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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 PREDI WAVE CORPORATION,

13 Plaintiff,

14 v.

15 NEW WORLD INFRASTRUCTURE
LIMITED, aka "NEW WORLD TMT,
16 LIMITED,"

17 Defendant.
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Case No. C04 01900 (PVT)

FIRST AMENDED COMPLAINT FOR:

- 1 (1) **BREACH OF CONTRACT**
 - 2 (2) **BREACH OF DISTRIBUTORSHIP AGREEMENT**
 - 3 (3) **BREACH OF EXCLUSIVE DISTRIBUTORSHIP AGREEMENT**
 - 4 (4) **BREACH OF MARKETING AGREEMENT**
 - 5 (5) **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**
 - 6 (6) **TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**
 - 7 (7) **TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE**
 - 8 (8) **DECLARATORY RELIEF**
- DEMAND FOR JURY TRIAL**

INTRODUCTION

1
2 1. Between September 2000 and November 2003, Plaintiff PrediWave
3 Corporation (“PrediWave” or “Plaintiff”) entered into a series of agreements with New World
4 Infrastructure Limited, aka New World TMT Limited (“Defendant” or “New World”). The
5 agreements concerned substantial transactions involving hundreds of millions of dollars. Under
6 the terms of these agreements, PrediWave agreed to supply Defendant with various high
7 technology goods and services specifically related to PrediWave’s novel Video-On-Demand
8 (“VOD”) technology, and Defendant agreed to be PrediWave’s exclusive distributor of this
9 technology in Asia. Defendant also invested millions of dollars in PrediWave.

10 2. Beginning in 2001 and continuing through April 2004, Defendant took
11 receipt of PrediWave’s products and services. By at least three letters dated January 27 and 28,
12 2004, Defendant agreed in writing that (i) certain goods delivered to Defendant were accepted, (ii)
13 the trial periods referred to in the relevant purchase contracts were waived, (iii) the relevant
14 purchase contracts were non-cancelable, and (iv) the monies paid under the relevant purchase
15 contracts were non-refundable.

16 3. Nevertheless, on May 3, 2004, counsel for Defendant sent PrediWave a
17 letter anticipatorily breaching or otherwise purporting to cancel all agreements between the parties
18 and demanding the return of all monies paid to and invested in PrediWave.

19 4. Further, on June 16, 2004, Defendant sent PrediWave a letter anticipatorily
20 breaching or otherwise purporting to terminate the exclusive distributorship agreement between
21 PrediWave and Defendant obligating Defendant to exclusively distribute PrediWave’s technology
22 in Asia.

23 5. To the extent possible, PrediWave has performed under the agreements with
24 Defendant. However, PrediWave’s ability to fulfill its obligations under contracts with Defendant
25 and others has been seriously impeded by Defendant’s actions and inactions, such as requests to
26 change the terms of an agreement or the technology covered by an agreement, and by Defendant’s
27 failure to take delivery of certain products manufactured under the agreements.

28 6. Defendant has, *inter alia*, (a) failed to pay outstanding balances for goods

1 (Purchase Order PW/DC – 02, dated March 20, 2003; PW System License Agreement, dated June
2 26, 2003; Purchase Order PW/BC – 05AR, dated February 5, 2003; PrediWave Product Purchase
3 Agreement, dated March 1, 2003; and Amended STB Purchase Agreement, dated February 5,
4 2003), availed itself of the benefits and protections of California.

5 13. Declaratory relief is appropriate under 28 U.S.C. § 2201 and § 2202.

6 **BACKGROUND FACTS**

7 14. PrediWave is a technology company that sells an innovative content
8 delivery system for use by broadband service operators (“Operators”) such as cable and satellite
9 television providers. PrediWave produces a comprehensive Video On Demand (“VOD”) system
10 that allows Operators to provide content, typically movies or other programming, on demand over
11 a 1-way coaxial cable to an infinite number of end users (“Subscribers”). PrediWave’s patented
12 and patent-pending bandwidth saving technology is revolutionary because it utilizes bandwidth in
13 a novel way to allow Operators to provide VOD services without the expensive infrastructure
14 investments previously required to provide the same services. PrediWave’s digital broadband
15 delivery system (the “PrediWave Delivery System”) is comprised of, among other things, head
16 end servers housing PrediWave software that work in conjunction with PrediWave Set Top Boxes
17 (“STBs”) in Subscriber homes.

