

NO. 20070114425

STATE OF TEXAS,

and

THE ST. ANTHONY, A WYNDHAM  
HISTORICAL HOTEL, AND  
WYNDHAM INTERNATIONAL, INC.  
*Respondents.*

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IN THE DISTRICT COURT OF

BEXAR COUNTY, TEXAS

**408th**

JUDICIAL DISTRICT

**ORDER APPROVING ASSURANCE OF  
VOLUNTARY COMPLIANCE**

On this date came on to be considered the Assurance of Voluntary Compliance in the above-referenced cause, which is approved by all parties. Said Assurance of Voluntary Compliance is hereby APPROVED by the Court.

SIGNED this 21 day of Sept, 2007.

  
\_\_\_\_\_  
JUDGE PRESIDING

CERTIFIED COPY CERTIFICATE STATE OF TEXAS  
I, MARGARET G. MONTEMAYOR, BEXAR COUNTY DISTRICT  
CLERK, CERTIFY THAT THE FOREGOING IS A TRUE AND  
CORRECT COPY OF THE ORIGINAL RECORD AS INDICATED  
BY THE VOLUME, PAGE AND COURT ON SAID DOCUMENT.  
WITNESS MY OFFICIAL HAND AND SEAL OF OFFICE THIS

SEP 21 2007

MARGARET G. MONTEMAYOR  
BEXAR COUNTY, TEXAS

By:  DEPUTY

VOL 3089PG0163

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THE ST. ANTHONY, A WYNDHAM  
HISTORICAL HOTEL, AND  
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409th

JUDICIAL DISTRICT

*Respondents.*

**ASSURANCE OF VOLUNTARY COMPLIANCE**

The STATE OF TEXAS, acting by and through Attorney General GREG ABBOTT, and Wyndham Hotel Management, Inc. ("WHM"), on behalf of The St. Anthony, a Wyndham Historical Hotel ("St. Anthony"), and Wyndham International, Inc. ("WII") (WHM, St. Anthony and WII collectively, "Respondents") respectfully submit to the Court the following Assurance of Voluntary Compliance ("AVC") in accordance with the Deceptive Trade Practices Act ("DTPA"), TEX. BUS. & COM. CODE ANN. § 17.58.

**I.  
STATE'S ALLEGATIONS**

The Office of the Attorney General alleges that WII and St. Anthony took advantage of consumers by selling lodging at exorbitant or excessive prices in violation of sections 17.46(a) and 17.46(b)(27)(A)&(B) of the DTPA. Specifically, the State alleges that WII and St. Anthony improperly offered for sale and sold lodging at excessive prices to consumers for several days in September 2005 during a Governor-declared disaster referred to as Hurricane Rita.

**II.  
WHM'S RESPONSE**

WHM assumed certain liabilities associated with WII's business as a result of the sale of

certain assets of WII on or about October 11, 2005. WII managed the St. Anthony during September 2005, and WHM had no control of the management of the St. Anthony during September 2005. Neither WHM nor WII serves as the management company for the St. Anthony as of the date of this AVC.

The Respondents specifically deny they violated the Deceptive Trade Practices Act ("DTPA"), TEX. BUS. & COM. CODE ANN. § 17.46(b)(27)(A)&(B) and 17.46(a), or any other Texas law or rule, and further deny all other allegations asserted by the Texas Attorney General in connection with its investigation.

### **III. STIPULATIONS**

**The State and Respondent agree that:**

This AVC shall fully resolve any and all claims, causes of action, and allegations which may have arisen out of the investigation by the Consumer Protection Division of the Office of the Attorney General into the business practices of Respondents during the period of Hurricane Rita;

WHM shall institute reasonable practices to provide notice of the applicable terms of this agreement to all agents and employees involved in the sale of hotel accommodations during any natural disaster or calamity declared by the Governor of the State of Texas;

In consideration of the terms of this Assurance, the Office of the Attorney General releases the Released Parties as defined herein, from all claims, complaints, demands, suits, actions or causes of action resulting from acts or omissions which were the subject of the DTPA investigation referred to in paragraph I., above, which occurred on or before the date of the execution of this AVC. This release does not and is not intended, however, to constitute a

waiver of the right of the State of Texas to seek enforcement in a court of competent jurisdiction of WHM's compliance with the terms contained herein;

They do not contest, the entry of this agreement; and

The corporate signatory hereto is a WHM officer who is authorized to enter into this AVC on behalf of WHM and has read the AVC and agrees to entry of same.

#### **IV. DEFINITIONS**

**As used in this AVC, the following terms are defined as follows:**

- A. **"Released Parties"** means Respondents, their predecessors, successors, assigns, officers, agents, subcontractors, representatives, shareholders, directors, servants, present and former employees, parent entities, affiliates, subsidiaries, and any other person or entity in active concert or participation with them;
- B. **"The St. Anthony"** shall mean the hotel which is located at 300 East Travis, San Antonio, Texas 78205;
- C. **"State of Disaster"** shall mean the period of time from September 20, 2005, when Texas Governor Rick Perry issued a proclamation certifying Hurricane Rita as an imminent disaster, to November 18, 2005, when the second proclamation extending the state of disaster expired;
- D. **"Declared disaster"** means the Governor of Texas by executive order or proclamation may declare a state of disaster if the Governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent pursuant to TEXAS GOVERNMENT CODE § 418.014 *et seq.*;

E. **“Disaster”** means the occurrence or imminent threat of widespread or sever damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, other public calamity requiring emergency action, or energy emergency pursuant to TEXAS GOVERNMENT CODE § 418.004(1);

F. **“Effective Date”** shall mean the date that this AVC is signed by the Court; and

G. **“Consumer” and “Person”** means an individual, partnership, corporation, or entity of any kind, including this state, or a subdivision or agency of this state that seeks or acquires, by purchase or lease, any goods or services.

