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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

GROVE HOTEL PARTNERS LLC, an Oregon limited liability company, and)	CASE NO.
GROVE HOSTEL PROPERTY, LLC, an Oregon limited liability company,)	
)	NUISANCE COMPLAINT
Plaintiffs,)	(TORT- GENERAL)
)	
v.)	CLAIM NOT SUBJECT TO MANDATORY ARBITRATION
)	
MICHAEL WRIGHT, an individual; LINDA WRIGHT, an individual; DANIEL L. COSSETTE, TRUSTEE OF THE DANIEL L. COSSETTE REVOCABLE LIVING TRUST DATED SEPTEMBER 7, 2010; and DONNA L. COSSETTE, an individual,)	Prayer Amount: \$1,637,373
)	Fee Amount: 793.00
)	Fee Authority: ORS 21.160(1)(d)
Defendants.)	
)	

Plaintiffs allege:

1.

Plaintiff Grove Hostel Property, LLC is an Oregon limited liability company (“Grove Hostel”).

2.

Plaintiff Grove Hotel Partners LLC is an Oregon limited liability company (“Grove Hotel Partners”).

3.

The vacant historic Grove Hotel is located on Lots 1 and 2, EXCEPT the Southerly 20 feet in W. Burnside Street, and all of Lot 4 Block 32, COUCH'S ADDITION TO THE CITY OF

1 PORTLAND, in the City of Portland, County of Multnomah and State of Oregon (the “Hotel
2 Property”). As of August 2011 the Portland Development Commission (“PDC”) owned the
3 Hotel Property.

4 4.

5 Defendants are individuals and own the following real property as tenants in common:
6 Property: Lot 2. EXCEPT the portion taken for the widening of West Burnside Street, and the
7 South 28 feet of Lot 3 and the West 95 feet of the North 22 feet of Lot 3, Block 29. COUCH’S
8 ADDITION TO THE CITY OF PORTLAND, City of Portland, Multnomah County, Oregon
9 (“Defendants’ Property”).

10 5.

11 The Hotel Property is located at the north-west corner of West Burnside and 4th Ave. in
12 Portland, Oregon. Defendants’ Property is located on the north-east corner of West Burnside and
13 4th Ave. in Portland, Oregon. The two properties face each other along NW 4th Avenue and flank
14 the Chinatown Gate with its two bronze lions.

15 6.

16 The City of Portland has adopted a zoning code and related maps to regulate use and
17 development of real property within the City and such code represents the public policy of the
18 City of Portland regarding use and development of property within the City.

19 7.

20 Defendants’ Property and the Hotel Property are zoned Central Commercial with design
21 and historic resource protection overlays and are located within the Old Town Chinatown
22 neighborhood.

23 8.

24 Development within the Central Commercial zone is intended to be very intense with
25 high building coverage, large buildings and buildings placed close together. Development is

1 intended to be pedestrian-oriented with a strong emphasis on a safe and attractive streetscape.

2 9.

3 The design overlay zone is intended to promote the conservation, enhancement and
4 continued vitality of areas of the City with special scenic, architectural or cultural value and to
5 ensure infill development will be compatible with the neighborhood and enhance the area.

6 10.

7 The historic resource protection overlay protects historic resources and recognizes the
8 role historic resources have in promoting the education and enjoyment of those living in and
9 visiting the region. Historic preservation beautifies the city, promotes the city’s economic health,
10 and helps to preserve and enhance the value of historic properties.

11 11.

12 Beginning on or about October 10, 2011 and continuing through the date of filing of this
13 complaint, defendants have allowed Right 2 Dream Too (“R2D TOO”) to set up a campground
14 with tents, tarps and canopies on Defendants’ Property to provide a place for homeless people to
15 camp (the “Outdoor Shelter”).

16 12.

17 The operation of the Outdoor Shelter on Defendants’ Property violates the City of
18 Portland’s zoning code because such use is a Mass Shelter, defined in Portland City Code
19 (“PCC”) 33.010.030, does not comply with PCC 33.285.050, and such use has not been
20 approved as a conditional use.

21 13.

22 Defendants’ use of Defendants’ Property as an Outdoor Shelter also violates Oregon
23 Administrative Rules Chapter 918-650-0020 & 0025, and Oregon Revised Statutes 455.680(1) &
24 (3).

25 ///

1 14.

2 Defendants' use of Defendants' Property as an Outdoor Shelter is incompatible with and
3 adversely impacts the public policy goals for property located in the Old Town Chinatown
4 neighborhood.

5 **I. FIRST CLAIM FOR RELIEF BY GROVE HOSTEL PROPERTY LLC**
6 **(Nuisance)**

7 15.

8 Plaintiff Grove Hostel re-alleges paragraphs 1 – 14 above.

9 16.

10 On or about August 18, 2011, Grove Hostel entered into a Disposition and Development
11 Agreement with the PDC to acquire fee title ownership of the Hotel Property (the "DDA").
12 Pursuant to the DDA Grove Hostel was obligated to redevelop the Grove Hotel into a new hotel
13 with restaurants and other retail uses. Accordingly, as of August 18, 2011, Grove Hostel had a
14 real property interest in the Hotel Property.

