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8 Fairbanks Polo Club Homeowner’s Association

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO**

11 FAIRBANKS POLO CLUB  
12 HOMEOWNER’S ASSOCIATION

13 Plaintiff,

14 v.

15 CITY OF SAN DIEGO and DOES 1  
16 through 25, inclusive,

17 Defendants.

CASE NO: 37-2023-00015356-CU-OR-NC

Assigned for all purposes to:

Hon. Earl H. Maas III, Dept. N-28

**PLAINTIFF FAIRBANKS POLO CLUB  
HOA’S OPPOSITION TO NON-PARTY  
SURF CUP SPORTS, LLC’S MOTION TO  
INTERVENE AS A DEFENDANT**

19 **I. INTRODUCTION**

20 This is a declaratory relief action to enforce a specific restriction in a Grant Deed  
21 between Defendant City of San Diego (the “City”) and the predecessor-in-interest of Plaintiff  
22 Fairbanks Polo Club Homeowner’s Association (“FPCHA”). The sole issue is whether the Grant  
23 Deed and its amendments restrict the use of the subject property to 25 days of events per year.  
24 Given the City’s prior judicial admissions on this issue, FPCHA expects to have the issue  
25 decided by dispositive motion at the summary judgment stage.<sup>1</sup>

26  
27  
28 <sup>1</sup> The City has already admitted in a 2016 CEQA action and confirmed in appellate briefing in 2021, that there was no intention to increase usage beyond the 25 days per year restriction in the Grant Deed. Request for Judicial Notice at Exhibit A. The appeal was decided in the City’s favor

1 Months after the pleadings have been settled, non-party Surf Cup Sports, LLC (“Surf  
2 Cup”) seeks to inject itself into this case and raise a plethora of extraneous and unrelated factual  
3 issues. In so doing, Surf Cup has filed an untimely Motion to Intervene that does not meet any of  
4 the requirements for mandatory intervention or permissive intervention joinder. Surf Cup is a  
5 stranger to the Grant Deed and has absolutely no rights related to how it should be interpreted or  
6 enforced. Although Surf Cup leases the property that is the subject of the Grant Deed (known as  
7 the “Polo Fields”), it will not gain or lose anything by the direct legal operation and effect of any  
8 judgment rendered in this action because Surf Cup is bound by the Lease provisions regardless.  
9 FPCHA does not address the Lease provisions and does not intend to litigate any aspect of the  
10 Lease. Those issues can be addressed at some other time, in some other forum, between the City  
11 and Surf Cup. Their Lease is simply not implicated by this declaratory relief action involving the  
12 Grant Deed only.

13  
14 Further, to the extent Surf Cup has any interest in the subject of this action, those interests  
15 are adequately represented by the City. The two unique interests Surf Cup identifies in its motion  
16 - subsidizing youth sports for underprivileged teams and the interest of its owners in maximizing  
17 their investment – are insubstantial, indirect, and merely consequential. In addition, Surf Cup’s  
18 intervention would unduly enlarge the issues in this case to encompass Surf Cup’s rights under  
19 the Lease, as well as the two unique interest Surf Cup apparently intends to litigate. Overall, Surf  
20 Cup’s meager reasons for intervening in this simple and straightforward contract matter do not  
21 outweigh FPCHA’s reasons for opposing an intervention that would overly complicate the case,  
22 while unduly increasing the cost of litigation and delaying the time it will take to reach a  
23 resolution.

24 Surf Cup’s Motion to Intervene should be denied.  
25  
26

27  
28 in an unpublished decision in 2021. See, *Friends of the San Dieguito River Valley v. City of San Diego*, 2021 Cal. App. Unpub. LEXIS 583 (4<sup>th</sup> Dist. Court of Appeal, January 29, 2021). These are judicial admissions.

