



NORTHERN CALIFORNIA CHAPTER

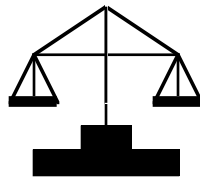
MEETING PROFESSIONALS INTERNATIONAL

# HOTEL CONTRACTS BOOT CAMP!

*Legal Tips and Practical Guidelines for Meeting Professionals*

*Part 2*

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MPI-NCC

22<sup>nd</sup> Annual Conference & Expo

January 20-21, 2010  
Moscone West  
San Francisco, CA

**JOHN S. FOSTER III, ESQ.**  
Certified Hospitality Marketing Executive

Consultant and Counselor to  
Associations, Trade Show & Event Sponsors, Meeting & Convention Professionals™

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# **HOTEL CONTRACTS BOOT CAMP!**

*Legal Tips and Practical Guidelines for Meeting Professionals*

*John S. Foster, Esq., CHME*

## **Part 2**

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### **I. INTRODUCTION AND OVERVIEW**

- What we will discuss today

### **II. ANALYZE THIS!**

- Interactive Exercises / Key Concepts
  - Exercise #1 – Get your facts straight
  - Exercise #2 - Attrition Clause - Guest Rooms & Catering
  - Exercise #3 – Cancellation by Group (Guest Rooms & Catering)

### **III. Q&A**

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**INTERACTIVE EXERCISES**

*The following contract clauses are for discussion only. Each clause came from an actual hotel contract. Analyze each one separately and decide what's good about them, what's bad about them and what should be revised. Do not use these clauses in your contracts*

**EXERCISE #1**

**California Association of Liberal Students  
Wild and Indignant about Nearly Everything**

(CALSWINE)

Meeting Dates: **January 22-26, 2012**

Guest Room Accommodations: This contract applies to the following block of rooms:

DAY	DATE	RUN OF HOUSE	STAFF ROOMS	ONE-BEDROOM SUITE	TOTAL
Sunday	January 22, 2012	100	10	2	112
Monday	January 23, 2012	100	10	2	112
Tuesday	January 24, 2012	100	10	2	112
Wednesday	January 25, 2012	100	10	2	112
Thursday	January 26, 2012	0	0	0	0

Total Room Nights Held by Hotel: 448

Anticipated Guest Room Revenue: \$89,600

Allowable Attrition: 10%

Room Rates:

Run of House: \$200.00 single/double occupancy

Staff: 50% off ROH Rate

Concessions:

Comps: 1 per 50 occupied and paid for over the Meeting Dates. Comps have no value. Comp rooms not used during your meeting will be lost.

Health Club: Complimentary

One Bedroom Suite: Complimentary / 4 nights (over and above earned comps)

Upgrades: All staff rooms

Cut-Off Date: One month (30 days)

Commission 10% per paid roomnight to [Third-Party] (excluding attrition or cancellation and staff rooms)

Minimum Guaranteed Catering: \$ 50,000

Meeting Room Rental: Comp with 90% pick-up of room block

**EXERCISE #2**  
**ATTRITION CLAUSE – GUEST ROOMS**

- a) The rates and terms in this Agreement are based on CALSWINE's total number of room nights contracted, the meeting/function space needed based on your reservations and/or the number of catered food and beverage events and covers anticipated.
- b) The total contracted room block reserved for CALSWINE is 448. The MEGAGRAN HOTEL will allow your CALSWINE to reduce without penalty the guest room commitment to 90% of its original total. All reservations are due thirty (30) days prior to arrival (Cut-Off date). At that time, your room nights should equal no less than 90% of the contracted rooms (or a total of 403). Should room reservations on the Cut-Off Date total less than 403, an attrition charge for rooms below 403 will be posted to CALSWINE's account for convenience.
- c) Attrition charges will be computed by multiplying CALSWINE's average rate, plus tax, plus an amount of revenue per occupied room calculated for the month the meeting takes place for lost revenue in room service, bars, restaurants, health club and other retail outlets times the difference between 90% and the actual rooms utilized. Final attrition charges may increase if no-shows or cancellations occur after the Cut-off Date.
- d) Should CALSWINE not pick-up at least 90% of the room block, the MEGAGRAN HOTEL reserves the right to either:
  - 1) Reduce the amount of meeting space it is holding for CALSWINE or charge a reasonable rental for the space used, at the HOTEL's discretion, and
  - 2) Eliminate all concessions and upgrades, including comp rooms, suites, and staff rates
- e) Should any of your catered food and beverage events be cancelled, reduced or taken off property, CALSWINE will be charged for the number of covers that are cancelled or reduced, multiplied by 90% of the revenue expected by the Hotel, plus tax, based on menu prices in affect at the time of the meeting.

**EXERCISE #3**

**CANCELLATION BY GROUP CLAUSE**

In the event you cancel this Agreement prior to the initial arrival date of your Group, the MegaGrand Hotel will necessarily incur damages including, for example, turning away other guest room reservations, the ancillary revenue associated with each guest room, meetings or functions, including the additional food and beverage revenue generated for the Hotel.