**V.  
TERMS OF COMPLIANCE**

**WHM assures the Office of the Attorney General (and thereby the consumers of Texas) that from the effective date of this AVC, WHM:**

A. Subject to subsection B below, WHM shall not charge or demand during a declared disaster in the State of Texas, a price for accommodations at hotel properties it manages in the State of Texas in excess of 10% or greater the average amount charged demanded or offered by the hotel properties for rent for each room type for the 90 day period immediately preceding such disaster;

B. WHM however is permitted to honor reservations for accommodations at the rates confirmed or contracted for prior to a disaster; and

C. Shall not charge sales taxes during a period in which the Governor of the State of Texas has suspended the collection of state and local hotel and motel taxes under GOV. CODE § 418.012, § 418.014, § 418.015, § 418.016 or § 418.020.

**VI.  
ATTORNEYS' FEES AND RESTITUTION**

The State of Texas, through the Office of the Attorney General of Texas, shall have and recover restitution in the amount of Ninety Thousand and No/100 Dollars (\$90,000.00) from WHM, to be used in whole or in part, for restoration of money or other property taken from consumers by WII and/or St. Anthony as the State determines appropriate, advisable and necessary. In the event the State is not able to distribute all of this restitution to consumers within one year from the effective date of this AVC, such amounts shall revert to the State, as additional attorney fees.

WHM shall pay said restitution on September 10, 2007, by cashier's check made payable to the State of Texas through the Texas Attorney General, bearing the reference **AG # 052230430**, and deliver it to the attention of Paul Carmona, Chief, Consumer Protection and Public Health Division, Office of the Attorney General, by mail at P.O. Box 12548, Austin, Texas, 78711-2548 or by other delivery at 300 W. 15<sup>th</sup> St., WPC Building, Floor 9, Austin, Texas, 78701.

The State of Texas, through the Office of the Attorney General of Texas, shall have and recover attorneys' fees in the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) from WHM for reimbursement of the State's attorneys' fees and investigative costs incurred in this case, which sum is for the benefit of the State of Texas, a governmental

unit, and which is not compensation for any actual or pecuniary loss and do not constitute an antecedent debt with respect to this investigation.

WHM shall pay said State's attorneys' fees and investigative costs on September 10, 2007, by cashier's check made payable to the State of Texas through the Texas Attorney General, bearing the reference **AG # 052230430**, and delivered to the attention of Paul Carmona, Chief, Consumer Protection and Public Health Division, Office of the Attorney General, by mail at P.O. Box 12548, Austin, Texas, 78711-2548 or by other delivery at 300 W. 15<sup>th</sup> St., WPC Building, Floor 9, Austin, Texas, 78701.

**IX.  
NOTICE**

As set forth in TEX. BUS. COM. CODE § 17.58(c), both the State of Texas and Respondent acknowledge that unless this AVC has been rescinded by agreement of the parties or voided by the Court for good cause, the subsequent failure to comply with the terms of this AVC is *prima facie* evidence of a violation of the Texas Deceptive Trade Practices Act in any action by the State of Texas acting by and through the Office of the Attorney General. Respondents do not waive and hereby expressly reserve all defenses to any claim that any of them have failed to comply with the terms of this AVC. Further, it is agreed and understood that this AVC shall not in any way affect individual rights of action by any consumers.

The State's signature on this AVC does not constitute an approval by the State of any practices of the Respondent and the Respondent agrees not to make any representations to the contrary.

SIGNED this 21 day of Sept, 2007.

  
JUDGE PRESIDING

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

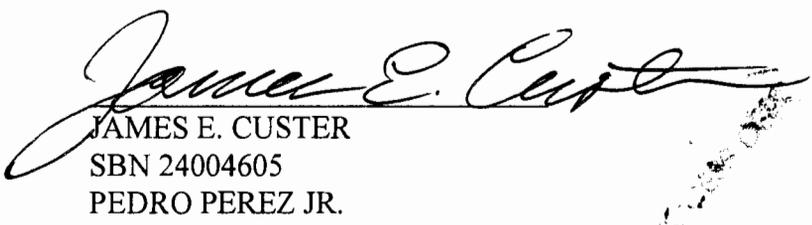
GREG ABBOTT  
ATTORNEY GENERAL OF TEXAS

KENT C. SULLIVAN  
First Assistant Attorney General

JEFF L. ROSE  
Deputy First Assistant Attorney General

PAUL CARMONA  
Chief, Consumer Protection & Public Health Division

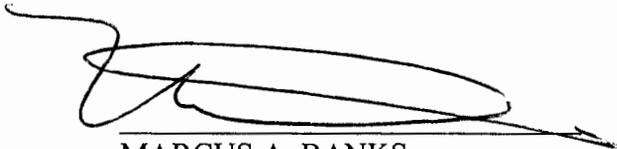
JOHN OWENS  
Deputy Chief, Consumer Protection Division



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**Attorney for Respondent**



MARCUS A. BANKS  
Group Vice President - Legal  
As Agent for:  
Wyndham International, Inc.  
**Respondent**

**CERTIFIED COPY CERTIFICATE STATE OF TEXAS  
MARGARET G. MONTEMAYOR, BEXAR COUNTY DISTRICT  
CLERK, CERTIFY THAT THE FOREGOING IS A  
TRUE AND CORRECT COPY OF THE ORIGINAL  
RECORD FILED ON 9-21-07  
WITNESS MY OFFICIAL HAND AND SEAL OF OFFICE THIS**

SEP 21 2007

**MARGARET G. MONTEMAYOR  
BEXAR COUNTY, TEXAS**



**DEPUTY**