1 **II. BACKGROUND**

2 The basis for this legal action is the 1983 Grant Deed which is attached to the  
3 Complaint at Exhibit A. The Grant Deed provides that Watt Industries (FPCA's  
4 successor-in-interest) grants to the City of San Diego certain real property described at  
5 Exhibit A attached to the Grant Deed, subject to the covenants, conditions and  
6 restrictions set forth in Exhibit B attached to the Grant Deed.  
7

8 In accepting the covenants, conditions, and restrictions to the Grant Deed, the  
9 City agreed as follows:

10 Grantee for and on behalf of itself, and on behalf of each successive  
11 owner, during its, his, her or their ownership of any portion of the Affected Land  
12 herein granted by Grantor to Grantee, and each person having any interest in the  
13 Affected Land derived through any such owner, covenants, and agrees that it, he,  
she or they:

14 (a) Shall keep and preserve the Affected Land as Open Space in its natural  
15 condition as near as possible, or may permit it to be utilized for any or all of the  
16 following purposes and no others:

- 17 (i) All agricultural uses relating to the growing harvesting, processing  
or selling of field grain crops, fruit and vegetables;
- 18 (ii) Passive non-commercial recreational uses (e.g., picnicking,  
walking, hiking, and similar activities) and reasonable support facilities, including  
19 any restrooms and parking facilities as may be reasonably required, for such uses;
- 20 (iii) Active non-commercial recreational uses not involving large  
assemblages of people or automobiles, nor involving the use of motor-driving  
21 machines or vehicles (e.g. equestrian activities, jogging, frisbee, and similar  
activities).

22 (b) Shall, notwithstanding any other provision hereof, prevent any of the  
23 following purposes, uses and activities from being conducted upon the Affected  
24 Land:

25 . . .  
(ix) Establishments or enterprises involving large assemblages of  
26 people or automobiles, including, but not limited to, recreational facilities  
publicly or privately operated;

27 . . .  
28 (xvi) Accessory buildings, other than as may be specifically  
allowed hereinabove, and uses customarily incidental to any of the above uses,  
including but not limited to:

1                     ...  
2                     (xvii) Any other use similar in character to the uses, including  
3                     accessory uses, enumerated in this section and inconsistent with the purpose and  
                          intent of this deed restriction.

4                     The City further agreed: “5. (a) Grantee or its successors shall permit no use of  
5                     the Affected Land in violation of the provisions hereto. In the event any use is  
6                     contemplated which is not specifically permitted by the terms of this document, such use  
7                     shall not be allowed without Grantee having first obtained Grantor’s (or Grantor’s  
8                     successors’) written consent thereto.”

9  
10                    In 2002, the City requested and received permission for additional uses on the  
11                    Affected Land, including dog shows, soccer tournaments, and lacrosse tournaments,  
12                    provided these uses occurred “no more than 25 days per calendar year cumulatively (not  
13                    each).” It is this specific provision in the Grant Deed that is at the heart of this litigation.  
14

### 15   **III.   LEGAL ARGUMENT**

#### 16                   **A.   Surf Cup is not entitled to mandatory intervention.**

17                    As Surf Cup correctly acknowledges, it must establish three elements before it is entitled  
18                    to mandatory intervention: (1) it must show a protectable interest in the subject of the action; (2)  
19                    it must demonstrate that the disposition of the action may impair or impede its ability to protect  
20                    that interest; and (3) it must demonstrate that its interests are not adequately represented by the  
21                    existing parties. *Carlsbad Police Officers Ass’n v. City of Carlsbad* (2020) 49 Cal. App. 5th 135,  
22                    148. As will be shown below, Surf Cup cannot meet any of these elements.

#### 23                                 **1.   Surf Cup does not have a protectible interest in the subject** 24                                 **matter.**

25                    Surf Cup provides only a cursory and conclusory analysis of its purported interest in the  
26                    subject matter of this action. It paints with a broad brush when it sweepingly concludes that it has  
27                    a property interest in the leasehold that is the subject of the action and as the manager and  
28                    operator of the Polo Fields, it has a financial stake in the action. However, “[n]ot every interest in

1 the outcome of litigation gives to its possessor the right to intervene in the lawsuit. The interest .  
2 . . must be direct and not consequential, and it must be an interest which is proper to be  
3 determined in the action in which the intervention is sought.” *Continental Vinyl Products Corp.*  
4 *v. Mead Corp.* (1972) 27 Cal. App. 3d 543, 549 (internal citations omitted.)

