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8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEW JERSEY

10 (NEWARK)

11 SUPER 8 MOTELS, INC., South Dakota  
12 Corporation

13 Plaintiff/Cross-Defendant

14 V.

15 ABDUL PATEL, an individual,  
16 Defendant/Cross-Complainant.

Civil Action No. 07-CV-1039 (FSH)

**MEDIATION STATEMENT**

Mediator: Judge Stewart Pollock

Date: June 5, 2008

Time: 9:30 am

Place: 1 Speedwell Ave  
Morristown, NJ 07962

17 **INTRODUCTION**

18 This case arises out of plaintiff's, Super 8 Motels, Inc.'s (hereafter "Super 8"),  
19 unlawful termination of the franchise owned and operated by defendant, Abdul Patel. On  
20 October 10, 1997, Mr. Patel formalized his relationship with Super 8 by entering into a  
21 franchise agreement permitting him to operate his Cameron Park, California motel as a  
22 Super 8 facility. At the time the franchise agreement was executed, franchisees were  
23 subject to quality assurance inspections where violations were given point designations.  
24 If the total points assessed was greater than 500, the facility would fail the inspection.  
25  
26

27 Several years after Mr. Patel began operating under the terms of the franchise  
28 agreement, Super 8 arbitrarily altered the point system for its quality assurance

1 inspections. Super 8 began doubling the points for recurring violations, which had the  
2 effect of, within a very short period of time, turning a minor violation into a major  
3 violation that would constitute a default under the terms of the franchise agreement. The  
4 effect of this change on Mr. Patel was to turn a 40 point parking lot issue into a 10,000  
5 point violation that was the sole basis of Super 8's decision to terminate the franchise  
6 relationship.  
7

8 Super 8 then added insult to injury by instituting this litigation for liquidated  
9 damages, attorney fees, and recurring fees. Mr. Patel filed a counter-complaint for breach  
10 of the franchise agreement in that Super 8 arbitrarily and materially altered the franchise  
11 agreement for the sole purpose of terminating Mr. Patel's, and others similarly situated  
12 franchises.  
13

14 As a result of Super 8's wrongful termination of Mr. Patel's franchise, he suffered  
15 extensive damages in excess of one million dollars (total damages of Mr. Patel will be the  
16 subject of expert testimony). Mr. Patel's damages include, but are not limited to,  
17 termination of Super 8 reservation services prior to the termination of contract, costs  
18 associated with demarking the facility, costs in purchasing of new supplies for an  
19 independent hotel, costs in associating with Motel 6, lost business while an independent  
20 hotel, and attorney fees.  
21

### 22 **PRIOR NEGOTIATIONS AND CURRENT POSITIONS**

23  
24 Super 8 in their Notice of Termination letter dated January 21, 2004 requested  
25 damages in the amount of approximately \$132,108.14.

26 Super 8 in their letter dated July 6, 2005, stated that they were willing to settle this  
27 matter for \$75,000.00 (SWI 0751 – 0752).  
28

1 Super 8 in their email to counsel dated February 7, 2008 stated that they were  
2 willing to settle this matter for \$162,000.00. On February 21, 2008, Mr. Patel rejected  
3 Super 8's demand to settle this matter and countered with an offer to dismiss his cross-  
4 complaint should Super 8 dismiss the complaint by February 27, 2008 with each side  
5 bearing its own attorney's costs. Mr. Patel's offer stated that if Super 8 rejected his offer,  
6 then his opening demand would be \$500,000.00. On February 27, 2008, Super 8 rejected  
7 Mr. Patel's offer that both parties simply dismiss this litigation.  
8

### 9 STATEMENT OF FACTS

10 On or about October 10, 1997, Abdul Patel entered into a franchise agreement  
11 with Super 8 Motels, Inc. (SWI 0209 – 0237; Exhibit A). Mr. Patel owned a 60 room  
12 hotel in Cameron Park, CA that had previously been a Super 8. He had officially started  
13 the process of applying for the franchise when on March 11, 1997, he submitted his  
14 \$1,000 application fee (SWI 0284)  
15

16 Prior to being admitted as a Super 8, Mr. Patel was required to make many  
17 changes to bring the property up to standard. (SWI 253 – 258; Exhibit B). According to  
18 section 3.1 of the franchise agreement, he was required to make pre-opening  
19 improvements and to pass a quality review assurance inspection with 300 or fewer points.  
20 According to the "Punchlist" Mr. Patel was required to make sure that all items on the  
21 punchlist were completed before opening the Super 8. Item 2 on the Punch list under the  
22 section Property Exterior sets forth "Hot patch, reseal and stripe parking lot. Resurface  
23 badly cracked and damaged areas." (SWI 0254; Exhibit B).  
24

