



**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA
Vs.
BENJAMIN R. JACOBS

C.A. No. 2010 CA 000898 B

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("SCR Civ") 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the Summons, the Complaint, and this Initial Order. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in SCR Civ 4(m).

(3) Within 20 days of service as described above, except as otherwise noted in SCR Civ 12, each defendant must respond to the Complaint by filing an Answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in SCR Civ 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an Initial Scheduling and Settlement Conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than six business days before the scheduling conference date. No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each Judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website <http://www.dccourts.gov/>.

Chief Judge Lee F. Satterfield

Case Assigned to: Judge JOAN ZELDON
Date: February 18, 2010
Initial Conference: 9:30 am, Friday, May 28, 2010
Location: Courtroom A-51
515 5th Street, N.W.
WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 105, 515 5th Street, N.W. (enter at Police Memorial Plaza entrance). Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Clerk's Office. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Lee F. Satterfield

CA Form 1

Superior Court of the District of Columbia

CIVIL DIVISION

**500 Indiana Avenue, N.W., Room JM-170
Washington, D.C. 20001 Telephone: 879-1133**

District of Columbia
a Municipal Corporation
441 4th Street, N.W., Suite 650N
Washington, D.C. 20001

Plaintiff

vs.

Civil Action No. 10 Ca 898

Benjamin R. Jacobs
6619 Elgin Lane
Bethesda, MD 20817

Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Room JM 170 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Clerk of the Court

Jacques P. Lerner
Assistant Attorney General

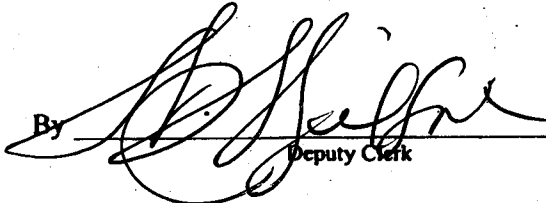
Name of Plaintiff's Attorney

441 4th Street, N.W., Suite 650N

Address
Washington, D.C. 20001

(202) 724-1342

Telephone

By 
Deputy Clerk

Date FEB 18 2010

PUEDE OBTENERSE COPIAS DE ESTE FORMULARIO EN ESPANOL EN EL TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA, 500 INDIANA AVENUE, N.W., SALA JM 170

YOU MAY OBTAIN A COPY OF THIS FORM IN SPANISH AT THE SUPERIOR COURT OF D.C., 500 INDIANA AVENUE, N.W., ROOM JM 170

NOTE: SEE IMPORTANT INFORMATION ON BACK OF THIS FORM.

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Superior Court of the District of Columbia

CIVIL DIVISION

500 Indiana Avenue, N.W., Room JM-170

Washington, D.C. 20001 Telephone: 879-1133

District of Columbia

a Municipal Corporation

441 4th Street, N.W., Suite 650N

Washington, D.C. 20001

Plaintiff

vs.

Civil Action No. 10ca 898

Kenneth F. Finkelstein

15109 Whitetail Way

Gaithersburg, MD 20878

Defendant

SUMMONS

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Clerk of the Court

Jacques P. Lerner
Assistant Attorney General

Name of Plaintiff's Attorney

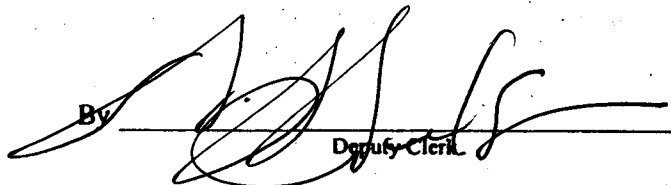
441 4th Street, N.W., Suite 650N

Address

Washington, D.C. 20001

(202) 724-1342

Telephone

By  Deputy Clerk

Date

FEB 18 2000

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CIVIL DIVISION

500 Indiana Avenue, N.W., Room JM-170
Washington, D.C. 20001 Telephone: 879-1133

District of Columbia
a Municipal Corporation
441 4th Street, N.W., Suite 650N
Washington, D.C. 20001

Plaintiff

vs.

Civil Action No. 0000898-10

JBG Properties, Inc.
A Maryland Corporation
4445 Willard Avenue, Suite 400
Chevy Chase, MD 20815

Defendant

Serve: Corporation Service Company
Registered Agent
1090 Vermont Avenue, N.W.
Washington, D.C. 20005

SUMMONS

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Clerk of the Court

Jacques P. Lerner
Assistant Attorney General
Name of Plaintiff's Attorney

441 4th Street, N.W., Suite 650N
Address
Washington, D.C. 20001

(202) 724-1342
Telephone

By  Deputy Clerk

Date FEB 18 2010

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CIVIL DIVISION

500 Indiana Avenue, N.W., Room JM-170

Washington, D.C. 20001 Telephone: 879-1133

District of Columbia

a Municipal Corporation

441 4th Street, N.W., Suite 650N

Washington, D.C. 20001

Plaintiff

vs.