18 15. On information and belief, Defendant is the telecommunications, media,
19 and technology company of the New World Group, a large Hong Kong conglomerate.
20 Defendant’s stated mission is to become a leading player in technology media sectors through the
21 delivery of content to homes and public marketplaces in Asia.

22 16. In order to further its business objectives and capitalize on PrediWave’s
23 novel and valuable technology, Defendant entered into a number of agreements with PrediWave.
24 These agreements between PrediWave and Defendant New World were executed by Tony Qu
25 (“Qu”), President of PrediWave, and Douglas Chan (“Chan”), then the Managing Director of New
26 World. On the basis of these agreements, Defendant made hundreds of millions of dollars in
27 payments to PrediWave.

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1 **AGREEMENTS BETWEEN PREDIWAVE AND NEW WORLD**

2 17. PrediWave and Defendant have entered into numerous contractual
3 agreements, and Defendant has placed at least 43 purchase orders for goods and services with
4 PrediWave. These contracts and purchase orders are worth hundreds of millions of dollars.

5 18. At the time of the filing of this Complaint, Defendant has outstanding
6 balances on at least three purchase orders and one agreement for goods and services delivered or
7 licenses granted by PrediWave to Defendant. With this action, PrediWave seeks payments due
8 under these purchase orders and goods and services agreement.

9 19. At the time of the filing of this Complaint, Defendant is obligated to
10 PrediWave under the terms of at least two contracts and one purchase order for which the delivery
11 of goods and services is not yet complete. With this action, PrediWave seeks the benefit of the
12 bargain it would have received had these agreements and purchase orders been completed.

13 20. At the time of the filing of this Complaint, Defendant is obligated to
14 PrediWave under the terms of at least one contract to use best efforts to distribute PrediWave
15 products in Asia, which it has failed to do. With this action, PrediWave seeks the benefit of the
16 bargain it would have received had this agreement been performed.

17 21. At the time of the filing of this Complaint, Defendant is obligated to
18 PrediWave under the terms of at least one oral contract to exclusively distribute in Asia
19 PrediWave’s goods and services. With this action, PrediWave seeks the benefit of the bargain it
20 would have received had this agreement been performed.

21 22. At the time of the filing of this Complaint, Defendant is obligated to
22 PrediWave under the terms of at least one contract to use best efforts to promote the goodwill of
23 PrediWave in Asia, which it has failed to do. With this action, PrediWave seeks the benefit of the
24 bargain it would have received had this agreement been performed.

25 23. Collectively, any and all purchase orders and agreements for which
26 Defendant owes PrediWave money, the contracts and purchase orders for which delivery of goods
27 and services and payments are not yet complete, distributorship agreements, exclusive
28 distributorship agreements, and marketing agreements will be referred to collectively as the

1 “Contracts At Issue.”

2 **Agreements under Which Defendant Owes PrediWave Money**
3 **for Services Fulfilled and Goods Delivered**

4 24. Defendant owes PrediWave money under at least three purchase orders and
5 one contract. At a minimum, these purchase orders are: PW/BC – 11, PW/DC – 02, and PW/DC
6 – 01R; one such contract is a license agreement (the “PW System License Agreement”).

7 **PWBC – 11**

8 25. On or around October 10, 2001, Defendant agreed to purchase from
9 PrediWave 8,000 STBs for \$425 each. The purchase price for the STBs in this agreement was
10 \$3,400,000. The terms of this agreement, including explicit provisions that the agreement was
11 non-cancelable and the goods purchased thereby non-returnable, were memorialized on a New
12 World purchase order signed by Qu and Chan, PWBC – 11. This purchase order forms a binding
13 and non-cancelable contract between Defendant New World and PrediWave.

14 **PW/DC – 02**

15 26. On or around March 20, 2003, Defendant agreed to purchase from
16 PrediWave numerous servers and software programs for a PrediWave Delivery System. The total
17 purchase price for the components in this system, after a discount agreed to by the parties, was
18 \$38,045,000. The terms of this agreement, including explicit provisions that the agreement was
19 non-cancelable and the goods purchased thereby non-returnable, were memorialized in a New
20 World purchase order signed by Qu and Chan, PW/DC – 02. This purchase order forms a binding
21 and non-cancelable contract between Defendant New World and PrediWave.

