

EXHIBIT 1

Clerk of the Superior Court

*** Filed ***

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P. McKinley

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

HONORABLE SCOTT BLANEY

CLERK OF THE COURT
P. McKinley
Deputy

FREDDY BROWN, et al.

STEPHEN W TULLY

v.

CITY OF PHOENIX

AARON D ARNSON

MICHAEL G BAILEY
ILAN WURMAN
TRISH STUHAN
STEPHEN B COLEMAN
TIMOTHY SANDEFUR
JUDGE BLANEY

UNDER ADVISEMENT RULING

The Court has reviewed and considered the following:

1. Plaintiffs' *Application for Preliminary Injunction*;
2. Defendant City of Phoenix's *Opposition to Plaintiff's Application for Preliminary Injunction*;
3. Plaintiffs' *Reply in Support of Their Application for Preliminary Injunction*;
4. The Goldwater Institute's *Amicus Brief in Support of Plaintiffs and In Support of Motion for Preliminary Injunction and Motion for Expedited Hearing*;
5. The arguments and evidence received at the October 27, 2022 combined Oral Argument on Defendant's *Motion to Dismiss* and Evidentiary Hearing on Plaintiffs' *Application for Injunctive Relief*;
6. The arguments received at the December 15, 2022 follow-up Oral Argument;

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

7. Plaintiffs' *Brief*, filed pursuant to the Court's January 31, 2023 Order (filed 02/01/2023);
8. Defendant City of Phoenix's *Response in Opposition to Plaintiffs' Brief*;
9. The *Declaration of Aaron Aftergood*, dated February 6, 2023;
10. The *Declaration of Scott Hall*, dated February 13, 2023; and
11. Other relevant portions of the record in this case.

I. FACTUAL BACKGROUND

Plaintiffs brought the present action asking the Court to declare that Defendant City of Phoenix has created, maintained, and/or failed to abate a public nuisance in a neighborhood in Phoenix informally referred to as "The Zone." Plaintiffs are property owners, residents, and/or business owners in the Zone. Plaintiffs base their action on allegations, many of which are undisputed, that there is a substantial portion of homeless individuals that have moved into the area and set up semi-permanent tent encampments on the public sidewalks, public grounds, and public rights of way. Plaintiffs allege, *inter alia*, that the City refuses to enforce criminal and quality-of-life laws prohibiting loitering, disturbing the peace, drunken and disorderly conduct, drug use, domestic violence, and obstruction of streets, sidewalks, and other public grounds inside the Zone.

The City argues in response that it has discretion regarding how it enforces its policies and which policies to adopt and that such issues are therefore not appropriate for judicial review. The City also argues that it has discretion regarding how to allocate resources. The City therefore argues that its discretion on how to address the situation in the Zone precludes Plaintiffs from seeking relief from the Court. The Court disagrees.

Having considered the filings and the evidence, including the sworn testimony, exhibits, and demeanor of the witnesses, **THE COURT MAKES THE FOLLOWING FINDINGS:**

1. Plaintiffs are property owners, residents, and/or business owners who live, work, or own businesses or property in an area of Phoenix informally referred to as "the Zone," which encompasses an area roughly between 7th and 15th Avenues and between Van Buren and Grant Streets.
2. The homeless population in Phoenix is largely concentrated in the Zone.
3. The City controls the rights of way in the Zone, including the streets, alleys, avenues, and sidewalks.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

4. Located within the Zone is the Human Services Campus, which occupies 13 acres with seven buildings. Approximately 15 different providers, non-profit organizations, and government agencies provide various services at the Campus to homeless individuals. The Human Services Campus began operation in 2005 and has operated continuously since that time.
5. Prior to 2018, there was some limited homelessness in the area but there were no tents or semi-permanent encampments. Residents generally considered the area safe despite the existence of the Human Resources Campus and its clients.

The City Stopped Enforcing Certain Laws in the Zone:

6. The City changed its enforcement policies in the 2018-2019 timeframe. The City intentionally stopped – or at least materially decreased – enforcement of criminal, health, and other quality of life statutes and ordinances in the Zone. The City’s decision was based in part on the Ninth Circuit Court of Appeals’ ruling in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), which held, *inter alia*, that municipalities could not enforce public camping laws against homeless individuals who do not have access to adequate temporary shelter, whether because they do not have the means to pay for it or because it is not available to them for free. The *Martin* decision was originally issued in 2018 and was reissued in 2019 as modified.
7. The City erroneously applied the *Martin* case; interpreting its narrow holding as precluding the enforcement of public camping laws whenever the homeless population in Phoenix exceeded the number of available shelter beds. The City also stopped or greatly decreased enforcement of other health, quality of life, and even criminal laws and ordinances in the Zone.
8. There are a substantial number of individuals that have migrated into the Zone and are living on the street since the City’s change in policy. These individuals have set up semi-permanent tent encampments on the public sidewalks, public grounds, and public rights of way, making the Zone the largest “homeless encampment” in the State of Arizona.
9. The City currently has a policy of transporting homeless individuals to the Zone from other areas of the City. Phoenix police officers provide “courtesy rides” for homeless individuals from throughout Phoenix to the Human Services Campus in

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

the Zone. City officials testified that the transportation to the Zone is for the purpose of assisting the homeless to obtain services from the Campus; not to encourage them to camp in the area. But the City simply drops the homeless off in the area and thus the City's "courtesy rides" to the Zone inevitably result in more homeless individuals residing on the streets of the Zone.

