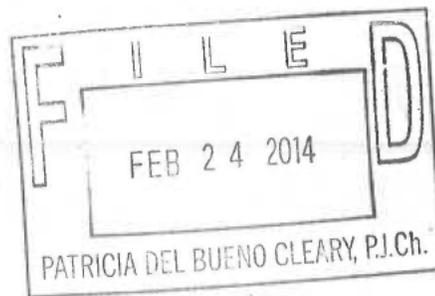


JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs

By: Alina Wells (029512006)
Deputy Attorney General
[REDACTED]



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO.: MON-C-74-13

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,

Plaintiffs,

v.

BERKELEY HOTEL LIMITED LIABILITY
COMPANY d/b/a THE BERKELEY HOTEL;
JOHN DOES 1-10, individually and as owners,
officers, directors, shareholders, founders,
managers, agents, servants, employees,
representatives and/or independent contractors of
BERKELEY HOTEL LIMITED LIABILITY
COMPANY d/b/a THE BERKELEY HOTEL; and
XYZ CORPORATIONS 1-10,

Defendants.

Civil Action

FINAL CONSENT
ORDER

JUDGMENT

The parties to this Action and Final Consent Order ("Consent Order") are plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney General"), and Eric T. Kanefsky, Director of the New Jersey Division of Consumer Affairs ("Director"),

(collectively, "Plaintiffs"),¹ and defendant Berkeley Hotel Limited Liability Company d/b/a The Berkeley Hotel ("Defendant") (collectively, "Parties"). As evidenced by their signatures below, the Parties do consent to the entry of this Consent Order 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.

PRELIMINARY STATEMENT

Plaintiffs commenced this Action on May 10, 2013, alleging that Defendant violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), by the Advertisement, offering for Sale and Sale of hotel rooms at excessive and unjustified price increases (e.g. price gouging) after Governor Chris Christie declared a State of Emergency on October 27, 2012, just prior to Tropical Storm Sandy reaching New Jersey. Specifically, Plaintiffs allege that from October 28, 2012 through November 11, 2012, Defendant offered for Sale and/or sold hotel rooms at an Excessive Price Increase in two hundred and seventy-one (271) instances. Defendant denies the allegations.

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

IT IS HEREBY ORDERED 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 Order. 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

¹ This action was commenced on behalf of Jeffrey S. Chiesa, former Attorney General, and the Director. Pursuant to R. 4:34-4, the caption has been revised to reflect the current Acting Attorney General.

as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Order.

2. VENUE

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Consent Order shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Monmouth County.

3. EFFECTIVE DATE

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

4. DEFINITIONS

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

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. Berkeley Hotel Limited Liability Company d/b/a The Berkeley Hotel, Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. MON-C-74-13, and all pleadings and proceedings related thereto, including the Complaint, filed May 10, 2013.

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[s]" shall refer to those Consumers who purchased the hotel rooms reflected in Exhibit A.

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 rooms.

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 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(d).

4.13 "State of Emergency" shall be defined in accordance with N.J.S.A. 56:8-108.

5. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

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 rooms, at a price constituting an Excessive Price Increase during a State of Emergency or within thirty (30) days after termination of the State of Emergency, in violation of N.J.S.A. 56:8-109.

6. RESTITUTION

6.1 Attached as Exhibit A is a list prepared by the Division that identifies the room number and dates for which Restitution is due, as well as the Restitution due for each, pursuant to N.J.S.A. 56:8-8, which totals Five Thousand Nine Hundred Thirty-Two and 50/100 Dollars (\$5,932.50) ("Affected Consumer Restitution").

6.2 Within thirty (30) days after the Effective Date, Defendant shall forward to each Affected Consumer the Restitution identified in Exhibit A. 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 made by a check made payable to the Affected Consumer.

6.3 Within ninety (90) days after the Effective Date, Defendant shall provide written notification to Plaintiffs regarding Restitution to each Affected Consumer. Such notification shall also include the following:

- (a) The name and address, if known, of the Affected Consumer;
- (b) The Restitution provided to the Affected Consumer;
- (c) Copies of documents evidencing the Restitution provided 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.

6.4 Within ninety (90) days after the Effective Date, Defendant shall forward to Plaintiffs, in accordance with Section 14.1, any remaining 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."

6.5 Upon making the payment referenced in Section 6.4, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid 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 AMOUNT

7.1 The Parties have agreed to a settlement of the Action in the amount of Seventy-Five Thousand Dollars (\$75,000.00) ("Settlement Amount").

7.2 The Settlement Amount comprises Fifty-Two Thousand Thirty-Two and 77/100 Dollars (\$52,032.77) in civil penalties, pursuant to N.J.S.A. 56:8-13, Five Thousand Nine Hundred Thirty-Two and 50/100 Dollars (\$5,932.50) in Affected Consumer Restitution, pursuant to N.J.S.A. 56:8-8, Twelve Thousand Forty-Five and 00/100 Dollars (\$12,045.00) in reimbursement of Plaintiffs' attorneys' fees, and Four Thousand Nine Hundred Eighty-Nine and 73/100 Dollars (\$4,989.73) 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 Plaintiffs agree to suspend Thirty Thousand and 00/100 Dollars (\$30,000.00) of the civil penalty portion of the Settlement Amount ("Suspended Penalty"), subject to the conditions set forth in Section 7.6.

