19 to submit: (a) an executed Terms of Approval letter (‘Approval Letter’) which will include
20 conditions of membership (e.g. completion of a Property Improvement Plan); and (b) an
21 executed Membership Agreement (‘Agreement’). You may not hold yourself out to the
22 public as a Best Western branded hotel until all conditions are met.” (Doc. 131-1 at 19.)

23 The Application contained an “Applicant Information” form. Under a section titled
24 “Proposed Construction/Under Construction Project,” the form noted: “All facilities
25 associated with the hotel Property . . . are subject to Best Western inspection. If the
26 Property is approved for Best Western membership, all such facilities will be subject to
27 any renovation deemed necessary by Best Western.” (Doc. 131-1 at 24.) The same section

28 ¹ Unless otherwise noted, factual statements included in the Court’s summary are undisputed.

1 contained a question: “Is financing in place?” Koshiya checked the “yes” bubble and wrote
2 Valley View Bank KS as the source of financing. (Doc. 131-1 at 23.) In his deposition,
3 Koshiya testified that when he answered this question, he “did not have the financing in
4 place according to what Best Western wanted to submit the application, but [he] had
5 existing financing in place for [his] existing hotel, which is a Suburban Extended Stay.”
6 (Doc. 131-2 at 66.) In other words, when he answered “yes” to the question about having
7 financing in place, he meant there was existing “debt on the hotel as opposed to financing
8 to do the conversion.” (Doc. 131-2 at 66.) Koshiya further testified that, at the time of the
9 application, there was no financing in place to convert the hotel to a Best Western. (Doc.
10 131-2 at 66.)

11 On May 9, 2013, Koshiya emailed Greg Burgett, Best Western’s Regional Director
12 of North American Development, asking whether Best Western had received Bright’s
13 application and check. Koshiya also requested Burgett to “[p]lease get elevator and pool
14 waiver approval as well.” (Doc. 139-4 at 2.) Burgett responded that Best Western had
15 received the signed documents and check. Burgett also stated: “Additionally, the elevator
16 and pool waivers will not be a problem.” (Doc. 139-4 at 2.)

17 Best Western conditionally approved Bright’s application through a letter dated
18 May 28, 2013. (Doc. 131-1 at 38.) Enclosed within the letter were two additional
19 documents: The Terms of Approval and Membership Agreement. (Doc. 131-1 at 38.) Best
20 Western’s letter stated: “You must indicate your agreement with the Membership
21 Agreement and the Terms of Approval by returning completed, signed originals of both by
22 June 12, 2013.” (Doc. 131-1 at 38.) Both documents indicated that Best Western
23 membership would not fully vest until certain conditions were met. (Doc. 131-1 at 55
24 (“Only after all of the Terms of Approval have been timely satisfied, will the Best Western
25 Membership be granted and Membership procedural rights become available.”; Doc. 131-
26 1 at 76 (“Membership rights shall not be granted until such time as the Property has been
27 activated on Best Western’s reservation system and the Initial Term has begun.”).)

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1 The Terms of Approval required: “By signing and returning the Membership
2 Agreement and the Terms of Approval, you agree . . . [t]o complete the Property
3 Improvement Plan.” (Doc. 131-1 at 42.) It further stated: “The property has up to June 12,
4 2014 (twelve months) to open and operate as a Best Western branded hotel,” and that the
5 “application was approved with 110 units. Unit Count Changes are subject to Best Western
6 approval.” (Doc. 131-1 at 41, 49.) In the event Bright could not open and operate within
7 that time, the Terms of Approval provided: “If more than ‘twelve months’ are needed to
8 be open and operating as a Best Western branded hotel, and an extension is requested at
9 least thirty days prior to the expiration of this ‘twelve month’ period, Best Western shall
10 have sole discretion as to whether to grant an extension and whether a fee shall be required
11 for the extension (e.g., a monthly fee).” (Doc. 131-1 at 41.) Best Western’s internal policy
12 governed extension requests generally: Best Western management was authorized to “(a)
13 Grant a total of six months of extended time to Activate. The six months of extended time
14 shall be at no cost to the Property; and (b) Grant up to twelve months of additional time in
15 three-month increments to Activate upon the request and agreement of the Property to pay
16 one-fourth (1/4th) of the Property’s Best Western Entrance Fee for each three-month
17 increment.” (Doc. 131-1 at 5.) Management was not permitted to grant extensions past
18 eighteen months and “anything further would have to go to the Board to be approved.”
19 (Doc. 131-2 at 88.)