Civil Action No. 09-00000-10

Wardman Investor, L.L.C.

A Delaware Limited Liability Company

4445 Willard Avenue, Suite 400

Chevy Chase, MD 20815

Defendant

Serve: Corporation Service Company

Registered Agent

1090 Vermont Avenue, N.W.

Washington, D.C. 20005

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Clerk of the Court

Jacques P. Lerner
Assistant Attorney General

Name of Plaintiff's Attorney

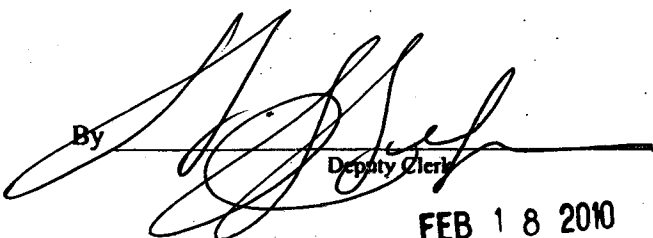
441 4th Street, N.W., Suite 650N

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Telephone

By  Deputy Clerk

Date

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Washington, D.C. 20001 Telephone: 879-1133

District of Columbia

a Municipal Corporation

441 4th Street, N.W., Suite 650N

Washington, D.C. 20001

Plaintiff

vs.

Civil Action No. _____

CIM/Wardman, L.L.C.

A Delaware Limited Liability Company

6922 Hollywood Boulevard

Hollywood, CA 90028

Defendant

Serve: The Honorable Adrian M. Fenty

Mayor of the District of Columbia

Executive Office of the Mayor

1350 Pennsylvania Avenue, N.W.

Suite 316

Washington, D.C. 20004

SUMMONS

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Jacques P. Lerner
Assistant Attorney General

Name of Plaintiff's Attorney

441 4th Street, N.W., Suite 650N

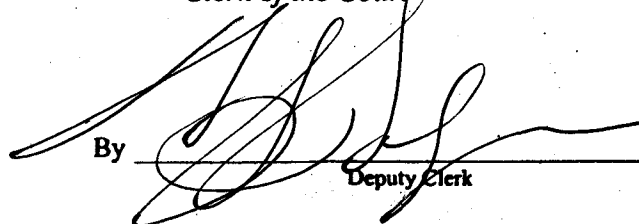
Address

Washington, D.C. 20001

(202) 724-1342

Telephone

Clerk of the Court



By

Deputy Clerk

Date

FEB 18 2010

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

DISTRICT OF COLUMBIA,

Plaintiff,

v.

BENJAMIN R. JACOBS
6619 Elgin Lane,
Bethesda, Maryland 20817,

KENNETH F. FINKELSTEIN
15109 Whitetail Way,
Gaithersburg, Maryland 20878,

JBG PROPERTIES, INC.
A Maryland Corporation
4445 Willard Avenue, Suite 400
Chevy Chase, Maryland 20815

SERVE:
Corporation Service Company
Registered Agent
1090 Vermont Avenue, N.W.
Washington, D.C. 20005,

WARDMAN INVESTOR, L.L.C.
A Delaware Limited Liability Company
4445 Willard Avenue, Suite 400
Chevy Chase, Maryland 20815

SERVE:
Corporation Service Company
Registered Agent
1090 Vermont Avenue, N.W.
Washington, D.C. 20005,

and

Civil Action No. _____

0000898-10

JURY TRIAL DEMANDED

RECEIVED
Civil Clerk's Office
FEB 18 2010
Superior Court of the
District of Columbia
Washington, D.C.

CIM/WARDMAN, L.L.C.
A Delaware Limited Liability Company
6922 Hollywood Boulevard
Hollywood, California 90218

SERVE
The Honorable Adrian M. Fenty
Mayor of the District of Columbia
Executive Office of the Mayor
1350 Pennsylvania Avenue, N.W.
Suite 316
Washington, D.C. 20004

Defendants.

0000896-10

**COMPLAINT FOR DAMAGES, DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF, AND OTHER RELIEF**
(Abuse of Process; Civil Conspiracy; and Prima Facie Tort)

COMES NOW the District of Columbia (hereinafter "Plaintiff" or "District"), by and through the Attorney General of the District of Columbia, for itself, and by and on behalf of the residents of the District of Columbia in *parens patriae*, and, for its Complaint against the Defendants, respectfully states as follows.