5 As a lessee, Surf Cup’s interest in the subject of the litigation is limited by the express  
6 language of the Lease.<sup>2</sup> The express language of the Lease limits Surf Cup’s interest to the  
7 restrictions in the Grant Deed (identified in the Lease as the “Allowable Uses”). As such, Surf  
8 Cup thus has no interests beyond the “Allowable Uses” identified in the Lease. The express  
9 restrictions in the Grant Deed limit the events on the Polo Fields to 25 days of events per year.  
10 Since this action is brought to enforce the express language of the Grant Deed limiting the events  
11 to 25 days of events per year, it simply does not affect any interest Surf Cup has under the Lease.  
12 Indeed, Surf Cup will not “gain or lose” by the direct legal operation of a judgment limiting the  
13 events on the Polo Fields to the 25 days of events proscribed by the Grant Deed that are  
14 specifically incorporated into the Lease. Any judgment in the action will not add or detract from  
15 Surf Cup’s legal rights under the express terms of the Lease.  
16

17 \_\_\_\_\_  
18 <sup>2</sup> The Lease, which is attached at Exhibit 2 to Surf Cup’s Notice of Lodgement, provides in  
19 pertinent part:

20 1.2 Subject to Corporation Grant Deed. This Lease is and shall be subject and  
21 subordinate to the conditions and restrictions on the Premises and its allowed uses  
22 contained in that certain Corporation Grant Deed, (“Deed”) by Watt Industries/San  
23 Diego, Inc. (“WISD”) to CITY, filed with the San Diego County Recorder’s Office as  
Document Number 83-382964, and attached hereto as **Exhibit B: Corporation Grant**  
**Deed.**

24 . . .  
25 1.3 Uses. LESSEE shall use the Premises for programs, activities, and operations as set  
forth in the Deed and any subsequent amendments to the Deed (the “Allowed Uses”).  
26 . . .

27 1.3.2 Only Allowed Uses. LESSEE shall not use the Premises for any purpose other than  
28 the Allowed Uses. Each and all Allowed Uses shall be conducted in compliance with all  
laws, rules, regulations and directives of competent governmental authorities.

1                   **2. Surf Cup’s interest, if any, will not be impaired or impeded.**

2                   Surf Cup contends that this action “ultimately seeks to restrict Surf Cup’s use of the Polo  
3 Fields.” Not so. FPCHA seeks to enforce the restriction in the amendment to the Grant Deed  
4 limiting events on site to 25 days per year, which, by definition, cannot impair or impede Surf  
5 Cup’s leasehold or financial interests in the Polo Fields because the defined term “Allowable  
6 Uses” includes that restriction. Surf Cup’s interest in the Polo Fields can be no greater than the  
7 terms of the Lease provide. And, since those terms limit the Allowable Uses to 25 days of events  
8 per year, Surf Cup has no interest that will be impaired by a judgment enforcing the 25-day  
9 limitation in the Grant Deed. Any judgment in the action will thus not add or detract from Surf  
10 Cup’s interest in the leasehold.

11                   Similarly, any judgment enforcing the Grant Deed restrictions will not materially affect  
12 Surf Cup’s ability to make its rent payments to the City. Indeed, the Lease contemplates that Surf  
13 Cup must meet its rent obligation within the parameters of the Allowed Uses. Under the  
14 provision entitled “Use Objective,” the Lease requires that Surf Cup “shall diligently conduct *the*  
15 *Allowed Uses* on the Premises, using its reasonable best efforts *to reasonably maximize revenue*  
16 *from the Allowed Uses* for purposes of the percentage rent set . . .” (emphasis added). Ex. 2 to  
17 Surf Cup’s Notice of Lodgment. Surf Cup willingly agreed to this provision, knowing that the  
18 uses allowed on the leasehold were limited to those identified in the Grant Deed and that it  
19 would have to meet its rent obligation within the confines of those agreed-upon Allowable  
20 Uses.<sup>3</sup>