20 The Membership Agreement provided, in relevant part, that Bright “shall have no
21 recourse of any kind against Best Western, its directors, officers, employees, agents or
22 Members for failure to grant Membership unless [Bright] has strictly, absolutely and timely
23 complied with each and every requirement imposed upon Member by Best Western.”
24 (Doc. 131-1 at 79.) It also limited damages to “actual damages for any breach or default
25 by Best Western of any obligation or duty owed to [Bright],” and further limited “Best
26 Western’s liability for any damages [to] the amount of Membership fees actually paid by
27 [Bright] in connection with the Property, during a single fiscal year in which the breach or
28 default occurred.” (Doc. 131-1.)

1 Among the conditions required by the Terms of Approval was Bright’s performance
2 of substantial renovations in accordance with a Property Improvement Plan. (Doc. 131-1
3 at 42.) The Property Improvement Plan listed required improvements including, for
4 example, adding a breakfast room and renovating the lobby. (Doc. 131-1 at 58–71.) In
5 addition, the Property Improvement Plan stated that hotels with 100–199 rooms, as Bright’s
6 hotel had, required a minimum of two elevators. (Doc. 131-1 at 62.) Prior to signing the
7 documents, Bright attempted to obtain a waiver of the second elevator requirement. (Doc.
8 131-2 at 77.) On May 28, 2013, Burgett informed Koshiya “the waiver for the second
9 elevator was denied due to [the Hotel] being a four story structure,” despite Burgett’s
10 earlier email stating that obtaining the wavier would not be a problem. (Docs. 131-1 at 74;
11 139-4 at 2.) Burgett apologized and asked if Koshiya wished to “[withdraw] this project
12 and have the check returned to you.” (Doc. 131-1 at 74.) Nevertheless, on June 20, 2013,
13 Koshiya signed both documents on behalf of Bright and agreed to be jointly and severally
14 liable for Bright’s obligations to Best Western. (Docs. 131 at 4; 139 at 6.)

15 On November 11, 2013, Koshiya emailed Amy Lowry, Best Western’s New
16 Member Development Manager. Koshiya informed Lowry that Bright had “just started
17 initial work for conversion.” (Doc. 131-1 at 87.) Koshiya further stated: “We are just
18 getting [a] little set back from our existing [lender] as this is going to be expensive
19 renovation project and we required to have closer to 2 million additional loan.” (Doc. 131-
20 1 at 87.) He stated Bright had found another lender to finance the conversion and that he
21 thought “this deal is going to go through 100%.” (Doc. 131-1 at 87.) Because of the need
22 for additional financing, Koshiya requested an “additional 12 months extension” to the
23 original deadline of June 12, 2014. (Doc. 131-1 at 87.) On February 11, 2014, Koshiya
24 again emailed Lowry, stating “I would like to request extension for [the conversion project]
25 till end of December 2014.” (Doc. 131-1 at 95.) Best Western approved this extension:
26 Lowry wrote to Koshiya confirming that “two 90 day gratis extensions to be open and
27 operating as a Best Western hotel has been granted until December 12, 2014.” (Doc. 131-
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1 1 at 97.) Lowry informed Koshiya that although these two extensions were free, any
2 additional extensions would require a fee. (Doc. 131-1 at 97.)

3 On November 24, 2014, Koshiya emailed Verena Zurcher, another Best Western
4 New Member Development Manager. (Doc. 131-2 at 16.) Koshiya stated: “During last
5 year we made our full efforts to get this project loan approved and met with many [lenders]
6 but it was difficult time for everyone in banking industry. . . . We did not start or perform
7 any work so far because we were not able to get the additional fund[ing] required to finish
8 this project. At this point we have met the banker and they are taking our loan to the
9 committee and have assured us that they will get it approved and issue us commitment
10 letter. We feel very strong about getting it approved.” (Doc. 131-2 at 16.) Koshiya asked
11 for “another 7 to 8 month[s] of extension to get this project started and completed.” (Doc.
12 131-2 at 16.) On December 18, 2014, Cheryl Pollack, Best Western’s Director of Member
13 Care and Development Administration, responded to Koshiya’s request. She confirmed
14 that “an extension to be open and operating as a Best Western hotel has been granted until
15 September 12, 2015.” (Doc. 131-2.) This included three 90-day extensions; Bright was
16 required to pay \$14,500 for each extension. (Doc. 131-2 at 13.) Bright paid the required
17 fees. (Doc. 131 at 9.)