PARTIES AND JURISDICTION

1. Plaintiff is the Government of the District of Columbia, a sovereign municipality authorized to sue and be sued. It is further authorized by a series of Acts of the Council of the District of Columbia (hereinafter "Council"), *inter alia*, to lend, support, aid, and facilitate the development of the Walter E. Washington Convention Center (hereinafter "Convention Center") and the hotel to be constructed adjacent to the Convention Center site (hereinafter "Hotel"). *See, e.g., New Convention Center Hotel Omnibus Financing and Development Act of 2006, D.C. Act*

No. 16-0630; *New Convention Center Hotel Amendment Act of 2009*, D.C. Act No. 18-0310; *New Convention Center Hotel Combined Technical Amendments Emergency Declaration Resolution of 2008*, D.C. Res. No. 17-1152; *New Convention Center Hotel Emergency Declaration Resolution of 2009*, D.C. Res. No. 18-0447 (all such Acts are hereinafter collectively referred to as “the Hotel Acts”).

2. The District of Columbia sues in its own name, and in its common law *parens patriae* capacity to protect the interests and well-being of the residents of the District of Columbia.

3. The Washington Convention and Sports Authority (hereinafter “WCSA” or the “Authority”), is a statutorily independent entity that owns and/or manages the Convention Center and other major sports and entertainment facilities in the City. WCSA is an independent instrumentality of the District of Columbia that has a legal existence separate from the District. D.C. OFFICIAL CODE § 10-1202.02 (references in this Complaint to “WCSA” and to the “Authority” encompass both WCSA and its predecessor entities, the Washington Convention Center Authority and the District of Columbia Sports and Entertainment Commission). WCSA’s statutory purpose is, *inter alia*, to operate and manage its facilities, including the Convention Center, so as to attract and retain meetings, conventions, recreational, entertainment and sporting events, and to promote tourism and leisure travel to the District. Pursuant to the Hotel Acts, Plaintiff and the Authority have worked cooperatively to develop the Hotel, and, thereby, to maximize the economic benefits from the Convention Center to the City and to its residents.

4. Defendant Benjamin R. Jacobs (hereinafter “Jacobs”) is an adult resident of the State of Maryland residing at the address set forth above, and a principal of Defendant JBG Properties, Inc.

5. Defendant Kenneth F. Finkelstein (hereinafter "Finkelstein") is an adult resident of the State of Maryland residing at the address set forth above, and a principal of Defendant JBG Properties, Inc.

6. Defendant JBG Properties, Inc. (hereinafter "JBG") is a Maryland Corporation maintaining its principal place of business at the address set forth above. JBG is not sued in Count II (Civil Conspiracy).

7. Wardman Investor, L.L.C. (hereinafter "Wardman") is a Delaware Limited Liability Company maintaining its principal place of business at the address set forth above. Wardman is not sued in Count II (Civil Conspiracy).

8. CIM/Wardman, L.L.C. (hereinafter "CIM/Wardman") is a Delaware Limited Liability Company maintaining its principal place of business at the address set forth above. Upon information and belief, CIM/Wardman is a member of Wardman and holds an interest in the Marriott Wardman Park Hotel (hereinafter "Wardman Park"), 2660 Woodley Road, N.W., Washington, D.C., which is owned by Wardman and operated by and/or for the benefit of the Defendants. CIM/Wardman is not sued in Count II (Civil Conspiracy).

9. On information and belief, Defendant Wardman and Defendant JBG are affiliates and mere alter egos of one another under applicable law. Defendant Wardman and Defendant JBG are commonly controlled and Defendant JBG has the power to, and does in fact, direct and control the management, policies, decisions, and actions of Defendant Wardman. On information and belief, Defendant JBG has misused the corporate form to perpetrate a wrong on the District of Columbia and its residents as alleged herein.

10. All injuries and damages to the District of Columbia and its residents have occurred and are continuing to occur within the District of Columbia.

11. The execution of Defendants' scheme to extort Marriott has occurred within the District of Columbia, to wit, the filing and prosecution by Defendants, through Wardman, or through Wardman and CIM/Wardman, of: (1) a false and frivolous "bid protest," decided in favor of the District of Columbia by the District of Columbia Contract Appeals Board (hereinafter "Board" or "CAB"), (2) a false, frivolous, and now dismissed petition for review of the Board's decision in this Court, which was styled as *Wardman Investor, L.L.C., and CIM/Wardman, L.L.C. v. District of Columbia Contract Appeals Board and Marriott Int'l., Inc.*, Civil Action No. 09-7748 (Macaluso, J.) (hereinafter "the CAB appeal"), in which, on February 12, 2010, this Court summarily affirmed the CAB's dismissal of Wardman's and CIM/Wardman's so-called bid protest, holding that Wardman lacked standing to bring a bid protest because it was not even in existence when the RFP was issued, and stating that "[i]t strains language beyond meaning to construe a non-existent entity as a prospective offeror," and (3) a civil action for declaratory and related relief against the District of Columbia in this Court, *Wardman Investor, L.L.C. v. District of Columbia*, Civil Action No. 09-6427 (Combs Greene, J.) (hereinafter "the Superior Court claim"). Collectively, these proceedings are referred to as "the false claims."