Under the terms of this Agreement, the MegaGrand Hotel is reserving the Room Block and meeting and/or exhibit space requirements described herein for your use. In the event these reserved facilities and related services are not used by you, the Hotel will experience significant financial losses.

Notwithstanding any other provisions of this Agreement, you shall have the right to cancel this Agreement, without cause, upon written notification to the Hotel at any time prior to the event and upon payment of an amount expressed below:

- Notice and payment received after signature and on or before January 22, 2010 (25% of the Room Block x average Group room rate + F&B Minimum) \*\$72,400
  
- Notice and payment received between January 23, 2010 and on or before January 22, 2011 (50% of the Room Block x average Group room rate + F&B Minimum) \$94,800
  
- Notice and payment received between January 23, 2011 and on or before arrival January 22, 2012 (100% of the Room block x average Group rate + F&B Minimum) \$139,600

\*Calculated based on Total Room Revenue:  
448 Room Nights x \$200 = \$89,600  
Catering Food & Beverage Minimum = \$50,000  
Total: \$139,600

These payments may be subject to the applicable taxes. The Parties agree that these sums are not a penalty and represent a reasonable effort on behalf of the MegaGrand Hotel to establish its loss prospectively and represent liquidated damages.

Such payment shall be made by certified check or wire transfer and shall accompany your notice of the exercise of this cancellation option. Any attempted exercise of this right without the inclusion of payment as set forth above, shall be invalid. Proper notice of cancellation is not a default but rather an exercise of a right under this Agreement to cancel this Agreement without any further obligations.

MegaGrand Hotel will not consider notice of cancellation valid and will not release accommodations held until payment of the liquidated cancellation damages is received, therefore delay in payment may result in higher damages owed.

Any cancellation for the sole purpose of utilizing another facility and/or city will result in one hundred percent (100%) charge of anticipated rooms, food and beverage, and function space revenue without respect to the date of cancellat

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### JOHN S. FOSTER, ESQ., CHME Bio and Professional Background



**JOHN S. FOSTER, ESQ. CHME** is an attorney and counsel whose firm FOSTER, JENSEN & GULLEY, LLC specializes in the legal aspects of meetings & conventions, trade shows & events, and association management. He has been an associate or general counsel for over four hundred (400) national and regional associations and companies since 1986 and has been named as one of the 25 most influential people in the meetings industry by MeetingNews. His peers have also voted John a Special Recognition Award as “Corporate Member of the Year” through the Georgia Society of Association Executives. PCMA Members voted John special recognition as its “Author of the Year” for his frequent contributions to *Convene* magazine. John has also been selected as a Subject Matter Expert (SME) for the peer-to-peer assistance program and a Platinum Speaker for Meeting Professionals International.

John’s professional experience includes twelve (12) years as a director of sales and marketing for Hyatt Hotels and Resorts, Marriott Hotels and Resorts, and Holiday Inns and he holds the Certified Hospitality Marketing Executive (CHME) designation from HSMIAI. John is also a founding member of the Academy of Hospitality Industry Attorneys (AHIA) and is active in MPI, PCMA, and IAEM. He is also a long time member of ASAE and has been a member of the Legal Section and the Meetings & Exposition Sections. John is the legal columnist for *Convene*, published by PCMA, and the author of three books on the legal aspects of meetings and conventions: *Meeting & Facility Contracts*, *Meetings & Liability* and *Independent Meeting Planners & the Law*. John is also a co-author for PCMA’s Professional Meeting Management book, chapter on “Contracts in the Meetings Industry”. He has also served as a Subject Matter Expert on legal issues for MPI. John also provides outside legal services to MPI on industry contracts.

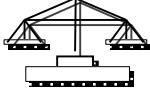
John has been an adjunct professor at Georgia State University and a guest lecturer at the University of Oklahoma, University of Georgia, and Arizona State University and Kennesaw State University in their respective meeting management programs.

John handles in-house legal training as well as contract preparation and negotiations for corporations and associations nationwide. He is a well-known expert in the hospitality industry and he speaks frequently at industry events worldwide.

**Consultants and Counselors to  
Associations, Trade Show & Event Sponsors, Meeting & Convention Professionals<sup>sm</sup>**

# Hotel Contract Boot Camp - Part 2

**Hotel Contracts Boot Camp - Part 1**  
*Contracting Tips for Meeting Professionals*



**MPI-NCC**  
22nd Annual Conference & Expo  
**John S. Foster, J.D., CHME**  
Attorney at Law  
Certified Hospitality Marketing Executive

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**What We Will Discuss Now**

➤ **Interactive Exercises**

- Exercise #1 - Get your facts straight
- Exercise #2 - Attrition clause - Guest rooms & Catering
- Exercise #3 - Cancellation by Group

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# Hotel Contract Boot Camp - Part 2

