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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Fund for Empowerment, *et al.*,

Plaintiffs,

v.

City of Phoenix,

Defendant.

Case No: 2:22-cv-02041-PHX-GMS

**DEFENDANT’S ANSWER TO THIRD
AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Defendant City of Phoenix (the “City”) answers Plaintiffs’ Third Amended Complaint for Declaratory and Injunctive Relief as follows.¹

1. Deny that the City is experiencing an increase in homelessness. Admit that the allegation accurately represents figures in the 2023 Point-in-Time (“PIT”) count. Deny all remaining allegations.

2. Admit that the allegation accurately reflects the content of the article cited by Plaintiffs. Deny all remaining allegations.

¹ In its March 31, 2025 Order, the Court dismissed Counts Three and Four and dismissed all claims against Rachel Milne and Michael Sullivan. (Doc. 171.) Because the City is the sole remaining defendant, only the City files this Answer.

1 3. Admit that the City experiences significant heat in the summer months.
2 Admit that the allegation accurately reflects the content of both the article and the
3 Department of Justice (“DOJ”) Report. Deny all remaining allegations.

4 4. Deny.

5 5. Deny.

6 6. Admit that the City created the Office of Homeless Solutions (“OHS”) in
7 2022. Deny all remaining allegations.

8 7. Deny.

9 8. Deny.

10 9. Deny.

11 10. Deny.

12 11. Admit that the allegation accurately quotes the DOJ Report. Deny all
13 remaining allegations.

14 12. Deny.

15 13. Deny.

16 14. Admit only that this is an action brought pursuant to 42 U.S.C. § 1983.

17 15. Admit that jurisdiction is proper.

18 16. Admit that 28 U.S.C. §§ 2201-02 are the statutes that authorize a grant of
19 declaratory relief. Deny that Plaintiffs are entitled to declaratory relief as alleged.

20 17. Admit only that venue is appropriate in this District.

21 18. Upon information and belief, admit that Fund for Empowerment is an
22 incorporated nonprofit entity operating in Maricopa County. Without sufficient
23 information to admit or deny the remaining allegations.

24 19. Deny that the City or the Phoenix Police Department (“PPD”) conduct
25 “raids.” Deny that Massingille has experienced “raids” by the City or PPD. Deny that any
26 “raids” have resulted in the destruction of his personal property. Admit that Massingille
27 has received multiple criminal citations from PPD. Deny that Massingille has been cited
28

1 for camping or sleeping in public, as such acts are not, without more, cognizable criminal
2 offenses. Without sufficient information to admit or deny the remaining allegations, as
3 the allegation lacks specificity as to citing entity, crime, or date range.

4 20. Deny that the City conduct “sweeps.” Deny that any “sweeps” have
5 resulted in the destruction of Sissoho’s property. Admit that Sissoho has received
6 multiple criminal citations from PPD. Deny that Sissoho has been cited for sleeping in
7 public, as such an act is not, without more, a cognizable criminal offense. Without
8 sufficient information to admit or deny the remaining allegations, as the allegation lacks
9 specificity as to citing entity, crime, or date range.

10 21. Deny that the City conduct “sweeps.” Deny that any “sweeps” have
11 resulted in the destruction of Moore’s property. Deny that Moore has been “repeatedly
12 harassed by the PPD for sleeping in public places.” Without sufficient information to
13 admit or deny the remaining allegations.

14 22. Deny that the City or PPD conduct “raids.” Deny that Kearns has
15 experienced “raids” by the City or PPD. Deny that any “raids” have resulted in the
16 destruction of her personal property. Without sufficient information to admit or deny the
17 remaining allegations.

18 23. Deny that the City or the PPD conduct “raids.” Deny that Urban has
19 experienced “raids” by the City or PPD. Deny that any “raids” have resulted in the
20 destruction of his personal property. Admit that Urban has been cited for trespassing and
21 obstructing a public thoroughfare. Deny that Urban has been cited for loitering. Without
22 sufficient information to admit or deny the remaining allegations.

23 24. Admit that James has been cited multiple times. Without sufficient
24 information to admit or deny the remaining allegations.

25 25. Deny.

26 26. Deny that Idrissa is harassed by PPD. Without sufficient information to
27 admit or deny the remaining allegations.

1 27. Admit that Rich has been cited for violating City ordinances. Without
2 sufficient information to admit or deny the remaining allegations.

3 28. Admit.

4 29. Sullivan has been dismissed from the lawsuit, so no answer is required.

5 30. Sullivan has been dismissed from the lawsuit, so no answer is required.

6 31. Milne has been dismissed from the lawsuit, so no answer is required.

7 32. Milne has been dismissed from the lawsuit, so no answer is required.

8 33. Deny.

9 34. Deny.

10 35. Deny.

11 36. Deny.

12 37. Admit that the allegation accurately cites figures from the 2023 PIT count.
13 Deny all remaining allegations.

14 38. Admit that the allegation accurately cites figures from the 2022 and 2023
15 PIT counts. Deny all remaining allegations.

16 39. Admit that the allegation accurately cites figures from the 2022 PIT count.
17 Deny all remaining allegations.

18 40. Admit that the allegations accurately reflects figures and information from
19 the 2023 PIT count and the articles notes and accurately quotes the Maricopa Association
20 of Governments article.

21 41. Admit that at the end of 2021, the City had approximately 1,492 shelter
22 beds available. Admit that the City added numerous shelter beds in 2022 and 2023.
23 Admit that the City continues to open shelters and add shelter beds to address the needs
24 of its unsheltered residents. Deny all remaining allegations.

25 42. Admit that the allegation accurately quotes the OHS Program Report. Deny
26 all remaining allegations.

27 43. Deny.