12. Defendants, directly or by one or more agents, transact business in the District of Columbia and contract to supply services in the District of Columbia.

13. Upon information and belief, Defendants, directly or by one or more agents, have caused, and are continuing to cause, tortious injury in the District of Columbia to the District of Columbia Government and its residents by an act or omission in the District of Columbia. Defendants, directly or by one or more agents, have also caused, and are continuing to cause, tortious injury in the District of Columbia to the District of Columbia Government and its residents by an act or omission in the State of Maryland while regularly doing or soliciting

business, engaging in a persistent course of conduct including without limitation the filing and prosecution of the false claims, and/or deriving substantial revenue from services rendered in the District of Columbia including without limitation services connected with the Wardman Park.

14. Actions in furtherance of the civil conspiracy by and among Defendants Jacobs and Finkelstein including without limitation the filing and prosecution of the false claims have occurred and continue to occur within the District of Columbia.

15. Defendants, directly or by one or more agents, have an interest in, use, or possess real property in the District of Columbia.

16. Based on the facts alleged herein, this Honorable Court has personal and subject matter jurisdiction over these parties and these matters pursuant to D.C. Official Code §§ 11-921, 13-422, and/or 13-423(a)(1), (a)(2), (a)(3), (a)(4), and (a)(5).

FACTUAL BACKGROUND

The Convention Center and The Hotel Project

17. The Convention Center is an integral asset of the District of Columbia and one of great value to its residents. It is a state-of-the-art building constructed at a cost of over \$850 million. It was built to attract premium events, multiple events at the same time and in the same venue, and City-wide events. Recently, the Convention Center was showcased during the inauguration of President Obama in January 2009, when the building served as the site for an unprecedented six separate official inaugural balls under one roof. It will again be showcased this spring, when the President hosts 43 heads of state at the Nuclear Security Summit. This summer, the Convention Center will welcome the Microsoft Worldwide Partner Conference, one of the

nation's most profitable corporate meetings, which links Microsoft with all of its technology partners from around the world.

18. Events at the Convention Center generate employment opportunities for City residents, tax and other revenue for the District, revenue and profit for WCSA and local businesses, and prestige for the City. The benefits of such a state-of-the art facility have been evident since the Convention Center opened in 2003. A recent study performed at the request of the District's Office of the Chief Financial Officer has documented that the net economic impact of the Convention Center in 2008 alone was in excess of \$429 million, including generating over \$300 million in direct spending, \$35 million for the City in additional tax revenues, \$21 million in increased hotel revenues, and over 4,000 additional jobs in the City. Benefits of similar magnitude have been realized by the City in each of the years since the Convention Center opened. This year, the Microsoft event alone is expected to generate between \$15-21 million in economic benefits.

19. When the new Convention Center was in the planning stages, the District determined that a hotel would be necessary to facilitate and augment the new complex. After the new building opened in 2003, it became clear that, without the Hotel, the Convention Center would be limited in its ability to attract the largest and most prestigious City-wide conventions, meetings, and other events that the facility had been designed for.

20. Accordingly, Plaintiff District of Columbia, the Authority, and Marriott have been negotiating for a number of years to build the Hotel. The undertaking is a public-private partnership, with WCSA issuing bonds secured by a tax increment financing (or TIF) note from the District, the Authority and the District leasing the underlying real estate, Marriott and/or its designee bringing in equity dollars, and Marriott and/or its designated developer building,

operating and owning the Hotel. For many years, TIF financing, authorized and approved by the Council, has been an integral part of economic development activity in the District of Columbia, for development of other hotels, as well as other commercial, residential, and public construction projects. Such financing, through similar legislation, has also been enacted in the past to provide for other commercial development, publicly and privately financed. *See, e.g.*, D.C. OFFICIAL CODE § 2-1217.31 (Gallery Place Complex, including commercial retail, office, and market rate housing, and specific businesses as well as parking).

21. To facilitate WCSA's and the District's participation in the Hotel project, the Council passed the Hotel Acts. The first series of actions, in 2006, authorized WCSA and the District to acquire land for the Hotel, lease the land to Marriott (or its designee) to build the Hotel, and further authorized WCSA to issue bonds to partially finance the Hotel's construction and development costs. *See New Convention Center Hotel Omnibus Financing and Development Act of 2006*, D.C. Act No. 16-163. The Council has authorized the District to issue a tax increment financing note to secure these bonds. *See id.*, sec. 107.

22. In August 2006, the Authority acquired the former Plumbers' Union Building (located at 9th and Massachusetts Avenue, N.W., across the street from the Convention Center), and the underlying real estate, for the purpose of leasing that real estate for Hotel use. In July 2009, and through the last of The Hotel Acts, the Council gave final approval to the transaction documents to be executed to move the Hotel to construction and, ultimately, completion in time to accommodate future conventions that have committed to come to the District on the condition that the Hotel be completed and open for business.

