

Received, 7 PM

M. M. Ratanjani - 11.08.2012

KANESHCHA RATANJANI

RECEIVED & FILED  
SUPERIOR COURT

2012 NOV -8 P 4: 26

MORRIS COUNTY  
CIVIL DIVISION

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Plaintiffs

By: Jah-Juin Ho  
Deputy Attorney General



SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION,  
MORRIS COUNTY  
DOCKET NO. MRS-C-\_\_\_\_\_ -12

JEFFREY S. CHIESA, Attorney General of the  
State of New Jersey, and ERIC T. KANEFISKY,  
Acting Director of the New Jersey Division of  
Consumer Affairs,

Plaintiffs,

v.

RATAN HOSPITALITY GROUP, LLC D/B/A  
HOWARD JOHNSON EXPRESS, JANE AND  
JOHN DOES 1-10, individually and as owners,  
officers, directors, shareholders, founders,  
managers, agents, servants, employees,  
representatives and/or independent contractors of  
RATAN HOSPITALITY GROUP, LLC D/B/A  
HOWARD JOHNSON EXPRESS; and XYZ  
CORPORATIONS 1-10,

Defendants.

Civil Action

**COMPLAINT**

Plaintiffs Jeffrey S. Chiesa, Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

## **PRELIMINARY STATEMENT**

1. During emergencies and major disasters, such as hurricanes, tropical storms, earthquakes, fires and floods, some merchants have taken unfair advantage of consumers by greatly increasing prices for certain merchandise, which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain the life health or safety or comfort of persons or their property, a practice commonly known as "price gouging." When a declared state of emergency results in abnormal disruptions of the market, the New Jersey Legislature has found it in the public interest that excessive and unjustified price increases in the sale of certain merchandise, price gouging, be prohibited. See N.J.S.A. 56:8-109.

2. On October 27 2012, just prior to Tropical Storm Sandy ("Sandy") reaching the State of New Jersey ("State" or "New Jersey"), Governor Chris Christie ("Governor Christie") declared a State of Emergency. In the wake of the State of Emergency, defendant Ratan Hospitality Group, LLC d/b/a Howard Johnson Express ("Howard Johnson Express" or "Defendant") engaged in price gouging in the sale of hotel rooms. In so doing, Howard Johnson Express committed numerous violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA").

## **PARTIES AND JURISDICTION**

3. The Attorney General is charged with the responsibility of enforcing the CFA. The Director is charged with the responsibility of administering the CFA on behalf of the Attorney General.

4. By this action, the Attorney General and Director (collectively, "Plaintiffs") seek injunctive and other relief for violations of the CFA. Plaintiffs bring this action pursuant to their

authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and/or 56:8-109. Venue is proper in Morris County, pursuant to R. 4:3-2, because it is the county in which Howard Johnson Express has conducted business.

5. On July 14, 2003, Howard Johnson Express was established as a limited liability corporation in the State. Upon information and belief, at all relevant times, Howard Johnson Express has maintained a business address of 625 Route 46 East, Parsippany, New Jersey 07054. Howard Johnson Express's registered agent is Mahesh Ratanji, who maintains a mailing address of 1300 Tonnelle Avenue, North Bergen, New Jersey 07047.

6. John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, and/or representatives of Howard Johnson Express who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

7. XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS:**

**A. Sandy and Executive Order No. 104 Declaring a State of Emergency**

8. In late October 2012, Sandy was approaching New Jersey.

9. Hurricanes and tropical storms have the potential to cause severe weather conditions, including heavy rains, high winds, main stream and river flooding, and progressing runoff that may threaten homes and other structures, and endanger lives in the State.

10. On October 27, 2012 at approximately 11:30 a.m., due to the approach of Sandy, Governor Christie issued Executive Order No. 104, which immediately declared a State of Emergency in New Jersey ("State of Emergency").

11. Upon information and belief, on October 28, 2012, President Obama signed an emergency disaster declaration for New Jersey.

12. Upon information and belief, Governor Christie ordered the evacuation of all New Jersey barrier islands by 4:00 p.m. on October 28, 2012.

13. Upon information and belief, on October 29, 2012, Hurricane Sandy made landfall in New Jersey, which at that time had been categorized as a tropical storm, and resulted in severe weather conditions of an unprecedented magnitude, including enormous storm surges, devastating winds and widespread flooding throughout the State.

14. Upon information and belief, while moving ashore at Atlantic City, Sandy brought winds in excess of 80 miles per hour, and heavy rainfall that reached almost 12 inches.

15. Sandy resulted in severe wind and water damage, among other things, to the New Jersey shoreline, homes and businesses.

16. Sandy produced winds that toppled trees and downed power lines throughout New Jersey, causing widespread power outages that affected at least 2.4 million households and countless businesses.

17. In several municipalities, particularly those along the New Jersey coast, residents were forced to evacuate their homes which, in many instances, were completely destroyed.

18. In other areas, severe flooding and power outages left New Jersey residents at least temporarily homeless.

19. Many displaced residents did not have the ability to stay with family or friends or chose not to stay in a temporary shelters.

20. Residents thus resorted to seeking shelter at hotels or other places of lodging.

21. Upon information and belief, at least 23 New Jersey residents have died as a result of Sandy.

**B. Defendant's Business Generally**

22. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of hotel accommodations to consumers in the State and elsewhere.

