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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

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6 Attorneys for Defendant CITY OF SAN DIEGO

7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 LORI and LYNN BARNES-WALLACE;
MITCHELL BARNES-WALLACE;
11 MICHAEL and VALERIE BREEN; and
12 MAXWELL BREEN,

13 Plaintiffs,

14 vs.

15 CITY OF SAN DIEGO, a California
Municipal Corporation; and BOY SCOUTS
16 OF AMERICA - DESERT PACIFIC
COUNCIL; BOY SCOUTS OF AMERICA

17 Defendants.
18

) Case No. 00cv1726J (AJB)

) DECLARATION OF WILLIAM T. GRIFFITH
) IN SUPPORT OF DEFENDANT CITY OF
) SAN DIEGO'S MOTION FOR SUMMARY
) JUDGMENT (RULE 56)

) Date: March 10, 2003

) Time: 10:30 a.m.

) Courtroom: 12

) Judge: Honorable Napoleon A. Jones, Jr.

19 I, William T. Griffith, declare as follows:

20 1. I am the Director of Real Estate Assets Department [READ] of the City of San Diego
21 [City], which is a charter city under article XI, section 5 of the California Constitution. My duties
22 include, among others, the administration of leases of City property, including the leases at issue in
23 this case. Prior to being appointed as Director of READ, I was a Deputy City Attorney for the City
24 and was assigned to provide legal advice to READ. I have personal knowledge of the following
25 facts, and if called as a witness would testify competently to them.

26 2. Mission Bay Park and Balboa Park are dedicated parkland under San Diego City
27 Charter section 55, a certified copy of which is lodged as Exhibit 25 to the City's Motion for
28 Summary Judgment. According the Charter Section 55, the only permitted uses of dedicated
parkland are for park and recreation, as well as cemeteries. Any other use must be first approved by
a two-thirds vote of the City's electorate. The use of Mission Bay Park is also discussed in the

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1 Mission Bay Master Plan, relevant portions of which are lodged as Exhibit 24. In addition, the City
2 Council has provided policy guidance regarding the use of Mission Bay Park in City Council Policy
3 700-08, a certified copy of which is lodged as Exhibit 19. The use of Balboa Park is discussed in the
4 Balboa Park Master Plan, relevant portions of which are lodged as Exhibit 26. Also, the City
5 Council has provided policy guidance regarding the use of Balboa Park in City Council Policy 700-
6 04, a certified copy of which is lodged as Exhibit 18.

7 3. Exhibit 1 to the City's Notice of Lodgement in Support of its Motion for Summary
8 Judgment [NOL] is a certified copy of San Diego Resolution No. R-269866 approved by the City
9 Council on November 30, 1987. This resolution authorized the City Manager to execute a lease with
10 the Boy Scouts of America, San Diego County Council, now known as the Desert Pacific Council
11 [DPC], for one-half acre of real property in Fiesta Island for the construction, maintenance, and
12 operation of a youth aquatic center. A certified copy of the Youth Aquatic Center [YAC] lease is
13 lodged as Exhibit 2. My office administers this lease in cooperation with the Park and Recreation
14 Department.

15 4. Section 9.01 of the YAC lease includes a legal description of the leased premises,
16 which clearly indicates that the City leased only 0.5 acre of a larger 84 acre area designated by the
17 City for youth camping. The leased premises cannot exceed 27,000 square feet. (Ex. 1, §1.01). The
18 leased premises do not include any of the parking lot where cars using the YAC and the adjacent
19 City campground park.

20 5. As indicated in section 9.06(1) of the YAC lease, the YAC must be open to all youth
21 serving groups. Also, under sections 7.02 and 7.04 of the YAC lease, the lessee must comply with all
22 local, state and federal laws, and cannot discriminate in the use of the premises.

23 6. The City has never interpreted these sections of the YAC lease to impact the internal
24 membership requirements of the lessee. Neither the City Manager nor the City Council has ever
25 approved or endorsed the DPC's internal membership requirements, or for that matter, any other
26 lessee's membership requirements. Instead, as reflected in the lease, the City requires that the YAC
27 property be open to all youth serving groups, regardless of the sexual orientation or religious views
28 of the members of the youth group. Indeed, if the Boy Scouts dropped its internal membership

1 requirements, that would have no impact on the validity of the YAC lease.

2 7. The lease was approved "solely and exclusively for the purposes of constructing,
3 maintaining, and operating an aquatic safety training and recreational center in boating, sailing and
4 water sports, and for such other related or incidental purposes as may first approved in writing by the
5 City Manager and for no other purpose whatsoever." (Ex. 2 , §1.02) (emphasis added). The City
6 Manager has never approved any requests for the DPC to engage in activities other than those
7 specified in section 1.02 of the YAC lease.