22 **PW/DC – 01R**

23 27. On or around April 29, 2003, Defendant agreed (as part of a revised
24 purchase order agreement) to purchase from PrediWave numerous servers and software programs
25 for a PrediWave Delivery System. The total purchase price for the components in this system was
26 \$36,795,480. The terms of this agreement, including explicit provisions that the agreement was
27 non-cancelable and the goods purchased thereby non-returnable, were memorialized in a New
28 World (revised) purchase order signed by Qu and Chan, PW/DC – 01R. This purchase order

1 forms a binding and non-cancelable contract between Defendant New World and PrediWave.

2 **PW System License Agreement**

3 28. On or around June 26, 2003, Defendant agreed to license PrediWave’s “PW
4 CA System” in accordance with limited terms stated in the agreement. The total fees for this
5 license were \$30,500,000. The terms of this agreement were memorialized in a contract signed by
6 Qu and Chan, the PW System License Agreement. This document is a binding contract between
7 Defendant New World and PrediWave.

8 **Funds Past Due under these Contracts**

9 29. Under the terms of these and other agreements, Defendant owes PrediWave
10 over \$108,740,500. To date, Defendant has made payments of only approximately \$50,000,000
11 toward these obligations. Currently, Defendant owes PrediWave over \$58,866,500 under the
12 terms of the agreements for goods and services sold by PrediWave and delivered to Defendant
13 from 2001 to the present.

14 **Agreements Defendant Refuses to Fulfill**

15 30. Additionally, Defendant has entered into contracts and purchase orders with
16 PrediWave that Defendant refuses to fulfill. One such purchase order is PW/BC – 05AR. The
17 contracts are agreements to, *inter alia*, purchase and license STBs and head end servers (the
18 “Amended STB Purchase Agreement”) and an agreement to purchase STBs (the “PrediWave
19 Product Purchase Agreement”).

20 **PW/BC – 05AR**

21 31. On February 5, 2003, Defendant agreed to purchase from PrediWave
22 200,000 STBs (model “PW–CATV–STB–V1”) for \$435 each. The total purchase price for the
23 STBs in this agreement was \$87,000,000, with a required deposit of \$32,000,000. The terms of
24 this agreement were memorialized in a New World (amended and restated) purchase order signed
25 by Qu and Chan, PW/BC – 05AR. This purchase order forms a binding contract between
26 Defendant New World and PrediWave. Defendant has not fulfilled its obligations under this
27 Purchase Order.

28 32. On January 28, 2004, Chan, on behalf of Defendant New World, executed a

1 letter, sent to Qu, declaring its purchase of STBs pursuant to purchase order PW/BC – 05AR non-
2 cancelable, all payments pursuant to purchase order PW/BC – 05AR non-refundable, and any
3 warranties under purchase order PW/BC – 05AR waived.

4 33. While Defendant has paid PrediWave the money owed under the
5 agreement, Defendant has taken possession of only about 20,000 of the 200,000 STBs due under
6 the agreement. PrediWave is ready, willing, and able to supply the remaining STBs for
7 distribution in Asia. In fact, PrediWave’s contract manufacturer has at least 4,000 completed
8 STBs that Defendant has refused to pick up for months.

9 34. Defendant’s failure to take delivery of, and ship out of China, the completed
10 STBs has caused Flash Electronics, a contract manufacturer of PrediWave’s STBs, to inform
11 PrediWave that it cannot ship new orders for PrediWave. PrediWave informed Defendant of its
12 interference with PrediWave’s contractual relations and prospective economic advantage with
13 Flash Electronics by failing to take delivery of the completed STBs manufactured pursuant to
14 Defendant’s purchase orders. At the time of the filing of this Complaint, Defendant has not yet
15 taken delivery of these completed STBs.

16 35. Defendant’s request for the return of its money paid under, and refusal to
17 take delivery of PrediWave STBs manufactured pursuant to, this purchase order is a repudiation of
18 purchase order PW/BC – 05AR. Furthermore, Defendant’s request for the return of its money
19 paid under this purchase order is moot, given Defendant’s own statement that its purchase
20 pursuant to PW/BC – 05AR is non-cancelable, that all payments pursuant to purchase order
21 PW/BC – 05AR are non-refundable, that any warranties under purchase order PW/BC – 05AR
22 are waived, and that goods already delivered thereunder are accepted.

