

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

**COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL,**

Plaintiff,

v.

**GRM MANAGEMENT LLC,
a Virginia limited liability company,**

Defendant.

CIVIL ACTION NO. 14-238

CONSENT JUDGMENT

The Plaintiff, Commonwealth of Virginia, by, through and at the relation of the Attorney General of Virginia, Mark R. Herring (the "Commonwealth" or the "Plaintiff"), and the Defendant, GRM Management LLC d/b/a The Richmond Grand Magnuson Hotel, Richmond Magnuson Grand Hotel and Convention Center, and Richmond Magnuson Grand Hotel and Conference Center ("Richmond Magnuson" or the "Defendant"), on behalf of itself, its members, managers, employees, agents, related entities, successors, and assigns, have resolved the matters in controversy between them and have agreed to the terms of this Consent Judgment, as follows:

I. STIPULATED RECITALS

1. The Plaintiff is the Commonwealth of Virginia, by, through and at the relation of Mark R. Herring, Attorney General of Virginia. The Attorney General has statutory authority to enforce violations of the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 to 59.1-207, and authority to bring an action to enjoin any violation of Chapter 6, Article 8 of Title 18.2 of the Code of Virginia, including, but not limited to, violations of Virginia Code §

18.2-217(a), pursuant to Virginia Code § 59.1-68.2.

2. The Defendant, GRM Management LLC, is a Virginia limited liability company having its principal office at 10307 West Broad Street, Suite 275, Glen Allen (Henrico County), Virginia 23060. The Defendant has operated a hotel in Henrico County located at 6531 West Broad Street, Richmond (Henrico County), Virginia 23230, from approximately December 1, 2012 through the present.

3. Based upon written complaints and other materials received by the Office of the Attorney General of Virginia and its subsequent investigation, the Commonwealth filed a Complaint alleging that the Defendant violated §§ 59.1-200(A)(5), (8), and (14) of the VCPA, and Virginia Code § 18.2-217(a), by advertising, offering, and confirming room rates for one price with the intent not to sell at that price or upon the terms advertised or offered, and then at actual check-in informing consumers of, and at check-out charging, a higher rate for the same rooms, or not having the rooms reserved available as requested.

4. In this connection, the Commonwealth contends that Event Directors of the Virginia Line Dance Festival (the "Dance Festival") chose the Crowne Plaza, located at 6531 West Broad Street, Richmond (Henrico County), Virginia 23230, as the site for the Dance Festival scheduled for Thursday, August 1, through Sunday, August 4, 2013. In October 2012, an Event Director for the Dance Festival contracted with the Crowne Plaza for the availability of rooms to accommodate attendees of the Dance Festival at a nightly rate of \$87 plus tax. The Crowne Plaza sold the hotel in December 2012 to Richmond Magnuson. After repeated difficulties reaching representatives of the Richmond Magnuson and threats to move the event to another hotel, an Event Director of the Dance Festival spoke with the Richmond Magnuson's Director of Sales and Catering in January 2013, and renegotiated for a rate of \$73 per night plus taxes of

\$9.49 (for a total of \$82.49 per night) and inclusion of a hot breakfast. The Richmond Magnuson General Manager had knowledge of and approved the change. Following the January 2013 conversation, over 120 Dance Festival attendees contacted the Richmond Magnuson and received oral and/or written confirmations for rooms with the nightly rate of \$73 plus tax. In August 2013, these same consumers were informed at check-in, and at check-out charged, a rate of \$87 per night plus taxes of \$11.57 (for a total of \$98.57 per night).

5. The Defendant contends that the Event Directors of the Dance Festival entered into a contract in October 2012 with the Crowne Plaza (the "Contract") for the availability of rooms to accommodate attendees of the Dance Festival. The Contract stated that the Dance Festival attendees would pay a nightly rate of \$87 plus tax, which included a discounted-meal coupon. When the Richmond Magnuson purchased the hotel, the Richmond Magnuson assumed the rights and liabilities of the Contract, including the agreed-upon nightly rate of \$87 plus tax. Among other things, the Contract provided that any changes to the Contract's terms would be valid only if approved in writing. Despite the Contract's nightly rate of \$87 plus tax and its requirement of written modifications, the Event Directors of the Dance Festival advertised a nightly rate of \$73 plus tax, including a full hot breakfast. The Richmond Magnuson never advertised the \$73 nightly rate and never approved changes to the Contract's terms. At some point in January of 2013, employees of the Richmond Magnuson, without authorization from the hotel's General Manager, recorded into the hotel's computer system room reservations for the Dance Festival at the nightly rate of \$73 plus tax. Once the Richmond Magnuson's General Manager discovered the discrepancy from the Contract's nightly rate of \$87, he corrected the rate in the hotel's computer system to match the Contract rate. Significantly, this included lowering rates that had been recorded at rates above the nightly rate to the Contract rate of \$87 per night.

