

I.

PARTIES, JURISDICTION & VENUE

1. SIR is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 175 Park Avenue, Madison, NJ 07940.

2. Defendant Briggs Freeman is a franchisee of SIR and is a Texas corporation with its principal place of business located at 5600 West Lovers Lane, Suite 224, Dallas County, Dallas, Texas 75209. Briggs Freeman may be served with process by serving its registered agent for service, Robert M. Briggs, at 5600 West Lovers Lane, Suite 224, Dallas County, Dallas, Texas 75209 or wherever he may be found.

3. Defendant Penn is a real estate agent and sales associate affiliated with Briggs Freeman who operates his real estate sales business on behalf of Briggs Freeman in Fort Worth, Texas without the approval of SIR. He resides in Tarrant County, Texas, and may be served with process at 3820 Potomac Ave., Fort Worth, TX 76107, or wherever he may be found.

4. Defendant McGinnis is a real estate agent and sales associate affiliated with Briggs Freeman who operates his real estate sales business on behalf of Briggs Freeman in Fort Worth, Texas without the approval of SIR. He resides in Tarrant County, Texas, and may be served with process at 3713 Hamilton Ave., Fort Worth, TX 76107-1705, 4904 Camp Bowie Blvd., Fort Worth, TX 76107, or wherever he may be found.

5. Defendant Zimmerman is a real estate agent and sales associate affiliated with Briggs Freeman who operates his real estate sales business on behalf of Briggs Freeman in Fort Worth, Texas without the approval of SIR. He resides in Tarrant County, Texas, and may be

served with process at 6628 Turnberry Dr., Fort Worth, TX 76132, 4904 Camp Bowie Blvd., Fort Worth, TX 76107, or wherever he may be found.

6. Defendant Tyson is a real estate agent and sales associate affiliated with Briggs Freeman who operates his real estate sales business on behalf of Briggs Freeman in Fort Worth, Texas without the approval of SIR. He resides in Tarrant County, Texas, and may be served with process at 4904 Camp Bowie Blvd., Fort Worth, TX 76107, or wherever he may be found.

7. Defendant Tankersley is a real estate agent and sales associate affiliated with Briggs Freeman who operates her real estate sales business on behalf of Briggs Freeman in Fort Worth, Texas without the approval of SIR. Tankersley resides in Tarrant County, Texas, and may be served with process at 300 Fossil Bridge Dr., Fort Worth, TX 76131, or 4904 Camp Bowie Blvd., Fort Worth, TX 76107, or wherever she may be found.

8. This action arises under the trademark laws of the United States, specifically 15 U.S.C. §1051, *et seq.*

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338, 15 U.S.C. §1121 and, with respect to certain claims, the Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

10. This Court also has diversity jurisdiction pursuant to 28 U.S.C. §1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

11. This Court has personal jurisdiction over Defendants, since Defendants reside or otherwise regularly conduct business in the State of Texas.

12. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a)(2) because all or a substantial part of the events or omissions giving rise to the claim occurred within this District;

all Defendants reside within this District; and Defendant Briggs Freeman has its primary office in Dallas, Dallas County, Texas.

II.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

A. The SIR Marks and System

13. SIR is affiliated with the world-renowned Sotheby’s auction house and is one of the largest and most prestigious franchisors of real estate brokerage services in the world. See declaration of Francis X. Santangelo (“**Santangelo Declaration**”), incorporated herein by reference and attached hereto as “**Exhibit A,**” Appendix at pp. 1-14. SIR has developed a widely known system for providing brokerage services in the luxury segment of the residential real estate market, operating under the trade name, SOTHEBY’S INTERNATIONAL REALTY® (the “**System**”). Id. SIR’s company-owned and franchised brokerage offices are identified and distinguished by the System. Id.

14. SIR is the exclusive licensor of well-known and famous trademarks, service marks, designs, logos, colors, color patterns and business methods for use in the System, and for promotion of SIR services, products, programs and marketing, which are on the principal register of the United States Patent and Trademark Office (the “**SOTHEBY’S INTERNATIONAL REALTY® Marks**” or the “**SIR Marks**”):

Registration No.	Service Mark	Registration Date
1248613	Sotheby’s International Realty	August 16, 1983

Id.

15. SIR has the exclusive right to sublicense the use of the SIR Marks. Id.

16. SIR or its predecessors have continuously used each of the SIR Marks since the date of their registration, and these marks are in full force and effect pursuant to 15 U.S.C. §1065. Id.

17. SIR has given notice to the public of the registration of the SIR Marks as provided in 15 U.S.C. §1111. Id.

18. Through the System, SIR markets, promotes, and provides services to its real estate brokerage franchisees throughout the world. Id. In order to identify the origin of their luxury real estate brokerage services and to promote the SOTHEBY'S INTERNATIONAL REALTY® brand name, SIR allows its franchisees to operate under the SIR Marks and System. Id.

19. SIR has invested substantial effort over a long period of time, including the expenditure of millions of dollars, to develop goodwill in the SIR Marks to cause consumers throughout the world to recognize the SIR Marks as distinctly designating SOTHEBY'S INTERNATIONAL REALTY® luxury real estate brokerage services as originating with SIR. Id.

20. The value of the goodwill developed in the SIR Marks does not lend itself to a precise monetary calculation, but because (i) the SIR Marks are indisputably among the most famous in the world, and (ii) the System is widely known for providing brokerage services in the luxury segment of the real estate market, the value of SIR's goodwill in the SIR Marks is substantial. Id.

B. The Briggs Freeman Franchise Agreement

21. Effective as of December 1, 2010, SIR and Briggs Freeman entered into a confidential franchise agreement, whereby SIR granted Briggs Freeman the limited, non-

exclusive right to use the SIR Marks and System in the operation of a luxury residential real estate brokerage business under the licensed trade name, Briggs Freeman Sotheby's International Realty, in Dallas, Texas (the "**Agreement**"). Id. A true and correct copy of the Agreement has been filed under seal, contemporaneously herewith, in accordance with Rule 5.2 of the Federal Rules of Civil Procedure, and in accordance with Local Rule 79.3. Because the terms of the Agreement are confidential, relevant provisions to this dispute are referenced herein without disclosing other terms which are irrelevant to the dispute at issue.

22. Section 4.5 of the Agreement states, as follows:

The Marks, System and other products and items we [SIR] deliver to you [Briggs Freeman] under this Agreement (collectively, the "System Components") are our exclusive property, and your right to use them is contingent on your full and timely performance under this Agreement. You [Briggs Freeman] will be responsible for, and supervise the Business (and sales agents and employees) to ensure, the proper use of the System Components ... We [SIR] reserve the right to approve all of your public use of the Marks, except for your use of any advertising templates that we may approve and update on a periodic basis. We [SIR] may determine if you are meeting our standards for the Marks' usage. You [Briggs Freeman] will promptly correct any deficiencies we [SIR] find... You [Briggs Freeman] will use the Marks only in connection with the Business. You [Briggs Freeman] must supervise all persons working in the Business to ensure compliance with this Agreement.

