

JOHN J. HOFFMAN  
ACTING 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  
[REDACTED]

**FILED**

**AUG 30 2013**

**ROSEMARY E. RAMSAY, J.S.C.  
JUDGE'S CHAMBERS  
MORRIS COUNTY COURTHOUSE**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MORRIS COUNTY  
DOCKET NO. MRS-L-1302-13

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.

RATAN HOSPITALITY GROUP, LLC d/b/  
a HOWARD JOHNSON EXPRESS,  
RATAN HOTELS MANAGEMENT, LLC d/  
b/a HOWARD JOHNSON INN, RATAN  
PALACE, LLC d/b/a HOLIDAY INN  
EXPRESS, RATAN HOTEL PLAZA d/b/a  
RAMADA INN, 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, RATAN  
HOTELS MANAGEMENT, LLC d/b/a  
HOWARD JOHNSON INN, RATAN  
PALACE, LLC d/b/a HOLIDAY INN  
EXPRESS, RATAN HOTEL PLAZA d/b/a  
RAMADA INN; and XYZ  
CORPORATIONS 1-10,

Defendants.

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 defendants Ratan Hospitality Group d/b/a Howard Johnson Express ("Howard Johnson-Parsippany"), Ratan Hotels Management, LLC d/b/a Howard Johnson Inn ("Howard Johnson-Clifton"), Ratan Palace, LLC d/b/a Holiday Inn Express ("Holiday Inn"), Ratan Hotel Plaza d/b/a Ramada Inn ("Ramada Inn") (collectively "Defendants"). As evidenced by their signatures below, the Plaintiffs and Defendants (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.

#### **PRELIMINARY STATEMENT**

Plaintiffs commenced this Action on or about November 8, 2012 against defendants Howard Johnson- Parsippany. On or about November 26, 2012, Plaintiffs amended their complaint, joining the remaining Defendants. Plaintiffs' Amended Complaint alleges that Defendants 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 Defendants' hotel accommodation prices the week immediately preceding Sandy, from October 27, 2012 to November 5, 2012, Defendants' prices for hotel accommodations increased as high as 32.22% for the Howard Johnson-

Parsippany; 111.12% for the Howard Johnson- Clifton; 60.64% for the Holiday Inn Express; and 38.46% for the Ramada Inn.

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. Ratan Hospitality Group d/b/a Howard Johnson Express, Ratan Hotels Management, LLC d/b/a Howard Johnson Express, Ratan Palace, LLC d/b/a Holiday Inn Express, Ratan Hotel Plaza d/b/a Ramada Inn, Superior Court of New Jersey, -Chancery Division, Morris County, Docket No. MRS-L-1302-13, and all pleadings and proceedings related thereto, including the Complaint, filed November 8, 2012, and Amended Complaint, filed November 26, 2012, under original Docket No. MRS-C-117-12.

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 Defendants 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 Defendants 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 AND BUSINESS PRACTICES**

5.1 Defendants 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 Defendants 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 Defendants shall pay Consumer Restitution in the amount of Nine Thousand Five Hundred Eighty-Eight and 56/100 Dollars (\$9,588.56) ("Affected Consumer Restitution").

6.2 The Division shall provide Defendants with a list of Consumers entitled to the Affected Consumer Restitution, including the amount of Restitution for each consumer ("Consumer Restitution List").

6.3 Within 30 days after receipt of the Consumer Restitution List, Defendants 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, Defendants 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, Defendants 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, Defendants 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."

6.6 Upon making the payment referenced in Section 6.3, Defendants 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 Defendants shall pay the amount of One Hundred Two Thousand One Hundred Eleven and 44/100 Dollars (\$102,111.44) ("Settlement Payment").