AMERICAN ASSOCIATION OF LIBERAL STUDENTS  
WILD AND INDIGNANT ABOUT NEARLY EVERYTHING  
(CALSWINE)

## EXERCISE #1

Meeting Dates: January 22-26, 2012

Guest Room Accommodations: This contract applies to the following block of rooms:

DAY	DATE	RUN OF HOUSE	STAFF ROOMS	ONE-BEDROOM SUITE	TOTAL
Sunday	Jan. 22, 2012	100	10	2	112
Monday	Jan. 23, 2012	100	10	2	112
Tuesday	Jan. 24, 2012	100	10	2	112
Wednesday	Jan. 25, 2012	100	10	2	112
Thursday	Jan. 26, 2012	0	0	0	0

Total Room Nights Held by Hotel: 448

Anticipated Guest Room Revenue: \$89,600

Allowable Attrition: 10%

### Room Rates:

Run of House: \$200.00 single/double occupancy  
Staff: 50% off ROH Rate

### Concessions:

Comps: 1 per 50 occupied and paid for over the Meeting Dates. Comps have no value. Comp rooms not used during your meeting will be lost.

Health Club: Complimentary for Board Members

One Bedroom Suite: Complimentary / 4 nights (over and above earned comps)

Upgrades: All staff rooms

Cut-Off Date: One month (30 days)

Commission: 10% per paid roomnight to (Third-Party) (excluding attrition or cancellation and staff rooms)

Minimum Guaranteed Catering: \$ 50,000

Meeting Room Rental: Comp with 90% pick-up of room block

## EXERCISE #2

### ATTRITION CLAUSE - GUEST ROOMS

- The rates and terms in this agreement are based on CALSWINE's total number of room nights contracted, the meeting/function space needed based on your reservations and/or the number of catered food and beverage events and covers anticipated.
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- Should CALSWINE not pick-up at least 90% of the room block, the HOTEL reserves the right to either:
  - Reduce the amount of meeting space it is holding for your group or charge a reasonable rental for the space used, at the HOTEL's discretion, and
  - Eliminate all concessions and upgrades, including comp rooms, suites, and staff rates
- Should any of your catered food and beverage events be cancelled, reduced or taken off properly, CALSWINE will be charged for the number of covers that are cancelled or reduced, multiplied by 90% of the revenue expected by the Hotel, plus tax, based on menu prices in effect at the time of the meeting.

## EXERCISE #3

### PERFORMANCE / CANCELLATION

In the event you cancel this Agreement prior to the initial arrival date of your Group, the MegaGrand Hotel will necessarily incur damages including, for example, turning away other guest room reservations, the ancillary revenue associated with each guest room, meetings or functions, including the additional food and beverage revenue generated for the Hotel.

Under the terms of this Agreement, the MegaGrand Hotel is reserving the Room Block and meeting and/or exhibit space requirements described herein for your use. In the event these reserved facilities and related services are not used by you, the Hotel will experience significant financial losses.

Notwithstanding any other provisions of this Agreement, you shall have the right to cancel this Agreement, without cause, upon written notification to the Hotel at any time prior to the event and upon payment of an amount expressed below:

- Notice and payment received after signature and on or before April 3, 2009 (25% of the Room Block x  $72,400^*$  average Group room rate + F&B Minimum)
- Notice and payment received between April 3, 2009 and on or before October 3, 2009 (50% of the Room Block x  $394,800$  average Group room rate + F&B Minimum)
- Notice and payment received between October 3, 2009 and on or before arrival October 3, 2010 (100% of the Room block x average Group rate + F&B Minimum)

\*Calculated based on Total Room Revenue:  
448 Room Nights x \$200 = \$89,600  
Catering Food & Beverage Minimum = \$50,000  
Total: \$139,600



# Hotel Contract Boot Camp - Part 2

## EXERCISE #3 – PART 2

### CANCELLATION CLAUSE

These payments may be subject to the applicable taxes. The Parties agree that these sums are not a penalty and represent a reasonable effort on behalf of the MegaGrand Hotel to establish its loss prospectively and represent liquidated damages.

Such payment shall be made by certified check or wire transfer and shall accompany your notice of the exercise of this cancellation option. Any attempted exercise of this right without the inclusion of payment as set forth above, shall be invalid. Proper notice of cancellation is not a default but rather an exercise of a right under this Agreement to cancel this Agreement without any further obligations.

MegaGrand Hotel will not consider notice of cancellation valid and will not release accommodations held until payment of the liquidated cancellation damages is received, therefore delay in payment may result in higher damages owed.

Any cancellation for the sole purpose of utilizing another facility and/or city will result in one hundred percent (100%) charge of anticipated rooms, food and beverage, and function space revenue without respect to the date of cancellation.

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### Any Questions?

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### Professional Resources

The Law of Meetings, Conventions & Trade Shows

“Meeting & Facility Contracts”

\$69.95

Meetings & Liability

\$49.95

Order:

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