23. Thus, pursuant to Section 4.5 of the Agreement, Briggs Freeman is responsible for, and must supervise its sales agents and employees to ensure the proper use of the SIR Marks and System. Id. Further, Briggs Freeman agreed that SIR has the right to approve all of Briggs Freeman's public use of the SIR Marks, and that SIR would determine if Briggs Freeman was meeting SIR's standards for use of the SIR Marks. Id. Finally, Briggs Freeman agreed that it would only use the SIR Marks in connection with its franchised business, and that Briggs

Freeman must supervise all persons working for it to ensure compliance with the Agreement. Id.

24. Section 5.1 of the Agreement states, as follows:

You [Briggs Freeman] will operate the Business only from the Office(s), and you will not operate any other business or engage in any other activity at or from the Office except in compliance with this Agreement. Unless you receive our [SIR's] written approval, you may not advertise any other location, ***conduct the Business from any other location, or take any action that leads consumers to believe that you are operating from a location other [than] an approved Office.***¹

25. The term, "Office," is defined in Exhibit C to the Agreement as "any office location covered by this Agreement."

26. Exhibit D to the Agreement states "You [Briggs Freeman] are authorized to operate Offices under the terms of this Agreement at the following addresses: 5600 West Lovers Lane, Suite 224, Dallas, Texas 75209."

27. Pursuant to an Addendum to the Agreement for each additional location, SIR also authorized Briggs Freeman to operate Offices under the terms of the Agreement at four (4) additional locations:

- a. 1000 Ballpark Way, Arlington, Texas 76011;
- b. 2500 Cedar Springs Road, Dallas, Texas 75201;
- c. 2913 Fairmont Street, Dallas, Texas 75201; and
- d. 112 State Street, Southlake, Texas 76092.

Collectively, the five (5) offices located at the approved and authorized locations identified in this and the preceding paragraph shall be referred to as the "Approved Locations." A true and correct copy of the Addendums have been filed under seal, contemporaneously herewith, in

¹ Unless otherwise noted, all emphasis supplied by the undersigned.

accordance with Rule 5.2 of the Federal Rules of Civil Procedure, and in accordance with Local Rule 79.3.

28. The term, “Business,” is defined in Exhibit C to the Agreement as “the performance of real estate brokerage services for Residential Real Estate (including Concierge Services) and the performance of Authorized Commercial Services and Approved Auction Business,”

29. The term, “Residential Real Estate,” is defined in Exhibit C to the Agreement as:

[R]eal estate consisting of a residential dwelling (including an apartment within a multi-family building), including leaseholds of dwellings (including the rental and management of properties in vacation and resort markets), cooperatives, condominiums, fractional ownership, manufactured homes, panelized or pre-fabricated housing, undeveloped land, resort, farm and ranch real estate and any other form of real estate for which a residential real estate brokerage license is required under applicable law, excluding timeshares.

30. The term, “Authorized Commercial Services,” is defined in Exhibit C and Section 4.2.1. of the Agreement as follows:

You [Briggs Freeman] may provide real estate brokerage services for commercial properties under the Marks, subject to the following conditions: (i) the commercial real estate brokerage services are offered as a service ancillary to the provision of real estate brokerage services for Residential Real Estate, (ii) you do not hold yourself out as providing commercial real estate brokerage services as your principal business or as being a stand-alone provider solely of commercial services, and (iii) your aggregate listings (on a unit basis) of commercial properties do not exceed 5% of all your listings (on a unit basis) in any calendar year during the Term (“Authorized Commercial Services”).

31. Thus, pursuant to Section 5.1 of the Agreement, Briggs Freeman is prohibited from conducting residential real estate services from any location other than the Approved Locations in Dallas, Arlington, and Southlake, except in compliance with the Agreement.

32. Despite the provisions of Section 5.1 of the Agreement, Defendants have conducted and continue conducting residential real estate services from locations other than the Approved Locations, specifically Defendants are conducting real estate services at multiple unauthorized offices located in Fort Worth and Meridian, Texas. Id. Such activities are outlined in further detail below.

33. Further, pursuant to Section 5.1 of the Agreement, unless Briggs Freeman obtains written approval from SIR, Briggs Freeman is prohibited from advertising any location other than the Approved Locations.

34. Despite the provisions of Section 5.1 of the Agreement, Defendants have advertised, and continue advertising, locations other than the Approved Locations, specifically multiple unauthorized offices located in Fort Worth and Meridian, Texas. Id. Such activities are outlined in further detail below.

35. Finally, pursuant to Section 5.1 of the Agreement, unless Briggs Freeman obtains written approval from SIR, Briggs Freeman is prohibited from taking any action that would lead consumers to believe that Briggs Freeman is operating a location other than the Approved Locations.

36. Despite the provisions of Section 5.1 of the Agreement, Defendants have taken action, and continue taking action, that would lead consumers to believe that Briggs Freeman is operating from locations other than the Approved Locations. Specifically they have taken actions that lead consumers to believe it is operating from multiple unauthorized offices located in Fort Worth and Meridian, Texas. Id. Such activities are outlined in further detail below.

37. Section 5.3 of the Agreement states, in pertinent part:

The *Sotheby's International Realty* franchise granted by this Agreement is non-exclusive, covers only the Office(s) in Exhibit D, and does not grant any area, market, territorial rights, or protected area. This Agreement does not grant...any right or priority for the location of additional franchises...We [SIR] and our Related Parties retain all rights and discretion with respect to the Marks, the System and other real estate offices, including the rights to:

5.3.1 Operate and grant others the right to operate real estate offices identified by the Marks, at locations within or outside the area where you operate, and on terms we deem appropriate...

5.3.3 Operate and grant others the right to operate real estate offices identified by trademarks, service marks or trade dress other than the Marks, at locations within or outside the area in which you operate, and on terms we deem appropriate... .

38. Briggs Freeman does not have any approved office in the cities of Fort Worth or Meridian, Texas.

39. Section 5.4 of the Agreement states, in pertinent part:

If you [Briggs Freeman] seek to operate the Business from an additional office ("Future Branch Office"), after the Effective Date, we [SIR] **must approve the Future Branch Office** and we and you must execute a Branch Office Location Addendum to this Agreement.

40. Despite the provisions of Section 5.4 of the Agreement, Defendants have provided, and continue providing, residential real estate brokerage services using the SIR Marks and System out of multiple unauthorized offices located in Fort Worth and Meridian, Texas. Id. Such activities are outlined in further detail below.

