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9 UNITED STATES DISTRICT COURT
 10 DISTRICT OF ARIZONA

12 Fund for Empowerment, *et al.*,
 13 Plaintiffs,
 14 v.
 15 City of Phoenix, *et al.*,
 16 Defendants.

Case No.: CV-22-02041-PHX-GMS

**DEFENDANTS’ ANSWER TO PLAINTIFFS’
 FIRST AMENDED COMPLAINT FOR
 DECLARATORY AND INJUNCTIVE RELIEF**

18 Defendants City of Phoenix (the “City”), Jeri Williams, and Michael Sullivan
 19 (collectively, “Defendants”) answer Plaintiffs’ First Amended Complaint for Declaratory
 20 and Injunctive Relief as follows:

INTRODUCTION

- 22 1. Admit.
- 23 2. Admit that the City has received federal funding through the American Rescue
 24 Plan Act, a portion of which has been allocated and spent to address solutions to
 25 homelessness. Admit that the City continues to develop solutions and expend federal funding
 26 to this end. Deny all remaining allegations.
- 27 3. Admit that the City has allocated federal funding for temporary shelter, heat
 28 relief, and additional services. Deny all remaining allegations, including any implication that

1 heat-related deaths were a result of the City's actions.

2 4. Admit that the 2022 Point-in-Time count is accurately represented for central
3 Phoenix. Admit that although the City is working diligently to secure more shelter space, the
4 City does not currently have enough shelter space to accommodate each unsheltered
5 individual. Deny all remaining allegations.

6 5. Admit that the 2022 Point-in-Time count is accurately represented.

7 6. Admit that the article cited by Plaintiffs is accurately quoted. Deny all
8 remaining allegations.

9 7. Admit that a number of unsheltered individuals congregate in an area of the
10 City that Plaintiffs refer to as the "Zone." Admit that area is near the Human Services
11 Campus.

12 8. Deny.

13 9. Deny.

14 10. Deny.

15 11. Deny that the City conducts "raids." Without sufficient information to admit or
16 deny the remaining allegation in this paragraph regarding alleged loss of property.

17 12. Deny.

18 **JURISDICTION & VENUE**

19 13. Admit only that this is an action for declaratory and injunctive relief pursuant
20 to 42 U.S.C. § 1983.

21 14. Admit that jurisdiction is proper.

22 15. Admit.

23 16. Admit that venue is appropriate in this District.

24 **PARTIES**

25 17. Without sufficient information to admit or deny the allegation in this
26 paragraph.

27 18. Upon information and belief, admit the Plaintiffs Kearns and Urban are
28 members of FFE. Without sufficient information to admit or deny the remaining allegation in

1 this paragraph.

2 19. Upon information and belief, admit that Plaintiff Kearns resides in Maricopa
3 County and has historically been unsheltered. Deny that the City or PPD has conducted any
4 raids or has indiscriminately destroyed personal property. Without sufficient information to
5 admit or deny the remaining allegations in this paragraph.

6 20. Upon information and belief, admit that Plaintiff Urban resides in Maricopa
7 County and has historically been unsheltered. Deny that the City or PPD has conducted any
8 raids or has indiscriminately destroyed personal property. Deny that Plaintiff Urban was ever
9 cited “in connection to his unsheltered status.” Without sufficient information to admit or
10 deny the remaining allegations in this paragraph.

11 21. Upon information and belief, admit that Plaintiff Massingille resides in
12 Maricopa County and is currently unsheltered. Deny that the City or PPD has conducted any
13 raids or has indiscriminately destroyed personal property.

14 22. Admit.

15 23. Admit.

16 24. Admit.

17 25. Admit.

18 26. Admit.

19 27. Without sufficient information to admit or deny the allegation in this paragraph.

20 **GENERAL FACTUAL ALLEGATIONS**

21 28. Admit.

22 29. Admit that since the COVID-19 pandemic, the number of residents
23 experiencing homelessness has increased. Deny all remaining allegations.

24 30. Admit that the circumstances that contribute to homelessness are complex and
25 varied.