18 In January 2015, Bright again tried to obtain a waiver for the second elevator
19 requirement. (Doc. 131-2 at 77.) Koshiya testified that he spoke with Gloria Gaddis and
20 Greg Burnett,² Best Western representatives, about potentially reducing the number of
21 rooms in the Hotel in order to waive the second elevator requirement. (Doc. 131-2 at 77.)
22 The Property Improvement Plan required Bright to “[p]rovide a minimum of two elevators
23 for hotels with 100–199 rooms.” (Doc. 131-1 at 62.) Koshiya testified Bright was willing
24 to “cut down a few rooms and make the room count around 98 rooms so we don’t have to
25 have the second elevator.” (Doc. 131-2 at 77.) On January 20, 2015, Best Western denied
26 Bright’s request for the waiver after consideration by the Best Western Review Committee.
27 (Doc. 139-3 at 51.) Koshiya testified Best Western denied his request because its bylaws

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² Koshiya could not recall when he had the conversation. (Doc. 131-2 at 77.)

1 required hotels with four stories or more—even if they had fewer than 100 rooms—to have
2 at least two elevators, which was not explicitly stated in the Property Improvement Plan.
3 (Doc. 131-2 at 77–78.)

4 On August 26, 2015, Koshiya requested yet another extension. (Doc. 131-2 at 27.)
5 Koshiya wrote: “There are several reasons we could not start the project on timely manner
6 and they are listed below. Now we are 100% ready to start construction and should be able
7 to complete it quickly.” (Doc. 131-2 at 13.) Koshiya requested an extension until March
8 31, 2016 and stated he was “100% sure that [Bright] will be able to complete everything
9 on or before 3/31/2016.” (Doc. 131-2 at 28.) David Nuss, Best Western’s Regional New
10 Member Development Manager, communicated with Regional Director Chris Campbell
11 regarding Bright’s extension request. (Doc. 139-6 at 8.) Nuss informed Campbell: “Their
12 extension is up 9/12. They will need another paid extension to bring them to 12/12/15 (this
13 would be their 4th paid extension). They are not expecting to be completed until the end of
14 Feb of 2015 so any extension requests following this 9/12 to 12/12/15 request would have
15 to go before [B]oard.” (Doc. 139-6 at 8.) Campbell responded: “I’m ok with this next 90
16 days but I’m going to start working a new construction deal in the market, so [Bright] may
17 not get the one in December if that deal comes about.” (Doc. 131-2 at 30.) Nuss also
18 emailed Ron Pohl, Senior Vice President of Brand Management and Member Services, for
19 approval of Bright’s extension request. (Doc. 139-6 at 40.) Pohl responded: “Approved,
20 but this is the last one.” (Doc. 139-6 at 40.) On September 4, 2015, Pohl wrote to Koshiya
21 and granted a 90-day extension until December 12, 2015. (Doc. 131-2 at 33.) This
22 extension required another \$14,500 fee. (Doc. 131-2 at 33.) Although Koshiya had asked
23 for an extension until March 2016, Pohl did not grant the extension until March. Rather,
24 Pohl informed Koshiya that “any further extension requests will require review and
25 approval by the Best Western Board of Directors.” (Doc. 131-2 at 33.) Bright states it
26 began demolition on September 8, 2015, and notified Best Western of its demolition
27 schedule. (Docs. 136 at 5; 139-1 at 14.)