23. According to the Hotel Acts:

[The Hotel] is required...to support the operations of the [Convention Center] and to enhance the economic benefits to the District of the [Convention Center]. The

construction and development of the [Hotel] and the expansion of the [Convention Center] would enable the [Convention Center] to be more competitive in the convention market, enable it to attract increased business, provide for additional retail use, and enhance the financial viability of the [Convention Center]. The development of the [Hotel] is a municipal use that serves many public purposes and is in the interest of, and for the benefit of, the residents of the District.

New Convention Center Hotel Omnibus Financing and Development Act of 2006, D.C. Act No. 16-163, sec. 102(1).

24. With the passage of the last of the Hotel Acts in July 2009, the Council had collectively approved the development of the Hotel as the Marriott Marquis Convention Center Headquarters Hotel across the street from the Convention Center, as part of a project that would cost over \$500 million. The Hotel Acts specifically identified Marriott International, Inc. (hereinafter, including its affiliates, "Marriott") to be the operator/lessee of the assemblage of property on which the Hotel would be constructed. D.C. OFFICIAL CODE § 10-1202.21 (2009).

25. The unique features of the Hotel will be its location (directly across the street from the Convention Center) and its size, containing approximately 1,100 hotel rooms and suites, and approximately 100,000 square feet of meeting space (including a 30,000 square foot grand ballroom); its amenities will include restaurants, shops, a health club, and a garage with space for 400 valet-parked cars. The plans also call for the Convention Center and the Hotel to be connected via an underground pedestrian walkway and an underground roadway that will provide access under the Convention Center to the Hotel's loading dock facilities.

26. As Plaintiff, WCSA, Marriott, and HQ Hotel, LLC (an affiliate of Quadrangle Development Corporation and Marriott's designee as the Hotel developer and owner), were preparing to move forward with bond issuance and groundbreaking, the Defendants began the tortious and unlawful acts that give rise to this lawsuit.

Defendants' Illegal Scheme

27. Plaintiff files this suit because the Defendants have, through extortionist activities, interfered with the legal rights and interests of the District of Columbia and its residents. Specifically, Defendants are wrongfully seeking to delay, or prevent entirely, the construction of the Hotel, a project that has been in development for years.

28. Defendants have filed, or caused to be filed, on administrative action before the Contract Appeals Board and two actions in this Court challenging the Hotel project. On July 27, 2009, Defendants carried out the extortion by filing a bid protest before the District of Columbia Contract Appeals Board challenging the 2001 Request for Proposals for the development of the Hotel and the selection of Marriott, and, thereafter, having lost the bid protest before the Board, further carried out the extortion by filing the CAB appeal in this Court, seeking review of the Board's decision.

29. On February 12, 2010, this Court summarily affirmed the CAB's dismissal of the bid protest on standing and timeliness grounds, in a decision reflecting unequivocally that the bid protest and subsequent petition for review thereof were frivolous. On September 4, 2009, Defendants further carried out the extortion by filing the Superior Court claim, seeking declaratory and related relief against the District of Columbia challenging the 2001 Request for Proposals and the selection of Marriott, and also challenging the lawfulness of provisions of The Hotel Acts.

30. Neither of the false claims was filed to redress legitimate grievances, but, instead, both were instituted by Defendants as a means of carrying out Defendants' extortionist threats in order to obtain concessions in *unrelated* business dealings which Defendants have with Marriott, the

Hotel's planned operator. The ultimate goal of Defendants in pursuing the false claims has not been as a "disappointed bidder" or as stated in the pleadings filed in those cases, but, rather, has been part and parcel of an unlawful scheme by Defendants to force Marriott to grant concessions in a business endeavor involving the Wardman Park, which is entirely unrelated to the Hotel.

31. Marriott Hotel Services, Inc. (hereinafter "MHS"), a Marriott subsidiary, is the operator, and Defendants (directly or indirectly) are owners (or affiliates of the owners), of the Wardman Park in Northwest Washington, a business endeavor wholly unconnected to the Hotel project. Marriott and Plaintiff are both involved in the Hotel project.

32. Defendants, beginning in July 2009, sought to reduce their losses at the Wardman Park by demanding and then extorting concessions from Marriott in connection with MHS's Management Agreement for the Wardman Park. When Marriott refused to grant these concessions, Defendants unlawfully and repeatedly threatened to challenge or interfere with the Hotel project. Upon Marriott's continuing refusal to accede to Defendants' extortionist demands, Defendants commenced the pursuit of the false claims.

33. Upon information and belief based on sworn testimony filed in this Court, on or about July 8, 2009, Joel M. Eisemann, an Executive Vice President of Marriott, participated in a meeting with Defendant Jacobs, a senior executive at JBG, and Defendant Finkelstein, along with Timothy Marvin, another Marriott executive, and Marriott's Vice-Chairman, William Shaw.