21 \_\_\_\_\_  
22  
23 <sup>3</sup> In any event, Surf Cup’s claim that it will be unable to meet its rental obligation is simply not  
24 credible, considering a sworn affidavit Surf Cup filed with this Court in a CEQA matter  
25 challenging the City’s approval of the Lease with Surf Cup. In *Friends of the San Dieguito River*  
26 *Valley v. City of San Diego*, Case No. 37-2016-00030312-CU-TT-CTL, Rob Haskell, Surf Cup’s  
27 Vice President of Operations submitted a declaration in opposition to the plaintiff’s application  
28 for a temporary restraining order which belies the financial woes Surf Cup presents to this Court  
in the instant matter. RJN at Exhibit B. In his 2016 declaration, Haskell sought to establish the  
revenue Surf Cup would lose if it could not charge for on-site parking. Haskell first estimated  
that there were approximately 8 – 12 events per year and then stated that “an event with 2200  
cars per day parking on-site would generate approximately \$22,000 per day, or \$44,000 for a  
two-day event and \$66,000 for a three-day event.” Even assuming the same parking rates and  
attendance are applicable today, Surf Cup can easily cover its base rent with parking fees alone,

1           Lastly, the respective rights of the City and Surf Cup under the Lease are independent of  
2 rights between FPCHA and the City under the Grant Deed. Surf Cup may bring a separate action  
3 against the City with which their respective rights under the Lease may be determined. See,  
4 *Siena Court Homeowners Assn. v. Green Valley Corp.* 164 Cal. App. 4th 141, 1426-1425.  
5 Therefore, Surf Cup need not intervene in this action to protect its rights under the Lease.

6                           **3. Surf Cup’s interest, if any, is adequately represented by the**  
7                           **City.**

8           Surf Cup’s sole basis for arguing that the City cannot adequately protect its interest is  
9 perhaps the greatest stretch of all. The only “unique” interests Surf Cup can drum up is that it has  
10 an interest in “subsidizing youth sports and yielding a reasonable return for Surf Cup’s owners.”  
11 However, Surf Cup does not identify either of these interests as its protectible interest under the  
12 first element. Rather, Surf Cup manufactures these “sub-interests” only for the purposes of  
13 arguing that the City cannot adequately protect its interest.

14           On the first sub-interest – subsidizing youth sports – Surf Cup cites no authority  
15 supporting its position that a desire to be charitable is somehow a recognizable interest that  
16 courts should help a non-party protect through allowing intervention. Such an interest is even not  
17 Surf Cup’s own interest, but rather, the interest of the underprivileged teams. Moreover, Surf  
18 Cup again wildly understates its ability to generate sufficient revenue. The parking fees alone  
19 will allow Surf Cup to pursue its altruistic goals and charitable endeavors.

20           On the second sub-interest – yielding a reasonable return – the Lease is a percentage  
21 lease and the City even added a provision that Surf Cup must “reasonably maximize revenue  
22 from the Allowed Uses.” As such, the City does have an interest in yielding maximum revenues  
23

24 \_\_\_\_\_  
25  
26 not to mention all the entry fees and other commercial endeavors Surf Cup operates through its  
27 sister entities like Surf Club Soccer. Surf Cup’s financial hardship claim is a mere sideshow. In  
28 fact, Surf Cup recently charged \$20 per car, per day at an event, instead of the \$10 a car Haskell  
used in his 2016 calculation. RJN at Ex. C. Considering the magnificently increased parking  
capacity since 2016, the parking revenues are likely quadrupled today.

1 (within the confines of the Allowable Uses), so this financial interest is fully protected.

2 As such, Surf Cup has failed to demonstrate that the City cannot adequately protect its  
3 interests and mandatory intervention should be denied.