23 36. Accordingly, PrediWave seeks declaratory relief and damages in the
24 amount of the deposit on the contract, the profits it would have realized under the agreement had it
25 been fulfilled.

26 **Amended STB Purchase Agreement**

27 37. On or around February 5, 2003, Defendant agreed to purchase 1,000,000
28 STBs (model “PDV3000”) for \$425 each. The total purchase price for the STBs in this agreement

1 was \$425,000,000, which required a deposit of \$20,000,000. The terms of this agreement (an
2 amendment of a prior agreement for the purchase of 1,000,000 older-model STBs) were
3 memorialized in a contract between PrediWave and Defendant New World signed by Qu and
4 Chan, the Amended STB Purchase Agreement. This signed agreement forms a binding contract
5 between PrediWave and Defendant.

6 38. While Defendant has paid the deposit due under the agreement, Defendant
7 has failed to make the first two mandated minimum quarterly purchases due under the Amended
8 STB Purchase Agreement (the final two mandated quarterly purchases are not yet due).
9 Defendant has likewise failed to pay for these mandated purchases. Currently Defendant is past
10 due on orders for 500,000 STBs, totaling \$212,500,000.

11 39. PrediWave is ready, willing, and able to supply the remaining STBs for
12 distribution in Asia. In fact, PrediWave's contract manufacturer has at least 4,000 completed
13 STBs that Defendant has refused to pick up for months.

14 40. Defendant's failure to take delivery of, and ship out of China, the completed
15 STBs has caused Flash Electronics, a contract manufacturer of PrediWave's STBs, to inform
16 PrediWave that it cannot ship new orders for PrediWave. PrediWave informed Defendant of its
17 interference with PrediWave's contractual relations and prospective economic advantage with
18 Flash Electronics by failing to take delivery of the completed STBs manufactured pursuant to
19 Defendant's purchase orders. At the time of the filing of this Complaint, Defendant has not yet
20 taken delivery of these completed STBs.

21 41. Defendant's request for the return of its money paid under this agreement is
22 a repudiation of this contract. Accordingly, PrediWave seeks declaratory relief and damages in
23 the amount of the deposit on the contract and the profits it would have realized under the
24 agreement had it been fulfilled.

25 **PrediWave Product Purchase Agreement**

26 42. On or around March 1, 2003, Defendant signed an agreement to purchase
27 from PrediWave 500,000 STBs (model "PDV4102C") for \$280 each. The total purchase price for
28 the STBs in this agreement was \$140,000,000, which required a deposit of \$10,000,000. The

1 terms of this agreement were memorialized in a contract between PrediWave and Defendant New
2 World signed by Qu and Chan, the PrediWave Product Purchase Agreement. This signed
3 agreement forms a binding contract between PrediWave and Defendant.

4 43. While Defendant has paid the deposit due under the agreement, Defendant
5 has failed to make mandated minimum quarterly purchases due under the PrediWave Product
6 Purchase Agreement. Defendant has likewise failed to pay for any mandated purchases.

7 44. PrediWave is ready, willing, and able to supply the remaining STBs for
8 distribution in Asia. In fact, PrediWave's contract manufacturer has at least 4,000 completed
9 STBs that Defendant has refused to pick up for months.

10 45. Defendant's failure to take delivery of, and ship out of China, the completed
11 STBs has caused Flash Electronics, a contract manufacturer of PrediWave's STBs, to inform
12 PrediWave that it cannot ship new orders for PrediWave. PrediWave informed Defendant of its
13 interference with PrediWave's contractual relations and prospective economic advantage with
14 Flash Electronics by failing to take delivery of the completed STBs manufactured pursuant to
15 Defendant's purchase orders. At the time of the filing of this Complaint, Defendant has not yet
16 taken delivery of these completed STBs.

17 46. Defendant's request for the return of its money paid under this agreement is
18 a repudiation of this contract. Accordingly, PrediWave seeks declaratory relief and damages in
19 the amount of the deposit on the contract and the profits it would have realized under the
20 agreement had it been fulfilled.