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1 In November 2015, Koshiya asked Best Western for another extension. (Doc. 131-
2 2 at 47.) Koshiya emailed Nuss, attaching photographs of renovation progress, and
3 promised he “will not need any more extension after this one.” (Doc. 131-2 at 47.) Koshiya
4 informed Nuss that Bright had spent “1.2 million out of pocket and we will [be] spending
5 1 million in next 90 days to finish outstanding work.” (Doc. 131-2 at 47.) Internal emails
6 show that Best Western considered the options of granting Bright additional paid
7 extensions or allowing another hotel developer to construct a new Best Western hotel in
8 the same area. In the event Best Western received an application from the other developer,
9 Vice President of Owner Relations Michael Morton suggested “telling the board we have
10 a new construction app and recommend we cut ties with [Bright].” (Doc. 139-4 at 19.) In
11 a letter dated December 15, 2015, Best Western informed Koshiya the Board had reviewed
12 his extension request and decided to not approve the request. (Doc. 131-2 at 53.) The
13 letter further stated: “As a result, Best Western International, Inc. considers your
14 application withdrawn and has terminated your conditional approval for this project.”
15 (Doc. 131-2 at 53.) Best Western additionally asked Bright to send payment in the amount
16 of \$111,000.000, pursuant to a provision in the Terms of Approval that stated: “If the
17 applicant conducts hotel operations at the approved location under another brand or as an
18 independent hotel, the applicant shall pay to Best Western a fee equal to one thousand
19 dollars (\$1,000) per hotel guest room[.]” (Doc. 131-2 at 53.) To date, Bright has not made
20 this payment. (Doc. 139 at 44.)

21 Best Western moved for summary judgment on April 30, 2018. (Doc. 127.) On
22 July 27, 2018, the Court granted Bright’s Motion to Amend the Complaint to add additional
23 defendants. (Doc. 155.) The parties subsequently stipulated to dismiss Defendants PG
24 West, Beth Campbell, and Dilipkumar Patel. (Doc. 186.) Upon reconsideration, the Court
25 denied the Motion to Amend. (Doc. 190). As such, the Amended Complaint (157) shall
26 be stricken and the remaining individual defendants shall be terminated.

1 at this time.” (Doc. 139-1 at 6.) According to Haupt, Chris Campbell, a former Best
2 Western employee, has yet to be deposed and has “personal knowledge of BW’s efforts to
3 solicit another applicant in the Lenexa, Kansas area and its decision to select another hotel
4 developer for the area and terminate Bright’s conditional membership.” (Doc. 139-1 at 6.)
5 Haupt also states: “Additional depositions may need to be taken of BW witnesses Ron Pohl
6 and Greg Burgett.” (Doc. 139-1 at 8.) Further, Haupt declares the depositions of Hasmukh
7 “Harry” Patel and Sanjay Koshiya were stayed while Bright’s Motion to Disqualify
8 Counsel was pending. (Doc. 139-1 at 7.) Finally, Bright argues that at the time Best
9 Western moved for summary judgment, the deadline for the parties to make expert
10 disclosures and exchange expert reports had not yet passed. (Doc. 136 at 12.)

11 Bright’s request under Rule 56(d) is denied. The deadline to complete fact
12 discovery was April 2, 2012. (Docs. 81; 191.) Bright is incorrect that fact discovery was
13 “at a standstill” when Best Western moved for summary judgment on April 30, 2018. As
14 the Court stated in a prior order, Bright is not entitled to additional fact discovery and to
15 take the depositions of Campbell, Pohl, or Burgett. (Doc. 191.) The Court previously
16 explained Bright’s motion to stay applied only to the depositions of Sanjay Koshiya and
17 Hasmukh “Harry” Patel. (Doc. 191 at 2.) Both of these individuals are principals of Bright.
18 Best Western, not Bright, was scheduled to depose them before the stay. Bright does not
19 show how Best Western’s failure to depose these witnesses has precluded *Bright* from
20 discovering facts essential to oppose summary judgment. Bright’s argument regarding
21 expert disclosures similarly does not explain what additional facts Bright needs to oppose
22 summary judgment. While the parties had not made expert disclosures or exchanged expert
23 reports when Best Western’s motion for summary judgment was filed, Bright submitted
24 affidavits from two proposed expert witnesses. (Doc. 139-1 at 7.)

