

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
BROOKLYN REGIONAL OFFICE**

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In the Matter of

AOD No. 13-403

MMG-Butler Street, LLC d/b/a Holiday Inn Express

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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO NY EXECUTIVE LAW § 63(15)**

Pursuant to the provisions of General Business Law (“GBL”) Article § 396-r and Executive Law § 63(12), Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of the Holiday Inn Express operated by MMG-Butler Street, LLC, and based upon such inquiry, the Attorney General has made the following findings:

MMG-Butler Street, LLC

1. MMG-Butler Street, LLC (“MMG”) is a Delaware limited liability corporation authorized to do business in New York State.
2. MMG operates the Holiday Inn Express franchise hotel located at 279 Butler Street, Brooklyn, NY (“hotel”) and has done so since May, 2007.

Hurricane Sandy and Its Impact

3. On October 26, 2012, Governor Andrew Cuomo declared a state of emergency in New York State based on the expected landfall of Hurricane Sandy. On October 28, 2012, Eric T. Schneiderman issued a press release advising businesses of the existence of New York State’s price gouging statute and warned that any violations of this statute could result in prosecution.

4. On the night of October 29, 2012, Hurricane Sandy made landfall in New York State and New Jersey, striking New York City and many of the surroundings areas. Despite the extraordinary precautions taken by public officials, the results of the surge were devastating. Hurricane Sandy was responsible for at least 120 deaths, including more than 50 in New York State alone, concentrated in the New York City metropolitan area.

5. Hurricane Sandy's high winds and torrential rain caused extensive damage in and around New York City. The storm surge flooded streets, tunnels, and subways. More than 305,000 homes and 265,300 businesses were damaged or destroyed in New York State alone.

6. Nearly 2.2 million power outages were reported in New York State by businesses and homeowners alike; thousands remained without power for weeks.

7. Hurricane Sandy significantly restricted travel to and from the New York City area as the damage and flooding caused the closure of J.F.K., LaGuardia, and Newark International airports. Amtrak canceled some services on October 29 in preparation for the storm and did not resume service until November 2.

8. Immediately after Hurricane Sandy, numerous hotels in New York City were closed due to flood damage and/or power outages. Hotels that continued to operate experienced significant increases in occupancy as residents who had been displaced by the storm competed with stranded travelers for the few remaining hotel accommodations.

9. Hurricane Sandy caused an abnormal disruption of the market for consumer goods and services, including the market for hotel accommodations, which are vital and necessary for the health, safety, and welfare of consumers.

Price Gouging

10. The price gouging statute is codified in GBL § 396-r. It prohibits price gouging in the sale or offering of consumer goods and services vital and necessary for the health, safety, and welfare of consumers during any abnormal disruption of the market for such goods or services. GBL § 396-r(2) provides, in pertinent part:

“During any abnormal disruption of the market for consumer goods and services vital and necessary for the health, safety and welfare of consumers, no [merchant] shall sell or offer to sell any such goods or services or both for an amount which represents an unconscionably excessive price ... the phrase ‘abnormal disruption of the market’ shall mean any change in the market, whether actual or imminently threatened, resulting from ... national or local emergency, or other cause of an abnormal disruption of the market which results in the declaration of a state of emergency by the governor.”

11. Hurricane Sandy was a “stress of weather” as defined in GBL § 396-r(2) which resulted in an abnormal disruption of the market for hotel rooms.

12. The provision of hotel accommodations is a consumer service that is used, bought, and rendered for personal or family use, and is vital and necessary for the health, safety and welfare of consumers, especially following a storm such as Hurricane Sandy.

13. On November 5, 2012, the Office of the Attorney General (“OAG”) received a consumer complaint alleging price gouging by MMG during days following Hurricane Sandy. The complainant and his colleagues were stranded in

New York City after a conference as a result of airport closures. They were displaced from their original hotel due to a power outage. MMG charged the complainant and his colleagues as much as \$519 per night when they called seeking last-minute reservations.

14. Based on this consumer complaint, the OAG requested documents from MMG reflecting rate information from October 22 through November 5, 2012, and conducted an investigative hearing eliciting testimony from the hotel's General Manager, Omar Aquino.

15. Pursuant to the OAG's request, MMG voluntarily provided a log of reservation and rate information for the hotel from October 21 to November 7, 2012. The OAG also received room rate information from consumers who submitted invoices showing their room charges.

16. Using the information submitted by MMG, the OAG evaluated the room rates MMG charged at the hotel from October 21 to November 7, 2012. This investigation revealed that during a four-night period, from October 30 through November 2, 2012, MMG accepted numerous last-minute bookings at rates that greatly exceeded the prices the hotel had been charging prior to the storm.

17. The week before this four-night period, MMG's average room rates ranged from \$155 to \$170 per night. The average room rates were: \$155 on October 23 and 24; \$157 on October 25; and \$170 on October 26, 2012. See Exhibit B.

18. Hurricane Sandy struck New York State on October 29, 2012. During the following four-night period, October 30 to November 2, 2012, many travelers were stranded in New York City and numerous hotels were closed due to flooding and/or power outages. Over that four-night period, MMG charged fifty (50) guests over \$400 per night. On October 30 alone, MMG charged twenty-six (26) guests over \$400 per night and fifteen (15) over \$500 per night. See Exhibit A. All of the guests who were charged over \$400 per night made last-minute reservations.

19. Respondent did not charge any guests over \$400 per night other than during the four-night period. There were no charges of over \$400 prior to the storm on October 21 until October 30, 2012, and no room charges of over \$400 after New York began to recover from Hurricane Sandy, November 3 through November 7, 2012. See Exhibit A.