4 **B. Surf Cup is not entitled to permissive intervention.**

5 Surf Cup correctly identifies the elements it must meet before the court can grant  
6 permissive intervention, including that: “(1) the proper procedures have been followed; (2) the  
7 nonparty has a direct and immediate interest in the action; (3) the intervention will not enlarge  
8 the issues in the litigation; and (4) the reasons for the intervention outweigh any opposition by  
9 the parties presently in the action.” *Carlsbad Police Officers Ass’n, supra*, 49 Cal. App. 5th at  
10 148 [citation omitted]. As with mandatory intervention, Surf Cup cannot meet any of these  
11 requirements.

12 **1. Surf Cup did not follow the proper procedures.**

13 C.C.P. § 387 requires that the application to intervene be timely. Yet, Surf Cup waited  
14 nearly six months to file its motion to intervene. A right to intervene should generally be asserted  
15 within a reasonable time and the intervener must not be guilty of an unreasonable delay after  
16 knowledge of the suit. *Sanders v. Pacific Gas & Elec. Co.* (1975), 53 Cal. App. 3d 661.  
17 Furthermore, timeliness of a motion to intervene should be determined based on the date the  
18 proposed interveners knew or should have known their interests in the litigation were not being  
19 adequately represented. *Ziani Homeowners Assn. v. Brookfield Ziani LLC* (2015) 243 Cal. App.  
20 4th 274.

21 Here, Surf Cup had knowledge of this impending legal action *years* before it was even  
22 filed. Surf Cup not only knew exactly when FPCHA finally filed the case, but it also knew or  
23 should have known immediately that its two supposed sub-interests – subsidizing youth sports  
24 and yielding sufficient return for its owners – would not be adequately represented by the City.  
25 Yet, for its own strategical reasons, Surf Cup chose to delay for many months. In doing so, it did  
26 not follow the proper procedures.  
27

28 ///



1 ///

2 **2. Surf Cup does not have a direct and immediate interest in**  
3 **the action.**

4 The threshold question under section 387, subdivision (a) is whether the party seeking  
5 discretionary intervention has a direct and immediate interest in the action. *Reliance Insurance*  
6 *Co. v. Superior Court* (2000) 84 Cal. App. 4th at 383, 386. “The requirement of a direct and  
7 immediate interest means that the interest must be of such a direct and immediate nature that the  
8 moving party ““will either gain or lose by the direct legal operation and effect of the judgment.”  
9 [Citation.]’ [Citations.]” *City and County of San Francisco v. State of California* (2005) 128 Cal.  
10 App. 4th 1030, 1037. “Conversely, ‘An interest is consequential and thus insufficient for  
11 intervention when the action in which intervention is sought does not directly affect it although  
12 the results of the action may indirectly benefit or harm its owner.’ [Citation.]” *Id.*

13  
14 As explained above, Surf Cup does not even have a protectible interest in this litigation,  
15 let alone a direct and immediate interest in the action. To the extent Surf Cup would be harmed  
16 at all by having to meet its existing obligations under the Lease, the “harm” is consequential and  
17 therefore indirect.

18 **3. Surf Cup’s intervention will enlarge the issues.**

19 Surf Cup’s motion proves that its intervention will enlarge the issues. First, this action  
20 involves interpretation of the Grant Deed and FPCHA seeks only to enforce the express terms of  
21 the Grant Deed. Although Surf Cup is mentioned in the Complaint because it is the current  
22 tenant, the four corners of the Complaint involve the Grant Deed only. Surf Cup cites no legal  
23 authority that states that a party may intervene in an action simply because they are mentioned in  
24 the Complaint.

25 Second, to the extent Surf Cup intends to litigate how the use restrictions under the Grant  
26 Deed impact Surf Cup’s rights under the Lease, which it appears to be arguing, then it would be  
27 enlarging the issues. Indeed, Surf Cup even mentions elsewhere that the City’s interests and  
28 FPCHA’s interests “may converge” at some point in the litigation and the implication is that Surf

1 Cup will then be litigating *against* the City. The only issue Surf Cup would be litigating would  
2 be the rights and obligations under the Lease, which would greatly expand the issues in this  
3 otherwise very simple and straightforward litigation. Whatever happens on the Lease is between  
4 the City and Surf Cup, and it will likely be far more complicated, costly, and time-consuming  
5 than the issues presented in FPCHA’s complaint.