25 Mr. Patel did not believe that the parking lot needed repairs back in 1997 and to  
26 date, he still has not made any repairs. Super 8 permitted Mr. Patel to open even though  
27 he did not fix the parking lot as they required.  
28

Both parties have disclosed a total of 14 inspection reports between 2/26/00 and 11/13/03 (SWI 0287 – 602; Attached as Exhibit C are the inspection reports dated 3/13/01, 5/7/01, and 11/13/03). Neither party has disclosed any inspection reports that may or may not have occurred between 1997 and 1999. All 14 inspection reports do cite the parking lot as something that needed Mr. Patel’s attention. The following is a list of dates that the Cameron Park Facility was inspected along with the applicable scores:

Date	Total Score	Parking Lot	QE w/ doubling
2/26/00	192	40	
7/14/00	265	40	
10/4/00	281	40	
11/15/00	258	40	
3/13/01	259	40	
5/7/01	549	80	409*
9/19/01	856	160	436*
1/3/02	1446	800	466*
7/28/02	236		
10/18/02	763	640	166
11/25/02	1434	1280	194
2/8/03	2683	2560	163
6/16/03	5503	5120	423
11/13/03	10659	10,240	458

\* The 5/7/01, 9/19/01, and 1/3/02 also had doubling of points for training violations. The doubling of training violations were also subtracted out.

1 In February 2001, Super 8 revised its Rules of Operations (SWI 1508 – 1720).  
2 The Rules of Operation are also known as the System Standards Manual (SWI 233;  
3 Exhibit A – Definitions to Franchise agreement). Super 8 has not yet given to Patel’s  
4 attorneys a copy of the System Standards Manual that was in effect in 1997. The  
5 Cameron Park facility was inspected on March 13, 2001 and no doubling of points were  
6 issued. However, on the very next inspection on May 7, 2001, Super 8 began to double  
7 all violations that were not corrected. The doubling of points was cumulative, meaning  
8 that within a very short period of time, a simple 40 point violation became a 10,240 point  
9 violation. It thus appears that the doubling of points started with a change of strategy  
10 associated with the changing of the System Standards Manual that occurred in February  
11 2001. (It must be noted that Super 8 has failed to show that Mr. Patel ever received a  
12 copy of this February 2001 System Standards Manual and if so, what date he received it).  
13  
14

15 In the February 2001, System Standards Manual, Super 8 reveals its policy  
16 regarding QA scores. Section 2.02 (SWI 1560; Exhibit D) does not mention that failure to  
17 repair things from a prior inspection will automatically double, although that is in reality  
18 what did occur. Instead the System Standards Manual states:  
19

- 20 4. If the deficiencies have not been corrected when the next quality  
21 assurance inspection is conducted, a Notice of Default may be  
22 issued, subjecting the motel to possible termination pursuant to the  
23 Franchise Agreement.

24 While the Franchise agreement signed by Mr. Patel did authorize Super 8 to make  
25 changes to the systems standards and that one of Super 8’s responsibilities would be to  
26 send any revisions of the System Standards Manual to Mr. Patel, this particular change to  
27 the System Standards Manual which now permitted any deficiencies not corrected to  
28 result in possible termination of contract changed the rules of the initial franchise

1 agreement. This changing of the rules thus gave Super 8 the right to terminate a franchise  
2 agreement by indirect means any and all minor breaches to the franchise relationship.

3 It is possible that there are other violations that are doubled on the quality  
4 assurance inspection, however, because Super 8 has refused to turn over the materials  
5 used by the quality assurance inspectors, counsel for Patel has not yet been able to  
6 conduct a full review of all the quality assurance inspections. If the amounts of other  
7 bogus doubled violations were reversed, Mr. Patel's quality assurance inspection scores  
8 would improve. It should be noted that while a score of 300 was required for the initial  
9 inspection, 500 was a passing score during all relevant times (according to discovery  
10 submitted by Super 8, in December 2006, a passing score was reduced to 400 [SWI  
11 1342]).  
12

13  
14 Counsel for Mr. Patel have not received a single document that actually shows  
15 how Super 8 quality assurance field representatives were to rate a facility. Furthermore,  
16 counsel for Mr. Patel have not received a single document that reveals Super 8's new  
17 policy of uncorrected violations other than what appears on the quality assurance reports.  
18