41. Section 16.6 of the Agreement states, in pertinent part:

If we [SIR] bring an action against you [Briggs Freeman] or anyone associated with you before or after expiration or termination, seeking to halt infringement of the Marks, you acknowledge that any court of competent jurisdiction may, if appropriate, **enter temporary restraining orders or preliminary and permanent injunctions (in under applicable law) without**

posting a bond or other security and may order the immediate seizure and destruction of any infringing materials.

42. Pursuant to Section 16.6 of the Agreement, Briggs Freeman agreed that if SIR brought an action against it, or anyone associated with it, seeking to halt infringement of the SIR Marks, that any court may, if appropriate, enter a temporary restraining order or preliminary and permanent injunction without posting a bond or other security, and may order the immediate seizure and destruction of infringing materials.

C. **Unauthorized Use of SIR Marks and the System in Fort Worth and Meridian**

43. SIR notified Briggs Freeman on numerous occasions that it would not approve the establishment of an office or physical presence located within the Fort Worth, Texas area by Briggs Freeman or any of Briggs Freeman's sales associates. See Santangelo Declaration, Exh. A, App at pp. 1-14, incorporated herein.

44. In or around February 2012, SIR notified Briggs Freeman that SIR granted an exclusive area of protection for the Fort Worth, Texas area to Williams Trew Real Estate Services, LLC d/b/a Williams Trew Sotheby's International Realty (the "**Williams Trew AOP**"). Id. A true and correct copy of the Williams Trew AOP is being filed under seal contemporaneously with the filing of the Complaint and Application for Temporary Restraining Order in this matter.

45. Further, SIR notified Briggs Freeman that opening an office in the Fort Worth, Texas area or promoting its brokerage services through advertising and marketing would violate the Williams Trew AOP, and that SIR is obligated to, and will enforce its contracts with franchisees, including the Williams Trew AOP. Id.

46. Despite these notifications and, in direct violation of both Section 5.1 of the

Agreement and with knowledge of the Williams Trew AOP, Briggs Freeman, McGinnis, Penn, Zimmerman, Tyson, and Tankersley have been, and currently are, promoting and advertising their services directly in the Fort Worth, Texas area, including, but not limited to, conducting the following prohibited activities (Id.):

- a. For several months prior to the filing of this Complaint, the Briggs Freeman website (www.briggsfreeman.com) listed Fort Worth as one of the primary cities it serves. Clicking on the “Fort Worth” link on the Briggs Freeman website opened a new webpage (<http://www.briggsfreeman.com/fortworth/>), which, to the left, had a rotating screen that lists McGinnis, Penn, Tyson, and Zimmerman as the “*Agents Serving Fort Worth*.” To the immediate right, the Briggs Freeman website touts that it has “local, Top Producing agents who live, work, and play *in Fort Worth*.” See **Exhibit “A-1”** to the Santangelo Declaration, App at pp. 15-16, incorporated herein.
- b. For several months prior to the filing of this Complaint and, as of the filing of this Complaint, Briggs Freeman’s website links to a blog titled “Update Fort Worth” (www.updatefortworth.com) (“**Fort Worth Blog**”), where Defendants provide regular updates on “Neighborhood and Market News, Design Trends, and Events *in Ft. Worth* and North Texas.” The Fort Worth Blog includes links to properties listed by Defendants in Fort Worth. These listings unlawfully, and without SIR’s consent, utilize the SIR Marks and System. The Fort Worth Blog was created without authorization from SIR. See **Exhibit “A-2”** to the Santangelo Declaration, App at pp. 17-25, incorporated herein.
- c. A Twitter account, www.twitter.com/updatefortworth/, which also unlawfully, and without SIR’s consent, uses the SIR Marks and System, links to Defendants’ updates created on the Fort Worth Blog. The Twitter account was also created without authorization from SIR. See **Exhibit “A-3”** to the Santangelo Declaration, App at pp. 26-29, incorporated herein.
- d. A YouTube account, www.youtube.com/fortworthtv, also unlawfully and without SIR’s consent, uses the SIR Marks and System in multiple videos advertising Briggs Freeman’s unauthorized activities in Fort Worth. See **Exhibit “A-4”** to the Santangelo Declaration, App at pp. 30-31, incorporated herein.
- e. For several months prior to the filing of this Complaint and, as of the filing of this Complaint, Defendants heavily advertised their presence in the Fort Worth market in multiple printed advertising.

- 1) For instance, Defendants' print advertising includes an advertisement titled "your team for 2013." This advertisement lists agents McGinnis, Penn, Tankersley, and Zimmerman under the heading "**Fort Worth Agents.**" See **Exhibit "A-5"** to the Santangelo Declaration, App at p. 32, incorporated herein.
 - 2) By way of further example, a recent advertisement placed in Paper City Magazine, promotes Briggs Freeman's Fort Worth agent, Zimmerman under the heading "John Zimmerman introduces the cultural gateway to the American West" and references his properties and focus on Fort Worth. See **Exhibit "A-6"** to the Santangelo Declaration, App at pp. 33-41, incorporated herein.
 - 3) Briggs Freeman's print advertisements in the publication 360West, which is delivered primarily to the Fort Worth market, include in January 2012: "Briggs Freeman Sotheby's International Realty announces the opening of its Fort Worth office with longtime resident and area property expert John Zimmerman. ..." ; and in March 2013: "... Zimmerman has reached more than \$25 million in sales in less than a year. ..." See **Exhibit "A-7"** to the Santangelo Declaration, App at pp. 42-69, incorporated herein.
- f. For several months prior to the filing of this Complaint and, as of the filing of this Complaint, Zimmerman's personal website, <http://jzdfw.com> (notably, this same website was, until very recently, www.jzfortworth.com), unlawfully contains references to the licensed trade name of Briggs Freeman Sotheby's International Realty. This website solely solicits real estate brokerage services in Fort Worth, Texas. The website links to Zimmerman's twitter account which remains [@jzfortworth](https://twitter.com/jzfortworth). See **Exhibit "A-8"** to the Santangelo Declaration, App at pp. 70-74, incorporated herein.
 - g. Penn's profile on the Briggs Freeman website emphasizes his Fort Worth stronghold, stating, in pertinent part: "Roby [Penn] has extensive roots in Fort Worth, he is the third generation of the Penn family to live here, and knows the houses on the West Side and their histories as intimately as his own." See **Exhibit "A-9"** to the Santangelo Declaration, App at pp. 75-76, incorporated herein.
 - h. Tyson's profile on the Briggs Freeman website publicizes that he "is a long time member of the Greater Fort Worth Board of Realtors." Notably, Tyson's profile lists no other city's Board of Realtors of which he is or was a member. See **Exhibit "A-10"** to the Santangelo Declaration, App at pp. 77-78, incorporated herein.
 - i. McGinnis's profile on the Briggs Freeman website states, in pertinent part: "Since 1999 Kevin McGinnis has been a part of the Fort Worth real estate community with an emphasis on custom building and renovation of some of

Fort Worth's finest homes." His profile then touts that he lives in Fort Worth and "is very involved with various organizations throughout Fort Worth." See **Exhibit "A-11"** to the Santangelo Declaration, App at pp. 79-80, incorporated herein.