6. In the interest of resolving the Commonwealth's claims, the Commonwealth and the Defendant have agreed on a basis for the settlement of the Complaint and stipulated to entry of this Consent Judgment between the parties without trial or the adjudication of the validity of any alleged issue of law or fact.

7. The Defendant does not admit nor deny the allegations set forth in the Commonwealth's Complaint, and affirmatively states that its execution of this Consent Judgment is for settlement purposes only.

8. The Defendant and the Commonwealth waive their rights to appeal from this Consent Judgment and enter into this Consent Judgment voluntarily and state that no promises of any kind were made to enter into this Consent Judgment, except as provided herein.

9. The Commonwealth's Complaint in this matter states claims upon which relief could be granted under the provisions of the VCPA and Virginia's "bait and switch" statute.

10. The Defendant and the Commonwealth agree that the relief set forth in this Consent Judgment, including the amount of monetary restitution, costs, expenses, attorney's fees, and the injunctive relief provided, is a fair and reasonable settlement for the claims alleged by the Commonwealth.

11. The Defendant and the Commonwealth agree that nothing in this Consent Judgment shall prevent the Defendant from seeking any tax refund or credit to which it is entitled under the laws of the Commonwealth.

12. The Defendant consents to and submits itself to the jurisdiction of this Court and waives any objection it may have had to the jurisdiction of this Court over it for all matters relating to the entry, execution, monitoring, and enforcement of this Consent Judgment. The Defendant further waives any objection it may have had to venue in this Court for matters

relating to the entry, execution, monitoring, and enforcement of this Consent Judgment.

13. This Consent Judgment constitutes the entire agreement between the Defendant and the Commonwealth.

II. ORDER

NOW, THEREFORE, based upon the advice and stipulation of the parties, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Upon agreement of the parties, the Court hereby enters this Consent Judgment.
2. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Judgment.

A. INJUNCTIVE RELIEF

3. Richmond Magnuson, in its own name or doing business under any other trade name, its members, managers, agents and employees, and any other persons in active concert or participation with any of them, with either actual or constructive knowledge of this permanent injunction and judgment are hereby permanently enjoined from violating §§ 59.1-200(A)(5), (8), and (14) of the VCPA, and Virginia Code § 18.2-217(a), as each of those statutes are now in effect or later amended, including but not limited to permanently enjoined from advertising, offering, and confirming room rates for one price with the intent not to sell at that price or upon the terms advertised or offered, and then at actual check-in informing consumers of, and at check-out charging, a higher rate for the same rooms, or not having the rooms reserved available as requested.

4. The Defendant agrees that engaging in such acts or practices after the Court's entry of this Consent Judgment may constitute a violation of the Consent Judgment, defendant

on the facts and circumstances to be later determined.

B. RESTITUTION

5. The Commonwealth, as trustee, shall have judgment against, and shall recover from, the Defendant the sum of five-thousand three-hundred dollars and seventy-eight cents (\$5,300.78), pursuant to Virginia Code § 59.1-205, for the use and benefit of, and for purposes of making restitution to, the individuals who are listed in the spreadsheet attached as Exhibit A in the monetary amounts listed in Exhibit A. The spreadsheet attached as Exhibit A includes the best information currently available to the parties concerning the names and corresponding overcharge amounts for those Dance Festival attendee consumers that the Commonwealth contends are owed restitution, and excludes those that the Commonwealth understands already have successfully disputed the overcharges they incurred with their respective bank or credit card company. Any names or amounts listed in Exhibit A shall not be binding with respect to any mistakes or defects made in good faith by the parties in compiling the list based on the best information then available, or otherwise shown to be incorrect based upon subsequent information or evidence.