21 **Agreements Under Which Defendant Is Obligated To Make Best Efforts to Distribute**
22 **PrediWave Products**

23 47. Defendant New World is obligated to PrediWave under the terms of at least
24 one contract, the Amended STB Purchase Agreement, to use best efforts to promote the sale of,
25 and distribute, PrediWave's products in Asia. The terms of this agreement were memorialized in
26 a contract between PrediWave and Defendant signed by Qu and Chan on or around February 5,
27 2003. This signed agreement forms a binding contract between Defendant and PrediWave.

28 48. While PrediWave has to the extent possible, given Defendant's actions and

1 54. Defendant's failure to exclusively distribute PrediWave's products in Asia
2 constitutes a material breach of its exclusive distributorship agreement with PrediWave.
3 Accordingly, PrediWave seeks damages in the amount of the benefit of the bargain it would have
4 received had this agreement been performed.

5 **Agreements Under Which Defendant Is Obligated To Make Best Efforts to Promote**
6 **PrediWave's Goodwill and the Marketing of PrediWave's Products**

7 55. Defendant New World is obligated to PrediWave under the terms of at least
8 one contract, the Amended STB Purchase Agreement, to make best efforts to promote
9 PrediWave's goodwill and to promote the marketing of PrediWave's products in Asia. The terms
10 of this agreement were memorialized in a contract between PrediWave and Defendant signed by
11 Qu and Chan on or around February 5, 2003. This signed agreement forms a binding contract
12 between Defendant and PrediWave.

13 56. While PrediWave has to the extent possible, given Defendant's actions and
14 inactions, performed under this agreement, Defendant has failed to make best efforts to promote
15 PrediWave's goodwill and market PrediWave's products in Asia. In fact, Defendant failed to
16 implement its business plan to develop a market for VOD services in China and throughout Asia.
17 As a result, it failed to use its best efforts to market PrediWave products in Asia. Following its
18 failure to implement its business plan, Defendant has caused enormous economic and reputational
19 damage by engaging in a widespread marketing and media campaign in PrediWave's primary
20 markets to lay the blame for Defendant's failures to perform under Defendant's agreements with
21 PrediWave at the feet of PrediWave by demeaning the quality of PrediWave's products and
22 disparaging PrediWave's management.

23 57. Defendant's failure to make best efforts to promote PrediWave's goodwill
24 and market PrediWave's products in Asia and active engagement in disparaging PrediWave's
25 products and management constitute a material breach of the Amended STB Purchase Agreement.
26 Accordingly, PrediWave seeks damages in the amount of the benefit of the bargain it would have
27 received had this agreement been performed and in the amount of PrediWave's loss of good will
28 due to Defendant's disparagement.

1 **Damages to PrediWave**

2 58. PrediWave has been damaged because Defendant has (a) failed to pay
3 outstanding balances for goods and services delivered under the contracts and agreements, (b)
4 failed to place mandatory minimum orders of goods and services under the contracts and
5 agreements, (c) failed to accept delivery of goods and services under the contracts and agreements,
6 (d) failed to promote the sale of PrediWave products in Asia, (e) failed to exclusively distribute
7 PrediWave’s products in Asia, (f) failed to promote the goodwill of PrediWave in Asia, (g)
8 breached its covenant of good faith and fair dealing with PrediWave, (h) tortiously interfered with
9 PrediWave’s contractual relations, (i) tortiously interfered with PrediWave’s prospective
10 economic advantage, and (j) disparaged PrediWave’s products and management, causing loss of
11 goodwill and substantial impediment to PrediWave’s ability to conduct business in Asia.
12 PrediWave’s damages include, but are not limited to, the following: (1) amounts owed under
13 outstanding purchase orders with Defendant for which Defendant has not paid and interest
14 thereon; (2) loss of business opportunities due to PrediWave’s inability to complete these contracts
15 on schedule; (3) loss of market share due to Defendant’s delay in distributing PrediWave products;
16 (4) loss of market share due to Defendant’s delay in exclusively distributing PrediWave products;
17 (5) loss of market share due to Defendant’s failure to promote PrediWave’s goodwill; (6) added
18 costs to process purchase order production runs in smaller batches due to the uncertainty that
19 Defendant will take delivery of the products; (7) additional development costs for product features
20 not contemplated by the parties at the time of the contracts; (8) loss of profits PrediWave would
21 have received had the contracts been fulfilled; (9) losses incurred by obligations that PrediWave
22 owes to suppliers related to PrediWave agreements with Defendant, including agreements to
23 supply components for Defendant’s orders of STBs and PrediWave servers; (10) and loss of
24 goodwill due to Defendant’s disparagement of PrediWave’s products and management.