7.2 The Settlement Payment comprises Eighty-Six Thousand Eight Hundred Sixty and 84/100 Dollars (\$86,860.84) in civil penalties, pursuant to N.J.S.A. 56:8-13, Eight Thousand Four Hundred Seventy-Seven and 50/100 Dollars (\$8,477.50) in reimbursement of Plaintiffs' attorneys' fees and Six Thousand Seven Hundred Seventy-Three and 10/100 Dollars (\$6,773.10) 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 From the Settlement Payment, Defendants shall pay as follows:

- a. Fifty Thousand Dollars (\$50,000.00) shall be paid within ten days of the Effective Date; and

- b. The remaining Fifty-Two Thousand One Hundred Eleven and 44/100 Dollars (\$52,111.44) shall be paid as follows: (i) Twenty-Six Thousand Fifty-Five and 72/100 Dollars (\$26,055.72) shall be paid on or before March 31, 2014; and (ii) Twenty-Six Thousand Fifty-Five and 72/100 Dollars (\$26,055.72) shall be paid on or before December 31, 2014.

7.4 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

7.5 Upon making the Settlement Payment, Defendants 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. FORBEARANCE ON EXECUTION AND DEFAULT

8.1 In the event that Defendants fail to make any of the payments referenced in Section 7.3 within 15 days of their due date, all unpaid amounts due and payable under this Consent Judgment shall immediately be accelerated and due and payable, with interest calculated in accordance with R. 4:42-11 from the date of default, and with the Plaintiffs' cost of

collection; provided, however, that Plaintiffs shall first provide notice to Defendants of their default, and afford Defendants a 15 day period within which to cure any such default. In addition to the relief provided for in this Section, an uncured default shall also entitle Plaintiffs to make an application to the Court for an order directing compliance and any other relief in aid of litigant's rights including an award of attorneys' fees.

#### **9. DISMISSAL OF ACTION**

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

#### **10. GENERAL PROVISIONS**

10.1 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.

10.2 This Consent Judgment 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 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.

10.4 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 Defendants.

10.5 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.

10.6 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.

10.7 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.

10.8 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 Defendants; or (b) an admission by Defendants that any of their 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. Defendants specifically deny engaging in any unlawful activity. 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 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 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.

10.10 The Parties represent and warrant that their signatories to this Consent Judgment 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 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.

## **11. RELEASE**

11.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendants 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 Defendants 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 Defendants for violations of the CFA as alleged in the Action, as well as the claims specifically described in Section 5.2 of the Consent Judgment ("Released Claims").

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

has received Restitution; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendants 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 Judgment 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 Judgment and/or the CFA shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Defendants may be liable for enhanced civil penalties.

## **13. COMPLIANCE WITH ALL LAWS**

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

- (a) Relieving Defendants of their 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 Defendants 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 Defendants 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 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:

