

OFFICE OF THE CITY ATTORNEY
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1 OFFICE OF THE CITY ATTORNEY
2 CRIS MEYER, City Attorney
3 State Bar No. 012262
4 200 West Washington, Suite 1300
5 Phoenix, Arizona 85003-1611
6 Telephone (602) 262-6761
7 law.civil.minute.entries@phoenix.gov

8 Robert A. Hyde Bar No. 029337
9 Assistant City Attorney
10 Attorney for the City of Phoenix

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13 Lasse Norgaard-Larsen, et al.,

14 Plaintiffs,

15 vs.

16 The City of Phoenix, et al.,

17 Defendants.

No. 20-cv-02467-PHX-GMS

**RULE 26(F) CASE
MANAGEMENT REPORT**

(Assigned to the Honorable G. Murray Snow)

18 Pursuant to this Court’s July 12, 2021 Order (Doc. 21), the parties hereby submit
19 their Rule 26(f) Joint Case Management Report as follows:

20 **1. Parties who attended the Rule 26(f) Meeting**

21 Lasse Norgaard-Larsen and J. Arthur Deal – Plaintiffs

22 Robert A. Hyde – Attorney for Defendant City of Phoenix

23 Eric C. Anderson – Attorney for Defendant City of Scottsdale

24 **2. Parties in the Case**

Lasse Norgaard-Larsen and J. Arthur Deal – Plaintiffs

OFFICE OF THE CITY ATTORNEY
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1 City of Phoenix, Arizona

2 City of Scottsdale, Arizona

3
4 **3. Short Statement of the Nature of the Case**

5 This lawsuit stems from two citizens' disagreement with a November 2018 lease
6 between the cities of Phoenix and Scottsdale (collectively, "the Cities") for a portion of
7 Papago Park, and Scottsdale's December 2018 sublease of some of that land to the San
8 Francisco Giants baseball franchise. Plaintiffs are Lasse Norgaard-Larsen (a Tempe
9 resident) and J. Arthur Deal (a Scottsdale resident). Plaintiffs have named as defendants
10 the City of Phoenix and the City of Scottsdale, but not the Giants baseball franchise or
11 any other federal or state governmental entities.

12 In their complaint, Plaintiffs make a series of allegations concerning prior deeds
13 and conveyances of the land between the federal government, the State of Arizona, and
14 the Cities. Plaintiffs claim that Phoenix and Scottsdale have violated various portions
15 of the land transfer documents (and thereby the Property Clause of the U.S.
16 Constitution) by allowing the Giants to build an expanded baseball facility within
17 Papago Park. The Plaintiffs do not seek money damages. Instead, they seek to have a
18 Court-mediated settlement discussion between themselves, the cities of Phoenix and
19 Scottsdale, the State of Arizona, the Giants, and the U.S. Department of Interior.

20 Plaintiffs initially raised claims under the Land and Water Conservation Fund
21 Act of 1965, a provision of the Federal Property and Administrative Services Act, and
22 the Contracts Clause of the U.S. Constitution. However, the Court earlier dismissed
23 those claims. The only remaining claim is brought under the Property Clause of the
24 U.S. Constitution.

OFFICE OF THE CITY ATTORNEY
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1 The Cities contest that Plaintiffs have standing to raise a claim under the
2 Property Clause. The Cities further contend that Plaintiffs fail to state a claim upon
3 which relief can be granted. The Cities otherwise deny the allegations in the Complaint.
4

5 **4. Jurisdictional Basis for the Case**

6 Because Plaintiffs are advancing a claim under the U.S. Constitution, the Court
7 has federal question jurisdiction under 28 U.S.C. § 1331. Plaintiffs' claim necessarily
8 relies upon 42 U.S.C. § 1983, as well, which also indicates federal question
9 jurisdiction.
10

11 **5. Parties Who Have Not Been Served**

12 None.
13

14 **6. Parties Expected to Be Added**

15 Plaintiffs – None at this time. However, given certain issues of health and
16 employment, other parties may need to be added.

17 Defendants – None.
18

19 **7. Contemplated Motions**

20 Plaintiffs – The Plaintiffs anticipate asking the Court to recognize the clear and
21 unambiguous use restrictions in the 1930 Act to Abolish Papago Saguaro National
22 Monument (46 Stat. 142), the 1937 Land Grant and Certificate of Transfer and, rather
23 than enact an immediate reversion for non-compliance as seemingly required in those
24 documents, requesting that there first should be a Court-mediated hearing to attempt to

OFFICE OF THE CITY ATTORNEY
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1 resolve this case, as permitted in the 1964 Deed of Sale and the 1997 Land Patent, prior
2 to any final judgment by the Court.

