

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

**STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,  
OFFICE OF THE ATTORNEY GENERAL**

**Plaintiff,**

**vs.  
JANUS HOTELS AND RESORTS, INC.,  
d/b/a DAYS INN**

**CASE NO.:**

**Defendant.**

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**COMPLAINT FOR INJUNCTION, DAMAGES,  
CIVIL PENALTIES AND OTHER STATUTORY RELIEF**

Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS,  
OFFICE OF THE ATTORNEY GENERAL, (hereinafter referred to as "the OAG")  
brings this action against Defendant JANUS HOTELS AND RESORTS, INC., d/b/a  
DAYS INN for injunctive relief, civil penalties, and other statutory relief brought  
pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II,  
Florida Statutes (2003), and §501.160, Florida Statutes (2003) (hereinafter referred to  
"FDUTPA"), prohibiting unconscionable prices in the rental or sale of essential  
commodities during a declared state of emergency and states:

**THE PARTIES**

1. The OAG is statutorily authorized to bring this action under §§ 501.160(8) and  
501.207 Fla. Stat. (2003) and is authorized to seek injunctive and other statutory relief

thereunder.

2. Defendant JANUS HOTELS AND RESORTS, INC., d/b/a DAYS INN (hereinafter referred to as "DAYS INN"), is located at 2300 45<sup>TH</sup> Street, West Palm Beach, Palm Beach County, Florida 33407. DAYS INN has conducted business in Palm Beach County, Florida, at all times relevant to this complaint.

### **JURISDICTION**

3. This Court has jurisdiction pursuant to the provisions of FDUTPA, §501.160, Fla. Stat. (2003).

4. The Consumers affected reside in more than one judicial circuit in Florida and thus this action affects more than one judicial circuit.

5. The OAG has conducted an investigation and the Attorney General, Charles J. Crist, Jr., has determined that an enforcement action serves the public interest.

6. Defendant, at all times material hereto has engaged in "trade or commerce" as that term is defined in Section 501.203(8), Florida Statutes (2003).

7. JANUS HOTELS AND RESORTS, INC., at all times material hereto, has done business as "DAYS INN," at 2300 45<sup>TH</sup> Street, West Palm Beach, Palm Beach County, Florida 33407, and operates as a overnight lodging business offering rooms for rent. At all times material hereto, JANUS HOTELS AND RESORTS, INC. has owned, managed, directed and controlled or had the authority to direct and control, the operations and policies of "DAYS INN."

## DEFENDANTS' UNLAWFUL COURSE OF BUSINESS

8. On August 10, 2004, the Governor of the State of Florida, Jeb Bush, signed Executive Order 04-182, in which the Governor declared a State of Emergency for various regions throughout the State of Florida, including communities located in southern and southwestern portions of the State, in connection with Tropical Storm Bonnie and Hurricane Charley.

9. On August 13, 2004, Hurricane Charley struck Florida with winds exceeding 145 miles per hour. It crossed Florida from coast to coast leaving devastation in its wake. Homes were destroyed. People were killed. Hospitals and nursing homes were critically damaged. Hundreds of thousands of citizens were evacuated. Over one million people are without electricity or water.

10. During the State of Emergency essential commodities like lodging, food, water, ice, chemicals, petroleum products, and lumber are necessary for use and consumption for citizens.

11. During the State of Emergency, Defendant DAYS INN has engaged in unconscionable pricing practices, and unconscionable, deceptive and unfair acts and practices in trade and commerce.

12. Illustrative of said practices are the following facts:

A. On August 13, 2004, at approximately 1 a.m., Mr. Patrick Flanigan, whose home in Hillsborough County was in an evacuation zone for Hurricane Charlie,

departed his home as part of the evacuation of nearly 2 million Floridians.

B. Mr. Flanigan departed the Tampa area driving east to escape the storm. During the drive he stopped at several hotels and motels on Highway 60 and inquired about rooms, only to find no vacancies. He eventually made it to Interstate 95 and stopped at several other hotels and motels in the Ft. Pierce area, again only to find no vacancies.