- j. Tankersley's profile on the Briggs Freeman website as well as her LinkedIn profile focus solely on listings in Fort Worth. While her Briggs Freeman profile disingenuously lists her office as in Dallas (when, in fact, Tankersley works daily out of the Fort Worth Office), her personally created LinkedIn profile indicates that she is operating in the Fort Worth area. See **Exhibit "A-12"** to the Santangelo Declaration, App at pp. 81-84, incorporated herein.

47. Further, in direct violation of both Section 5.1 of the Agreement and the Williams Trew AOP, Briggs Freeman, McGinnis, Tyson, Tankersley, and Zimmerman, with Briggs Freeman's knowledge and consent, have been, and are, conducting residential real estate brokerage services for Briggs Freeman from their recently-established Fort Worth office, located at 4904 Camp Bowie Boulevard, Fort Worth, Texas 76107 (the "**Fort Worth Office**"). Id. Upon information and belief, the Fort Worth Office is leased or controlled by Zimmerman. Id.

48. Beginning on or about January 4, 2013, and possibly earlier, Briggs Freeman, through Zimmerman, Tyson, and Tankersley, began conducting residential real estate brokerage services out of the Fort Worth Office. Id.

49. Beginning in approximately January 2013 and continuing through the filing of this Complaint, McGinnis, Tyson, Tankersley, and Zimmerman conducted, and are conducting, substantial residential real estate brokerage services for themselves and Briggs Freeman out of the Fort Worth Office. Id. By way of example (see, id.):

- a. McGinnis, Tyson, Zimmerman, and Tankersley operate out of the Fort Worth Office most, and sometimes all, days of the week. Typically, they each arrive in the morning, leave and return throughout the day, and depart in the early evening.
- b. The Fort Worth Office is furnished.
- c. Defendants regularly receive mail at the Fort Worth Office.

- d. Title company agents and other participants in the residential real estate brokerage industry have been observed visiting with Defendants at the Fort Worth Office and delivering various items, including paperwork, large, commercial print jobs, and presents on holidays, to Defendants at the Fort Worth Office.
- e. On several occasions, Defendants have been observed loading their vehicles with SIR Marks, including SIR lawn signage, “Open House” signs, and “Under Contract” yard signs, that they retrieved from the Fort Worth Office.
- f. Defendants have been observed bringing SIR Marks into the Fort Worth Office, including various types of SIR signage.
- g. Various individuals, whom SIR is informed and believes are actual or potential purchasers or sellers of residential homes in the Fort Worth area, have been observed meeting with Defendants at the Fort Worth Office.
- h. Other Briggs Freeman sales associates, including Nancy Dennis and William Harlan Ray, have been observed working with Defendants at the Fort Worth Office.
- i. Defendants have met with other residential real estate agents at the Fort Worth Office.
- j. Starting in or about March 2013, and continuing as of the filing of this Complaint, Kourtney Risky works for Defendants out of the Fort Worth Office.

50. Defendants are using the SIR Marks and System without authorization from SIR, in the operation of the Fort Worth Office. Id.

51. Despite SIR’s repeated demands to Defendants to immediately cease and desist their unlawful actions and breach of the Agreement, they have failed and refused to do so. Id.

52. It was discovered within the past week that, beginning in approximately April 2012 and continuing through the filing of this Complaint, Briggs Freeman conducted, and is conducting, substantial residential real estate brokerage services out of another unauthorized office, this one located in Meridian, Texas. *See Exhibit “A-13”* to the Santangelo Declaration, App at pp. 85-95, incorporated herein.

53. Briggs Freeman agent Jim Brosche and others operate as sales associates on behalf of Briggs Freeman in an unauthorized office bearing the SIR trade name and trademarks and which is located at 117 N. Main Street, Meridian, Texas (the “**Meridian Office**”). Id. Defendants are using the SIR Marks and System without authorization from SIR in the operation of the Meridian Office. Id.

54. Briggs Freeman has been and is acutely aware that it cannot open any new office without the express written consent of SIR, in the same manner that resulted in the approval of the branch office operated by Briggs Freeman in Arlington, Southlake, and Dallas. Id.

55. SIR has made numerous attempts to obtain compliance by Defendants with the Agreement and to obtain their cooperation in respecting the Williams Trew AOP. Id. SIR has consistently and clearly stated to the Defendants that no real estate brokerage office – whether branded or unbranded, and no matter how limited – could be permitted in Fort Worth or otherwise in the Williams Trew AOP. Id.

56. Initially, Defendants branded the Fort Worth Office with the SIR trade name and SIR Marks using signage and other display items, as well as referencing the office location in print advertisements, without the approval of SIR. Id. Upon discovery of the unauthorized Fort Worth Office, SIR sent a cease and desist letter to Briggs Freeman. Id. The Fort Worth Office was then unbranded *only* to the extent of removing the external signage. Id.

57. Despite numerous warnings, the Briggs Freeman agents have continued to use and, in fact, have increased operations at the Fort Worth Office. Id. It is used daily by the Defendants for the provision of real estate services on behalf of Briggs Freeman. Id. This is a direct violation of the Agreement and the Williams Trew AOP. Id.

58. At Briggs Freeman’s request, SIR agreed to hold on its intent to pursue litigation

pending negotiation of a global business solution. Id. Throughout that process, SIR made it clear that it had no intention, in any way, of waiving its rights or remedies and that, short of a timely resolution of the issues through a global settlement, SIR would have no option but to pursue the instant litigation and request court assistance in immediately closing of the Fort Worth Office and halting further unauthorized advertising and marketing activities through injunctive relief.

59. Within the past week, SIR has been notified by Briggs Freeman and Williams Trew that a global settlement is unachievable. Given that all attempts at obtaining a business resolution have been exhausted and in light of the discovery of yet another unauthorized office opened by Briggs Freeman (the Meridian Office), SIR has no option but to commence this litigation and seek relief, including but not limited to injunctive relief.

III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST BRIGGS FREEMAN

Breach of Contract: Briggs Freeman Franchise Agreement (Fort Worth)

60. SIR repeats and makes a part hereof each and every allegation set forth in Paragraphs 1 through 59 of the Complaint.

61. SIR and Briggs Freeman entered into the Agreement, whereby SIR agreed to provide Briggs Freeman with a limited, nonexclusive license to use the SIR Marks and System in the operation of a luxury residential real estate brokerage business under the licensed trade name, Briggs Freeman Sotheby's International Realty, in Dallas, Texas.

62. SIR notified Briggs Freeman on numerous occasions that it is not authorized to use the SIR Marks and System anywhere other than Approved Locations, and specifically not in

Fort Worth, Texas.

