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Attorneys for Proposed Intervenors

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Fund for Empowerment, *et al.*,

Plaintiffs,

v.

City of Phoenix, *et al.*,

Defendants.

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

Notice of Motion and Motion to Intervene

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Freddy Brown, Joel Coplin, Jo-Ann Coplin, Deborah Faillace, Karl Freund, Gallery 119, Michael Godbehere, Jordan Evan Greeman, Rozella Hector, Daniel Langmade , Dianne Langmade, Ian Likwarz, Matthew Lysiak, Michael Lysiak, Old Station Sub Shop, PBF Manufacturing Co. Inc., Phoenix Kitchens LLC, and Don Stockman, (“Proposed Intervenors”) will and hereby do move this Court for leave to intervene as of right as a defendant in this action pursuant to Fed. R. Civ. P. 24(a). In the alternative, Proposed Intervenors seek permissive intervention pursuant to Rule 24(b).

The grounds for this motion are as follows:

1 1. Proposed Intervenorers are the plaintiffs in the ongoing case *Brown v. City of*
2 *Phoenix*, No. CV2022-010439 (Maricopa County Super. Ct., filed Aug. 10, 2022). In that
3 case, they are suing the City of Phoenix for maintaining a public nuisance by operating,
4 overseeing, and maintaining the homeless encampment known as the Zone, which is also
5 the subject of this action. Proposed Intervenorers own property and operate businesses in the
6 Zone, and are harmed by the City's maintenance of this public nuisance. In its defense in
7 that case, the City contends, in part, that it is prohibited by *Martin v. City of Boise*, 920
8 F.3d 584 (9th Cir. 2019), from taking certain steps necessary to abate such a nuisance. The
9 Proposed Intervenorers deny that.

10 2. The Maricopa County Superior Court in *Brown* has issued an injunction requiring
11 the City to take appropriate steps before July 10, 2023, to abate the public nuisance it has
12 created in the Zone by transporting unsheltered persons to the Zone, refusing to enforce
13 laws such as those against public urination, defecation, and public camping, and by
14 allowing encampments and obstructions on the City's property in the Zone.

15 3. The Plaintiffs in this lawsuit contend that it is unconstitutional for the City of
16 Phoenix to enforce anti-camping ordinances in the Zone. On December 15, 2022, this
17 Court issued a preliminary injunction that effectively restated the holding of *Martin* and
18 that limited the City's ability to enforce legal prohibitions against camping and/or sleeping
19 on public property and that separately limited the City's authority to seize and/or destroy
20 property in the Zone. The Plaintiffs have now filed an Order to Show Cause seeking a
21 finding of civil contempt against the City for allegedly violating that injunction.

22 3. Intervention as of right is warranted under Rule 24(a)(2) because (1) this action
23 is timely; (2) the Proposed Intervenorers have a substantial interest in the subject of this suit
24 because an order forbidding the City from taking actions that could help the abatement of
25 the nuisance at issue in *Brown* will result in the continuance of that nuisance and the
26 continuing harms to the Proposed Intervenorers' property rights, economic interests,
27 personal safety, and other interests involved in the *Brown* case; (3) the disposition of this
28 action will, as a practical matter, impair and impede the Proposed Intervenorers' ability to

1 protect those interests; and (4) the Proposed Intervenor's interests are not adequately
2 represented by the existing Defendants, who are also defendants in the *Brown* case and
3 whose interests may not be fully adverse to the Plaintiffs' interests in this matter.

4 4. In the alternative, Proposed Intervenor should be permitted to intervene under
5 Rule 24(b)(1) because they seek to address some common legal questions of whether
6 *Martin* indeed bars the City from taking steps necessary to abate the nuisance it is currently
7 maintaining in the Zone.

8 This motion is based on this Notice of Motion and Motion, the simultaneously filed
9 Memorandum of Points and Authorities, the files and records of this action, and other such
10 argument or evidence as may be presented if the Court wishes to convene a hearing.

11
12 RESPECTFULLY SUBMITTED this 23rd day of May, 2023.

13
14 **TULLY BAILEY LLP**

15 /s/ Stephen W. Tully

16 Stephen W. Tully
17 Michael Bailey
18 Ilan Wurman
19 *Attorneys for the Plaintiffs*
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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2023, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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By: /s/ Stephen W. Tully

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