6. The Commonwealth shall administer the process of providing restitution to the individuals listed in Exhibit A. The restitution process will occur in two steps. In the first step, the Commonwealth shall send notice letters to the listed consumers inviting them to return a claim form confirming that they paid the Richmond Magnuson for hotel lodging while attending the Dance Festival from August 1 through 4, 2013, they were charged and paid more than the amount they were informed in their oral and/or written confirmation by the amount noted in Exhibit A (or other amount for which they can provide supporting evidence), they have not already received a recovery of their loss through a credit card or bank dispute, and that, if they

have a pending credit card or bank charge dispute which has not resulted in a credit to their account, they agree to withdraw it in favor of receiving restitution through this claim form process. The claim form shall contain a release to be signed by the eligible consumer in favor of Richmond Magnuson, which release shall state that the eligible consumer elects to seek restitution exclusively through the restitution process described in paragraph 5 and this paragraph and will not seek recovery of their loss through a credit card or bank dispute. In the second step, the Commonwealth shall issue checks to those individuals who return a claim form and release with the attested confirmation in the amount listed in Exhibit A (or other amounts for which they provide supporting evidence, if funds are available from the restitution amount described in paragraph 5). Although the amount due from the Richmond Magnuson for consumer restitution to Dance Festival attendees will not change, any eligible consumers may dispute the amount of their proposed refund by providing evidence of the amount of overcharge they contend. If the amount ultimately due the Dance Festival attendees exceeds the amount available, the Commonwealth shall provide restitution on a pro rata basis.

7. The Defendant agrees not to challenge, or continue to challenge, any credit card or bank charge disputes related to the allegations in the Commonwealth's Complaint. In addition to, and separate from, the amounts listed for the individuals named in Exhibit A, the Defendant further agrees to provide restitution, through the restitution process described in paragraphs 5 and 6, to any additional Dance Festival attendee who provides it or the Commonwealth with evidence of an advance confirmation at any time from the Richmond Magnuson at one nightly rate, who was then charged a different rate at check-in or check-out. The requirements imposed upon and commitment made in this paragraph 7 by the Richmond Magnuson shall be for the period beginning on December 1, 2012 and will continue for a period of up to one year after this

Consent Judgment is entered.

8. The Commonwealth shall make reasonable efforts to locate and make refunds to the individuals listed in Exhibit A. Any surplus funds remaining after the Commonwealth's efforts to locate and make refunds to the affected individuals, including any amounts that relate to claim forms that are returned for insufficient or incorrect addresses, and any amounts that relate to individuals who fail to reply after claim forms are mailed to and received by them, shall be retained by the Commonwealth as additional reimbursement for its attorney's fees and/or for its costs in administering the restitution process. If any consumers return claim forms but the checks issued to them are returned to the Commonwealth, the amounts due these consumers shall be distributed to the Unclaimed Property Division of the Virginia Department of the Treasury pursuant to, and for the purposes set forth in, the Uniform Disposition of Unclaimed Property Act, Virginia Code §§ 55-210.1 through 55-210.30. After all issued checks are cashed, deposited or turned over to the State Treasurer, the Commonwealth shall provide all original claim and release forms to the Richmond Magnuson.

C. ATTORNEY'S FEES, COSTS, AND EXPENSES

9. The Commonwealth shall have judgment against, and shall recover from, the Defendant the sum of seven-thousand and five-hundred dollars (\$7,500.00), pursuant to § 59.1-206 of the VCPA, for reimbursement of its reasonable expenses, costs, and attorney's fees in investigating and preparing this action. Any of these amounts that are paid and collected, and any additional surplus funds that result from the Commonwealth's distribution of consumer restitution in the manner described in paragraph 8 above, shall be deposited into the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

D. CIVIL PENALTIES

10. The Commonwealth shall have judgment against, and shall recover from, the Defendant the sum of two-thousand and five-hundred dollars (\$2,500.00), pursuant to § 59.1-206 of the VCPA, as a civil penalty for alleged violations of the VCPA. Any amounts paid and collected shall be deposited into the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

E. MISCELLANEOUS

11. Simultaneously with the execution of this Consent Judgment, the Defendant agrees to make partial payment to the Commonwealth by delivery of a cashier's or certified check, or by drawing on a line of credit with its financial institution, which includes but is not limited to a credit-card issuing bank, and delivering other good funds in the form of an electronic funds transfer, in the amount of ten-thousand dollars (\$10,000.00) payable to "Treasurer of Virginia," and remitted to the Office of the Attorney General, Consumer Protection Section, Attn: David B. Irvin, 900 East Main Street, Richmond, Virginia 23219.

