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SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

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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  
OF AMERICA - DESERT PACIFIC  
16 COUNCIL; BOY SCOUTS OF AMERICA

17 Defendants.  
18

) Case No. 00cv1726J (AJB)

) DECLARATION OF TIM ROTHANS 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, Tim Rothans, declare as follows:

20 1. I am the Deputy Director of the Real Estate Assets Department [READ] of the City of  
21 San Diego [City]. In that capacity, I supervise the Asset Management and Marketing Division of  
22 READ. Among other things, this division is responsible for administering leases of City-owned  
23 property.

24 2. The City has long had a practice of permitting City property to be used by nonprofit  
25 organizations for the cultural, educational, and recreational enrichment of the citizens of the City.  
26 READ currently has primary responsibility to administer 104 leases of City property with nonprofit  
27 organizations. Exhibit 17 to the City's Motion for Summary Judgment is a true and accurate list of  
28 the 104 leases between the City and the nonprofit organizations that are administered by staff for  
READ. This list identifies the name of the lessee, the address of the property, the rent paid by the

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ORIGINAL



1 lessee during the last two years, and the lease term for each lease. This list was prepared under my<sup>1</sup>  
2 supervision based upon the leases which READ has custody.

3 3. Several of the City's nonprofit leases identified in Exhibit 17 are with organizations  
4 that seek to advance the economic and social interests of particular ethnic groups. For instance, the  
5 City leases property to the San Diego County Hispanic Chamber of Commerce, the Vietnamese  
6 Federation of San Diego, the Asian Business Association, the American-Russian Business Council,  
7 the Black Police Officer's Association, and the Japan Society of San Diego and Tijuana.

8 4. The City has also approved several nonprofit leases with organizations providing  
9 social and medical services to low-income households, youth groups, and the elderly. For example,  
10 the City has approved nonprofit leases for groups providing homeless housing and services  
11 (Southeast Counseling and Consulting Services, San Diego Homeless Coalition), low-income  
12 housing (San Diego Kind Corp. and SOFA), youth counseling (Harmonium, Inc., Alpha of San  
13 Diego, Barrio Station Inc.), senior citizen social and medical organizations (ElderHelp of San Diego  
14 Inc., the East San Diego Nutritional Center, Alzheimer's Family Center, Adult Protective Services,  
15 Neighborhood House Association, and Pro-Tech Inc.), medical clinics for the poor (Logan Heights  
16 Family Health Center, Mid-City Community Clinic), and several child care centers.

17 5. Other nonprofit lessees of the City include educational institutions and organizations  
18 that provide job training. This includes leases to Pasadena College, the International School of  
19 Management, and the San Diego County Jobs for Progress.

20 6. In addition, the City leases public property to groups that provide community services  
21 and recreational opportunities to the public, including the Jewish Community Center, the Salvation  
22 Army, and several Young Men's Christian Associations [YMCA's].

23 7. Still other nonprofit leases are with museums, cultural institutions, and tourist  
24 attractions, most of which are located in Balboa Park. This includes the San Diego Zoological  
25 Society, the House of Hospitality, the Museum of Man, the Museum of Art, as well as the additional  
26 nonprofit leases identified in paragraph 15 in this Declaration. .

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1           8.       In addition, several of the City's nonprofit leases are with youth organizations that  
2 provide recreational and athletic activities, including the Girl Scouts of America, the Girls Club of  
3 San Diego, the Boys Club of San Diego, the Boys and Girls Club of San Diego, the Associated  
4 Students of San Diego State University, and several Little League organizations. The City has at least  
5 nineteen leases with youth oriented recreational nonprofit groups, none of which pay more than the  
6 \$2,500 administrative fee paid by the Boy Scouts of America-Desert Pacific Council [DPC] for the  
7 Camp Balboa lease.

8           9.       The City Council does not approve or endorse the membership requirements of  
9 nonprofit groups before approving a lease of City property. Rather, in the case of leases of dedicated  
10 parkland, the City ensures that park and recreational services are provided by the nonprofit group,  
11 and that those services are available to the public as a whole, without regard to race, religion,  
12 ethnicity, national origin, sex, marital status, or sexual orientation. Accordingly, it is standard  
13 practice for the City to include in its nonprofit leases of parkland a clause prohibiting the lessee from  
14 discrimination in the use of the leased premises. The City also includes a standard provision in  
15 nonprofit leases guaranteeing the public's right to use the leased parkland.

16           10.      It is very unusual for a nonprofit lessee to pay anything more than nominal rent for the  
17 lease of City property. In 55 of the 104 nonprofit leases identified in Exhibit 17, the lessee pays no  
18 rent at all. This includes all of the City's leases with organizations that provide youth recreational  
19 activity. An additional 22 lessees pay equal to or less than the \$2,500 administrative fee paid by the  
20 Boy Scouts for the Camp Balboa lease. Thus, of the total 104 nonprofit leases, identified in Exhibit  
21 17, 77 pay either no rent, or rent which is equal to or less than the \$2,500 administrative fee paid by  
22 the Boy Scouts for Camp Balboa.