C. Later that same day at approximately 10 a.m., he arrived at the Days Inn Airport hotel, located at 2300 45<sup>th</sup> Street, West Palm Beach, Florida 33407. As he approached the hotel he noticed a sign off of Interstate 95 approaching West Palm Beach that advertised rooms at the DAYS INN for less than \$50. When he arrived at the front desk and asked about a vacancy, the front desk clerk advised him that the rate was \$109 a night. She explained that there were only two rooms left and if he wanted one it was \$109. He was desperate and he needed shelter for his family so he took the room for that price.

D. Mr. Kenneth J. Kleppach is a resident of the City of Palm Harbor, Florida, and his home was located in an evacuation zone for Hurricane Charley. He left Palm Harbor as part of the evacuation on August 13, 2004 and that same day arrived at the Days Inn Airport hotel, located at 2300 45<sup>th</sup> Street, West Palm Beach, Florida 33407. As he approached the hotel he noticed a sign off of the highway in close proximity to the hotel that contained an advertisement for DAYS INN that read something to the effect of

"ALL ROOMS - \$46.99." He went to the front desk and asked about a vacancy the front desk clerk advised him that the rate was \$109 a night. The desk clerk represented that there were only two rooms left and if he wanted one it was \$109. He was desperate and needed shelter for his family so he took the room for that price.

E. Mr. Paul LoCasio is a resident of the City of Cape Coral, Lee County, Florida. His home was located in an evacuation zone for Hurricane Charley.

F. On August 13, 2004, at approximately 2 p.m., he departed the Cape Coral area driving east to escape the storm. During the drive he called 1-800-DAYSINN and inquired about any vacant hotel rooms in the West Palm Beach area. The receptionist quoted a price of \$68 at the DAYS INN. He did not make a reservation since he did not know if he would make it that far.

G. Later that same day at approximately 6 p.m., he arrived at the DAYS INN, located at 2300 45<sup>th</sup> Street, West Palm Beach, Florida 33407. As he approached the hotel he noticed a sign off of the highway in close proximity to the hotel that contained a two digit amount. As he approached the front desk and asked about a vacancy the front desk clerk advised him that the rate was \$119 a night. He explained to her that he called the 800 number and was quoted us a rate of \$68 and the sign on the highway also had a price that was much less. The lady told him that they only had two rooms left and if he wanted one it was \$119. He was desperate and needed shelter for his family so he took the room for that price.

13. Many other consumers, whose identities are currently unknown, had similar experiences at the DAYS INN on August 13, 2004.

## COUNT I

### **UNCONSCIONABLE PRICING DURING DECLARED STATE OF EMERGENCY (VIOLATIONS OF SECTION 501.160, FLORIDA STATUTES**

14. The OAG realleges and incorporates by reference paragraphs 8 - 13, above.

15. Section 501.160, Fla. Stat. (2003), provides that it is *prima facie* evidence that a price is unconscionable if the amount charged represents a gross disparity between the present price and the average price charged, in the usual course of business, during the thirty days prior to a declaration of a state of emergency, or the price grossly exceeds the average prices at which the same or similar goods were available 30 days immediately prior to the state of emergency.

16. By conducting the activities described in paragraphs 8-18 above, DAYS INN has violated § 501.160, Fla. Stat., by charging unconscionable prices.

17. As set forth in § 501.160 (3), charging unconscionable prices in a declared state of emergency is a violation of the Florida Deceptive and Unfair Trade Practices Act, § 501.204, Fla. Stat. (2003). By undertaking the activities described in paragraphs 8-18 herein, DAYS INN has thereby engaged in unconscionable, unfair and deceptive acts and practices in violation of § 501.204, Fla. Stat.

18. These above-described acts and practices of DAYS INN have injured and will likely continue to injure and prejudice the public.

19. Defendant willfully engaged in the acts and practices when it knew or should have known that said acts and practices were unfair or deceptive or prohibited by rule.

20. Unless DAYS INN is temporarily and permanently enjoined from engaging further in the acts and practices herein complained of, the continued activities of DAYS INN will result in irreparable injury to the public for which there is no adequate remedy at law.