12. The judgment amounts set forth in Section II, paragraphs 5, 9, and 10 of this Consent Judgment (the "Judgments") shall bear interest at the judgment rate of interest of six percent (6%) per annum from the date the Consent Judgment is entered. The Commonwealth agrees to suspend collection efforts on the unpaid portion of the Judgments for a period of six months after the entry of the Judgments (the "Waiting Period"). If no bankruptcy proceeding is commenced by or against the Defendant during the Waiting Period, and during the Waiting Period, neither the Defendant, a creditor, nor a bankruptcy trustee takes actions, or communicates to the Commonwealth that it is contemplating taking actions, to seek avoidance of the payment set forth in Section II, paragraph 11 (as a preference or fraudulent transfer as provided in 11 U.S.C. §§ 547, 548, and Virginia Code § 55-80, or by application of any other

federal or state law), the Commonwealth agrees to have the Judgments marked paid and satisfied, including any accrued interest, by the payment set forth in Section II, paragraph 11. If, on the other hand, a bankruptcy proceeding is commenced by or against the Defendant during the Waiting Period, and during the Waiting Period, either the Defendant, a creditor, or a bankruptcy trustee takes actions, or communicates to the Commonwealth that it is contemplating taking actions, to seek avoidance of that payment, the Commonwealth will not have the Judgments marked paid and satisfied, and may proceed with any permissible collection efforts on the Judgments in their entirety. If a bankruptcy proceeding is filed by or against the Defendant, nothing in this Consent Judgment shall limit or remove any rights of the Commonwealth as a creditor under Title 11 of the United States Code.

13. This Consent Judgment constitutes the entire agreement between the Defendant and the Commonwealth, concludes the Office of the Attorney General's inquiry into this matter to its satisfaction, and releases the Defendant from all claims asserted, or which might have been asserted, by the Attorney General under the VCPA and Virginia Code § 18.2-217(a), or otherwise arising out of the allegations set forth by the Commonwealth in its Complaint. Nothing in this Consent Judgment shall relieve the Defendant of its obligation to comply with all applicable state and federal laws.

14. Except as otherwise provided in connection with the releases discussed above, the entry of this Consent Judgment shall not bar private causes of action, if any.

15. Nothing in this Consent Judgment shall prevent the Defendant or Richmond Magnuson from conducting its business in a manner otherwise in accordance with the laws of the Commonwealth, the United States, or any other applicable jurisdiction.

16. This Consent Judgment may be modified only by order of this Court. After

making a good faith effort to obtain the concurrence of the other party for the requested relief, the Defendant or the Commonwealth may petition this Court for modification of the terms and conditions of this Consent Judgment.

17. A violation of any provision of this Consent Judgment shall be punishable as contempt and may subject the person or entity in violation to all penalties or sanctions allowed by law.

18. The waiver or failure of any party to exercise any rights under this Consent Judgment shall not be deemed a waiver of any right or any future rights. If any part of this Consent Judgment shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Judgment, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

ENTER:

9, 17, 14



Judge, Circuit Court of the County of Henrico

A COPY TESTE:
YVONNE G. SMITH, CLERK



DEPUTY CLERK

WE ASK FOR THIS:

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: 

David B. Iryia (VSB No. 23927)
Senior Assistant Attorney General
Stephen J. Sovinsky (VSB No. 85637)
Assistant Attorney General
Consumer Protection Section
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GRM MANAGEMENT LLC

By: 

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Richmond, Virginia 23219
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Fax: (804) 420-6507

Counsel for GRM Management LLC

GRM MANAGEMENT LLC

By: 

