UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Lasse Norgaard-Larsen, et al., **Plaintiffs** **v.** **City of Phoenix, et al.,** **Defendants**	**No. CV20-02467-PHX-GMS** **PLAINTIFFS' RESPONSE TO DEFENDANT'S OPPOSITION TO MOTION FOR SUMMARY JUDGEMENT** (Assigned to the Honorable G. Murray Snow)

The Defendant City of Phoenix has asked the court to deny the Plaintiffs' Motion for Summary Judgment. The Plaintiffs respectfully request this request be rejected and that the Motion for Summary Judgement be sustained. As previously stated, the Plaintiffs absolutely believe the essential facts of the case have been presented and a legal case can be made that numerous laws and covenants have been violated – this to the detriment of the public good.

The Defendants latest motion repeats the same accusations made in previous motions, namely that the Plaintiff's motions are procedurally improper without subject matter jurisdiction or cognizable legal theories, that the Plaintiffs lack prudential standing for not having a contractual relationship with the Defendants, and, finally, that even if the Plaintiff's accusations have merit, the statute of limitations for such claims under Arizona law had expired. The Plaintiffs believe that these allegations, while valid in some cases in some circumstances, do not apply in this case for the reasons explained

in our two previously motions, and fervently hope the Court will grant a Private Right of Action, as the Court has the power to do.

The Plaintiffs would like to address several reprehensible statements presented in the Defendant's latest Motion:

a. The Defendants censure the Motion for Summary Judgement for lack of a separate statement of facts that points to specific evidence. The Plaintiffs' Motion for Summary Judgment is not wanting in facts. In fact, the only essential facts are that 1. the Defendants have given control of public park lands to a private company (to the exclusion of the public), and 2. that there are seven legal instruments in that motion listed by date and name that forbid such action, each citing the applicable restrictions.

b. The Defendants seem to misunderstand the meaning of the word 'evidence'. In their latest motion they use it more than a dozen times, always in a sense that there is no 'evidence' for the claims made by the Plaintiffs -- i.e., that the building of a private facility in a public park is illegal. Let it be clearly stated that that the evidence of this misdeed is the array of documents and Acts of Congress that stipulate that Papago Park is to be used for public recreation and convenience. These are found in the initial Complaint, filled December 23, 2020, in the Motion for Summary Judgement, and even in the Lease signed by the Defendant.

c. The Defendants have done the unthinkable. They have accused the Plaintiffs of altering documents attached to the Complaint of December 23, 2020 (Page 4). They allege that unnamed documents included in the Complaint were "unauthenticated, unsworn and altered." This is a serious charge, even criminal. Given the gravity of this accusation, the Defendants have a moral duty to inform the Court which documents were altered and demonstrate the nature of any changes made.

d. The Defendants erroneously use the construction of a baseball stadium (Page 4) in Papago Park – authorized in the 1964 land deed from Arizona – as a justification for the building of the baseball facility. The two cases are completely different: the stadium was specifically authorized in that deed by the State of Arizona, and it was approved in a 'Change of Use' document signed by the U.S Secretary of the Interior, as required by existing covenants and deeds. Note also that the stadium was funded by a voter-approved initiative (the "Stadium District" sales tax) and although used by an NBL team (Oakland A's) for a while, the use was non-exclusive, and that team shared the premises with other organizations according to pre-determined schedule. The stadium is also used by the public. The training facility is an exclusive, private compound funded, built, and controlled by the San Francisco Giants, a professional baseball franchise and a private three-billion-dollar company.

e. The Plaintiffs reject the assertion (Page 20) by the Assistant City Attorney that the baseball training facility is not impacted by LWCF legislation restrictions requiring that a grant-funded area to be maintained, in perpetuity, for public outdoor recreation. Once again, the Plaintiffs insist that the only acceptable proof on this matter would be an original 6(f)(3) boundary map from the files of the 1960s grant, not the 2018 Google Earth map sent to the City of Phoenix by the State of Arizona, obtained by a FOIA request. Even so, supposing that the Giants' facility is not in a LWCF protected area, this does nothing to negate the deed restrictions in the many other documents of conveyance that apply to entirety of Papago Park. The only exception to this is the 1960 Certificate -- included in the Lease of the facility -- signed by the Secretary of the Interior which does, in fact, designate a specific area for which use restrictions would expire after 25 years (in 1985). Unfortunately for the Defendants, that Certificate

identifies a wrong area of the park and, moreover, is based upon a law that had been repealed in 1959.

f. The Defendants state that the Plaintiffs' utterly fail to establish which portions of Papago Park each of their purported exhibits cover (Page 4) and that just "proclaiming that these items apply to the area at issue in this lawsuit is not sufficient." Except as specified above relating to the 1960 certificate, the exhibits for Papago Park refer to the entirety of the Park as defined in the 1937 document signed by President Franklin Roosevelt. This designated area is also, in its current embodiment, that identified as Papago Park by the Phoenix Parks and Recreation Department. May the Court note that at the entrance of the Giants' baseball training facility, on both sides, there are signs proclaiming the land to be a public park owned and operated by the City of Phoenix. Adjacent to those signs, paradoxically, one now finds a fence with other signs proclaiming, "No Public Access" and "Giants Personnel Only".

g. The Defendants consider the possibility (Page15) that a Summary Judgment decision is possible and speculate on actions that would occur in this case, including discovery from the State of Arizona and the U.S. Department of the Interior. If this should happen, those entities would then be required to definitively render a formal position on the validity and enforceability of the use restrictions found in the Acts on the Acts of Congress, Land Patents, Certificate of Sale, and Deeds for Papago Park.

h. As affirmed by both the Defendants (Page 11) and previously by Plaintiffs, the relevant federal and state authorities are reluctant to get involved in the complex, tangled issue that is Papago Park, although the Defendants repeatedly tried to obtain their involvement (Note that these authorities have yet to properly provide FOIA information). There seems to be an important point of law at stake: do these government entities have a right to renege on their enforcement responsibilities because

any such action taken may create bureaucratic complications and inconvenience powerful interests. In simple terms: Is the enforcement of laws and contracts optional?

Once again, as this case progresses toward an unknown end, the Plaintiffs apologize for their lack of legal expertise. The Court is, however, well aware of this obvious fact and does not need the constant reminders that the Plaintiffs are not lawyers and do not have legal assistance. The Plaintiffs fervently wish they had the financial means to secure competent help to navigate legal protocol and properly follow established rules and procedures – not so much because of facts of the case – which clearly favor the Plaintiff's understanding of what constitutes proper use of a public land, but because this case may constitute judicial precedent in other lawsuits relating to public parks and lands. The Plaintiffs again regret their inexperience but are comfortable with their belief that public lands dedicated to public recreation and leisure should be used exclusively for public recreation and leisure.

Finally, in the Declaration submitted by the Assistant City Attorney, attached to Defendants latest Motion (Page 18), one encounters what may be seen as a conciliatory attitude, in that there is speculation about possible actions to be taken if the Court allows this case to proceed. This is in keeping with the relief requested by the Plaintiffs in their initial filing of the Complaint, on December 23, 2021 and the Motion for Summary Judgement, filed March 22, 2021. The Plaintiffs would welcome a hearing and additional discovery under the supervision of the Court to bring Papago Park into administrative and legislative compliance with the documents of conveyance, taking into consideration the alternatives and theoretical possibilities permitted by law.

Signed and dated this 20th day of May of 2021.

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Lasse Norgaard-Larsen J. Arthur Deal