**RELIEF REQUESTED**

21. WHEREFORE, Plaintiff, State of Florida, Department of Legal Affairs, Office of the Attorney General, asks for judgment:

- a. Temporarily and permanently enjoining Defendant DAYS INN, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in the acts and practices in violation of provisions of Chapter 501, Part II, Florida Statutes (2003), and § 501.160 as specifically alleged above, and any similar acts and practices;
- b. Assessing against Defendant DAYS INN civil penalties in the amount of Ten Thousand Dollars (\$10,000) for each violation of Chapter 501, Part II, Florida Statutes (2003) in accordance with § 501.2075, Fla. Stat. (2003);

and Fifteen Thousand Dollars (\$15,000) for each such violation that victimizes, or attempts to victimize, a senior citizen or handicapped person, in accordance with § 501.2077, Fla. Stat. (2003).

c. Awarding to Plaintiff OAG reasonable attorney's fees and costs pursuant to § 501.2105, Fla. Stat. (2003);

d. Awarding actual damages caused to consumers by Defendant's acts and practices in violation of FDUTPA, pursuant to Section 501.207(1)(c), Fla. Stat. (2003);

e. Assessing against Defendant DAYS INN civil penalties in the amount of One Thousand Dollars (\$1,000) for each violation of §501.160, Fla. Stats. (2003);

f. Granting such other relief as this Honorable Court deems just and proper.

**COUNT II**  
**UNFAIR AND DECEPTIVE TRADE PRACTICES**  
**(VIOLATIONS OF THE STANDARDS OF DECEPTION AND UNFAIRNESS)**

22. The OAG realleges and incorporates by reference paragraphs 8 - 13, above.

23. Section 501.204(1), Fla. Stat. (2003), declares unconscionable acts or practices in the conduct of any trade or commerce to be unlawful.

24. As set forth in paragraphs 8-13, above, DAYS INN has committed acts or practices in trade or commerce which shock the conscience, engaged in representations, acts, practices or omissions which are material, and which are likely to mislead consumers acting reasonably under the circumstances; or Defendants have committed acts or practices in trade or commerce which offend established public policy and are

unethical, oppressive, unscrupulous or substantially injurious to consumers. Thus, Defendants have engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of § 501.204(1), Fla. Stat.(2003).

25. These above-described acts and practices of DAYS INN have injured and will likely continue to injure and prejudice the public.

26. Defendant willfully engaged in the acts and practices when it knew or should have known that said acts and practices were unfair or deceptive or prohibited by rule.

27. Unless DAYS INN is temporarily and permanently enjoined from engaging further in the acts and practices herein complained of, the continued activities of DAYS INN will result in irreparable injury to the public for which there is no adequate remedy at law.

### **RELIEF REQUESTED**

28. WHEREFORE, Plaintiff, State of Florida, Department of Legal Affairs, Office of the Attorney General, asks for judgment:

- d. Temporarily and permanently enjoining Defendant DAYS INN, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in the acts and practices in violation of provisions of Chapter 501, Part II, Florida Statutes (2003), and § 501.160 as specifically alleged above, and any similar acts and practices;

- e. Assessing against Defendant DAYS INN civil penalties in the amount of Ten Thousand Dollars (\$10,000) for each violation of Chapter 501, Part II, Florida Statutes (2003); and Fifteen Thousand Dollars (\$15,000) for each such violation that victimizes, or attempts to victimize, a senior citizen or handicapped person, in accordance with § 501.2077, Fla. Stat. (2003).
- f. Awarding to Plaintiff OAG reasonable attorney's fees and costs pursuant to § 501.2105, Fla. Stat. (2003);
- d. Awarding actual damages caused to consumers by Defendant's acts and practices in violation of FDUTPA, pursuant to Section 501.207(1)(c), Fla. Stat. (2003);
- e. Assessing against Defendant DAYS INN civil penalties in the amount of One Thousand Dollars (\$1,000) for each violation of §501.160, Fla. Stats. (2003);
- f. Granting such other relief as this Honorable Court deems just and proper.

CHARLES J. CRIST, JR  
Attorney General

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