

STATE OF MICHIGAN
IN THE 6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DANA NESSEL, ATTORNEY GENERAL OF
THE STATE OF MICHIGAN, *ex rel* The
People of the State of Michigan,

Petitioner,

Case No. 2023-200177-CP

v

HON. CHERYL A. MATTHEWS

APPLE NINE HOSPITALITY OWNERSHIP,
INC., d/b/a HILTON GARDEN INN,

Respondent.

Darrin F. Fowler (P53464)
Assistant Attorney General
Michigan Dep't of Attorney General
Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632
FowlerD1@michigan.gov

ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE

Dana Nessel, Attorney General of the State of Michigan, on behalf of the State of Michigan and Apple Nine Hospitality Ownership, Inc., d/b/a Hilton Garden Inn (“Respondent”), hereby execute and agree to be bound by this Assurance of Voluntary Compliance and Discontinuance. This Assurance concerns the resolution of alleged violations of the Michigan Consumer Protection Act, 1976 PA 331, as amended, MCL 445.901 *et seq.* (“MCPA”).

Based on the foregoing, the Parties agree as follows:

I. Definitions

1.1 “Assurance” means this Assurance of Voluntary Compliance and Discontinuance.

1.2 “COD” means the Michigan Department of Attorney General, Corporate Oversight Division.

1.3 “Hotel” refers to the Hilton Garden Inn located at 27355 Cabaret Dr., Novi, MI 48377.

1.4 “Respondent” refers to Apple Nine Hospitality Ownership, Inc., d/b/a Hilton Garden Inn, whether doing business under any other assumed name or acting through its principals, employees, contractors, or any other business entity.

1.5 “Parties” means COD, the Department, and Respondent, collectively.

1.6 All other terms shall have the meaning specifically defined in the MCPA unless otherwise expressly defined in this Agreement.

II. COD investigation of Respondent

2.1 On March 5, 2023, the Attorney General received a complaint regarding the room rate paid to stay at the Hotel for one night, on February 24, 2023, during an ice storm that impacted lower Michigan in late February 2023 (the “Complaint”).

2.2 On May 3, 2023, the Attorney General filed an *Ex Parte* Petition for Civil Investigative Subpoenas in the Oakland County Circuit Court to show probable cause that the Hotel had violated the MCPA (the “Petition”).

2.3 Following entry of a Court Order Authorizing Issuance of Civil Investigative Subpoenas, COD served Respondent with a Subpoena for Testimony and Subpoena to Produce (the “Subpoenas”), seeking records and information relating to the concerns raised in the Complaint.

2.4 Respondent has cooperated with COD’s investigation.

2.5 In entering into the Assurance, the mutual objective of the Parties is to resolve, without litigation, COD’s potential claims under the MCPA for preliminary and permanent injunctive relief, as well as the potential claims for payment of damages and reimbursement of COD’s costs and expenses related to this case. The entry into this Assurance by Respondent is not an admission of liability with respect to the Complaint. Respondent is offering this Assurance to avoid the time and expense of litigating this matter and denies that its conduct violated the MCPA.

III. Jurisdiction

3.1 The Department of Attorney General (“Attorney General” or “the Department”) has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.905 and 445.910. Respondent waives all objections and defenses that it may have as to the jurisdiction of the Department over the matters covered by this Assurance.

IV. Parties Bound

4.1 This Assurance binds Respondent, and Respondent is also responsible for compliance with the terms of this Assurance, and must ensure that all of the

Hotel's employees, agents, property managers (including, but not limited to, HHM Mgmt Sub, LLC, a subsidiary of Hersha Hospitality Management L.P.), and representatives comply with the terms of this Assurance.

V. Implementation of Compliance Measures

5.1 To the extent that Respondent may have engaged in any unfair or deceptive business practices in the State of Michigan as alleged in the Complaint, Respondent shall immediately cease and desist such practices.

5.2(A) Within sixty (60) days, Respondent will ensure that all Hotel employees with responsibility for determining or setting room rates ("Pricing Employees") shall complete a compliance training provided by Respondent ("Pricing Training").

5.2(B) The Pricing Training shall include education regarding compliance with MCL 445.903(1)(z), which prohibits "[c]harging the consumer a price that is grossly in excess of the price at which similar property or services are sold," and a process for fielding and responding to guest complaints regarding pricing.

5.2(C) Completion of the Pricing Training by the Pricing Employees shall be documented. Such documentation shall be provided to COD within five (5) business days of a request by COD.

5.2(D) Any new Pricing Employee hired by the Respondent must complete the Pricing Training within thirty (30) days of their first date of employment.

5.3 The compliance measures required by this Section V shall remain in effect for two (2) years after the Effective Date.

VI. Financial obligations

6.1 Respondent will pay \$1,000 to the State of Michigan to resolve the dispute between the Parties. This amount shall be paid to COD no later than ten (10) business days after the Effective Date. COD will retain the \$1,000 payment as compensation for the expenses associated with the investigation.

