

ENTERED ON ACMS

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ACTING ATTORNEY GENERAL OF NEW JERSEY  
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FILED

OCT 10 2013

THOMAS V. MANAHAN, P.J.C.V.  
JUDGE'S CHAMBERS  
MORRIS COUNTY COURTHOUSE

By: Jah-Juin Ho  
Deputy Attorney General  
[REDACTED]

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MORRIS COUNTY  
DOCKET NO. MRS-L-001428-13

JOHN J. HOFFMAN, Acting Attorney  
General of the State of New Jersey, and ERIC  
T. KANEFSKY, Acting Director of the New  
Jersey Division of Consumer Affairs,  
Plaintiffs,

v.

HOSPITALITY MANAGEMENT OF  
PARSIPPANY, LLC d/b/a DAYS INN and  
JANE AND JOHN DOES 1-10, individually  
and as owners, officers, directors,  
shareholders, founders, managers, agents,  
servants, employees, representatives and/or  
independent contractors of HOSPITALITY  
MANAGEMENT OF PARPIPPANY, LLC  
d/b/a DAYS INN and XYZ  
CORPORATIONS 1-10,

Defendant.

Civil Action

**FINAL CONSENT JUDGMENT**

The parties to this Action and Final Consent Judgment ("Consent Judgment") are plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey, and Eric T. Kanefsky, Director of the New Jersey Division of Consumer Affairs (collectively, "Plaintiffs"), and defendant Hospitality Management of Parsippany, LLC doing business as Days Inn ("Days Inn- Parsippany" or "Defendant"). As evidenced by their signatures below, the Plaintiffs and Defendant (collectively "Parties") consent to the entry of this Consent Judgment and its

provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind. Defendant denies all allegations of wrongdoing.

### **PRELIMINARY STATEMENT**

Plaintiffs commenced this Action on or about December 14, 2012 against defendant Days Inn- Parsippany. Plaintiffs' Complaint alleges that Defendant violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), by charging excessive prices (e.g. price gouging) in the advertisement, offering for sale and/or sale of hotel accommodations after Governor Chris Christie declared a State of Emergency on October 27, 2012, just prior to Tropical Storm Sandy ("Sandy") reaching New Jersey. Specifically, Plaintiffs allege that as compared to Defendant's hotel accommodation prices the week immediately preceding Sandy, from October 27, 2012 to November 5, 2012, Defendant's prices for hotel accommodations increased as high as 204 percent.

The Court has reviewed the terms of this Consent Judgment and based upon the Parties' agreement and for good cause shown:

### **IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:**

#### **1. JURISDICTION**

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to the Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

## **2. VENUE**

2.1 Venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Law Division, Morris County.

## **3. EFFECTIVE DATE**

3.1 This Consent Judgment shall be effective on the date that it is entered with the Court ("Effective Date").

## **4. DEFINITIONS**

As used in this Consent Judgment, the following capitalized words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Judgment:

4.1 "Action" shall refer to the matter titled John J. Hoffman, Acting Attorney General of the State of New Jersey, and Eric T. Kanefsky, Director of the New Jersey Division of Consumer Affairs v. Hospitality Management of Parsippany d/b/a Days Inn, Superior Court of New Jersey, Chancery Division, Morris County, Docket No. MRS-L-001428-13, and all pleadings and proceedings related thereto, including the Complaint, filed December 14, 2012.

4.2 "Advertisement" shall be defined in accordance with N.J.S.A. 56:8-1(c). This definition applies to other forms of the word "Advertisement" including, without limitation, "Advertising."

4.3 "Affected Consumer" shall refer to any Consumer who purchased hotel accommodations from Defendant at an Excessive Price Increase during the period from October 27, 2012 through November 5, 2012.

4.4 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

4.5 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

4.6 “Division” or “Division of Consumer Affairs” shall refer to the New Jersey Division of Consumer Affairs.

4.7 “Excessive Price Increase” shall be defined in accordance with N.J.S.A. 56:8-108.

4.8 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes hotel accommodations.

4.9 “New Jersey” and “State” shall refer to the State of New Jersey.

4.10 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

4.11 “Restitution” shall refer to all methods undertaken by Defendant to resolve Consumer complaints including, but not limited to, the issuance of credits or refunds or the reversal of credit card or debit card charges.

4.12 “State of Emergency” shall be defined in accordance with N.J.S.A. 56:8-108, and for purposes of this Consent Judgment shall mean the State of Emergency declared before Sandy on October 27, 2012.

## **5. INJUNCTIVE RELIEF**

5.1 Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA.

5.2 Defendant shall be permanently enjoined from Advertising, offering for Sale and/or selling Merchandise, specifically hotel accommodations, at a price constituting an Excessive Price Increase during a State of Emergency or within 30 days after termination of the State of Emergency, in violation of N.J.S.A. 56:8-109.

## **6. RESTITUTION**

6.1 Defendant shall pay Consumer Restitution in the amount of Eight Thousand Two Hundred Forty and 11/100 Dollars (\$8,240.11) (“Affected Consumer Restitution”).

6.2 The Division shall provide Defendant with a list of Consumers entitled to Affected Consumer Restitution, including the amount of Restitution for each consumer (“Consumer Restitution List”). To the extent the first and last name of an Affected Consumer is unavailable for purposes of the Consumer Restitution List, the Division shall provide a room number and date the Affected Consumer purchased a hotel room.

6.3 Within 30 days after receipt of the Consumer Restitution List, Defendant shall forward to each Affected Consumer the Restitution amount identified by the Division. The total Restitution amount identified by the Division shall not exceed the Affected Consumer Restitution. Where Restitution concerns the reversal of credit or debit card charges, Defendant shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be drawn upon a U.S. bank account with sufficient funds and payable to the respective Affected Consumer.