25 **FIRST CAUSE OF ACTION**

26 **(Breach of Contract)**

27 59. PrediWave hereby incorporates by reference, and realleges as if set forth
28 fully herein, paragraphs 1 through 58 above.

1 PrediWave.

2 68. PrediWave is entitled to the damages set forth below, based on Defendant's
3 breach of contract and the significant harm caused thereby.

4 **THIRD CAUSE OF ACTION**

5 **(Breach of Exclusive Distributorship Agreement)**

6 69. PrediWave hereby incorporates by reference, and realleges as if set forth
7 fully herein, paragraphs 1 through 68 above.

8 70. To the extent that PrediWave was not prevented from doing so by
9 Defendant, PrediWave has complied with all of its obligations under all contracts, including at
10 least one oral agreement obligating Defendant to exclusively distribute PrediWave's products in
11 Asia.

12 71. Defendant has not complied with all of its obligations under the contracts.
13 Specifically, Defendant has failed to exclusively distribute PrediWave's products in Asia in
14 accordance with the terms of the oral agreement reached by Chan and Qu. In fact, Defendant has
15 caused enormous economic and reputational damage by engaging in a widespread marketing and
16 media campaign in PrediWave's primary markets to lay the blame for Defendant's failures to
17 perform under Defendant's agreements with PrediWave at the feet of PrediWave by demeaning
18 the quality of PrediWave's products.

19 72. Accordingly, Defendant has breached its contractual obligations to
20 PrediWave.

21 73. PrediWave is entitled to the damages set forth below, based on Defendant's
22 breach of contract and the significant harm caused thereby.

23 **FOURTH CAUSE OF ACTION**

24 **(Breach of Marketing Agreement)**

25 74. PrediWave hereby incorporates by reference, and realleges as if set forth
26 fully herein, paragraphs 1 through 73 above.

27 75. PrediWave has complied with all of its obligations under the contracts to
28 the extent that PrediWave was not prevented from doing so by Defendant.

1 exclusively distribute PrediWave's products in Asia, (f) and failing to promote the goodwill of
2 PrediWave in Asia.

3 83. PrediWave is entitled to the damages set forth below, based on Defendant's
4 breach of the covenant of good faith and fair dealing and the significant harm caused thereby.

5 **SIXTH CAUSE OF ACTION**

6 **(Tortious Interference With Contractual Relations)**

7 84. PrediWave hereby incorporates by reference, and realleges as if set forth
8 fully herein, paragraphs 1 through 83 above.

9 85. Valid contracts between PrediWave and third parties, including Flash
10 Electronics, a contract manufacturer of PrediWave products, existed at the time of Defendant's
11 breaches and continue to exist. Defendants had knowledge of the existence of the contracts
12 between PrediWave and third parties, including Flash Electronics.

13 86. Defendant had knowledge that its failure to take delivery of completed
14 STBs has substantially impeded Flash Electronics from shipping new orders for PrediWave.
15 PrediWave explicitly informed Defendant, including by letter, of its interference with
16 PrediWave's contractual relations with Flash Electronics by failing to take delivery of the
17 completed STBs manufactured pursuant to Defendant's purchase orders.

18 87. At the time of the filing of this Complaint, Defendant still has refused to
19 take delivery of these completed STBs.

20 88. Defendant's intentional failure to pick up its goods completed by Flash
21 Electronics constitutes an intentional disruption of PrediWave's contractual relations with Flash
22 Electronics, which is seriously impeded from shipping to PrediWave new product orders.

23 89. As a result of Defendant's intentional, malicious, and oppressive acts, the
24 contracts between PrediWave and third parties, including Flash Electronics, were disrupted.
25 PrediWave has been and continues to be damaged and to suffer monetary losses due to this
26 disruption and is entitled to the damages set forth below.

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1 **SEVENTH CAUSE OF ACTION**

2 **(Tortious Interference With Prospective Business Advantage)**

3 90. PrediWave hereby incorporates by reference, and realleges as if set forth
4 fully herein, paragraphs 1 through 89 above.

5 91. Economic relationships between PrediWave and third parties, including
6 Flash Electronics, a contract manufacturer of PrediWave products, employees, suppliers, and
7 customers existed at the time of Defendant's breaches and continue to exist today.