26 31. Admit.

27 32. Admit.

28 33. Admit.

1 34. Admit that the City does not currently have enough shelter space to
2 accommodate the number of unsheltered individuals within the City, although the exact
3 number of available beds and the unsheltered population may fluctuate daily. Deny any
4 implication that the City is not working diligently to secure more shelter space and any
5 remaining allegations.

6 35. Admit that the City does not currently have enough shelter space to
7 accommodate the number of unsheltered individuals within the City, although the exact
8 number of available beds and the unsheltered population fluctuates daily. Deny any
9 implication that the City is not working diligently to secure more shelter space.

10 36. Admit that Plaintiffs accurately cite the report noted.

11 37. Admit that the City has engaged in cleaning of the streets and public right-of-
12 way. Deny that the City has engaged in “clean sweeps” and deny that the City is “targeting”
13 the unsheltered population. Deny all remaining allegations.

14 38. Admit that the City has engaged in cleaning of the streets and public right-of-
15 way. Deny that the City has engaged in “clean sweeps” and deny all remaining allegations.

16 39. Deny.

17 40. Deny.

18 41. Deny.

19 42. Deny.

20 43. Deny.

21 44. Deny.

22 45. Admit that a variety of equipment is utilized for cleaning of streets and the
23 public right-of-way.

24 46. Deny.

25 47. Deny.

26 48. Deny.

27 49. Deny.

28 50. Deny.

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51. Deny.

52. Deny.

53. Admit.

54. Admit that Plaintiffs accurately cite state law, although the correct citation is A.R.S. § 13-2906(A)(1).

55. Deny.

56. Admit.

57. Admit.

58. Deny.

59. Deny.

60. Admit.

61. Deny.

62. Deny.

63. Deny.

64. Deny.

65. Without sufficient information to admit or deny the allegation in this paragraph.

66. Admit, upon information and belief.

67. Deny.

68. Deny.

69. Deny.

70 – 110. In response to paragraphs 70 through 110, deny any allegations that the City conducts raids; is using criminal or other citations to criminalize homelessness; is attempting to remove anyone from the City; and indiscriminately destroys personal property. Without sufficient information to admit or deny the allegations in these paragraphs as to Plaintiffs’ individual experiences. Deny all remaining allegations not expressly admitted herein.

111 – 119. Deny that the City conducts raids; targets unsheltered individuals; and criminalizes homelessness. Without sufficient information to admit or deny the remaining

1 allegations in these paragraphs.

2 120. Admit that the Phoenix New Times wrote an article on November 15, 2022
3 regarding the City’s plan to clean the encampments in the City’s downtown area. Deny the
4 remaining allegations.

5 121. Admit that the City has restarted enhanced cleaning of the downtown area with
6 the greatest concentration of encampments.

7 122. Deny.

8 123. Admit that during cleanings, roads will be temporarily blocked, and
9 unsheltered individuals will be temporarily asked to leave the area so that City officials can
10 perform the cleaning necessary to remove threats to public health and safety. Deny any
11 implication that the City will violate the law or any Constitutional rights.

12 124. Deny.

13 125. Deny.

14
15 **CLAIMS FOR RELIEF**

16 **Count One**

17 **(Fourth Amendment Violation—Unlawful Seizure)**

18 **(42 U.S.C. § 1983)**

19 **(All Defendants)**

20 126. The City reasserts its responses to the allegations set forth in the above
21 paragraphs.

22 127 – 142. In response to paragraphs 127 through 142, Defendants allege that the
23 Plaintiffs raise legal conclusions to which no response is required. To the extent such
24 allegations involve the application of law to fact, Defendants lack sufficient information to
25 admit or deny the allegations. Defendants disagree with and dispute Plaintiffs’ interpretation
26 of the legal background to this case and alleges affirmative defenses below. Defendants deny
27 all allegations of wrongdoing, and any allegation not expressly admitted is denied.
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Count Two

(Fourth Amendment Violation – Deprivation of Property without Due Process)

(42 U.S.C. § 1983)

(All Defendants)

143. The City reasserts its responses to the allegations set forth in the above paragraphs.

144 – 157. In response to paragraphs 144 through 157, Defendants allege that the Plaintiffs raise legal conclusions to which no response is required. To the extent such allegations involve the application of law to fact, Defendants lack sufficient information to admit or deny the allegations. Defendants disagree with and dispute Plaintiffs’ interpretation of the legal background to this case and alleges affirmative defenses below. Defendants deny all allegations of wrongdoing, and any allegation not expressly admitted is denied.