34. At the July 8, 2009, meeting, which, upon information and belief, occurred in the State of Maryland, Defendants Jacobs and Finkelstein pressed the Marriott executives to agree to give Wardman, an affiliate of JBG, the right to convert certain portions of the Wardman Park to residential use. Under the terms of the Management Agreement for the Wardman Park, Wardman's affiliates at that time no longer had any right to convert a portion of the hotel to other

uses, residential or otherwise. Previously, Wardman's affiliates had certain conversion rights, but they relinquished those rights in 2007 in exchange for other consideration pursuant to the negotiation and execution of an amendment to the Management Agreement.

35. Despite the fact that the conversion demanded by Defendants Jacobs and Finkelstein would have a substantial negative financial impact on Marriott, and, without regard to the consideration Marriott had previously given to Wardman's affiliates in 2007 in exchange for the relinquishment of these conversion rights, upon information and belief, Defendant Jacobs pressed for Marriott to reinstate such conversion rights without compensation consistent with their value.

36. The Marriott executives rejected Defendants Jacobs' and Finkelstein's demands, stating that Marriott was not prepared to make such a concession without appropriate compensation.

37. Upon information and belief, Defendant Jacobs stated that they were no longer willing to provide Marriott with such compensation, and if that was Marriott's position, then they would need to consider "all of their options" in regard to the Hotel project.

38. Mr. Eisemann asked Defendant Jacobs whether he was saying that if Marriott did not accede to their demands concerning the Wardman Park conversion rights, they would attempt to interfere with the Hotel project.

39. Upon information and belief, Defendant Jacobs responded that he knew how important the Hotel project is to Marriott, and that there were actions Wardman might take that might impact what Marriott is doing there. Mr. Eisemann understood this statement to be a threat that if Marriott did not agree to grant Wardman the conversion rights it wanted for the Wardman Park on Wardman's terms, then Wardman would seek to challenge or in some other manner interfere with Marriott's involvement in the Hotel project.

40. Upon information and belief, on or about July 9, 2009, Defendant Finkelstein outlined for Mr. Eisemann the key terms that Wardman was demanding regarding the conversion rights it was seeking for the Wardman Park. On or about July 13, 2009, Defendant Finkelstein suggested that they resolve the matter that day.

41. Upon information and belief, later that week, Defendant Finkelstein engaged in a telephone conversation with Mr. Eisemann in which that Defendant continued to press for a response to the demand for conversion rights at the Wardman Park. In that telephone conversation, Mr. Eisemann maintained Marriott's position that it would not agree to give them conversion rights under their proposed terms.

42. On July 22, 2009, Defendant Finkelstein requested that Mr. Eisemann meet with him as early as possible the next morning to discuss the Wardman Park and the Hotel project.

43. On July 23, 2009, Mr. Eisemann met with Defendant Finkelstein, Thomas Brinkman, another Marriott executive and a colleague of Defendant Finkelstein's. At that meeting, which, upon information and belief, occurred in the State of Maryland, Defendant Finkelstein again pressed for Marriott to grant to Wardman the conversion rights it wanted for the Wardman Park, but he also continued to refuse to provide appropriate compensation to Marriott.

44. At the July 23, 2009, meeting, Defendant Finkelstein provided Marriott with both a term sheet and a draft amendment to the Management Agreement. Mr. Eisemann once again advised Mr. Finkelstein that Marriott would not agree to Wardman's demands.

45. On or about July 29, 2009, Mr. Eisemann learned that Defendants Jacobs and Finkelstein had, on the prior day, July 28, 2009, followed through with the threat by those Defendants at the July 8 meeting by causing to be filed, through Wardman and CIM/Wardman, the false and now-dismissed CAB claim challenging Marriott's involvement in the Hotel project.

46. On or about August 11, 2009, Defendant Jacobs engaged in a telephone conversation with Mr. Eisemann, initiated by that Defendant, during which that Defendant asked to meet one-on-one that day to discuss the Wardman Park and the false CAB claim filed by Wardman. Mr. Eisemann met with Defendant Jacobs later that day.

47. At that meeting, Defendant Jacobs asked if Marriott was, at that time, prepared to have further discussions regarding the conversion rights Wardman wanted for the Wardman Park. Mr. Eisemann told Defendant Jacobs that Marriott was not willing to grant Wardman the conversion rights it was requesting on the terms Wardman was demanding, but that, without the threat of continued litigation over the Hotel project, Marriott would negotiate with Wardman in good faith regarding the conversion rights. Upon information and belief, Defendant Jacobs then stated that Wardman would not dismiss the CAB case unless a new agreement was in place granting Wardman conversion rights for the Wardman Park.

48. The statements by Defendants Finkelstein and Jacobs were intended and perceived as threats that if Marriott did not agree to modify its contractual relationship concerning Wardman, Defendants would take action to interfere with the Hotel project.