8 92. These relationships have brought economic benefits to PrediWave in the
9 past, and it is probable that these relationships would continue to bring economic benefits to
10 PrediWave in the future.

11 93. Defendant had, at all times relevant to this cause of action, knowledge of
12 the existence of these economic relationships and of the probability of future economic benefits to
13 PrediWave as a result therefrom.

14 94. Defendant nevertheless sought to disrupt the economic relationships
15 between PrediWave and third parties, including Flash Electronics, in order to harm PrediWave and
16 benefit itself in its contractual disputes with PrediWave. Defendant has, for example, refused to
17 pick up completed STBs manufactured pursuant to the Contracts At Issue and has engaged in a
18 widespread marketing and media campaign in PrediWave's primary markets to lay the blame for
19 Defendant's failures to perform under Defendant's agreements with PrediWave at the feet of
20 PrediWave by demeaning the quality of PrediWave's products and disparaging PrediWave's
21 management.

22 95. Defendant has actually disrupted the economic relationships between
23 Plaintiff and third parties, including Flash Electronics, which is substantially impeded from
24 shipping new orders for PrediWave due to Defendant's actions and inactions. Defendant has
25 actually disrupted the economic relationships between PrediWave and third parties by taking
26 actions intended to result in, and actually resulting in, *inter alia*, added costs to process purchase
27 order production runs in smaller batches due to the uncertainty that Defendant will take delivery of
28 the products and losses incurred by obligations that PrediWave owes to suppliers related to

1 PrediWave agreements with Defendant, including agreements to supply components for
2 Defendant's orders of STBs and PrediWave servers.

3 96. As a result of Defendant's intentional, malicious, and oppressive disruption
4 of Plaintiff's economic relationships, Plaintiff has been and continues to be damaged and to suffer
5 monetary losses and is entitled to the damages set forth below.

6 **EIGHTH CAUSE OF ACTION**

7 **(Declaratory Relief – PrediWave is Entitled to Deposits Paid for, and Profits it Would Have**
8 **Realized Under, all the Contracts At Issue)**

9 97. PrediWave hereby incorporates by reference, and realleges as if set forth
10 fully herein, paragraphs 1 through 96 above.

11 98. In entering into the contracts, PrediWave bargained for the timely payment
12 of security deposits, the timely placement of and payment for orders for goods and/or services as
13 set forth in the contracts, the distribution and exclusive distribution of its products in Asia, and the
14 promotion of its goodwill in Asia.

15 99. An actual controversy exists between PrediWave and Defendant regarding
16 the fulfillment of each party's obligations under the Contracts At Issue, PrediWave's right to keep
17 deposits already paid by Defendant, and PrediWave's entitlement to profits it bargained for in the
18 Contracts At Issue.

19 100. Plaintiff is thus entitled to a declaration that:

20 (a) Defendant is obligated to pay PrediWave all profits PrediWave
21 would have received under the Contracts At Issue, under which
22 PrediWave has fulfilled its obligations, had these Contracts At Issue
23 been fulfilled by Defendant.

24 (b) Defendant is obligated to pay PrediWave all consequential costs
25 incurred by PrediWave as a result of Defendant's failure to fulfill its
26 obligations under the Contracts At Issue.

27 (c) PrediWave is entitled to keep all security deposits paid by
28 Defendant to PrediWave under the Contracts At Issue where

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Defendant has failed or refused to take delivery of or place
mandated orders for PrediWave goods and/or services.

PRAYER FOR RELIEF

WHEREFORE Plaintiff PrediWave respectfully prays for a judgment against
Defendant New World for:

- a. Damages in an amount to be determined at trial but in no event less than \$58,866,500, and prejudgment interest at the maximum legal rate;
- b. Punitive damages in an amount to be determined at trial;
- c. Declaratory relief as described above;
- d. An award of Plaintiff's costs of suit, including attorneys' and expert fees;
- e. Such further relief that this court deems just and proper, including further relief under 28 U.S.C. § 2202.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, PrediWave
demands a trial by jury of all issues triable as of right by a jury in the above action.

Dated: August 12, 2004

SIMPSON THACHER & BARTLETT LLP

By /s/ George M. Newcombe
George M. Newcombe

Attorney for Plaintiff
PrediWave Corporation