3 Defendants – The Cities anticipate filing a motion for summary judgment. The
4 timing of this motion is not yet known. The Cities anticipate that the motion will
5 address issues of Plaintiff’s standing as well as the lack of facts to support their
6 remaining claim in this litigation.

7
8 **8. Reference to a Magistrate Judge**

9 Plaintiffs – The Plaintiffs do not believe a referral to a Magistrate Judge is
10 needed, unless desired by the Court for it purposes.

11 Defendants – The Cities do not believe that reference to a Magistrate Judge is
12 appropriate.

13
14 **9. Status of Related Cases**

15 None.

16
17 **10. Initial Disclosures**

18 Plaintiffs – The Plaintiffs anticipate serving their initial disclosures by
19 September 10, 2021.

20
21 Defendants – The Cities anticipate serving their initial disclosures by September
22 10, 2021.

23
24 **11. Rule 34 Requests**

OFFICE OF THE CITY ATTORNEY
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1 Plaintiffs – The Plaintiff’s will serve Rule 34 requests to Plaintiffs by the time of
2 the Rule 16 conference.

3 Defendants – The Cities anticipate serving Rule 34 requests to Plaintiffs by the
4 time of the Rule 16 conference.

5
6 **12. Electronically Stored Information**

7 Plaintiffs – All of the Plaintiff’s records are stored electronically, either in
8 computer files or email servers, therefore no special rules or processes are needed to
9 manage or retrieve such information.

10 Defendants – some or all of the Cities’ records may be maintained
11 electronically. The Cities do not believe that any special rules or processes are needed
12 to manage the electronic records in this case.

13
14 **13. Privilege or Work Product Issues**

15 Plaintiffs – The Plaintiffs do not anticipate any privilege or work-product issues,
16 at this time.

17 Defendants – the Cities do not anticipate any privilege or work-product issues.
18 However, the Cities reserve the right to object on these grounds should Plaintiffs seek
19 such materials through discovery.

20
21 **14. Order under Federal Rule of Evidence 502(d)**

22 Plaintiffs – the Plaintiffs do not know what type of discovery the Defendants
23 will to seek in this case.

24 Defendants – the Cities do not yet know what type of discovery Plaintiffs intend

OFFICE OF THE CITY ATTORNEY
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1 to seek in this case. As a result, the Cities are not yet able to determine whether an
2 order under Federal Rule of Evidence 502(d) is necessary.

3
4 **15. Discussion of Necessary Discovery**

5 *a. The extent, nature, and location of discovery anticipated by the parties;*

6 Plaintiffs – The extent, nature and location of discovery is currently unknown.
7 The Plaintiffs will seek discovery from officials and staff working for the Defendants
8 and take their depositions. The Plaintiffs will also seek discovery from the Office of the
9 Solicitor, the National Park Service, and the Bureau of Land Management – these being
10 agencies of the U. S. Department of the Interior – as well as the Arizona State Parks
11 and other parties, both corporate and private.

12 Defendants – The full amount of discovery is not known at this time. However,
13 the Cities intend to seek written discovery from Plaintiffs and take their depositions.
14 The Cities may also seek discovery from third parties, which may include the federal
15 government or the State of Arizona.

16
17 *b. Suggested changes, if any, to the discovery limitations imposed by the*
18 *Federal Rules of Civil Procedure and LRCiv 16.2;*

19 No changes are suggested.

20
21 *c. The number of hours permitted for each deposition:*

22 Seven hours or less.

23
24 **16. Proposed Specific Dates for the Following Deadlines**

OFFICE OF THE CITY ATTORNEY
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

- 1 a. Deadline for the completion of fact discovery: January 14, 2022
- 2 b. Dates for full and complete expert disclosures under Federal Rule of Civil
- 3 Procedure 26(a)(2)(A) - (C):
- 4 Plaintiff – December 3, 2021
- 5
- 6 Defendants – January 14, 2022
- 7
- 8 Rebuttal – February 4, 2022
- 9
- 10 c. Deadline for completion of expert depositions – March 11, 2022
- 11 d. Deadline for filing dispositive motions – March 25, 2022
- 12 e. A date by which the parties shall have engaged in face-to-face good faith
- 13 settlement talks – March 25, 2022
- 14 f. A date by which initial written discovery requests and initial deposition
- 15 notices shall be served – October 15, 2021
- 16 g. A date by which initial discovery requests pursuant to Rule 30 or 31 shall
- 17 be noticed – October 15, 2021
- 18 h. A date by which any Rule 35 examination will be noticed – not applicable.
- 19

20 **17. Jury Trial**

21 Plaintiffs – In the initial Complaint and Request for Injunction, filed December

22 23, 2020, the Plaintiffs state that a trial by Jury is acceptable. At this point, however,

23 the Plaintiffs strongly prefer a trial by jury, given that the Plaintiffs believe a matter

24 relating to the use of a public park is best decided by representatives of the public in a

OFFICE OF THE CITY ATTORNEY
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1 trial by jury.