49. On September 4, 2009, Defendants Finkelstein and Jacobs, through Wardman, caused to be filed the Superior Court claim.

50. Upon information and belief, Defendants, in further pursuit of their unlawful scheme and conspiracy to extort Marriott, published, or caused to be published, false communications about the Hotel project that were designed deliberately to interfere with the project. Specifically, the false communications made by or at the behest of the Defendants included, but were not limited to: (a) statements that the transaction under which WCSA would lease its real property interests was invalid and illegal; (b) statements that the Hotel Acts violate the District of Columbia Home

Rule Act; and (c) statements that the Hotel project involves provisions totally without precedent or objective standards of reasonableness. Defendants acted with malice in making these false communications. Defendants knew that the communications were false and/or they acted with reckless disregard as to the truth or falsity of the communications.

51. Defendants' actions as alleged herein were taken with full knowledge of all of the relevant circumstances, and Defendants were each motivated in their actions by evil motive, actual malice, deliberate violence or oppression, and/or an intention to cause substantial injury to the District of Columbia and its residents. In addition and/or in the alternative, Defendants were motivated by a willful and reckless disregard for Plaintiff's rights and interests, and the rights and interests of the residents of the District of Columbia. Under the circumstances, Defendants' conduct was outrageous and/or in reckless disregard for Plaintiff's rights and interests, and the rights and interests of District residents.

52. Upon information and belief, each Defendant was involved personally in, authorized and/or ratified the actions complained of herein, though only Defendants Jacobs and Finkelstein actually conspired to extort Marriott as alleged herein.

53. The purpose of the false claims is (or was) to extort, threaten, hinder, delay, and even forestall completely the Hotel project, no doubt in the hopes that escalating the pressure on Marriott in this manner will cause Marriott to reverse its position by acceding to Defendants' demands regarding Wardman Park. Defendants' extortion has had the effect intended by Defendants of halting the Hotel project. This has occurred because the pendency of the false claims has created a financial cloud over the Hotel transaction preventing the District's sound issuance of the TIF note required to support the bonds necessary for construction of the Hotel to

begin. The Hotel project cannot break ground so long as the false claims remain pending against the District.

54. For all these reasons, the District of Columbia finds itself unwittingly entangled in the consequences of the Defendants' illegal scheme. Given the integral connection of the Hotel project to the Convention Center, and of the Convention Center to the City as a whole, the City's economy is being held hostage in a petty private squabble at a time when it and its residents can least afford it.

55. The delay of the Hotel project by Defendants has directly and proximately caused, and is continuing to directly and proximately cause, numerous and substantial injuries and damages to the District of Columbia and its residents. These injuries and damages include, among other things, Plaintiff's inability to underwrite the TIF bonds so that construction of the Hotel can begin. Plaintiff has also been denied its expectancy in the New Convention Center Hotel Fund, a fund created to facilitate development of the Hotel. *See New Convention Center Hotel Omnibus Financing and Development Act of 2006*, D.C. Act No. 16-163, as amended by *New Convention Center Hotel Omnibus Financing and Development Amendment Act of 2008*, D.C. Act No. 17-144. Plaintiff has also been denied sales tax revenues for four booked conventions through 2015 that are conditioned on the open and operating status of the Hotel – calculated as \$6,536,376. Plaintiff has also been denied monthly sales tax revenues. Plaintiff and the residents of the District of Columbia have also been denied the permanent and construction jobs guaranteed to District residents under First Source Employment Agreements with HQ Hotel, LLC. Plaintiff has also incurred substantial attorneys' fees and costs as a result of this litigation and the prosecution of the false claims.

COUNT I
(Abuse of Process)

56. Plaintiff realleges and incorporates paragraphs 1-55, inclusive, as if set forth fully herein.

57. On information and belief, Defendants' sole purpose in threatening, commencing, and pursuing the false claims was to threaten, hinder, delay and/or even foreclose completely the Hotel project.

58. Defendants' purpose in seeking to threaten, hinder, delay and/or even foreclose completely the Hotel project was to pressure Marriott into acceding to Defendants' demand for millions of dollars of concessions in connection with the unrelated Wardman Park.

59. Defendants filed and pursued, or caused to be pursued, the false claims not because they had been harmed by or have a legitimate interest in the Hotel project, but solely for the unrelated and wrongful purposes of coercing and extorting concessions from Marriott in connection with the unrelated Wardman Park.

60. By filing and pursuing, or causing to be pursued, the false claims, Defendants have used the legal process in an effort to obtain an improper result collateral to the litigation. As such, Defendants' misuse of the courts is a perversion of the judicial process and an effort to achieve an end not contemplated in the regular pursuit of such claims.

61. As a direct and proximate result of Defendants' abuse of process, the District of Columbia and its residents have been injured and damaged, in an amount that will be proven at trial.