Count Three

(Eighth Amendment—Cruel & Unusual Punishment)

(42 U.S.C. § 1983)

(All Defendants)

158. The City reasserts its responses to the allegations set forth in the above paragraphs.

159 – 173. In response to paragraphs 159 through 173, Defendants allege that the Plaintiffs raise legal conclusions to which no response is required. To the extent such allegations involve the application of law to fact, Defendants lack sufficient information to admit or deny the allegations. Defendants disagree with and dispute Plaintiffs’ interpretation of the legal background to this case and alleges affirmative defenses below. Defendants deny all allegations of wrongdoing, and any allegation not expressly admitted is denied.

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Count Four

(Municipal Liability under *Monell*)

(All Defendants)

174. The City reasserts its responses to the allegations set forth in the above paragraphs.

175 – 184. In response to paragraphs 175 through 184, Defendants allege that the Plaintiffs raise legal conclusions to which no response is required. To the extent such allegations involve the application of law to fact, Defendants lack sufficient information to admit or deny the allegations. Defendants disagree with and dispute Plaintiffs’ interpretation of the legal background to this case and alleges affirmative defenses below. Defendants deny all allegations of wrongdoing, and any allegation not expressly admitted is denied.

Count Five

(Fourteenth Amendment—State Created Danger)

(All Defendants)

185. The City reasserts its responses to the allegations set forth in the above paragraphs.

186 – 202. In response to paragraphs 186 through 202, Defendants allege that the Plaintiffs raise legal conclusions to which no response is required. To the extent such allegations involve the application of law to fact, Defendants lack sufficient information to admit or deny the allegations. Defendants disagree with and dispute Plaintiffs’ interpretation of the legal background to this case and alleges affirmative defenses below. Defendants deny any allegation that the City sends individuals into the “Zone,” relaxes enforcement of laws to encourage individuals to stay in the Zone, or actively transports individuals to the Zone or tells people to go to the Zone other than to seek services. Defendants deny all allegations of wrongdoing, and any allegation not expressly admitted is denied.

AFFIRMATIVE DEFENSES

The following affirmative defenses may apply to Plaintiffs’ First Amended Complaint for Declaratory and Injunctive Relief: failure to state a claim, in whole or in part, upon which

1 relief can be granted; Defendants did not act under color of state law; Defendants' actions
2 comported with applicable constitutional requirements at all times; laches; waiver; estoppel;
3 qualified or absolute immunity; separation of powers; mootness, as Plaintiffs' claims are or
4 will be moot during the pendency of this action; and any other matter constituting an
5 avoidance or affirmative defense, as set forth in Rules 8(c) and 12 of the Federal Rules of
6 Civil Procedure.

7 Defendants reserve the right to assert additional affirmative defenses should they
8 become aware of additional defenses during the course of this matter.

9 WHEREFORE, having fully answered Plaintiffs' First Amended Complaint for
10 Declaratory and Injunctive Relief, Defendants respectfully request that the Court:

11 A. Dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive
12 Relief with prejudice;

13 B. Award Defendants their attorneys' fees and costs incurred in connection with
14 this matter pursuant to any applicable statute, rule, or legal theory; and

15 C. Award such other relief as the Court deems just and appropriate under the
16 circumstances.

17 RESPECTFULLY SUBMITTED this 10th day of February, 2023.

18 **PIERCE COLEMAN PLLC**

19 By: /s/ Aaron D. Arnson _____

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2023, I electronically transmitted this document to the Clerk’s Office using the ECF System for filing, causing a copy to be electronically transmitted to the following ECF registrants:

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