2 Defendants – A jury trial has not been requested. Because Plaintiffs seek
3 declaratory and equitable relief here (somewhat akin to a quiet title action), rather than
4 money damages, it is the Cities’ position that there is no right to a jury here. *See, e.g.,*
5 *Dollar Sys., Inc. v. Avcar Leasing Sys., Inc.*, 890 F.2d 165, 170 (9th Cir. 1989) (there is
6 no right to a jury trial for equitable claims); *Bank of Am. NA v. Ann Losee*
7 *Homeowners’ Ass’n*, 2018 WL 3429660, at *2 (D. Nev. July 16, 2018) (“[A] claim for
8 quiet title/declaratory relief is equitable in nature and thus not entitled to a federal right
9 to a jury trial.”).

10
11 **18. Estimated Length of Trial**

12 Three to four days if there is no right to a jury trial here. If the Court determines
13 that a jury is appropriate, the parties respectfully request an extra two days of trial time.

14
15 **19. Prospects for Settlement**

16 Plaintiffs – Although the basic issues relating to the violation of established
17 covenants are clear, the Plaintiffs understand there are many complicating factors that
18 make a quick, easy settlement unlikely. Therefore, the Plaintiffs are willing to
19 participate in mediation efforts or settlement conferences ordered by the Court to
20 attempt to attenuate possible outcomes injurious to taxpayers, the public and the Cities.

21 Defendants – the Cities do not believe that a settlement of this case is likely.
22 Nevertheless, the Cities are willing to participate in any court-ordered mediation or
23 settlement conference.

OFFICE OF THE CITY ATTORNEY
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

20. Any Other Matters

Plaintiffs – The Plaintiffs wish to inform the Court that they have made strenuous and persistent efforts to secure legal assistance. Unfortunately, this has not been possible.

Defendants – None known at this time.

DATED this 27th day of August, 2021.

See next page
Lasse Norgaard-Larsen
122 East Garfield Street
Tempe, Arizona 85251
Plaintiff *Pro Se*

See next page
J. Arthur Deal
5936 East Cambridge Avenue
Scottsdale, Arizona 85257
Plaintiff *Pro Se*

PHOENIX CITY ATTORNEY’S OFFICE
CRIS MEYER, City Attorney

By: /s/ Robert A. Hyde
Robert A. Hyde
Assistant City Attorney
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
Attorneys for Defendant City of Phoenix

OFFICE OF THE CITY ATTORNEY
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

20. Any Other Matters

Plaintiffs – The Plaintiffs wish to inform the Court that they have made strenuous and persistent efforts to secure legal assistance. Unfortunately, this has not been possible.

Defendants – None known at this time.

DATED this 26 day of August, 2021.

/s/ Lasse Norgaard-Larsen
Lasse Norgaard-Larsen
122 East Garfield Street
Tempe, Arizona 85251
Plaintiff *Pro Se*

/s/ J. Arthur Deal
J. Arthur Deal
5936 East Cambridge Avenue
Scottsdale, Arizona 85257
Plaintiff *Pro Se*

PHOENIX CITY ATTORNEY'S OFFICE
CRIS MEYER, City Attorney

By: /s/ Robert A. Hyde
Robert A. Hyde
Assistant City Attorney
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
Attorneys for Defendant City of Phoenix

SCOTTSDALE CITY ATTORNEY'S OFFICE

SCOTTSDALE CITY ATTORNEY’S OFFICE

By: /s/ Eric C. Anderson
Eric C. Anderson
Senior Assistant City Attorney
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251
Attorneys for the City of Scottsdale

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2021, I filed the attached document via CM/ECF and served the attached document by mail on the following, who are not registered participants of the CM/ECF System:

- Lasse Norgaard-Larsen
122 East Garfield Street
Tempe, Arizona 85251
Plaintiff *Pro Se*
- J. Arthur Deal
5936 East Cambridge Avenue
Scottsdale, Arizona 85257
Plaintiff *Pro Se*

By: /s/ M. Sandoval
RAH:ca; 2275288_1.DOC

OFFICE OF THE CITY ATTORNEY
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611
(602) 262-6761

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24