20. The OAG finds that on the four-night period immediately following Hurricane Sandy, the prices that MMG charged for rooms constituted price gouging in violation of GBL § 396-r. Those violations of GBL § 396-r constitute repeated and persistent illegal acts in violation of Executive Law § 63(12).

AGREEMENT

WHEREAS, MMG neither admits nor denies the Attorney General's findings and the Attorney General is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15) and to discontinue its investigation; and the parties accept the obligations imposed.

IT IS HEREBY AGREED, by and between the parties, that this Assurance shall be binding on and apply to MMG, its officers, directors, agents, employees, assignees, and any individual or entity through which MMG may now or hereafter act and shall apply to every hotel that MMG now, or in the future, operates in New York State.

Prohibited Practices

IT IS HEREBY AGREED by MMG that it shall comply with GBL § 396-r.

Civil Penalty

IT IS FURTHER AGREED that upon execution of this Assurance MMG shall pay by certified check or money order made payable to the State of New York Department of Law, a civil penalty totaling twenty-five thousand dollars (\$25,000) pursuant to GBL § 396-r(4).

Restitution and Accounting

IT IS FURTHER AGREED that MMG shall upon execution of this Assurance, pay fifteen thousand, three hundred and fifteen dollars (\$15,315) in restitution to all guests who paid in excess of four hundred dollars (\$400) per night for stays on October 30 through November 2, 2012 ("eligible guests").

In order to establish a base for restitution, the OAG reviewed MMG's records to determine the average prices MMG charged for rooms one week prior to each day from October 30 through November 2. The chart showing those average rates is included below:

Night eligible guest stayed	Date one week prior	Average room cost one week prior
10/30/2012	10/23/2012	\$155
10/31/2012	10/24/2012	\$155
11/1/2012	10/25/2012	\$157
11/2/2012	10/26/2012	\$170

See Exhibit B

The refund for each eligible guest is an amount equal to what the individual paid, minus the average room cost MMG was charging one week earlier. See Exhibit C, pages 1 – 4. The individual refund amounts due and the name of each of the eligible guests are listed on Exhibit C, page 5.

MMG, within ten (10) days of the execution of this Assurance, shall provide to the Attorney General the addresses and where possible billing information for all of these consumers. The Attorney General shall contact the eligible consumers to notify them of this settlement and to coordinate payment details for the consumers' restitution payment. Any money remaining of the \$15,315 due to eligible guests who cannot be located within 120 days of the execution of this Assurance shall be retained by the State of New York as an additional civil penalty.

Miscellaneous

IT IS FURTHER AGREED that any payments and all correspondence related to this Assurance must reference “Assurance #13-403.”

IT IS FURTHER AGREED that the Attorney General has agreed to the terms of this Assurance based on, among other things, the representations made to the Attorney General by MMG and the Attorney General’s own factual investigation as set forth above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in his sole discretion.

IT IS FURTHER AGREED that no representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by MMG in agreeing to this Assurance.

IT IS FURTHER AGREED that MMG represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. MMG shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects MMG’s: (i) testimonial obligations; or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by MMG.

IT IS FURTHER AGREED that this Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

IT IS FURTHER AGREED that in the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the Attorney General, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

IT IS FURTHER AGREED that to the extent not already provided under this Assurance, MMG shall, upon request by the Attorney General, provide all documentation and information reasonably necessary for the Attorney General to verify compliance with this Assurance.

IT IS FURTHER AGREED that all notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed by facsimile and mailed by USPS priority mail as follows:

If to the Attorney General, to:

NYS Office of the Attorney General
Brooklyn Regional Office
55 Hanson Place, Suite 1080
Brooklyn, NY 11217
Attn: AAG Matthew S. Eubank
Fax: (718) 722-3951

If to MMG, to:

MMG-Butler Street, LLC.
d/b/a Holiday Inn Express
Jacob Graham, General Manager
279 Butler Street
Brooklyn, NY 11215
Fax: (718) 855-9605

IT IS FURTHER AGREED that this Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the Attorney General, may assign,

delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the Attorney General.

IT IS FURTHER AGREED that acceptance of this Assurance by the Attorney General shall not be deemed as approval by the Attorney General of any of the practices or procedures referenced herein. MMG shall make no representation to the contrary.

IT IS FURTHER AGREED, and pursuant to Executive Law § 63(15), that evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by the Attorney General.

IT IS FURTHER AGREED that if a court of competent jurisdiction determines that MMG has breached this Assurance, MMG shall pay to the Attorney General the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

IT IS FURTHER AGREED that the Attorney General finds the relief and agreements contained in this Assurance appropriate and in the public interest. The Attorney General will accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

IT IS FURTHER AGREED that nothing contained herein shall be construed to deprive any person of any private right under the law.

The effective date of this Agreement is 10/1, 2013.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: Oct 1, 2013
New York, N.Y.
(city) (state)

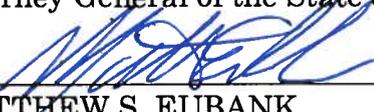
By: 
Jacob Graham, General Manager
MMG-Butler Street, LLC.
d/b/a Holiday Inn Express
279 Butler Street
Brooklyn, NY 11217

By: 
Juliette S. Levin, Esq.
Counsel for MMG-Butler Street, LLC.
2 Park Avenue, 19th Floor
New York, NY 10016

CONSENTED TO BY:

Dated: October 23, 2013
Brooklyn, NY

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: 
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