10. The City's decision to forego enforcement of criminal, health, and other quality of life statutes and ordinances in the Zone continues to this day. City representatives from the Office of Homeless Solutions testified that it is the City's strategy to keep homeless individuals who commit crimes out of the criminal justice system, reasoning that the City "would prefer any human being not to become justice involved." Thus, if a homeless individual is arrested for an alleged crime, the City's strategy is to pursue services for the individual instead of a conviction. The Court did not receive evidence that the City's strategy extends to individuals who are not homeless.
11. The City limits the discretion of police officers working in the Zone to enforce applicable laws and ordinances. Police officers working in the Zone have informed Plaintiffs that "the Zone is off-limits to enforcement." Police officers have specifically advised Plaintiffs that if they want the police to enforce the laws, they need to go to their policymakers and tell them to let the police enforce laws in the Zone.¹

¹ The Court did not receive a hearsay objection to this testimony. Moreover, the Court found the witness and his testimony to have been credible. The Court further notes that the City's witness, Commander Brian Freudenthal, disputed the testimony that individual officers are not permitted to enforce laws in the Zone. Commander Freudenthal is the commander with responsibility for the area encompassing the Zone and he testified that police officers have individual discretion regarding whether to arrest an offender in the Zone – they have not been told to avoid arresting offenders. But the Court notes that this testimony is directly contradicted by the City's stated policy positions. *See* Finding No. 10. The testimony is also contradicted by the statements of individual police officers working in the Zone. *See* Finding No. 11. And Commander Freudenthal's testimony that officers are permitted to enforce the laws in the Zone at their discretion is greatly undermined by the actual conditions in the Zone; appalling conditions that continue to deteriorate. *See* Finding Nos. 8, 12, 15, 17-20, 24-27, 32, & 44. Commander Freudenthal also testified that the concentration of police officers around the Zone is higher than in any other area of the City. Although relevant, this testimony does not explain

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

12. Emergency calls to the City result in delayed response times and often do not resolve the issues. Plaintiffs often call the police 2-3 times every day. It typically takes 30-40 minutes for an officer to arrive to investigate. Even after the officers arrive – if the offender is still present – the officers do not usually remove the individual from the area. Officers will instead ask the homeless person to leave private property but will not remove that person from public easements or sidewalks just steps away from the private property, even if the person is intoxicated or high on drugs.

13. An unknown portion of the homeless population in the Zone is “service resistant,” meaning that they refuse to accept services when offered and will instead opt to live on the street in the Zone. The City uses “outreach providers” to attempt to get people into services. But a portion of the homeless in the Zone resist going into shelters because they have accumulated a large number of possessions on the street or because they are prohibited from taking contraband into the shelter, for example: drugs and weapons. Although unthinkable for the general public, there are some individuals in the Zone that choose to live in a tent on the sidewalks or in the street, with three meals each day provided by the Human Services Campus and the ability to engage in antisocial behavior and drug use. Although City representatives admitted that a portion of the Zone was service resistant, the City was unable to provide the Court with an estimate of the percentage of homeless in the Zone that refuse services.

14. Closely related to Finding No. 13, the Court has not received credible evidence that every individual in the Zone lacks access to adequate temporary shelter, whether because they do not have sufficient means to pay for it or because it is unavailable to them for free.² Conceivably, a large portion of the homeless in the Zone likely lack access to shelter. But in the absence of credible evidence, the Court will not infer that every individual in the Zone that engages in the conduct detailed below lacks realistic access to adequate temporary shelter. For example, a service resistant individual could not be said to lack access to adequate temporary shelter if he or she is refusing the service. In other cases, individuals may have the means to pay for adequate temporary shelter. When questioned at the hearing, City representatives could not tell the Court how many of the homeless in the Zone were

the response delays alleged by other witnesses, nor does it mitigate the negative impact of precluding officers from enforcing statutes and ordinances.

² See *Martin*, 920 F.3d at n.8.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

already receiving government benefits that they could use toward housing, or how many were receiving a military pension or some type of regular disability payments.