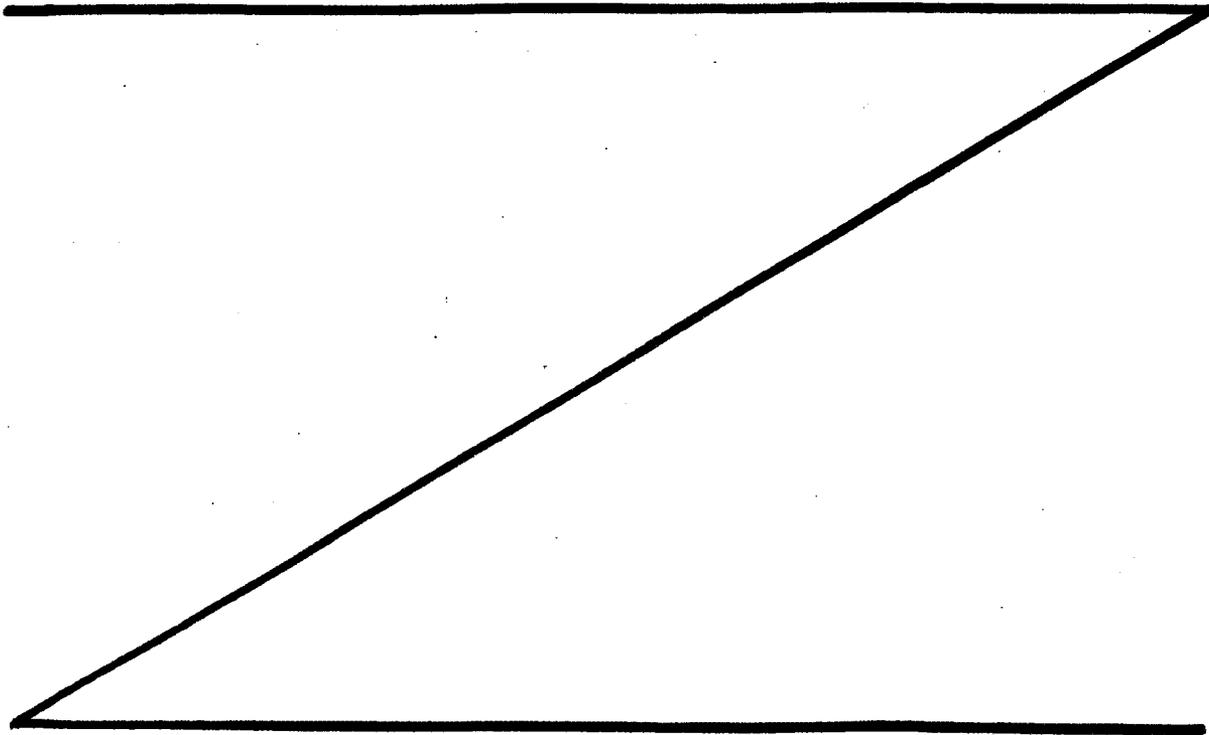
Jah-Juin Ho, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

For the Defendants:

Patrick McGovern, Esq.  
Genova Burns Giantomasi Webster LLC  
494 Broad Street  
Newark, New Jersey 07102

IT IS ON THE 30<sup>th</sup> DAY OF August 2013 SO ORDERED,  
ADJUDGED AND DECREED.

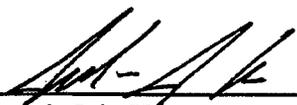
  
HON. ROSEMARY B. RAMSAY, J.S.C.



JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

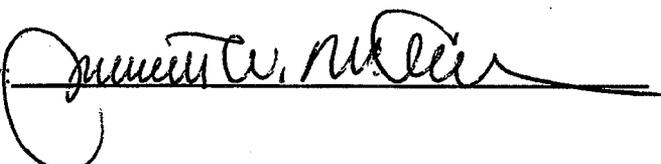
JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Jah-Juin Ho  
Deputy Attorney General

Dated: \_\_\_\_\_, 2013

FOR DEFENDANTS:

GENOVA BURNS GIANTOMASI WEBSTER LLC

By: 

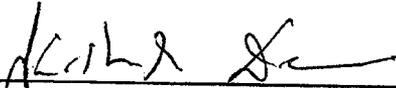
Dated: August 21, 2013

14

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Patrick McGovern, Esq.

RATAN HOSPITALITY GROUP, LLC d/b/a  
HOWARD JOHNSON EXPRESS

By:   
Kishor Desai, General Manager

Dated: 8/15/13, 2013

RATAN HOTELS MANAGEMENT, LLC d/b/a  
HOWARD JOHNSON INN,

By:   
Ramiit Gandhi, General Manager

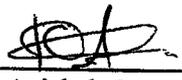
Dated: 8/15, 2013

RATAN PALACE, LLC d/b/a  
HOLIDAY INN EXPRESS

By:   
Hina Vakharia, General Manager

Dated: 08/16, 2013

RATAN HOTEL PLAZA d/b/a  
RAMADA INN

By:   
Keyur Avichal, General Manager

Dated: 8/16, 2013