6.4 Within 90 days after the Effective Date, Defendant shall provide written notification to Plaintiffs as to whether each Affected Consumer has received Restitution. Such notification shall also include the following:

- (a) The name and address, if known, of the Affected Consumer;
- (b) The amount paid to each consumer;
- (c) Copies of documents evidencing the Restitution paid to the Affected Consumer; and
- (d) In the event that the Restitution is returned as undeliverable, documents evidencing the efforts undertaken to locate the Affected Consumer.

6.5 Within 90 days after the Effective Date, Defendant shall forward to Plaintiffs, in accordance with Section 14.1, any remaining unpaid balance of the Affected Consumer Restitution. Such payment shall be made by bank check, attorney trust account check or other guaranteed funds made payable to "New Jersey Division of Consumer Affairs."

6.6 Upon making the payment referenced in Section 6.5, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid to Plaintiffs and all interest in the monies, and any subsequent interest or income derived therefrom, and Plaintiffs shall have sole discretion as to the application of such monies.

## **7. SETTLEMENT PAYMENT**

7.1 Defendant shall pay the amount of Sixty-One Thousand Seven Hundred Fifty-Nine and 89/100 Dollars (\$61,759.89) ("Settlement Payment").

7.2 The Settlement Payment comprises of Fifty-Three Thousand Sixty-Two and 74/100 Dollars (\$53,062.74) in civil penalties, pursuant to N.J.S.A. 56:8-13, Six Thousand Three Hundred Twenty and 00/100 Dollars (\$6,320.00) in reimbursement of Plaintiffs' attorneys' fees and Two Thousand Three Hundred Seventy-Seven and 15/1000 Dollars (\$2,377.15) in reimbursement of Plaintiffs' investigative costs, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

7.3 The Settlement Payment shall be made by bank check, attorney trust account check or other guaranteed funds made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Jah-Juin Ho, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

7.4 Upon making the Settlement Payment, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid to Plaintiffs and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

#### **8. DISMISSAL OF ACTION**

8.1 The entry of this Consent Judgment constitutes a dismissal with prejudice of the Action.

#### **9. GENERAL PROVISIONS**

9.1 This Consent Judgment is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Judgment.

9.2 This Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of the State.

9.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

9.4 This Consent Judgment contains the entire agreement among the Parties. This agreement supersedes all prior negotiations and/or agreements. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Plaintiffs and Defendant.

9.5 Except as otherwise explicitly provided for in this Consent Judgment, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

9.6 If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

9.7 This Consent Judgment shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment avoid compliance with this Consent Judgment.

9.8 This Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Judgment nor any action taken hereunder shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Defendant; or (b) an admission by Defendant that any of its acts or practices described in or prohibited by this Consent Judgment are unfair or deceptive or violate any of the Consumer protection laws of the State. This Consent Judgment is not intended, and



shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Judgment; or (b) any action or proceeding involving a Released Claim (as defined in Section 10) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

9.9 Nothing contained in this Consent Judgment shall be construed to limit or otherwise affect the rights of any Persons who are not Parties to this Consent Judgment with respect to any of the matters contained herein.

9.10 The Parties represent and warrant that their signatories to this Consent Judgment have authority to act for and bind the respective Parties.

9.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Judgment.

## **10. RELEASE**

10.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendant providing Restitution in the manner referenced in Section 6 and making the Settlement Payment in the manner referenced in Section 7, Plaintiffs hereby agree to release Defendant from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Plaintiffs could have brought prior to the Effective Date against Defendant for violations of the CFA as alleged in the Action ("Released Claims").

10.2 Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendant by any other agency or subdivision of the State.

### **11. PENALTIES FOR FAILURE TO COMPLY**

11.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Judgment or to seek sanctions for violations hereof or both.

11.2 The Parties agree that any future violations of the injunctive provisions of this Consent Judgment and/or the CFA shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Defendant may be liable for enhanced civil penalties.

### **12. COMPLIANCE WITH ALL LAWS**

12.1 Except as provided in this Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendant of its obligations to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Plaintiffs may otherwise have to obtain information, documents or testimony from Defendant pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Defendant may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

### **13. NOTICES UNDER THIS CONSENT JUDGMENT**

14.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Judgment shall be sent by the United States Mail,

Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the documents. The notices and/or documents shall be sent to the following addresses:

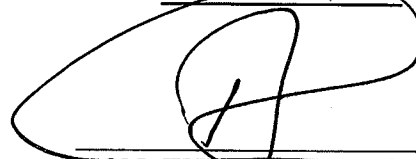
For the Plaintiffs:

Jah-Juin Ho, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
Newark, New Jersey 07101

For the Defendant:

Andrew Berns, Esq.  
Einhorn Harris Ascher Barbarito & Frost, PC  
165 East Main Street  
Denville, New Jersey 07834

IT IS ON THE 10<sup>th</sup> DAY OF OCTOBER 2013 SO ORDERED,  
ADJUDGED AND DECREED.




HON. THOMAS V. MANAHAN, P.J.

**JOINTLY APPROVED AND SUBMITTED FOR ENTRY:**

FOR THE PLAINTIFFS:


JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:   
Jah-Juin Ho  
Deputy Attorney General

Dated: 10/8, 2013


FOR DEFENDANT:

EINHORN HARRIS ASCHER BARBARITO & FROST PC

By:   
Andrew Berns, Esq.

Dated: 10/3, 2013

HOSPITALITY MANAGEMENT OF PARSIPPANY LLC

By:   
[Sign Name]

By: Steven Wu, President  
[Print Name], [Title]

Dated: 10/3, 2013