- 1 62. Admit that the allegation accurately quotes a portion of the City code.
- 2 63. This allegation is a legal conclusion that requires no response.
- 3 64. Deny.
- 4 65. Admit that the allegation accurately quotes a portion of the City code.
- 5 66. Deny.
- 6 67. Deny.
- 7 68. Admit that the allegation accurately quotes portions of the City code and
- 8 state statutes.
- 9 69. Deny.
- 10 70. Deny.
- 11 71. Admit.
- 12 72. Admit that the allegation accurately cites a portion of the DOJ Report.
- 13 Deny all remaining allegations.
- 14 73. Deny.
- 15 74. Without sufficient information to admit or deny.
- 16 75. Deny.
- 17 76. Deny.
- 18 77. Deny.
- 19 78. Deny.
- 20 79. Deny.
- 21 80. Deny.
- 22 81. Deny.
- 23 82. Deny.
- 24 83. Without sufficient information to admit or deny.
- 25 84. Without sufficient information to admit or deny.
- 26 85. Without sufficient information to admit or deny.
- 27 86. Without sufficient information to admit or deny.

1 87. Without sufficient information to admit or deny.

2 88. Deny that the City conducts “raids.” Without sufficient information to
3 admit or deny the remaining allegations.

4 89. Deny that the City uses “statutes and ordinances to criminalize sleeping.”
5 Without sufficient information to admit or deny the remaining allegations.

6 90. Deny that the City conducts “sweeps” or that the City has unlawfully seized
7 any property at any time. Without sufficient information to admit or deny the remaining
8 allegations.

9 91. Deny.

10 92. Deny.

11 93. Deny.

12 94 – 211. Without sufficient information to admit or deny the allegations in
13 these paragraphs as to Plaintiffs’ individual experiences or Plaintiffs’ respective statuses
14 as sheltered or unsheltered. Deny that the City or PPD conducts “raids” or “sweeps.”
15 Deny that the City unlawfully cited Plaintiffs; cited Plaintiffs as a function of their
16 unsheltered status; harassed or threatened Plaintiffs; or unlawfully seized or destroyed
17 any of Plaintiffs’ property. Affirmatively allege that the City follows all applicable laws,
18 policies, and procedures in conducting cleanups, storing property, and disposing of
19 property, and that the City offers to connect displaced individuals with services. Deny all
20 remaining allegations not expressly admitted herein.

21 212. The City reasserts its responses to the allegations set forth in the above
22 paragraphs.

23 213 – 238. In response to paragraphs 213 through 238, the City alleges that
24 Plaintiffs raise legal conclusions to which no response is required. To the extent such
25 allegations involve the application of law to fact, the City lacks sufficient information to
26 admit or deny the allegations. The City disagrees with and disputes Plaintiffs’
27 interpretation of the legal background to this case and alleges affirmative defenses below.
28

1 The City denies all allegations of wrongdoing, and any allegation not expressly admitted
2 is denied.

3 239. The City reasserts its responses to the allegations set forth in the above
4 paragraphs.

5 240 – 263. In response to paragraphs 240 through 263, the City alleges that
6 Plaintiffs raise legal conclusions to which no response is required. To the extent such
7 allegations involve the application of law to fact, the City lacks sufficient information to
8 admit or deny the allegations. The City disagrees with and disputes Plaintiffs’
9 interpretation of the legal background to this case and alleges affirmative defenses below.
10 The City denies all allegations of wrongdoing, and any allegation not expressly admitted
11 is denied.

12 264 – 288. Count Three (Eighth Amendment – Excessive Fines) has been
13 dismissed, so no response is required to these allegations.

14 289 – 309. Count Four (Fourteenth Amendment – State Created Danger) has
15 been dismissed, so no response is required to these allegations.

16 **AFFIRMATIVE DEFENSES**

17 The following affirmative defenses may apply to Plaintiffs’ Third Amended
18 Complaint for Declaratory and Injunctive Relief: failure to state a claim, in whole or in
19 part, upon which relief can be granted; the City did not act under color of state law; the
20 City’s actions comported with applicable constitutional requirements at all times; the
21 City’s actions are in compliance with the Maricopa County Superior Court’s Under
22 Advisement Ruling dated September 29, 2023, which requires, among other things, that
23 the City maintain the area around downtown free of tents and other makeshift structures,
24 garbage, biohazards, and other impediments; statutes of limitations; laches; waiver;
25 estoppel; qualified or absolute immunity; mootness; and any other matter constituting an
26 avoidance or affirmative defense, as set forth in Rules 8(c) and 12 of the Federal Rules of
27 Civil Procedure.

1 The City reserves the right to assert additional affirmative defenses should they
2 become aware of additional defenses during this matter.

3 WHEREFORE, having fully answered Plaintiffs' Third Amended Complaint for
4 Declaratory and Injunctive Relief, the City respectfully requests that the Court:

5 A. Dismiss Plaintiffs' Third Amended Complaint for Declaratory and
6 Injunctive Relief with prejudice;

7 B. Award the City its attorneys' fees and costs incurred in connection with this
8 matter pursuant to any applicable statute, rule, or legal theory; and

9 C. Award such other relief as the Court deems just and appropriate under the
10 circumstances.

11 RESPECTFULLY SUBMITTED this 14th day of April, 2025.

12 **PIERCE COLEMAN PLLC**

13 By /s/ Aaron D. Arnson

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17 Stephen B. Coleman

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20 *Attorneys for Defendant*

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on April 14, 2025, I electronically transmitted the attached
23 document to the Clerk's Office using the ECF System for filing and caused a copy to be
24 emailed to the following:

25 **American Civil Liberties Union Foundation of Arizona**

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By: /s/ Mary Walker