8 8. Refusal by the DPC to allow non-Boy Scout youth groups to use the YAC would
9 subject the DPC to remedies under the lease. For instance, the City has the right to terminate the
10 lease if the lessee fails to perform a material covenant or condition of the lease, and fails to cure such
11 default within thirty days following written notice by the City. (Ex. 2, §4.03) This default section of
12 the YAC lease has never been invoked because the City has never received any complaints that the
13 DPC failed to allow non-scout youth groups to use the property.

14 9. The City leases the YAC property to the DPC for no rent. However, the DPC
15 incurred all of the expenses to build the improvements on the YAC, and the DPC is required under
16 the lease to pay for all maintenance and utility expenses. The City does not pay for any of the
17 ongoing expenses to maintain or operate the YAC. The City's Fiscal Year 2002 Park and Recreation
18 Budget, relevant portions of which are lodged as Exhibit 29, indicates that City spends more than \$6
19 million annually maintaining other portions of Mission Bay Park, yet the City pays nothing to
20 maintain the YAC.

21 10. I have been advised that experts retained by the plaintiffs in this case has opined that
22 there are several potential uses of the property, which could generate more income to the City than is
23 provided under the YAC lease. However, by approving the lease, the Mission Bay Master Plan and
24 City Council Policy 700-08, the City Council has made it clear that the appropriate use for the Fiesta
25 Island, where the YAC is located, is for aquatic recreation. This is reflected in the Mission Bay
26 Master Plan, which specifically designates the property for youth camping uses. (Ex. 24 , land use
27 map, bates page number 2SD001644). As noted in the Mission Bay Master Plan, Fiesta Island should
28 be "an area which supports a diversity of regional serving public and nonprofit recreation and natural

1 resource management and enhancement uses.” (Ex. 24, appendix 1, p. 13). The lease between the
2 City and the DPC for the YAC is consistent with the land use policy set forth in the Mission Bay
3 Master Plan. Development of a hotel or some other non-aquatic use would not be consistent with the
4 policies identified for Fiesta Island in the Mission Bay Master Plan. Moreover, development of
5 residential uses are prohibited under Charter Section 55, absent a two-thirds vote of the electorate.

6 11. City Council Policy 700-08, which provides guidance to the City Manager with
7 respect to Mission Bay Park, further reflects the City Council’s desire “to develop, operate and
8 maintain Mission Bay Park as an aquatically oriented recreation resource for the use of the general
9 public.” (Ex. 18, Council Policy 700-08(A)(1)). A certified copy of City Council Policy 700-08 is
10 lodged as Exhibit 18. Among other things, the Council Policy also states that “the development of
11 land areas of Mission Bay Park shall be designed to further the aquatic utilization of the park.” (Ex.
12 18, Council Policy 700-08(A)(5)). The Council Policy also states that only those lands “which,
13 because of location, are not suitable for aquatic recreational development, may be developed for park
14 and recreation areas, operating centers, or secondary activities supporting the aquatic park and
15 recreational needs.” (*Ibid*). Indeed, the Council Policy also states that “[a]ny new commercial leases
16 approved after August 24, 1981 shall be limited to land adjacent to rock revetments of non-water
17 oriented areas.” (Ex. 18, Council Policy 700-08(A)(8)). This policy direction would exclude any
18 commercial leases on the property occupied by the YAC.

19 12. Should for some reason the YAC lease be voided, the City would likely seek another
20 lessee to operate a recreational facility for youth oriented groups under similar terms and conditions
21 in the existing YAC lease. The City Council has never had a policy of using the YAC property in a
22 manner that maximizes the revenue that potentially could be generated by the site. Given the severe
23 use restrictions on the property in Charter Section 55, the Mission Bay Master Plan, and City
24 Council Policy 700-08, ascertaining a meaningful market rent is very difficult. As more fully
25 explained in the accompanying Declaration of Tim Rothans, the City has not historically sought to
26 obtain market rent from nonprofit lessees of dedicated parkland. The vast majority of these
27 nonprofit lessees pay either no rent or a nominal rent.

28 13. Charging the DPC a market based rent also conflicts with the City’s goal of making

1 recreational opportunities available for youth groups at minimal costs. If the City charged the DPC a
2 market based rent (assuming such a figure could even be ascertained), the costs to operate the YAC
3 would inevitably rise.

4 14. As Director of the READ, I also oversee the City's lease of 15.6 acres of dedicated
5 parkland in Balboa Park to the DPC. This property is commonly referred to as "Camp Balboa."
6 The City Council originally approved the lease of this property to the Boy Scouts of America, San
7 Diego County Council in 1957 for use as a camping and recreational area. Exhibit 5 is a certified
8 copy of San Diego Resolution No. R-188444 (Mar. 31, 1957), which authorized the City Manager to
9 execute the 1957 Camp Balboa lease with the Scouts. Exhibit 6 is a certified copy of the 1957 Camp
10 Balboa lease.