63. Despite SIR's numerous warnings and demands to Briggs Freeman to cease and desist its unauthorized activities, Briggs Freeman continues to use the SIR Marks and System in Fort Worth, Texas in breach of the Agreement.

64. Specifically, Briggs Freeman breached the Agreement by failing to supervise, prevent, or cease, McGinnis, Penn, Tyson, Zimmerman, and Tankersley's unauthorized use of the SIR Marks and System in Fort Worth, Texas. In material breach of the Agreement, Briggs Freeman, and its sales agents, McGinnis, Penn, Tyson, Tankersley, and Zimmerman are:

- a. Promoting and advertising to the public a presence in the Fort Worth, Texas area, using the SIR Marks and System;
- b. Operating out of an office located in Fort Worth, Texas, using the SIR Marks and System.

65. Further, Briggs Freeman materially breached the Agreement by allowing its sales agents, McGinnis, Penn, Tyson, Tankersley, and Zimmerman, to use the SIR Marks, despite repeated notice that their use of the SIR Marks in the Fort Worth area is unauthorized by SIR.

66. Briggs Freeman also materially breached the Agreement because it continues to allow McGinnis, Penn, Tyson, Tankersley, and Zimmerman to use the SIR Marks in Fort Worth, Texas, despite Briggs Freeman's agreement that it would ensure that its sales agents comply with the Agreement.

67. Finally, Briggs Freeman materially breached the Agreement because it continues to advertise, conduct residential real estate brokerage services, and take other actions that would lead consumers to believe that it is operating in Fort Worth, Texas, which is not an approved office location for Briggs Freeman.

68. SIR has fully or substantially performed under the Agreement.

69. All conditions precedent have occurred or have been prevented from occurring as a result of Defendants' unlawful conduct.

70. As a result of Briggs Freeman's material breach of the Agreement, SIR has been damaged in an amount that is not easily quantifiable but which includes (1) all fees owed under the Agreement for unreported transactions originating from any unauthorized office in Fort Worth, Texas, (2) any and all damages reasonably claimed and supported by Williams Trew for the violation of its AOP by Defendants, and (3) attorneys' fees and expenses necessary for pursuing this cause of action. Such amounts shall continue to increase as a result of Briggs Freeman's ongoing material breach of the Agreement.

**SECOND CAUSE OF ACTION
AGAINST BRIGGS FREEMAN**

Breach of Contract: Briggs Freeman Franchise Agreement (Meridian)

71. SIR repeats and makes a part hereof each and every allegation set forth in Paragraphs 1 through 70 of the Complaint.

72. SIR and Briggs Freeman entered into the Agreement, whereby SIR agreed to provide Briggs Freeman with a limited, nonexclusive license to use the SIR Marks and System in the operation of a luxury residential real estate brokerage business under the licensed trade name, Briggs Freeman Sotheby's International Realty, in Dallas, Texas.

73. SIR notified Briggs Freeman on numerous occasions that it is not authorized to use the SIR Marks and System anywhere other than the Approved Locations.

74. Despite Briggs Freeman's knowledge that it cannot open any new office without the express written consent of SIR, in the same manner that resulted in the approval of the branch offices operated by Briggs Freeman in Arlington, Southlake, and Dallas, Briggs Freeman has

been conducting substantial residential real estate brokerage services out of the unauthorized Meridian Office since at least April 2012.

75. Briggs Freeman agent Jim Brosche and others operate as sales associates on behalf of Briggs Freeman in the unauthorized Meridian Office which bears the SIR trade name and SIR Marks. Defendants are using the SIR Marks and System without authorization from SIR in the operation of the Meridian Office.

76. Briggs Freeman breached the Agreement by failing to supervise, prevent, or cease Brosche and others from the unauthorized use of the SIR Marks and System in Meridian, Texas. In material breach of the Agreement, Briggs Freeman, and its Meridian, Texas sales agents are:

- a. Promoting and advertising to the public a presence in the Meridian, Texas area, using the SIR Marks and System;
- b. Operating out of an office located in Meridian, Texas, using the SIR Marks and System.

77. Briggs Freeman also materially breached the Agreement because it permitted the Meridian Office to be opened using the SIR Marks, despite Briggs Freeman's agreement that it would ensure that its sales agents comply with the Agreement.

78. Finally, Briggs Freeman materially breached the Agreement because it conducts residential real estate brokerage services and takes other actions that would lead consumers to believe that it is operating in Meridian, Texas, which is not an approved office location for Briggs Freeman.

79. SIR has fully or substantially performed under the Agreement.

80. All conditions precedent have occurred or have been prevented from occurring as a result of Defendants' unlawful conduct.

81. As a result of Briggs Freeman's material breach of the Agreement, SIR has been

damaged in an amount that is not easily quantifiable but which includes (1) all fees owed under the Agreement for unreported transactions originating from the Meridian Office, and (2) attorneys' fees and expenses necessary for pursuing this cause of action. Such amounts shall continue to increase as a result of Briggs Freeman's ongoing material breach of the Agreement.

**THIRD CAUSE OF ACTION
AGAINST BRIGGS FREEMAN**

Demand for Accounting; Audit Demand

82. SIR repeats and makes a part hereof each and every allegation contained in Paragraphs 1 through 81 of the Complaint.

83. Pursuant to the Agreement, Briggs Freeman agreed to allow SIR to review and audit Briggs Freeman's business records for its franchised location, including information related to its sales agents.

84. Section 13 of the Agreement states, in pertinent part:

We [SIR], or our designee, have the right during the Term and for eighteen months following termination of the Agreement, to visit upon reasonable notice your Office location (or such other place where your records are located) during normal business hours and without hindrance or delay, proceed:

13.2.1 to inspect, audit, check and make copies of your books, records (including state and federal tax returns), journals, orders, receipts, any correspondence and other data relating to your Business or to any transactions, including the books and records of any Related Party if we have reason to believe that (i) its funds were commingled with the Business; (ii) it was operated in violation of Section 4.2; and (iii) where the Marks were used in connection with Related Party's business;

13.2.2 to verify any portion of your records or your Business or any Excluded Business as we may deem reasonable under the circumstances, including prompt response to any post-audit request for additional information; and

13.2.3 to discuss your records and the Business or any Excluded Business with any officers, directors and employees responsible for maintaining the records, or with your Responsible Broker, or with your sales associates.

85. Thus, pursuant to Section 13 of the Agreement, SIR has the right to inspect, review, and verify Briggs Freeman's business records, bookkeeping and accounting records, sales and income tax records and returns, as well as information about its sales associates.

86. SIR is unable to ascertain the full extent of Briggs Freeman's unauthorized use of the SIR Marks and System in Fort Worth and Meridian, Texas without an accounting and audit of Briggs Freeman's books and records, including information related to its sales agents. Further, this information is uniquely within Briggs Freeman's knowledge.

FOURTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS

Trademark Infringement, 15 U.S.C. § 1114

87. SIR repeats and makes a part hereof each and every allegation contained in Paragraphs 1 through 86 of the Complaint.

88. This claim is for trademark infringement under the laws of the United States, section 32 of the Lanham Act, 15 U.S.C. § 1114(1)(a).

89. The limited, nonexclusive license to use the SIR Marks and System in the operation of a luxury residential real estate brokerage business granted to Briggs Freeman in the Agreement does not authorize Defendants to use the SIR Marks and System in the cities of Fort Worth or Meridian, Texas.

90. Despite SIR's numerous warnings and demands to Defendants to cease and desist their unauthorized activities in Fort Worth, Texas, Defendants continue to use the SIR Marks and System in Fort Worth, Texas to induce the public to use residential real estate services provided

by Briggs Freeman under the guise of an association with SIR, notwithstanding the fact that Defendants have no right to use the SIR Marks and System in this manner. By way of example,

- a. Briggs Freeman promotes and advertises a presence in the Fort Worth, Texas area on the Briggs Freeman website, including listing at least five agents who service the Fort Worth, Texas area,
- b. Briggs Freeman has at least five (5) sales agents who conduct residential real estate services in the Fort Worth area for Briggs Freeman out of the Fort Worth Office,
- c. McGinnis, Penn, Tyson, Tankersley, and Zimmerman have used and continue to use SIR Marks on documents and signage located, stored in, and retrieved from the Fort Worth Office,
- d. McGinnis, Penn, Tyson, Tankersley, and Zimmerman already have, or intend to have made, brochures for their SIR listings in Fort Worth, and to conduct their real estate brokerage activities, including listing presentations and meeting with customers, at the Fort Worth Office, and
- e. Zimmerman uses SIR Marks on his website (www.jzdfw.com) to advertise his Fort Worth, Texas services.

91. Despite SIR's numerous reminders that Briggs Freeman may not operate its franchised business anywhere other than in Approved Locations, Briggs Freeman nonetheless opened and is operating a real estate brokerage office in Meridian, Texas using the SIR Marks and System without authorization. Briggs Freeman is using the SIR Marks and System in Merieidan, Texas to induce the public to use residential real estate services provided by Briggs Freeman in that area under the guise of an association with SIR, notwithstanding the fact that

Defendants have no right to use the SIR Marks and System in this manner.

92. Defendants' unauthorized use of the registered SIR Marks causes confusion or mistake among prospective or actual customers, in violation of section 32 of the Lanham Act. Further, such unauthorized use constitutes infringement of SIR's trademarks rights to the SIR Marks.

93. Defendants have acted knowingly and willfully, with full knowledge of the likelihood of confusion, and with the intent to deceive consumers in order to trade off the promotional efforts and earned goodwill and reputation of SIR in the Fort Worth, Texas and Meridian, Texas areas. Defendants have acted in disregard for SIR's rights in the SIR Marks.

94. As a direct and proximate result of the foregoing conduct, SIR is entitled to damages against each Defendant, in an amount that is presently unknown.

95. SIR also is entitled by statute to an award of attorneys' fees and costs incurred in having to institute this legal action.

96. Defendants' conduct is knowing, intentional, wanton, willful, malicious, and oppressive, and thus warrants this case being designated as exceptional under 15 U.S.C. §1117, and the imposition of treble damages against them.

**FIFTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS**

False Designation of Origin/False Advertising, 15 U.S.C. § 1125(a)

97. SIR repeats and makes a part hereof each and every allegation set forth in Paragraphs 1 through 96 of the Complaint.

98. Defendants' continued unauthorized use of the SIR Marks in connection with residential real estate services in Fort Worth, Texas and Meridian, Texas, on signage, websites

and in other manners, without SIR's consent, is a false designation of origin and false advertising, and has caused confusion, mistake, and deception as to source, sponsorship, affiliation, or connection in the minds of the public. This use of the SIR Marks by Defendants is a counterfeit mark within the meaning of section 34(d)(1)(B) of the Lanham Act, 15 U.S.C. §1116(d)(1)(B).

99. Defendants' false designation of origin in interstate commerce has infringed SIR's trademark rights in violation of section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1).

100. As a direct and proximate result of the foregoing conduct, SIR is entitled to damages against each Defendant, in an amount that is presently unknown.

101. SIR also is entitled by statute to an award of attorneys' fees and costs incurred in having to institute this legal action.

102. Defendants' conduct is knowing, intentional, wanton, willful, malicious, and oppressive, and thus warrants this case being designated as exceptional under 15 U.S.C. §1117, and the imposition of treble damages against them.

**SIXTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS**

Trademark Dilution, 15 U.S.C. § 1125(c)

103. SIR repeats and makes a part hereof each and every allegation set forth in Paragraphs 1 through 102 of the Complaint.

104. This claim is for trademark dilution under the laws of the United States, section 43 of The Lanham Act, 15 U.S.C. §1125(c).

105. SIR is the exclusive licensee of the SIR Marks. SIR has invested substantial time, effort, and millions of dollars in advertising and promoting the goods and services offered in

interstate commerce under the SIR Marks, such that the SIR Marks have become distinctive and famous.

106. Despite knowledge of the legal interests of SIR in and to the SIR Marks, Defendants have made use in interstate commerce of the SIR Marks, without the permission of SIR and beyond the permission that SIR granted.

107. Defendants' unauthorized use of the SIR Marks has diluted the distinctive quality of the SIR Marks.

108. As a direct and proximate result of the foregoing conduct, SIR is entitled to damages against each Defendant, in an amount that is presently unknown.

109. SIR also is entitled by statute to an award of attorneys' fees and costs incurred in having to institute this legal action.

110. Defendants' conduct is knowing, intentional, wanton, willful, malicious, and oppressive, and thus warrants this case being designated as exceptional under 15 U.S.C. §1117, and the imposition of treble damages against them.

**SEVENTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS
Common Law Unfair Competition**

111. SIR repeats and makes a part hereof each and every allegation set forth in Paragraphs 1 through 110 of the Complaint.

112. SIR is the exclusive licensor of the SIR Marks. Despite knowledge of the legal interests of SIR in and to the SIR Marks, Defendants have made use in commerce of the SIR Marks without the permission of SIR or beyond the permission that SIR granted.

113. Defendants have engaged in a pattern of unfair, deceptive, and fraudulent acts to

enrich themselves by misappropriating the SIR Marks and using them for their own benefit.

114. Defendants' unauthorized use of the SIR Marks creates a false association between Defendants and SIR in the Fort Worth, Texas area and in the Meridian, Texas area. It tends to cause confusion, mistake, or deception among consumers as to the source, quality, and nature of their goods and services.