25 **II. Bright’s Claims**

26 Bright sued Best Western for (1) breach of contract; (2) breach of the implied
27 covenant of good faith and fair dealing; (3) unjust enrichment; and (4) promissory estoppel.
28

1 First, Bright claims Best Western breached the Terms of Approval by terminating
2 the agreement and withdrawing Bright's application for membership. (Doc. 1 at 9.) Best
3 Western points out the Terms of Approval provided: (1) "The property has up to June 12,
4 2014 . . . to open and operate as a Best Western branded hotel"; (2) "Any failure to comply
5 with these Terms of Approval may result in cancellation of the application and the
6 Membership Agreement"; and (3) "If more than [12 months] are needed to be open and
7 operating as a Best Western branded hotel . . . Best Western shall have sole discretion as
8 to whether to grant an extension." (Doc. 131-1 at 41; 54.) There is no question the Hotel
9 did not open and operate as a Best Western branded hotel by June 12, 2014. (Doc. 131-1
10 at 41.) Best Western cancelled Bright's application and conditional membership pursuant
11 to Best Western's failure to fully comply with the Terms of Approval.

12 In Response, Bright does not point to any provision of the contract that Best Western
13 allegedly breached. Rather, Bright argues "fraud vitiates all transactions" and Best
14 Western "breached the contract . . . through its fraudulent actions and by making significant
15 misrepresentations to Bright during the renovation of the Hotel." (Doc. 136 at 7 (citation
16 omitted).) There is no fraud claim in this case and the Court previously denied Bright's
17 motion to add fraud claims. (Doc. 155.) Bright has not cited any cases supporting its
18 theory that Best Western breached the contract through fraudulent actions. In any event,
19 the Membership Agreement provided Bright "shall have no recourse of any kind against
20 Best Western . . . for failure to grant Membership unless [Bright] has strictly, absolutely
21 and timely complied with each and every requirement imposed upon Member by Best
22 Western." (Doc. 131-1 at 77.) There is no dispute that Bright did not comply with the
23 requirement that it open and operate a Best Western branded hotel by the required deadline.
24 (Doc. 131-1 at 41.) Therefore, Best Western's motion for summary judgment regarding
25 the breach of contract claim is granted.

26 Second, Bright claims Best Western breached the covenant of good faith and fair
27 dealing when it granted Bright the September 2015 extension despite knowing Bright
28 would require more time, and when it discussed with another hotel developer the possibility

1 of opening a different Best Western hotel in the same area. Under Arizona law, every
2 contract implies a covenant of good faith and fair dealing. *See Bike Fashion Corp. v.*
3 *Kramer*, 202 Ariz. 420, 423 (Ariz. Ct. App. 2002). When a contract grants one party
4 discretion, that party can still “breach the implied covenant of good faith and fair dealing
5 both by exercising express discretion in a way inconsistent with a party’s reasonable
6 expectations and by acting in ways not expressly excluded by the contract’s terms but
7 which nevertheless bear adversely on the party’s reasonably expected benefits of the
8 bargain.” *Id.* at 424. Here, Best Western had the “sole discretion” to grant extensions
9 under the Terms of Approval. (Doc. 131-1 at 41.) Bright argues material questions of fact
10 exist as to whether Best Western acted in bad faith by exercising its discretion in a way
11 that was inconsistent with Bright’s reasonable expectations. Aside from conclusory
12 statements that Bright had a reasonable expectation that Best Western would continue
13 granting extensions until the project was complete, (Doc. 139-1 at 19), Bright cites no
14 evidence showing Best Western acted in bad faith.⁵ Bright points to internal Best Western
15 emails discussing the possibility of allowing another hotel developer to construct a Best
16 Western hotel in the same area and “cut[ting] ties” with Bright. (Doc. 139-4 at 19.) But
17 Best Western is “entitled to act to protect [its] financial interest . . . without violating the
18 covenant of good faith and fair dealing,” especially in light of Bright’s repeated unfulfilled
19 promises about its renovation plans. *ABCDW LLC v. Banning*, 241 Ariz. 427, 439 (Ariz.
20 Ct. App. 2016). Bright also suggests Best Western acted in bad faith when it granted Bright
21 its last extension despite knowing it was insufficient to complete the project, citing an email
22 from Pohl stating “[t]his is the last one” as evidence that Best Western never intended to
23 grant additional extensions to allow Bright to finish renovations. However, Best Western
24 is correct that Pohl had no authority to grant extensions beyond the sixth, which Pohl
25 expressly told Bright in his September 5, 2015, letter stating: “Please be aware that any
26 further extension requests will require review and approval by the Best Western Board of

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28 ⁵ While Bright suggests Best Western employees represented Best Western would grant
sufficient extensions for the Hotel to open, Bright cites no evidence supporting this
proposition. (Doc. 136 at 5.)