15 17.

16 After signing the DDA, Grove Hostel, in carrying out its due diligence, incurred
17 substantial expenses for feasibility studies, engineering studies, architectural fees, legal fees, land
18 use planning fees, loan application fees and more totaling \$237,373.

19 18.

20 Plaintiff sought financing from commercial lenders for the project, which necessitated an
21 appraisal of the fair market value of the Hotel Property after completion of all intended
22 improvements.

23 19.

24 The Outdoor Shelter (which was established after Grove Hostel acquired its interest in
25 the Hotel Property) substantially interfered with Grove Hostel's use of the Hotel Property by

1 reducing the appraised fair market value of the as-built project, after all improvements were
2 made, by approximately \$900,000, which in turn resulted in the loss of Grove Hostel’s financing
3 to develop its project on the Hotel Property.

4 20.

5 In addition the Outdoor Shelter unreasonably interfered with Grove Hostel’s use of the
6 Hotel Property because (i) the gravity of the harm to the Grove Hostel’s development of the
7 Hotel Property substantially outweighs the benefit of a tent-and-tarp homeless shelter operating
8 on Defendants’ Property in violation of PCC zoning regulations cited in paragraph 12 above and
9 the laws and regulations cited in paragraph 13 above; (ii) the hotel use is suitable for and has a
10 high social value for the Old Town Chinatown neighborhood whereas the Outdoor Shelter is
11 unsuitable for and has low social value for the neighborhood, which already has more homeless
12 shelters than any other neighborhood in the City and (iii) defendants’ ability to prevent the harm
13 is greater than Grove Hotel’s ability to avoid the harm.

14 21.

15 Defendants’ intentionally caused the nuisance by allowing the R2DTHO to use
16 Defendants’ Property as the Outdoor Shelter.

17 22.

18 As a result of Defendants’ nuisances, the Grove Hostel has suffered damages in the
19 amount of \$237,373.

20 **II. SECOND CLAIM FOR RELIEF BY GROVE HOTEL PARTNERS LLC**

21 **(Nuisance)**

22 23.

23 Plaintiff Grove Hotel Partners re-alleges paragraphs 1 – 14 above.

24 ///

25 ///

1 28.

2 Defendants' use of Defendants' Property as an Outdoor Shelter is incompatible with and
3 adversely impacts the public policy goals for property located in the Old Town Chinatown
4 neighborhood.

5 29.

6 The Outdoor Shelter substantially interferes with plaintiffs' use of the Hotel Property by
7 (i) deterring guests seeking a pedestrian oriented urban experience with safe and attractive
8 streetscape from staying at the hotel, eating at the restaurants and shopping in the retail stores at
9 the Grove Hotel; (ii) contributing to the high incidence of crime, homelessness, mental-health
10 related problems and drug related problems in the Old Town Chinatown neighborhood, and (iii)
11 contributing to urban decay in the Old Town Chinatown neighborhood.

12 30.

13 In addition the Outdoor Shelter unreasonably interferes with plaintiffs' use of the Hotel
14 Property because (i) the gravity of the harm to the Grove Hotel substantially outweighs the
15 benefit of a tent-and-tarp homeless shelter operating on Defendants' Property in violation of
16 PCC zoning regulations cited in paragraph 12 above and the laws and regulations cited in
17 paragraph 13 above; (ii) the hotel use is suitable for and has a high social value for the Old Town
18 Chinatown neighborhood whereas the Outdoor Shelter is unsuitable for and has low social value
19 for the neighborhood, which already has more homeless shelters than any other neighborhood in
20 the City and (iii) defendants' ability to prevent the harm is greater than plaintiff's ability to avoid
21 the harm.

22 31.

23 Defendants' intentionally caused the nuisance by allowing the R2DTHO to use
24 Defendants' Property as the Outdoor Shelter.

25 ///

As a result of the Outdoor Shelter’s adverse impact on the New Grove Hotel plaintiff has suffered damages in the amount of not less than \$900,000, which represents the decrease in the New Grove Hotel’s as-built fair market value. In addition plaintiff has suffered additional damages in the amount of \$500,000, representing the increased cost of financing the construction of the hotel because of the adverse impact of the Outdoor Shelter.

WHEREFORE, Plaintiffs pray for a judgment against defendants as follows:

1. On behalf of Plaintiff Grove Hostel Property, LLC a judgment jointly and severally against defendants in the amount of \$237,373, plus prejudgment interest thereon at 9% per annum;

2. On behalf of Plaintiff Grove Hotel Partners LLC a judgment jointly and severally against the defendants in the amount of \$1,400,000, plus prejudgment interest thereon 9% per annum.

3. On behalf of both plaintiffs for their costs and disbursements.

Dated this 7th day of February, 2017.

TARLOW NAITO & SUMMERS, LLP

/s Steven L. Naito
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Trial Attorney