Anil Patel

Its: General Manager

Exhibit A: List of Individuals

Name	Overcharge
Arras, Ingeborg Carol	\$32.16
Austin, Grant and Luse, Chris (Chapman, Kevin)	\$64.32
Babneck (Babinec), Jill K.	\$48.24
Bautista, Debra	\$48.24
Beard, Donna	\$48.24
Biordi, Elizabeth	\$48.24
Bishop, Anna	\$48.24
Botta, Jane	\$48.24
Boyd, Janet	\$48.24
Brady, Joann	\$48.24
Brannon, Linda	\$48.24
Brazier, Janet L.	\$32.16
Brinker, Mary	\$48.24
Buhrman, Donna	\$48.24
Campbell, Angela W.	\$48.24
Carlock, Kathryn Ann (Kathy)	\$32.16
Cartwright, Dolores	\$32.16
Cross, Aleta and Norman L.	\$48.24
Custalow, Barbara A.	\$16.08
Duncan, Joyce and Michael	\$48.24
Durbin, Jerry	\$48.24
Eberhardt, Cathy	\$48.24
Elm, Mary	\$10.46
Falconer, Judy	\$48.24
Farace, Rose	\$32.16
Farrell, Roberta P.	\$32.16
Fortune, Geri and Bowman, Patra	\$48.24
Foster, Tina M.	\$48.24
Fuhrman, Pamela	\$48.24
Fuhrman, Phyllis and Smith, Edwin	\$32.16
Fulghum, Isabel	\$48.24
Gormley, Kathleen	\$48.24
Grozinsky, Wanda	\$48.24
Haas, Mary	\$32.16
Hacker, Jane	\$96.48
Harding, Ron	\$48.24
Hart, Barbara	\$48.24
Hesel, Kathy	\$48.24
Hess, Pamela B.	\$48.24
Hilbish, Robert T.	\$48.24
Hitchens, Joan and Charles D.	\$48.24
Hoagland, Jackie W.	\$48.24
Hoover, Linda	\$48.24

Hungate, Anita Marie	\$48.24
Hwang, Yuan-yuan	\$48.24
Ingersoll, Leslie	\$48.24
Jasman, Joan	\$48.24
Johnson, Karen H.	\$48.24
Johnson/Ehmann, Marry	\$96.48
Kaur, Gurbir (Nina)	\$48.24
Knight, Jackee (Jacquelyn) Renee	\$32.16
Krause, Alice	\$32.16
Kriner, Helene	\$16.08
Lamatrice, Linda L.	\$48.24
Leggio, Ann Lorraine	\$32.16
Leone, Gail	\$48.24
Lescarbeau, Steve and LeClaire, Dean	\$48.24
Ludwig, Nancy	\$48.24
Machtemes, Cristine	\$48.24
Magrath, Pamela	\$48.24
Marianna (Maiorana), Gladys S.	\$48.24
McAdams, Candy	\$48.24
McGough, Fay	\$48.24
McNally, Eugene Henry	\$32.16
Miller, Marialle (Marianne R.)	\$48.24
Miller, Verna	\$48.24
Mirasola, Sarah	\$64.32
Moore, Karen J.	\$32.16
Morgan, Nat	\$80.40
Morris, Sandra	\$48.24
Murphy, Susan D.	\$16.08
Myers, Joanne	\$32.16
Nice, Patricia	\$48.24
Ostrishko, Kathleen	\$48.24
Phillips, Susan A.	\$48.24
Pollinger, Balinda D.	\$32.16
Pollon, Kathy	\$32.16
Potteliger, Debra Ann	\$32.16
Pournelle, Terrell	\$96.48
Ray, Olivia	\$80.40
Recker, Katherine M.	\$48.24
Reynolds, Denise	\$48.24
Rich, Patricia	\$48.24
Richman, Sophie P.	\$32.16
Ritz, Joyce	\$48.24
Robinson/Willis	\$48.24
Roof, Adele	\$48.24
Rose, Brenda	\$48.24
Sagrilla, Marylou	\$48.24
Sargent, Carolyn Rose	\$16.08

Schrank, Donald S. (Scott)	\$48.24
Shattis, Jan	\$48.24
Shearer, Evelyn A.	\$32.16
Shepard, Terry	\$48.24
Sherlock, Carol	\$48.24
Shortell, Cheryl Renee	\$16.08
Smith, Barbara J.	\$48.24
Smookler, Linda and Edward	\$48.24
Snipes, Mary A.	\$48.24
Spratt, Bonnie J.	\$48.24
Starzynski, Phyllis R.	\$48.24
Stillwell, Patsy (Patricia) and Eddie (Edward)	\$48.24
Takacs, Evelyn	\$48.24
Treglown, Maryellen	\$48.24
Vener, Pamela	\$48.24
Vislay, Kate and Young, Penny	\$48.24
Warden, Beverly A.	\$48.24
Waterfield, Shirley/Iris	\$16.08
Weaver, Patricia	\$48.24
Webb, Donna	\$48.24
Webb, Susan	\$48.24
Wilkins, Betty B.	\$32.16
Williams, Rosemary	\$48.24
Williamson, U.T.	\$48.24
Wilson, Gary	\$48.24
Yee, Celine C.	\$48.24
York, Mary G.	\$16.08

Total	\$5,300.78
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