WHEREFORE, Plaintiff District of Columbia respectfully requests that this Honorable Court:

- a. Enter a declaratory judgment in Plaintiff's favor and against Defendants Benjamin R. Jacobs, Kenneth F. Finkelstein, JBG Properties, Inc., CIM/Wardman, L.L.C., and Wardman Investor, L.L.C., finding that these Defendants have violated Plaintiff's legal rights through the unlawful conduct alleged herein;
- b. Enter a money judgment in Plaintiff's favor and against Defendants jointly and severally, in an amount to be proven at trial;
- c. Award pre-judgment and post-judgment interest, attorneys' fees, and the costs of this lawsuit;
- d. Enter *pendente lite* and permanent injunctive relief against Defendants to bar them from continuing to interfere with or hinder the Hotel project;
- e. Award punitive damages in an amount to be proven at trial; and
- f. Grant such other relief as the Court may deem appropriate.

COUNT II
(Civil Conspiracy Against
Defendants Jacobs and Finkelstein)

62. Plaintiff realleges and incorporates paragraphs 1-61, inclusive, as if set forth fully herein.
63. Defendants Jacobs and Finkelstein conspired and agreed to take action to accomplish unlawful acts or to use unlawful means to accomplish acts not in and of themselves illegal, including, but not limited to, the filing and prosecution of the false claims, the false communications alleged herein regarding the Hotel project, and the other actions alleged herein.
64. The actions of these two Defendants violated and interfered with, and continue to violate and interfere with, Plaintiff's legal rights and interests.

65. Plaintiff has sustained damages as a direct and proximate cause of Defendants Jacobs' and Finkelstein's civil conspiracy, in an amount to be proven at trial.

WHEREFORE, Plaintiff District of Columbia respectfully requests that this Honorable Court:

- a. Enter a declaratory judgment in Plaintiff's favor and against Defendants Benjamin R. Jacobs and Kenneth F. Finkelstein, finding that these Defendants have violated Plaintiff's legal rights through the unlawful conduct alleged herein;
- b. Enter a money judgment in Plaintiff's favor and against Defendants Jacobs and Finkelstein jointly and severally, in an amount to be proven at trial;
- c. Award pre-judgment and post-judgment interest, attorneys' fees, and the costs of this lawsuit;
- d. Enter *pendente lite* and permanent injunctive relief against Defendants Jacobs and Finkelstein and all persons in active concert with them to bar them and all such persons from continuing to interfere with or hinder the Hotel project;
- e. Award punitive damages in an amount to be proven at trial; and
- f. Grant such other relief as the Court may deem appropriate.

COUNT III
(Prima Facie Tort)

66. Plaintiff realleges and incorporates paragraphs 1-65, inclusive, as if set forth fully herein.

67. In carrying out the actions and scheme alleged herein, Defendants intended to harm and threaten to harm the Hotel project, and thereby to cause injury and damage to Plaintiff and the residents of the District of Columbia, among others, in their effort to extort concessions from Marriott with respect to the unrelated Wardman Park. Under the circumstances, Defendants

actions were generally culpable and not justifiable under the circumstances, and it would be inequitable and improper for Defendants to avoid the consequences of their conduct.

68. To the extent that the Defendants' conduct, in whole or in part, is deemed to fall outside of the requirements of one of the named intentional torts herein, and even to the extent that recognizing a prima facie tort claim would require the extension, modification, or reversal of existing law and/or the creation of new law, in the alternative, Plaintiff alleges that it is entitled to recover tort damages against Defendants under the prima facie tort doctrine.

WHEREFORE, Plaintiff District of Columbia respectfully requests that this Honorable Court:

- a. Enter a declaratory judgment in Plaintiff's favor and against Defendants Benjamin R. Jacobs, Kenneth F. Finkelstein, JBG Properties, Inc., CIM/Wardman, L.L.C., and Wardman Investor, L.L.C., finding that these Defendants have violated Plaintiff's legal rights through the unlawful conduct alleged herein;
- b. Enter a money judgment in Plaintiff's favor and against Defendants jointly and severally, in an amount to be proven at trial;
- c. Award pre-judgment and post-judgment interest, attorneys' fees, and the costs of this lawsuit;
- d. Enter *pendente lite* and permanent injunctive relief against Defendants to bar them from continuing to interfere with or hinder the Hotel project;
- e. Award punitive damages in an amount to be proven at trial; and
- f. Grant such other relief as the Court may deem appropriate.

JURY TRIAL DEMANDED

Respectfully submitted,

PETER J. NICKLES
Attorney General, District of Columbia

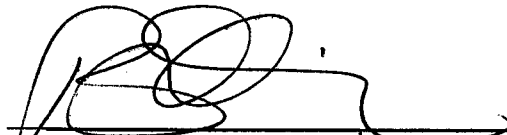
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FEBRUARY 18, 2010

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