19 On January 21, 2004, Super 8 sent to Mr. Patel a letter of termination of the  
20 Franchise agreement (SWI 0767 – 0768; Exhibit E). Super 8 cited as the reason for this  
21 termination as failure to cure defaults found under the quality assurance inspections.  
22

23 While it is not necessarily relevant to the litigation at hand, it is interesting to note  
24 that the Owners 8 Association (a recently formed non-profit association representing  
25 Super 8 Franchisees) has formed representing 801 owners of Super 8 facilities. The  
26 Owners 8 Association has recently conducted a survey of its members where it was found  
27 that 75.3% of Owners are dissatisfied or very dissatisfied with the direction of Super 8. It  
28

1 was also found that 75.3% of respondents would be very likely to end the franchise  
2 relationship with Super 8 now if there were no penalties. (approximately 18% of  
3 members of the association responded to the survey).

4 One of the main reasons the Owners 8 Association was formed was to address  
5 problems with the Quality Assurance inspections. In particular, one of the leading  
6 problems according to the Owners 8 Association deals with the doubling of points for  
7 violations that have not been cured between quality assurance inspections.  
8

9 It is also interesting to note that according to the Super 8's 2007 Franchise  
10 Offering Circular (UFOC), they reveal that there are only 1,477 Super 8 which were  
11 operating from January 1, 2006 through December 31, 2006 that had passed their last  
12 quality assurance inspection. Based upon Super 8's own web sites, there are well over  
13 2,000 Super 8's in North America which reveal that well over 25% of Super 8's appear to  
14 be in violation of the quality assurance inspection program.  
15

#### 16 **LEGAL STANDARD**

17  
18 "The courts of the state of New Jersey have consistently held that every party to a  
19 contract ... is bound by a duty of good faith and fair dealing in both the performance and  
20 enforcement of a contract." *Telmark Packaging Corp., Inc. v. Nutro Laboratories and*  
21 *Nature's Bounty*, 2008 WL 43954 \*3 (D.N.J. 2008). "As a general rule, subterfuges and  
22 evasions in the performance of a contract violate the covenant of good faith and fair  
23 dealing even though the actor believes his conduct to be justified." *Id.*  
24

25 While the New Jersey Franchise Practice Act (NJFPA) does not apply to the  
26 pending litigation since Mr. Patel's Super 8 was located outside the state of New Jersey,  
27  
28

1 it is helpful to review how the Court view the duty of good faith and fair dealing that a  
2 franchisor owes to a franchise.

3 It is clear according to the NJFPA that Super 8 cannot cancel a franchise for any  
4 reason other than the franchisee's substantial breach. *Atlantic City Coin & Slot Serv. Co.*  
5 *v. IGT*, 14 F.Supp.2d 644, 658 (D.N.J.1998). Super 8 is not permitted to accomplish a  
6 termination of Franchise Agreement by indirect means that it would not be permitted to  
7 accomplish by direct means. *Carlo C. Gelardi Corp. v. Miller Brewing Co.*, 502 F.Supp.  
8 637 (D.N.J., 1980). Furthermore, Super 8 cannot manipulate the system so that a  
9 Franchise Agreement is terminated. *Dunkin' Donuts Inc. v. Dough Boy Management,*  
10 *Inc.*, 2006 WL 20521, \*11 (D.N.J., 2006). The Court in Dunkin' ruled that "the standards  
11 that Dunkin' imposed on Defendants constituted an unreasonable standard of  
12 performance are questions for a jury." *Id.*

13 Since Super 8 has violated its duty of good faith and fair dealing in unjustifiably  
14 terminating the franchise agreement with Mr. Patel over a minor breach by manipulating  
15 the system, Super 8 is entitled to nothing and Mr. Patel is entitled to all damages that  
16 reasonably flow from Super 8's termination of a contract for a minor breach.  
17  
18  
19

### 20 CONCLUSION

21 Mr. Patel will be able to prove damages in excess of one million dollars.  
22 However, in order to avoid the costs of further litigating this matter, Mr. Patel is willing  
23 to settle all claims he has against Super 8 for \$500,000.00.  
24

25 Respectfully Submitted this 30<sup>th</sup> day of May, 2008

26 /S/ \_\_\_\_\_  
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28 Mark P. Meuser  
HASSAN LAW FIRM