

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
[REDACTED]

By: Glenn T. Graham
Deputy Attorney General

Krima D. Shah
Special Deputy Attorney General

CLERK OF SUPERIOR COURT
SUPERIOR COURT OF N.J.
MERCER COUNTY
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
MERCER COUNTY
DOCKET NO. MER-C-95-12

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.

ESA P PORTFOLIO, L.L.C. D/B/A EXTENDED
STAY AMERICA PRINCETON; AND JOHN
DOES 1-10, individually and as owners, officers,
directors, shareholders, founders, managers, agents,
servants, employees, representatives and/or
independent contractors of ESA P PORTFOLIO,
L.L.C. D/B/A EXTENDED STAY AMERICA
PRINCETON; 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 Jersey¹, and Eric T. Kanefsky, Director of the New Jersey Division of Consumer Affairs (collectively, "Plaintiffs"), and defendant ESA P Portfolio, L.L.C. ("Defendant") (collectively, "Parties"). As evidenced by their signatures below, the Parties do 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 November 26, 2012, alleging that Defendant violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), through its excessive and unjustified price increases (e.g. price gouging) in the sale of hotel rooms after Governor Chris Christie declared a State of Emergency on October 27, 2012, just prior to Tropical Storm Sandy reaching New Jersey. Specifically, Plaintiffs alleged that from October 28, 2012 through November 5, 2012, Defendant's prices for hotel rooms increased by more than 10% compared to the prices charged prior to the State of Emergency in one hundred seven (107) instances. Defendant denies the allegations.

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

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

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 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 Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Mercer 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. ESA P Portfolio, L.L.C. d/b/a Extended Stay America Princeton, Superior Court of New Jersey, Chancery Division, Mercer County, Docket No. MER-C-95-12, and all pleadings and proceedings related thereto, including the Complaint, filed November 26, 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, "Advertise" and "Advertising."

4.3 "Affected Consumer" shall refer to any Consumer who purchased hotel accommodations at an Excessive Price Increase during the period from October 27, 2012 through November 15, 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 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. REQUIRED AND PROHIBITED 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 not Advertise, offer for Sale and/or sell 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 each Affected Consumer, as well as the agreed upon Restitution, pursuant to N.J.S.A. 56:8-8, which totals Two Thousand Six and 20/100 Dollars (\$2,006.20) ("Affected Consumer Restitution").

6.2 Within 30 days after the Effective Date, Defendant shall forward to each Affected Consumer the Restitution amount 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 bank check or money order made payable to the Affected Consumer.

6.3 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 Affected 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.

6.4 Within 90 days after the Effective Date, Defendant shall forward to Plaintiffs, in accordance with Section 13.1, 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, Defendants 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 PAYMENT

7.1 Within seven (7) business days following the Effective Date, Defendant shall pay the amount of Sixty-One Thousand Eight Hundred Seventy-Nine and 77/100 Dollars (\$61,879.77) ("Settlement Payment").

7.2 The Settlement Payment comprises Fifty-Six Thousand One Hundred Fourteen and 40/100 Dollars (\$56,114.40) in civil penalties, pursuant to N.J.S.A. 56:8-13, Three Thousand Nine Hundred Eighty-Two and 50/100 Dollars (\$3,982.50) in reimbursement of Plaintiffs' attorneys' fees and One Thousand Seven Hundred Eighty-Two and 87/100 Dollars (\$1,782.87) 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:

Glenn T. Graham, 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

7.4 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.

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. 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 the Defendant; and (b) an admission by the 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 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 Judgment ("Released Claims").

10.2 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 Defendant 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 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.

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

13.1 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:

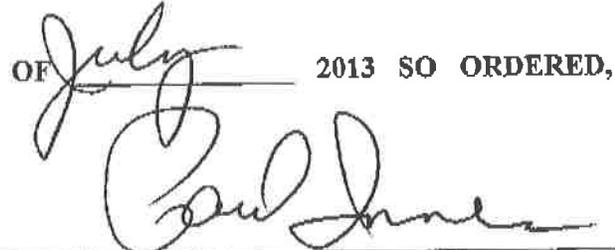
For the Plaintiffs:

Glenn T. Graham, 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:

A. Ross Pearlson, Esq.
Wolff & Samson, PC
One Boland Drive
West Orange, New Jersey 07052

IT IS ON THE 15th DAY OF July 2013 SO ORDERED,
ADJUDGED AND DECREED.



HON. PAUL INNES, P.J., CH.

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

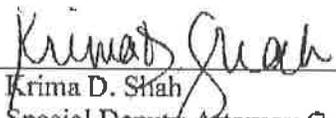
FOR THE PLAINTIFFS:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

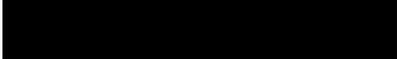
By: 
Glenn T. Graham
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: July 2, 2013

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101


By: 
Krina D. Shah
Special Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: July 2, 2013

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101


FOR DEFENDANT:

A. ROSS PEARLSON, ESQ.

By: A. Ross Pearlson Dated: June 27, 2013
A. Ross Pearlson, Esq.
Wolff & Samson, PC
One Boland Drive
West Orange, New Jersey 07052

Telephone: (973) 530-2100

GREGG L. WEINER, ESQ.

By: Gregg L. Weiner Dated: June 27, 2013
Gregg L. Weiner, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004-1980

Telephone: (212) 859-8000

ESA P PORTFOLIO L.L.C.

By: Fried, Frank, Harris, Shriver & Jacobson LLP, as Attorney-in-Fact Dated: June 27, 2013

By: Gregg L. Weiner
Name (Print): Gregg L. Weiner
Title (Print): Partner