1 Directors.” (Doc. 131-2 at 33.) Additionally, Bright’s own evidence shows Best Western
2 seriously considered granting Bright another extension in December 2015, months after
3 Pohl’s email. (Doc. 139-4 at 19.)

4 In *Regency Midwest Ventures Limited P’ship v. Best Western Int’l, Inc.*, the District
5 of Arizona considered a similar case involving Best Western and one of its members. CIV-
6 16-02491, 2017 WL 992357 (D. Ariz. Mar. 15, 2017). The plaintiff argued Best Western
7 breached the implied covenant of good faith and fair dealing because it exercised its
8 discretion in a manner inconsistent with the plaintiff’s reasonable expectations: Best
9 Western had granted the plaintiff two extensions to complete a property improvement plan
10 before refusing to grant a third extension and terminating the plaintiff’s membership. *Id.*
11 at *4. The court rejected the plaintiff’s argument that “it was reasonable to believe that as
12 long as they made adequate progress towards meeting Best Western’s standards, then Best
13 Western would not have terminated the Membership Agreement.” *Id.* Here, as in *Regency*
14 *Midwest*, Bright repeatedly failed to meet agreed-upon deadlines. Best Western made it
15 clear that failure to meet deadlines can be grounds for termination. No evidence in the
16 record suggests Best Western represented or led Bright to believe Best Western would
17 continue to grant extensions until the project was complete. As such, Best Western’s
18 motion for summary judgment regarding the breach of good faith and fair dealing is
19 granted.

20 Third, Bright claims Best Western was unjustly enriched when it collected
21 \$58,000.00 in extension fees from Bright, despite ultimately cancelling Bright’s
22 application. (Doc. 136 at 9.) Best Western argues the contract expressly provided Best
23 Western with the discretion to decide “whether a fee shall be required for the extension,”
24 and an unjust enrichment claim is unavailable where the parties have a contract that covers
25 the subject matter in dispute. (Doc. 127 at 15); *Trustmark Ins. Co. v. Bank One, Ariz., NA*,
26 48 P.3d 485, 493 (Ariz. Ct. App. 2002). Bright again invokes alleged fraud to support its
27 unjust enrichment claim: “Disputed issues of material fact exist as to whether BW’s actions
28 toward Bright were fraudulent, when it accepted \$58,000 in fees from Bright[.]” (Doc. 136

1 at 9.) Because there is no fraud claim and Bright has not cited cases showing how alleged
2 fraud can support an unjust enrichment claim, Best Western’s motion for summary
3 judgment is granted with regard to the unjust enrichment claim.

4 Fourth, Bright has presented no evidence supporting its claim of promissory
5 estoppel. In Response, Bright’s only discussion of this claim is the following sentence:
6 “As to Bright’s promissory estoppel or detrimental reliance claim, Bright’s expectations of
7 a final extension were reasonable in light of BW’s representations and prior course of
8 dealing.” (Doc. 136.) Under Arizona law, a claim of promissory estoppel requires a
9 showing that the defendant “made a promise and should have reasonably foreseen that
10 [plaintiff] would rely on that promise.” *Higginbottom v. State*, 203 Ariz. 139, 144 (Ariz.
11 Ct. App. 2002). Bright has not identified any such promise and Best Western’s motion for
12 summary judgment is granted as to this claim.

13 **III. Best Western’s Counterclaim**

14 Best Western moves for summary judgment on its breach-of-contract counterclaim
15 for liquidated damages. The Terms of Approval provided: “If the applicant conducts hotel
16 operations at the approved location under another brand or as an independent hotel, the
17 applicant shall pay to Best Western a fee equal to one thousand dollars (\$1,000) per hotel
18 guest room within thirty (30) days of Best Western’s demand for such fee payment.” (Doc.
19 131-1 at 42.) Best Western argues it is entitled to \$110,000 from Bright because Bright
20 continued to operate the Hotel as a Suburban Extended Stay after termination of the
21 contract. (Doc. 127 at 17.)

