

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA**

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

**Plaintiff,**

**vs.**

**CASE NO.:**

**APEX HOSPITALITY LLLP,  
d/b/a FT. MYERS INN & SUITES and  
WELLESLEY INN AND SUITES,**

**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 APEX HOSPITALITY LLLP, d/b/a FT. MYERS INN & SUITES and WELLESLEY INN AND SUITES (hereinafter referred to as “THE 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 Fla. Stat. (2005) (hereinafter referred to “FDUTPA”), and §501.160, Fla. Stat. 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. (2005) and is authorized to seek injunctive and other statutory relief pursuant to those statutes.

2. Defendant, THE INN, is located at 4400 Ford Street Extension, Fort Myers, Florida 33916. THE INN has conducted business in Lee County, Florida, at all times relevant to this complaint.

3. APEX HOSPITALITY, LLLP, at all times material hereto, has done business under two names: FT. MYERS INN & SUITES and WELLESLEY INN AND SUITES. Although the Defendant is operating under two names, there is only one location involved, 4400 Ford Street Extension, Ft. Myers, Lee County, Florida 33916. That location, THE INN, operates as a overnight lodging business offering rooms for rent. At all times material hereto, APEX HOSPITALITY LLLP has owned, managed, directed and controlled or had the authority to direct and control, the operations and policies of THE INN. However, APEX HOSPITALITY LLLP has never registered either FT. MYERS INN & SUITES or WELLESLEY INN AND SUITES as a fictitious name, and is thereby in violation of §865.09 Fla. Stat. (2005)

## **JURISDICTION**

4. This Court has jurisdiction pursuant to the provisions of FDUTPA.

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

6. The OAG has conducted an investigation and the Attorney General, Charles J. Crist, Jr., has made a determination in writing that an enforcement action serves the public interest as required by §501.207 Fla. Stat. (2005)

7. Defendant at all times material hereto has engaged in "trade or commerce" as that term is defined in Section 501.203(8) Fla. Stat. (2005) in Lee County, Florida

**DEFENDANT’S UNLAWFUL COURSE OF BUSINESS**

8. On October 19, 2005, the Governor of the State of Florida, Jeb Bush, signed Executive Order 05-219 (hereinafter, the “Executive Order”) in which the Governor declared a state of emergency for the State of Florida, including communities located in southern and southwestern portions of the State, in connection with Hurricane Wilma. The Executive Order expressly declares that a “state of emergency also exists in all destination counties that open shelters to accommodate evacuees from the communities threatened by Hurricane Wilma.” A copy of the Executive Order is attached hereto as Exhibit “A.” This Order followed three earlier Executive Orders from the Governor declaring a state of emergency, and extended the effective date of the last of those orders, Executive Order 05-183, thus continuing the state of emergency throughout Florida:

a. On July 7, 2005, Executive Order 05-139 was issued relating to Hurricane Dennis.

b. On August 24, 2005, Executive Order 05-176 was issued relating to Hurricane Katrina.

c. On September 18, 2005, Executive Order 05-183 was issued relating to Tropical Depression 18, which became Hurricane Rita.

9. On October 23, 2005, Hurricane Wilma struck Florida with winds exceeding 100 miles per hour. It crossed Florida from coast to coast leaving devastation in its wake. Homes were destroyed. People were killed. Thousands of citizens were evacuated. Over six million people were without electricity or water. Property damage is estimated to be \$9 billion.

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

11. During the state of emergency, Defendant THE 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:

a. Rates at the hotel average \$61.99; however, when the owner heard that the hurricane was coming, the rates were raised to \$89.99. They were further raised to \$119.00 on October 24<sup>th</sup>.

b. Sam Swami, the hotel owner, admitted that he had raised his room rates on Friday October 21, 2005.

c. Ms. Cecilia Murphy of Fort Myers was a guest at the hotel, checking in on October 22, 2005 and checking out the next day, October 23, 2005. She was charged \$109.00 for her room. Because of the approaching storm there were no

other rooms that she could find and she paid the price because she did not want to be at home when the storm was projected to hit the Ft. Myers area.

d. Ms. Kristin Davis, along with her husband, is a guest at the hotel, checking in on October 24th, and they will check out on October 28th. They were charged \$129 per day for a room. They were forced out of their house since it has no electricity or water.

13. THE INN charged numerous other hotel guests similar room charges which charges grossly exceeded the average rental price 30 days prior to the declared state of emergency which charges were paid by the guests.

14. Other consumers were charged these grossly excessive rates at THE INN in October 2005.

**COUNT I**  
**UNCONSCIONABLE PRICING DURING**  
**DECLARED STATE OF EMERGENCY**  
**(VIOLATIONS OF SECTION 501.160, FLORIDA STATUTES)**

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

16. Section 501.160 Fla. Stat. (2005) provides that it is *prima facie* evidence that a price is unconscionable if there is a gross disparity between the present price charged and the average price charged, in the usual course of business, during the 30 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.

17. By engaging in the activities described in paragraphs 8 - 14 above, THE INN has violated § 501.160 Fla. Stat. (2005), by charging unconscionable prices.

18. 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. (2005). By undertaking the activities described in paragraphs 8 - 13 herein, THE INN has engaged in unconscionable, unfair and deceptive acts and practices in violation of § 501.204 Fla. Stat. (2005)

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

20. 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 law.

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

**RELIEF REQUESTED**

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

- a. Permanently enjoining Defendant THE 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 FDUTPA and § 501.160 as specifically alleged above, and any similar acts and practices;

- b. Assessing against Defendant THE INN civil penalties in the amount of Ten Thousand Dollars (\$10,000) for each violation of FDUTPA in accordance with § 501.2075 Fla. Stat. (2005); 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. (2005)
- c. Awarding to Plaintiff reasonable attorney's fees and costs pursuant to § 501.2105 Fla. Stat. (2005);
- 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. (2005);
- e. Assessing against Defendant THE INN civil penalties in the amount of One Thousand Dollars (\$1,000) for each violation of §501.160 Fla. Stat. (2005);
- f. Granting such other relief as this Court deems just and proper.

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

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

24. Section 501.204(1) Fla. Stat. (2005) declares unconscionable or deceptive acts or practices in the conduct of any trade or commerce to be unlawful.

25. As set forth in paragraphs 8-14, THE INN has committed acts or practices in trade or commerce that are deceptive or shock the conscience, has engaged in representations, acts, practices or omissions that are material, and are likely to mislead consumers acting reasonably under the circumstances; 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. These practices include but are not limited to deceptive advertising and deceptive price quotations. 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. (2005)

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

27. 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 law.

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

**RELIEF REQUESTED**

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

- a. Permanently enjoining Defendant THE 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 Fla. Stat. (2005), and §501.160 as specifically alleged above;
- b. Assessing against Defendant THE INN civil penalties in the amount of Ten Thousand Dollars (\$10,000) for each violation of Chapter 501, Part II Fla. Stat. (2005); 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. (2005)
- c. Awarding to Plaintiff reasonable attorney's fees and costs pursuant to § 501.2105 Fla. Stat. (2005);

- 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. (2005);
- e. Assessing against Defendant THE INN civil penalties in the amount of One Thousand Dollars (\$1,000) for each violation of §501.160 Fla. Stat. (2005);
- f. Granting such other relief as this Court deems just and proper.

**JURY TRIAL DEMANDED**

- 30. Plaintiff demands a jury trial on all issues triable by jury.

CHARLES J. CRIST, JR  
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