7.3 On or before the Effective Date, Defendant shall pay Thirty-Nine Thousand Sixty-Seven and 50/100 Dollars (\$39,067.50) of the Settlement Amount ("Settlement Payment").

7.4 Defendant shall make the Settlement Payment by cashier's check, attorney trust account check or other guaranteed funds made payable to "New Jersey Division of Consumer Affairs" and forwarded to:

Alina Wells, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

7.5 Upon making the Settlement Payment, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid 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.

7.6 For a period of one (1) year from the Effective Date, the Suspended Penalty shall be suspended and automatically vacated at the end of that period on written notice to Defendant, provided:

- (a) Defendant complies in all material respects with the restraints and conditions set forth in Section 5;
- (b) Defendant provides Affected Consumer Restitution in the manner required under Section 6; and
- (c) Defendant makes the Settlement Payment in the manner required under Sections 7.3 and 7.4.

7.7 In the event Defendant materially fails to comply with Section 7.6, Plaintiffs shall provide Defendant with written notice seeking payment of the Suspended Penalty, as well as any unpaid portion of the Settlement Payment. In any such notice, however, Plaintiffs shall provide

Defendant with the specific details of the alleged noncompliance, as well as any supporting documentation. Defendant shall be afforded a fifteen (15) day period from receipt of such notice within which to cure any such noncompliance. Failure to cure such noncompliance shall be deemed an Event of Default, entitling Plaintiffs to proceed as described in Section 8.

8. JUDGMENT BY CONFESSION

8.1 Upon execution of this Consent Order, Defendant shall provide Plaintiffs with a Judgment by Confession in the amount of \$75,000.00 and supporting Affidavit for Judgment by Confession executed by Defendant, attached as Exhibit B. Plaintiffs' counsel shall hold the Judgment by Confession and supporting Affidavit in escrow pending an Event of Default.

8.2 If an Event of Default occurs, Plaintiffs may file a motion upon notice to Defendant pursuant to the New Jersey Rules of Court to enter and enforce the Judgment by Confession and to have judgment entered against the Defendant, in the entire amount of \$75,000.00, plus Plaintiffs' attorneys' fees and costs, less any amounts paid by Defendant under this Consent Order.

9. DISMISSAL OF ACTION

9.1 The entry of this Consent Order constitutes a dismissal with prejudice of the Action.

10. GENERAL PROVISIONS

10.1 This Consent Order 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 Order.

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

10.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order 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 Order.

10.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Plaintiffs and Defendant.

10.5 Except as otherwise explicitly provided for in this Consent Order, 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.

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

10.7 This Consent Order 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 Order avoid compliance with this Consent Order.

10.8 This Consent Order is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order 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 the Defendant; or (b) an admission by the Defendant that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate any of the Consumer protection laws of the State. This Consent Order 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 Order; or (b) any action or proceeding involving a Released Claim (as defined in Section 11) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

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

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

10.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order 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 Order.

11. RELEASE

11.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Defendant providing Affected Consumer Restitution as described 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, as well as the matters specifically addressed in Section 5.2 of the Consent Order ("Released Claims").

11.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action, provided however, that nothing herein shall prevent Defendant from raising the defense of set-off against a Consumer who has received

Restitution; (b) actions to enforce this Consent Order; and (c) any claims against Defendant by any other agency or subdivision of the State.

12. PENALTIES FOR FAILURE TO COMPLY

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

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

13. COMPLIANCE WITH ALL LAWS

13.1 Except as provided in this Consent Order, 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.

14. NOTICES UNDER THIS CONSENT ORDER

14.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order 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:

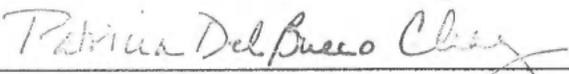
For the Plaintiffs:

Alina Wells, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Defendant:

Paul G. Nittoly, Esq.
Drinker Biddle Reath, LLP
500 Campus Drive
Florham Park, New Jersey 07932

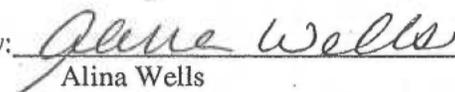
IT IS ON THE 24 DAY OF February 2014 SO ORDERED,
ADJUDGED AND DECREED.


HON. PATRICIA DEL BUONO CLEARY, P.J.Ch.

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

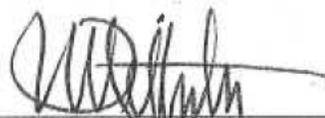
By: 

Alina Wells
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-3070

Dated: February 6, 2014

FOR DEFENDANT:

DRINKER BIDDLE REATH, LLP

By: 

Paul G. Nitto, Esq.
500 Campus Drive
Florham Park, New Jersey 07932
Telephone: (973) 549-7000

Dated: February 7, 2014

BERKELEY HOTEL LIMITED LIABILITY COMPANY
D/B/A THE BERKELEY HOTEL

By: 

George Dfouni, Chief Operating Officer
1401 Ocean Parkway
Asbury Park, New Jersey 07712

Dated: February 10, 2014