6.2 Respondent will refund all consumers who paid a room rate of more than \$200.00 to stay at the Hotel for any night between February 23, 2023, and February 26, 2023, the difference between \$200.00 and the room rate paid (plus corresponding tax amounts). Additionally, Respondent will provide to the consumer who submitted the Complaint a full refund for her stay at the Hotel on February 24, 2023. These payments must be applied as credits to the credit cards used by the consumers for their hotel stays not later than ten (10) business days after the Effective Date. Should Respondent be unable to credit any such consumer's credit card account, it will send the consumer the payment through a check delivered through the United States Postal Service within thirty days of the Effective Date.

6.3 If Respondent is late in making the payments referenced in Paragraphs 6.1 or 6.2, it agrees to pay \$10.00 per day for each calendar day after the due date. Such late fees shall be paid to COD. If the payment is more than thirty (30) calendar days late, Respondent agrees to compensate the Attorney General for any litigation costs and attorney fees associated with any action brought to enforce the terms of this Assurance. COD will give notice of the delinquency and resultant costs to Respondent by email and first-class mail.

6.4 All payments to the COD required by Paragraphs 6.1 and 6.3 (if applicable) shall be made by check payable to the “State of Michigan” and mailed to Darrin F. Fowler, Assistant Attorney General, Corporate Oversight Division, P.O. Box 30736, Lansing, MI 48909.

VII. Release

7.1 Upon the Effective Date, COD hereby releases and discharges Respondent and any of its parent entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of its past or present officers, directors, associates, shareholders, controlling persons, representatives, employees, attorneys, counselors, advisors, property managers, or agents, from any and all civil or administrative claims, demands, rights, actions, causes of action, and liabilities, of any kind or nature whatsoever, that are based directly or indirectly on the Attorney General’s consumer protection investigation as identified in the Petition, including the alleged acts, failures to act, omissions, misrepresentations, facts, events, transactions, statement, occurrences or other subject matter which were or could have been set forth, alleged, complained of or otherwise referred to in the Petition. Nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers.

VIII. General Provisions

8.1 This Assurance is binding upon, inures to the benefit of, and applies to the Parties and their successors-in-interest. This Assurance does not bind any other agencies, boards, commissions, offices of the State of Michigan, or attorneys in

other divisions of the Department of Attorney General acting as attorney representatives for other Michigan state agencies.

8.2 This Assurance does not create any private right or cause of action to any third party.

8.3 This Assurance does not constitute an approval by the Attorney General of any of Respondent's business practices and Respondent must not make any representation to the contrary, except as may be appropriate under Paragraph 8.7 of this Assurance.

8.4 No modification of this Assurance is valid unless in writing and signed by all Parties.

8.5 Within seven (7) business days of the Effective Date of this Assurance, COD will file a copy of this Assurance with the Oakland County Circuit Court, along with a notice that the investigation file related to the Petition is now closed.

8.6 In the event that COD or the Department has a reasonable basis to believe that Respondent is in noncompliance with any provision of this Assurance, COD or the Department must provide written notice to Respondent via e-mail and first-class mail of such noncompliance, identifying the provision(s) of this Assurance that it believes to have been violated, and setting forth the basis for such belief.

8.7 Upon receipt of written notice from COD or the Department pursuant to Paragraph 8.6, Respondent shall have thirty (30) calendar days to provide a good faith written response to COD's or the Department's notice, containing either a statement explaining why Respondent believes it is in compliance with the

Assurance or a detailed explanation of how the alleged violation occurred and a statement explaining how and when Respondent intends to remedy the alleged violation.

8.8 COD or the Department may not initiate suit or serve a subpoena or similar discovery request on Respondent during the 30-day response period.

Nothing herein shall prevent COD or the Department from agreeing in writing to provide Respondent with additional time beyond the 30-day period to respond to the notice provided under Paragraph 8.7.

8.9 Any notice to Respondent required by this Assurance shall be made to:

Siran S. Faulders
Cozen O'Connor
1200 19th St., NW, 3rd Fl.
Washington, D.C. 20036
sfaulders@cozen.com

IX. Signatories, Execution in Counterparts, and Electronic Signatures

9.1 Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Assurance and to legally bind such party to the terms and conditions of this Assurance.


9.2 This Assurance may be executed in counterparts, each of which is deemed an original hereof, but which together constitute one and the same instrument and agreement, and that facsimile or electronically-transmitted signatures may be submitted in connection with this Assurance and are binding on that Party to the same extent as an original signature.

X. Effective Date

10.1 The Effective Date of this Assurance is the date upon which the COD representative signs this Assurance.


**Dana Nessel, Attorney General,
on behalf of the People of the
State of Michigan**

Dated: October 25, 2023

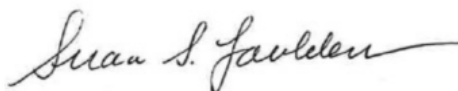
By: 
Darrin F. Fowler (P53464)
Assistant Attorney General
Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909

**Apple Nine Hospitality Ownership
d/b/a Hilton Garden Inn**

Dated: October 17, 2023

By: 
Matthew Rash, President

Dated: October 16, 2023

By: 
Siran S. Faulders
Cozen O'Connor
Attorney for Respondent
1200 19th St., NW, 3rd Fl.
Washington, D.C.