11 15. On December 4, 2001, the City Council adopted San Diego Resolution No. R-295827,
12 authorizing the City Manager to execute a new twenty-five year lease of the Camp Balboa property
13 to the DPC. A certified copy of this resolution is lodged as Exhibit 8. A certified copy of the new
14 Camp Balboa lease is lodged as Exhibit 9.

15 16. I oversaw the negotiations on behalf of the City for the new Camp Balboa lease.
16 The lease was approved "exclusively for the purposes of a Boy Scout recreational facility and related
17 administrative offices in accordance with the General Development Plan referenced in section 6.12 .
18 . . and for such other related or incidental purposes as may be first approved in writing by the City
19 Manager and for no other purpose whatsoever." (Ex. 9, § 1.2). As with the YAC lease, the City has
20 never authorized the DPC to engage in activities inconsistent with section 1.2 of the Camp Balboa
21 lease.

22 17. During the first seven years of the lease, the DPC is required to spend \$1.7 million in
23 capital improvements to the leased premises. (Ex. 9, §§6.12, 9.2b). The DPC is also responsible for
24 the costs of all utilities. (Ex. 9, §6.5). The City's Annual Fiscal Year Park and Recreation Budget, for
25 Balboa Park, relevant portions of which are lodged as Exhibit 29, shows that the City spends
26 approximately \$1.7 million annually maintaining Balboa Park facilities. (Ex. 29, p. 849). However,
27 the City spends nothing to maintain the facilities at Camp Balboa.

28 18. As with the YAC lease, the public has the right to use the recreational facilities at

1 Camp Balboa. (Ex. 9, §1.11). The DPC is required to maintain a sign on the premises indicating that
2 the area is owned by the City and available for public use. (Ex. 9, §1.12). Moreover, the DPC must
3 keep a “reasonable schedule of times when facilities on the premises are available for public use,”
4 and publish procedures for public use in the Park and Recreation Department’s facilities guide or
5 similar publications. (Ex. 9, § 1.12). Like the YAC lease, the DPC must abide by all federal, state
6 and local laws and are forbidden from discrimination in the use of the premises. (Ex. 9, §§ 7.2, 7.4).
7 For the reasons described in paragraph 5 of this declaration, the City does not approve or endorse the
8 internal membership requirements of the DPC. Indeed, if the Boy Scouts dropped its internal
9 membership requirements, that would have no impact on Camp Balboa lease.

10 19. Refusal by the DPC to allow any member of the public to use Camp Balboa,
11 including any non-Scout, because of that person’s religious beliefs or sexual orientation, would
12 subject the DPC to remedies under the lease. For instance, the City has the right to terminate the
13 lease if the lessee fails to perform a material covenant or condition of the lease, and fails to cure such
14 default within thirty days following written notice by the City. (Ex. 9, §4.4). As with the YAC lease,
15 the default section has never been invoked because the City has never been informed of any instance
16 when the DPC failed to make the leased premises available for public use.

17 20. The DPC pays no rent for the Camp Balboa property. However, the new Camp Balboa
18 lease requires the DPC to pay a \$2,500 administrative fee, subject to cost of living adjustments.
19 (Ex.9, §3.2). The City’s current policy is to charge all nonprofit lessees a \$2,500 administrative fee
20 to cover the City’s estimated costs of administering the lease. This \$2,500 fee is applied to existing
21 lessees, if and when their leases are renewed. New nonprofit lessees will also be charged the \$2,500
22 fee.

23 21. I am aware that experts retained by the plaintiffs have opined that the Camp Balboa
24 property could be developed in a more financially profitable manner for the City if the Boy Scout
25 lease is terminated and alternative uses are pursued. However, this argument overlooks the severe
26 legal restrictions on the use of the property. As detailed above, residential uses on dedicated
27 parkland are prohibited under City Charter section 55, absent a two-thirds vote of the electorate.

28 22. In addition, the City Council has never provided any policy direction to maximize the