23. At all relevant times, Defendant's inventory of hotel rooms included approximately 53 king-sized bed rooms, 43 double-bed occupancy rooms, and three handicap accessible rooms ("Covered Rooms").

**C. Defendant's Excessive Hotel Room Prices**

24. During the period immediately prior to the State of Emergency, October 19, 2012 through October 26, 2012, the highest rate charged by Defendant for any of the Covered Rooms in the Howard Johnson Express was \$90.00, charged on October 20, 2012.

25. Following the Governor's Declaration of a State of Emergency at 11:30 a.m. on October 27, 2012, there was a sharp percentage increase in the price of many of the rooms in the hotel as consumers who had been displaced by the storm sought shelter and basic essentials.

These increases exceeded ten percent over the highest prices previously charged for any of the Covered Rooms during the period of October 19 to 26, 2012 (the week leading up to the State of Emergency).

26. During the period of October 27, 2012 through October 31, 2012 (the "Emergency Period"), there were 15 instances in which the Defendant charged above the amount permitted by statute. These instances are as follows:

<u>Date</u>	<u>Highest Pre-Storm Room Rate</u>	<u>Rate</u>	<u># Rooms at Rate</u>	<u>Percentage in Excess of High Rate, Pre-State of Emergency</u>
October 28, 2012	\$90.00	\$105.00	2	16.67%
October 30, 2012	\$90.00	\$101.15	1	12.39%
October 30, 2012	\$90.00	\$109.00	3	21.11%
October 30, 2012	\$90.00	\$119.00	9	32.22%

**COUNT I**

**VIOLATION OF THE CFA (N.J.S.A. 56:8-109) BY DEFENDANT  
(EXCESSIVE PRICES DURING EMERGENCIES)**

27. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 26 as if more fully set forth herein.

28. The CFA defines "merchandise" as including "any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale." N.J.S.A. 56:8-1(c). Merchandise includes hotel rooms.

29. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), specifically hotel accommodations.

30. The CFA states:

It shall be an unlawful practice for any person to sell or offer to sell during a state of emergency or within 30 days of the termination of

a state of emergency, in the area for which the state of emergency has been declared, any merchandise which is consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of person or their property for a price that constitutes an excessive price increase.

[N.J.S.A. 56:8-109.]

31. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of merchandise consumed or used as a direct result of an emergency and/or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of person or their property within the meaning of N.J.S.A. 56:8-109, specifically hotel accommodations.

32. An "excessive price increase" means:

A price that is excessive as compared to the price at which the consumer good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency. A price shall be deemed excessive if:

(1) The price exceeds by more than 10 percent the price at which the good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency, unless the price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the state of emergency.

(2) In situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or services during the state of emergency, the price presents an increase of more than 10 percent in the amount of markup from cost, compared to the markup customarily applied by the seller in the usual course of business immediately prior to the state of emergency.

[N.J.S.A. 56:8-108]

33. After Sandy made landfall in New Jersey and within thirty (30) days after the State of Emergency had been declared, Defendant sold hotel rooms at prices more than 10 percent higher than for the period immediately prior to the State of Emergency, which constitutes an excessive price increase.

34. By offering for sale and/or selling hotel accommodations at prices constituting an excessive price increase, Defendant has engaged in unlawful practices in violation of the CFA, specifically N.J.S.A. 56:8-109.

35. Each instance of Defendant offering for sale and/or selling hotel accommodations at a price constituting an excessive price increase constitutes a separate violation of the CFA, N.J.S.A. 56:8-109.

## **COUNT II**

### **VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES)**

36. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 45 as if more fully set forth herein.

37. The CFA prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby...

[N.J.S.A. 56:8-2.]



38. In the operation of its business, Defendant has engaged in the use of unconscionable commercial practices.

39. Defendant has engaged in unconscionable commercial practices and deception including, but not limited to: Advertising, offering for sale and/or selling hotel accommodations for the period between October 27, 2012 and October 31, 2012 at prices constituting an excessive price increase compared to Defendant's prices immediately prior to the State of Emergency.

40. Each unconscionable commercial practice by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

#### **PRAYER FOR RELIEF**

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts of Defendant constitute multiple violations of the CFA;
- (b) Permanently enjoining Defendant, along with its agents, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under his control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA;
- (c) Directing Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Directing Defendant to pay the maximum statutory civil penalties for each violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing Defendant to pay costs and fees, including attorneys' fees, for the use of the State, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and

(f) Granting such other relief as the interests of justice may require.

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: \_\_\_\_\_



Jan-Juin Ho  
Deputy Attorney General

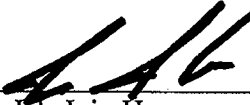
Dated: **11/8/12**  
Newark, New Jersey

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the CFA, is not the subject of any other action pending in any other court of this State. I further certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: \_\_\_\_\_




Jah-Juin Ho  
Deputy Attorney General

Dated: **11/8/12**  
Newark, New Jersey

**RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs


By:   
\_\_\_\_\_  
Jah-Juin Ho  
Deputy Attorney General

Dated: **11/8/12**  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Deputy Attorney General Jah-Juin Ho is hereby designated as trial counsel for the Plaintiffs in this action.

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
\_\_\_\_\_  
Jah-Juin Ho  
Deputy Attorney General

Dated: **11/8/12**  
Newark, New Jersey