6 Third, Surf Cup actually admits that the issues will be expanded on two issues - Surf  
7 Cup’s interest in subsidizing youth soccer and its owner’s interests in maximizing the return on  
8 their investment. Since Surf Cup argues these interests must be protected through intervention,  
9 then clearly it seeks to litigate these issues. As such, if intervention is allowed, a simple dispute  
10 over the express language of a Grant Deed will suddenly involve how much money Surf Cup  
11 should be allowed to generate so it has enough to host underprivileged sports teams and also  
12 have enough left over to sustain the privileges of Surf Cup’s owners.

13 Accordingly, allowing Surf Cup to intervene will unduly expand the scope of this matter  
14 from interpretation of a relatively short, unambiguous instrument to a fact-laden fight over  
15 finances, profits, and charitable intentions.  
16

17 **4. Surf Cup’s reasons for intervention are outweighed by**  
18 **FPCHA’s reasons for opposing intervention.**

19 Surf Cup identified two reasons for intervening in this action – to ensure it would be able  
20 to generate enough income to continue subsidizing youth sports and provide its owners a  
21 satisfactory return on their investment. Not only are these reasons factually disproven by Surf  
22 Cup’s own prior declaration, they legally pale in comparison to FPCHA’s legitimate reasons for  
23 opposing intervention, such as overly complicating a simple case involving the interpretation of  
24 the plain language of a Grant Deed, unduly increasing the cost of litigation, and unnecessarily  
25 delaying the time it will take to resolve this straightforward declaratory relief action that will  
26 likely be decided on summary judgment.

27 **IV. CONCLUSION**

28 For the foregoing reasons, Plaintiff Fairbanks Polo Club Homeowner’s Association

1 respectfully requests this Court deny the Motion to Intervene filed by non-party Surf Cup Sports,  
2 LLC.

3  
4 DATED: 10/20/2023

By: /s/ Vatche Chorbajian  
VATCHÉ CHORBAJIAN  
Attorneys for Plaintiff,  
Fairbanks Polo Club Homeowner's Association

1  
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA )  
4 COUNTY OF SAN DIEGO )

5 I am employed in the County of San Diego, State of California. I am over the age of 18  
6 years and not a party to the within action. My business address is 6006 El Tordo Road, Suite 207,  
7 Rancho Santa Fe, CA 92067 (Mailing Address: PO BOX 661). I am familiar with the mail  
8 collection and process of the County in which the mail is deposited with the United States Postal  
9 Service on the same day that it is deposited for collection and mailing, in the ordinary course of  
10 business. On October 20, 2023, I served the following document: **PLAINTIFF FAIRBANKS**  
11 **POLO CLUB HOA’S OPPOSITION TO NON-PARTY SURF CUP SPORTS, LLC’S**  
12 **MOTION TO INTERVENE AS A DEFENDANT** on the parties by the following:  
13  
14

15 ***Attorneys for Defendant:***  
16 JENNY K. GOODMAN  
17 Email: jgoodman@sandiego.gov  
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21 ***Attorneys for Movant Surf Cup Sports, LLC:***  
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1 [ ] Via the United States Postal Service by causing a true and correct copy and/or original  
2 thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated  
3 area for outgoing mail.

4  
5 [X] Via Electronic Mail by causing such document to be served via electronic mail on the  
6 parties in this action via email address as stated on this proof of service.

7 [ ] Via Facsimile by causing such document to be served via facsimile on the parties in this  
8 action via facsimile numbers as stated on this proof of service.

9  
10 I caused such envelope to be deposited in the mail at San Diego, CA. The envelope was  
11 mailed with postage thereon fully prepaid. I declare under penalty of perjury under the laws of  
12 the State of California that the above is true and correct.

13 Executed this 20<sup>th</sup> day of October 2023 at San Diego, California.

14 */s/Elizabeth Mars*  
15 Elizabeth Mars