1 potential revenues that could be reaped through the construction of a privately operated hotel or
2 some other private use on the dedicated parkland in Camp Balboa. To the contrary, the City's policy
3 with respect to Balboa Park has been to utilize this resource for the recreational, cultural, and
4 educational enrichment of the citizens of San Diego. This is reflected in the Balboa Park Master
5 Plan, relevant excerpts of which appears as Exhibit 26. The "vision" of the Balboa Park Master Plan
6 is to "[t]o nurture and enhance the cultural, recreational and passive resources of the Park to meet the
7 needs of the region and surrounding community while respecting its physical, cultural and historical
8 environment." (Ex. 26, p. 2SD000968) (capitalization in original omitted). The Balboa Park Master
9 Plan further identifies as a "major goal" to "[p]reserve and enhance the mix of cultural, and active
10 and passive recreational uses within Balboa Park that serve national, regional, community and
11 neighborhood populations." (Ex. 26, p. 2SD000971) (emphasis added) (original bold omitted). The
12 Plan includes a Land Use and Architecture section which identifies nine zones within Balboa Park.
13 In Zone 1, the Northwest Area, the Plan discusses the land uses permitted at the property leased to
14 the Boy Scout and Girl Scouts. These uses include night and day camping, training sessions,
15 community group meetings. The Plan further notes that the camps "provide an area for the
16 appreciation of nature and the opportunity for young person social interaction within an outdoor
17 setting. Although not a campground within the 'wild' so to speak, the camps provide a natural
18 enough character to act as a transitional experience between the 'city' and the 'country.'" (Ex. 26, p.
19 2SD00958).

20 23. City Council Policy 700-04 (1) also states that the City's policy with respect to
21 Balboa Park is "to encourage nonprofit organizations, whose purpose is to provide a desired
22 recreational, cultural and/or educational service to a broad segment of the citizens of San Diego, to
23 occupy and operate facilities in Balboa Park." This policy direction is reflected in the Camp Balboa
24 lease, which requires the recreational facilities to be made available to all members of the public for
25 recreational purposes. In fact, the City also leases an approximately 15-acre parcel located adjacent
26 to Camp Balboa for a Girl Scout campground and administrative headquarters available to all
27 members of the public. Exhibit 27 is a true and accurate copy of the Girl Scout lease, which is
28 virtually identical to the Boy Scout lease, and was also approved by the City Council on December 4,

1 2001. Both the DPC and the Girl Scouts pay the same \$2,500 administrative fee, subject to an annual
2 cost of living adjustment. The City also leases real property in Balboa Park to the Campfire Girls for
3 an administrative headquarters. Exhibit 28 is a true and accurate copy of the Campfire Girls lease,
4 approved in 1957 (the same year as the original Camp Balboa lease). The Campfire Girls lease is
5 also for a fifty-year term. The rent for the Campfire Girls lease is \$1 year. This lease is administered
6 by the City's Park and Recreation Department.

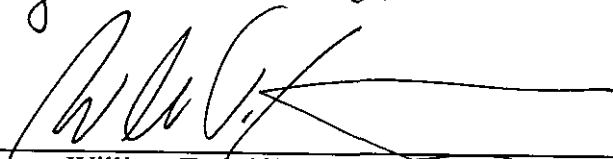
7 24. As explained above, the severe legal restrictions on the use of the Camp Balboa
8 property make it very difficult to determine a meaningful market rent. Even if such a figure could be
9 ascertained, charging the DPC a market rent would not further the City's recreational goals for
10 several reasons. First, the higher cost incurred by the DPC could eventually be passed along to the
11 public when they use the property. Thus, if a market rent was charged, users of Camp Balboa (Scouts
12 and non-Scouts alike) might be forced to pay higher fees. Second, during the first seven years of the
13 new Camp Balboa lease, the DPC is required to implement a \$1.7 million capital improvement
14 program at Camp Balboa to substantially improve the public facilities. Charging higher rent could
15 compromise the DPC's ability to commit to an aggressive schedule of capital improvements. Finally,
16 as more fully explained in the accompanying Declaration of Tim Rothans, Deputy Director for
17 READ, none of the City's nonprofit lessees that provide youth recreational activity pay market rent
18 for their City leases. Singling out the Boy Scouts for disparate treatment because of their
19 membership requirements would serve no valid public purpose, especially when the Camp Balboa
20 property is open for use by all members of the public without regard to sexual orientation or religious
21 belief. For these reasons, if the Camp Balboa lease were to be voided, it is likely that the City would
22 continue to utilize the property for recreational camping with a nonprofit lessee for nominal rent.

23 25. In administering the Camp Balboa and YAC leases, the City has no involvement in
24 regulating the programs offered by the DPC, other than to ensure that the facilities are available for
25 public use as required by the leases. City staff will ensure that promised capital improvements are
26 made and monitor the uses taking place on the properties to ensure consistency with the leases. In
27 addition, City staff will make sure that the Boy Scouts maintain required insurance coverage and will
28 respond to complaints, if any, that are raised by members of the public regarding the Boy Scouts

1 compliance with its lease terms. However, the City has no involvement in regulating the day to day
2 activities conducted by the DPC.

3 I declare under penalty of perjury, under the laws of the United States of America, that the
4 foregoing is true and correct of my own personal knowledge.

5 Executed this 27th day of January 2003, at San Diego, California.

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8 
9
10 William T. Griffith, Declarant

11 GriffithDec.MSJ