23           11.      The nonprofit lessees that pay anything more than nominal rent identified in Exhibit  
24 17 generally fall into one of four categories. First, three nonprofit lessees are located in Mission Bay  
25 Park (the Mission Bay Yacht Club, the Mission Bay Boat and Ski Club, and the San Diego Rowing  
26 Club). These lessees pay rent in accordance with Council Policy 700-08(C)(7). That policy calls for  
27 nonprofit lessees in Mission Bay Park to pay one-third of the rent paid by commercial lessees in  
28 Mission Bay Park calculated on a square foot basis. (Exhibit 18 ). Council Policy 700-08 (C)(8)(b)

1 exempts nonprofit educational institutions from paying the rental rate set forth in Council Policy  
2 700-08(C)(7). In 1987, when the YAC lease was approved, the City Council elected not to charge  
3 any rent to the Scouts based upon this policy.

4 12. Second, several of the nonprofit lessees are located in commercial office buildings  
5 owned by the City, such as the World Trade Center (located at 1250 Sixth Avenue) and the Crabtree  
6 building, (located at 303 A Street). Both of these office buildings are located Downtown. These  
7 office buildings are a source of revenue to the City, and are home to several for-profit companies. If  
8 the City did not lease to the nonprofit groups in these offices, the spaces would be leased to other  
9 organizations that would be charged fair market rent.

10 13. Third, several nonprofit groups lease land owned by City Enterprise Fund  
11 Departments such as the City's Water Utilities Department, which due to bond covenants and the  
12 City Attorney's interpretation of San Diego Charter section 53, do not permit services at below  
13 market prices. Exhibit 22 is a certified copy of San Diego Charter section 53. These nonprofit lessees  
14 include the United States Olympic Committee in the Lower Otay Reservoir, the City's Fire and Life  
15 Safety Services at Brown Field, and the San Diego Zoological Society, which has three leases in the  
16 San Pasqual Valley on property owned by the Water Department.

17 14. Finally, at least two nonprofit groups operate like traditional commercial ventures and  
18 charge its patrons significant fees for the use of the services provided on City-owned land. These  
19 nonprofit groups include the House of Hospitality, which is home to the Prado Restaurant, and the  
20 San Diego Zoological Society's lease of the Model Train in Balboa Park. The City's leases with  
21 these groups provide the City with a share of their revenues.

22 15. Finally, there is nothing unusual about the twenty-five year lease terms in both the  
23 YAC and Camp Balboa leases. At least 34 of the City's nonprofit leases identified in Exhibit 17 are  
24 for twenty-five years or longer. For instance, the lease between the City and the Jewish Community  
25 Center is for a term of sixty-five years. Three different YMCA's have nonprofit leases for terms of  
26 fifty years, as does the Boys and Girls Club of San Diego, and the Boys Club of San Diego. The  
27 twenty-five year lease term for the Boy Scouts is identical to the City's lease with the Girl Scouts, as  
28 well as the City's lease with the Associated Students of San Diego State University, which also

1 operates an aquatic recreational facility in Mission Bay Park.

2           16. Exhibit 17 does not represent an exhaustive list of all of the City's nonprofit lessees.  
3 In addition to the leases identified in Exhibit 17, the City also leases dedicated parkland to at least 19  
4 additional private nonprofit organizations in Balboa Park. These leases have traditionally been  
5 administered by the Park and Recreation Department with assistance from READ. All of these  
6 additional 19 leases are for museums, cultural, and recreational attractions in Balboa Park, including  
7 leases with the Old Globe Theater, the Ruben H. Fleet Space Museum, the San Diego Civic Light  
8 Opera, the Timkin Art Museum, the United Nations Association of San Diego, the Veterans  
9 Memorial Center, Inc. the Balboa Park Art Conservation Center, the Committee of 100, the Centro  
10 Cultural de la Raza, the San Diego Hall of Champions, the San Diego Historical Society, the San  
11 Diego Aerospace Museum, the San Diego Art Institute, the Japanese Friendship Garden Society of  
12 San Diego, the Mingie International Museum of Folk Art, the San Diego Model Railroad Museum,  
13 the San Diego Museum for the Photographic Arts, the San Diego Natural History Museum, and the  
14 Campfire Girls of San Diego County.

15           17. Only two of the leases identified in paragraph 15 pay any rent to the City. The United  
16 Nations Association of San Diego is required under its lease to pay the City \$196 a month to cover  
17 the City's costs of maintenance of the property. Similarly, the Centro Cultural de la Raza is required  
18 under its lease to pay \$200 per month. However, the City does not currently collect rent from the  
19 Centro Cultural de la Raza. The remaining seventeen lessees pay no rent at all. In addition, the vast  
20 majority of the lessees identified in paragraph 15 are expressly allowed to operate gift shops and/or  
21 concession sales. However, the City does not receive a share of the proceeds of the sales from any of  
22 the gift shops or concession sales.

23           18. Of the 19 leases described in paragraph 15, 17 have minimum lease terms of between  
24 25 and 50 years.

25           19. If the 104 nonprofit lessees identified in Exhibit 17 are added with the additional 19  
26 lessees in Balboa Park, the City leases real property to at least 123 nonprofit groups. Of this amount

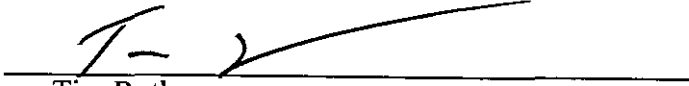
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1 96 pay either no rent, or a rent less than the \$2,500 administrative fee paid by the Boy Scouts of  
2 America- Desert Pacific Council for the Camp Balboa property.

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 30 day of January 2003, at San Diego, California.

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9 Tim Rothans

10 Declaration of Rothans MSJ.alternative.wpd  
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