115. SIR has been damaged by Defendants' unlawful, unfair, or fraudulent business practices and misleading advertising as alleged herein.

116. As a direct and proximate result of the foregoing conduct, SIR is entitled to damages against each of Defendant, in an amount that is presently unknown.

**EIGHTH CAUSE OF ACTION
AGAINST BRIGGS FREEMAN**

Indemnification

117. SIR repeats and makes a part hereof each and every allegation set forth in Paragraphs 1 through 116 of the Complaint.

118. Section 17 of the Agreement states, in pertinent part:

You [Briggs Freeman] will indemnify and hold harmless us [SIR] ... from all expenses, proceedings, claims, losses, damages, liabilities or actions of any kind or nature (including, but not limited to, costs and attorneys' fees) arising out of or related to your operations. If we [SIR] are made a party to a lawsuit or other legal action or we otherwise have a claim asserted against us in connection with your [Briggs Freeman] (or your Related Parties') activities, ...we may ... (ii) hire counsel directly to protect our interests and bill you for all costs and attorneys' fees incurred, which you must promptly pay... .

119. SIR has incurred damages, losses, and expenses, including attorney's fees, and may continue to incur further damages, losses, and expenses arising out of or related to the

wrongful operations of Briggs Freeman within the Fort Worth area, which Briggs Freeman knew were in violation of the Williams Trew AOP. SIR has been required to hire counsel and incur attorneys' fees and expenses to protect its interests.

120. SIR demands that Briggs Freeman indemnify it for all losses, fees and expenses in accordance with the terms of the indemnification clause in the Agreement.

121. As a direct and proximate result of the foregoing conduct, SIR is entitled to damages against Briggs Freeman, in an amount that is presently unknown.

IV.

APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION, AND REQUEST FOR EXPEDITED DISCOVERY

122. SIR repeats and makes a part hereof each and every allegation set forth in Paragraphs 1 through 121 of the Complaint.

A. Application for Temporary Restraining Order, Preliminary and Permanent Injunctions

123. SIR seeks a temporary restraining order and preliminary injunction pursuant to Federal Rule of Civil Procedure 65 to enjoin Defendants and their agents and representatives from using SIR Marks and System in Fort Worth, Texas, Meridian, Texas, or in any other place that is not explicitly authorized by the Agreement and any Addendums thereto. These unauthorized activities infringe on the intellectual property rights of SIR, violate the Agreement, and violate the Williams Trew AOP.

124. As a direct and proximate result of Defendants' continued unauthorized activities as described above, SIR has suffered, and will continue to suffer, immediate and irreparable harm through the loss of clients, goodwill, revenues, profits, and protection of its franchisee

which has exclusive territorial rights to the Fort Worth, Texas area, pursuant to the Williams Trew AOP. The extent of the breach and infringement by Defendants cannot be accurately measured in dollars and cents, but the actual and potential harm to SIR and to the SIR Marks and System is substantial.

125. Furthermore, there is a substantial likelihood that SIR will prevail on the merits. Defendants do not have any right to use the SIR Marks, other than what is explicitly provided in the Agreement, and their actions to date, especially their continued use of the SIR Marks in Fort Worth and Meridian, Texas, despite notice of the unlawfulness of their conduct, constitutes intentional violations of the Lanham Act and Texas statutory and common law, as well as a material breach of the Agreement and a violation of the Williams Trew AOP.

126. If the Court does not grant a temporary restraining order and preliminary injunction, Defendants will continue their unlawful activities which infringe on SIR's protected intellectual property, are in direct breach of the Agreement, and are in violation of the Williams Trew AOP. SIR will continue to suffer irreparable injury if the Court does not restrain and enjoin Defendants from unauthorized use of the SIR Marks and System because actual confusion in the market is occurring and will continue to occur.

127. Defendants will not suffer undue hardship or loss as a result of the issuance of a temporary restraining order and preliminary injunction. Defendants can simply conduct their real estate brokerage franchised business pursuant to the terms of the Agreement and in its Approved Locations—without advertising, providing services, using sales agents, or maintaining or operating out of offices located in Fort Worth or Meridian, Texas, which conduct is in material breach of the Agreement, infringes upon the SIR Marks, and the activities in Fort Worth, Texas violate the Williams Trew AOP.

128. Issuance of a temporary restraining order and preliminary injunction would not adversely affect the public interest, because it will eliminate the confusion that exists in the marketplace. SIR has a franchisee with authorized offices located in Fort Worth, Texas that is not associated with Defendants.

129. SIR asks the Court to set its application for temporary restraining order for hearing at the earliest possible time, and, after hearing the request, issue a temporary restraining order against Defendants as set out in detail below.

130. SIR asks the Court to set its application for preliminary injunction for hearing at the earliest possible time and, after hearing the request, issue a preliminary injunction against Defendants in the manner specified below.

131. Further, SIR asks the Court to set its application for permanent injunctive relief for a full trial on the issues in this application, and after the trial, to issue a permanent injunction against Defendants in the manner specified below.

132. Section 16.6 of the Agreement states, in pertinent part:

If we [SIR] bring an action against you [Briggs Freeman] or anyone associated with you before or after expiration or termination, seeking to halt infringement of the Marks, you acknowledge that any court of competent jurisdiction may, if appropriate, **enter temporary restraining orders or preliminary and permanent injunctions (in under applicable law) without posting a bond** or other security and may order the immediate seizure and destruction of any infringing materials.

133. Therefore, pursuant to Section 16.6 of the Agreement, Briggs Freeman agreed that if SIR brought an action against it, or anyone associated with it, seeking to halt infringement of the SIR Marks, that any court may, if appropriate, enter a temporary restraining order or preliminary and permanent injunction without posting a bond or other security, and may order

the immediate seizure and destruction of infringing materials.

134. SIR therefore requests that the Court find that no bond is necessary for facilitating the injunctive relief requested herein pursuant to the clear terms of the Agreement.

B. Request for Expedited Discovery

135. SIR further requests that the Court order expedited discovery to be conducted prior to a hearing for a preliminary injunction, and that all responses to the expedited discovery requests, including depositions, be concluded at least four (4) days prior to the date of the preliminary injunction hearing.

136. Pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, the Court may modify discovery procedures and limitations if there is good cause, and if the modification is not specifically prohibited by some other rule. The critical need for discovery and the imminence of the hearing on Plaintiff's Application for Temporary Injunction constitute good cause under to permit expedited discovery. Therefore, the following Expedited Discovery Schedule should be approved:

a. The parties may serve no more than ten (10) Interrogatories and twenty (20) Requests for Production to each of the other parties. Service must be effected through personal service, email, facsimile, or overnight delivery.

b. The responding party must serve written responses and any objections to the Interrogatories and Requests for Production such that the requesting party receives the responses or objections within seven (7) calendar days after the date of service of the Interrogatories and Requests for Production. No extra time for service will be provided.

c. In response to Requests for Production, the responding party must produce all non-privileged responsive documents and materials such that the requesting party receives the documents within seven (7) calendar days after the date of service of the Requests for Production. No extra time for service will be provided.

d. If the responding party withholds any documents or information on the basis of privilege, the responding party must comply with Rule 26(b)(5) of the Federal Rules of Civil Procedure and, without any request by the requesting party, provide the information set forth therein such that the requesting party receives such information within seven (7) calendar days after the date of service of the Interrogatories or Requests for Production. No extra time for service will be provided.

e. Each side may depose each of the other parties to this suit and may take up to three (3) depositions. Any deposition may occur after three (3) calendar days' written notice thereof served by personal service, email, facsimile, or overnight delivery. No extra time for service will be provided. Depositions may occur between the date that is three (3) calendar days after the date of the Court's Order granting Plaintiff's Temporary Restraining Order and the date that is three (3) calendar days before the hearing on Plaintiff's Application for Temporary Injunction.

f. The parties may set any hearings on a Motion to Compel by providing the other party or parties with at least three (3) days' written notice thereof served by personal service, email, facsimile, or overnight delivery. No extra time for service will be provided.

V.

CONDITIONS PRECEDENT

137. All conditions precedent have been performed or have occurred, or have been prevented from occurring due to Defendants' actions.

PRAYER

SIR respectfully asks for judgment in its favor and against Defendants, jointly and severally, as follows:

- a. Judgment in favor of SIR on all causes of action in an amount to be proven at trial;
- b. On the first cause of action against Briggs Freeman, damages in an amount to be proven at trial;
- c. On the second cause of action against Briggs Freeman, damages in an amount to be proven at trial;
- d. On the third cause of action, that an accounting and audit be directed to determine (1) Briggs Freeman's profits resulting from its infringement and unfair competition, and that the profits be paid over to SIR, increased as the Court determines is appropriate to the circumstances of this case, and (2) Briggs Freeman's records regarding its sales agents operating in Fort Worth, Texas and Meridian, Texas;
- e. On the fourth cause of action for trademark infringement against all Defendants, damages in an amount to be proven at trial, including lost profits, loss of goodwill, and actual damages;
- f. On the fifth cause of action for false designation/false advertising against all Defendants, damages in an amount to be proven at trial, including lost profits, loss of goodwill, and actual damages;
- g. On the sixth cause of action for trademark dilution against all Defendants, damages in an amount to be proven at trial, including lost profits, loss of goodwill, and actual damages;

- h. On the seventh cause of action for common law unfair competition against all Defendants, damages in an amount to be proven at trial, including lost profits, loss of goodwill, and actual damages;
- i. On the eighth cause of action for indemnification against Briggs Freeman, damages in an amount to be proven at trial, including losses, expenses, and attorney's fees;
- j. An award of treble damages under 15 U.S.C. § 1117(b), as applicable, against all Defendants;
- k. An award of attorneys' fees and costs against all Defendants;
- l. An award of pre-judgment and post-judgment interest, at the highest rates allowed by law;
- m. A Temporary Restraining Order directing that Defendants and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with any of them, be temporarily restrained from the following:
 - 1) Using the SIR Marks or System in any way or manner to open, operate, support, or maintain a real estate brokerage office in Fort Worth, Texas, or in any area that is part of the Williams Trew AOP;
 - 2) Using the SIR Marks or System in any way or manner that indicates to the public that any of Defendants operate, support, or maintain a real estate brokerage office in Fort Worth, Texas, or in any area that is part of the Williams Trew AOP;
 - 3) Utilizing advertising, promotional, or marketing materials (including via newspapers, magazines, newsletters, the Internet, television, radio, and any other mediums), websites, blogs, online links to other websites, direct mailings, or business cards (collectively, "Promotional Materials") that in any way or manner indicate to the public that any of Defendants operate, support, or maintain a real estate brokerage office in Fort Worth, Texas, or in any area that is part of the Williams Trew AOP;
 - 4) Using the SIR Marks or System in any way or manner to open, operate, support, or maintain a real estate brokerage office in Meridian, Texas;
 - 5) Using the SIR Marks or System in any way or manner that indicates to the public that any of Defendants operate, support, or maintain a real estate brokerage office in Meridian, Texas;
 - 6) Utilizing Promotional Materials that in any way or manner indicate to the public that any of Defendants operate, support, or maintain a real estate brokerage office in Meridian, Texas;

- 7) Using any Promotional Materials, unless the Promotional Materials comply with the following requirements:
- A. The Promotional Materials must identify the Briggs Freeman Sotheby's International Realty name and the address of one or more of the Approved Locations, and not list, refer to, mention, or direct the public to any other location;
 - B. Each website of Defendants must identify the Briggs Freeman Sotheby's International Realty name and the address of one or more of the Approved Locations, and not list, refer to, mention, or direct the public to any other location;
 - C. Each website of Defendants McGinnis, Penn, Zimmerman, Tyson, and Tankersley must identify the Briggs Freeman Sotheby's International Realty name and the address of one or more of the Approved Locations that such Defendant is currently affiliated with, and not list, refer to, mention, or direct the public to any other location;
 - D. For multi-page print advertising, each page must identify one or more of the Approved Locations and not list, refer to, mention, or direct the public to any other location;
 - E. The Promotional Materials must not state that Defendants specialize in, or have any unique knowledge of, Fort Worth or any geographic area that is covered by the Williams Trew AOP;
 - F. Defendants' Internet domain names must not include the words "Fort Worth," "Ft. Worth," "DFW," "Metroplex," "DFW Metroplex," or any derivatives, synonyms, acronyms, or any combination of words or acronyms (*e.g.*, "JZDFW.com") that signify or refer to in any manner, directly or indirectly, Fort Worth or any area that is part of the Williams Trew AOP; and
 - G. The Promotional Materials must not use the phrase "Fort Worth Team," "Fort Worth Agents," "Agents Serving Fort Worth," or any derivatives, synonyms, or acronyms thereof (*e.g.*, "DFW" or the "Metroplex").
- n. An Order directing that Defendants file with the Court and serve on SIR within thirty (30) days after the entry and service on Defendants of a Temporary Restraining Order, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the provisions of the Temporary Restraining Order;

- o. An Order directing that Defendants file with the Court and serve on SIR within thirty (30) days after the entry and service on Defendants of a Preliminary Injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the provisions of the Preliminary Injunction;
- p. Expedited Discovery to be conducted in the manner requested herein;
- q. Temporary and Permanent Injunctions directing that Defendants and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with any of them, be preliminarily and permanently enjoined from the same activities outlined in sub-section (l) above; and
- r. Such other and further relief to which SIR is justly entitled.

DATE: August 1, 2013

Respectfully submitted,

MUNSCH HARDT KOPF & HARR, P.C.

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