22 The provision at issue is ambiguous on its face and in application. While Best
23 Western argues it is entitled to damages because Bright operated as another brand after the
24 contract was terminated, the provision does not specify *when* Bright was prohibited from
25 operating as another brand—for example, whether Bright was expected to keep the Hotel
26 closed during the entire conditional membership or whether this provision applied only
27 after Bright failed to open and operate as a Best Western by the required deadline. The
28 record indicates Best Western employees visited the Hotel while Bright was a conditional

1 member and knew it was operating as a Suburban Extended Stay, but did not raise any
2 concerns about Bright operating under another brand at the time. Further, although Best
3 Western's counterclaim is one for breach of contract, Best Western has not pointed to the
4 contractual provision that Bright allegedly breached. And while Best Western argues
5 Bright is required to pay \$1,000 each for 110 hotel rooms because Bright's application was
6 approved for 110 rooms, Best Western does not state how many hotel rooms Bright actually
7 operated when it allegedly breached the contract. Because Best Western has not provided
8 sufficient evidence supporting its breach-of-contract claim, summary judgment is denied.
9 *See Nelson v. Cannon*, 126 Ariz. 381, 386 (Ariz. Ct. App. 1980).

10 Finally, the Court notes Best Western has not moved for summary judgment on its
11 counterclaim for breach of the implied covenant of good faith and fair dealing.

12 Accordingly,

13 **IT IS ORDERED** Best Western's Motion for Summary Judgment (Doc. 127) is
14 **GRANTED IN PART** and **DENIED IN PART**.

15 **IT IS FURTHER ORDERED** Best Western's Motion to Exceed Page Limit (Doc.
16 144) is **GRANTED**.

17 **IT IS FURTHER ORDERED** Bright's Amended Complaint shall be stricken.
18 (Doc. 157.)

19 **IT IS FURTHER ORDERED** the Clerk of Court shall terminate the following
20 defendants: Terrance Bichsel, James Cosgrove, Anthony Klok, Julie Montmaneix, Jayesh
21 Patel, and Terry Porter.

22 This matter is ready for trial. Accordingly, the Court enters the following orders.

23 **IT IS ORDERED** all Motions in Limine are due **June 19, 2019**. Responses are
24 due ten days afterward. No replies are permitted unless ordered by the Court. Prior to
25 filing any Motion in Limine, the parties must confer and discuss the contents of each
26 planned motion. No Motion in Limine should be filed if the other party does not oppose
27 the relief requested.

28

1 **IT IS FURTHER ORDERED** the Joint Proposed Pretrial Order, if not already
2 filed, is due July 3, 2019.

3 **IT IS FURTHER ORDERED** the parties will separately file their Proposed
4 Findings of Fact and Conclusions of Law no later than July 18, 2019.


5 **IT IS FURTHER ORDERED** no later than July 22, 2019, the parties shall deliver
6 to chambers excerpts of the deposition testimony they propose to present at trial, in
7 compliance with the procedures available on the Court's website (found in Deposition
8 Designation Procedure for Judge Silver), including but not limited to: Plaintiffs
9 highlighting in yellow the portions they wish to offer and Defendants highlighting in blue
10 those portions they wish to offer. If either party objects to the proposed testimony, a
11 specific and concise objection (e.g., "Relevance, Rule 402") shall be placed in the margin
12 adjacent to the proposed testimony.

13 **IT IS FURTHER ORDERED** a final pretrial conference is set for August 7, 2019
14 at 2:00PM.

15 **IT IS FURTHER ORDERED** trial to the Court is set for August 20, 2019 at
16 8:30AM. Estimated length of trial is two days.

17 **IT IS FURTHER ORDERED** the parties shall comply with the Exhibit Procedures
18 found on the Court's website at www.azd.uscourts.gov / Judges' Information / Orders,
19 Forms & Procedures for Hon. Roslyn O. Silver.

20 Dated this 28th day of February, 2019.

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23 
24 Honorable Roslyn O. Silver
25 Senior United States District Judge