Increase in Violent Crime:

15. There has been a dramatic increase in violent crime in the Zone since 2018, including assault and homicide. Police officers have responded on multiple occasions to situations involving burned or burning human bodies in the Zone, including that of a burned, deceased newborn baby found lying in the street. Business owners and employees no longer feel safe and must travel in groups. There is a constant risk of violent crime to property owners, their family members, business owners and their employees while on their property or in their businesses. Employees of businesses in the Zone have been violently attacked and they face verbal confrontations with homeless individuals almost daily. There are also frequent fights involving anywhere from two to six homeless individuals.
16. The City does not send sanitation workers into the Zone without security officers. City representatives testified that the City provides security officers with the sanitation crews for the safety of individuals living in the Zone, reasoning that the heavy equipment could be a danger to residents. But the Court does not find that reasoning to be credible. A sanitation worker wearing a reflective vest could provide the necessary safety precautions that are provided at any job site, such as acting as a “ground guides” for heavy equipment. The Court instead finds that the City attaches security guards to sanitation crews as a necessary precaution for the protection of the sanitation workers.
17. Homeless individuals in the Zone receive threats from other homeless individuals – and even from “advocates” for the homeless – warning them not to cooperate with City officials, such as by voluntarily moving their possessions during clean-ups. This alarming fact suggests that there is a violent, organized crime element taking root in the Zone.

Increased Public Drug Use:

18. There has been a proliferation in public drug use in the Zone since 2018. This includes use of needles and the smoking of dangerous substances, such as fentanyl and methamphetamine. Individuals in the Zone often smoke these dangerous substances by the doors and windows of Plaintiffs’ businesses and homes, resulting

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

in the toxic smoke coming into the residence or business and forcing Plaintiffs and their employees to risk breathing it in. There are frequent overdose cases on the property of area businesses and driveways. Plaintiffs routinely find used needles on their properties, in addition to pieces of tin foil with burned residue of fentanyl pills all over the sidewalks. Business owners and property owners often find intoxicated, unconscious individuals sleeping right up against and/or on the patios of their properties and businesses.

The Zone Has Become a Biohazard:

19. Since 2018, the Zone has evolved into a serious environmental nuisance – a biohazard – that empties into the state’s waterways. The City does not dispute this fact. There is a considerable amount of human waste, food waste, and trash dumped on the streets or around the streets. Homeless individuals defecate and urinate in the open on the streets, sidewalks, lawns, and buildings. Property and business owners are forced to clean up the human waste each day. When it rains, the soil in and around the area is so soaked with urine and human feces that the rain intensifies the smell. Business and property owners do not go outside when it rains because of the puddles full of human urine and feces. The proliferation of human excrement and half-eaten food causes an infestation of flies and other insects in the Zone.
20. As stated above, there are used needles lying everywhere in the Zone. And users leave pieces of tin foil with burned residue of fentanyl pills in them on the lawns, in the street, and on the sidewalks. The fentanyl-tainted pieces of tin foil blow around in the wind and come into contact with residents, business owners, their employees, and even their children.
21. There is a dramatic increase in trash since 2018. The City has provided some dumpsters in the Zone but they are constantly overflowing. The issue is often exacerbated when the homeless climb into the dumpsters and throw the trash onto the street. Individuals living on the street dump their trash onto the sidewalks and curbs and when the wind blows, the trash is carried all over the businesses, sidewalks, and properties.
22. When there is a discharge into the storm drains in the City of Phoenix, that discharge ends up in the rivers, washes, and retention basins of the state. The storm drains in the Zone are clogged with human excrement, rotting food, and trash. The

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

homeless dump buckets of human waste into the storm drains. This toxic material ends up in the Rio Salado River Parkway.

23. The City has engaged in periodic cleaning of the Zone but has not been focused on abatement. The cleanings have therefore been limited in their effectiveness. When City workers arrive to clean the streets, they move some of the people that are encamped so that they can clean but then allow the individuals to return. Workers generally clean from the curb to the street but leave untouched everything that is staged by the homeless from the curb to the fence line. City workers do not clean any space that has tents or semi-permanent structures on them. The City stopped doing these clean-ups in January of 2022 because many of the homeless refused to cooperate, claiming that the City was violating their constitutional rights by moving their belongings for the cleanup.³

Property Crimes:

24. Residents and business owners in the Zone have seen a dramatic increase in property crimes with the influx of homeless individuals since 2018. Plaintiffs experience break-ins of their properties during and after business hours, even when the buildings are occupied. Business owners have had to install multiple locks over and over again just to offer some sort of temporary security but the homeless continue breaking in to steal anything of value. Plaintiffs also experience frequent break-ins of their vehicles, with one Plaintiff having found a cinderblock thrown through the window of his truck so that the thief could look for anything of value inside.

Prostitution and Public Indecency:

25. The increase in homeless individuals and drugs, coupled with the City's decrease in enforcement, has resulted in illegal prostitution, frequent public nudity, and lude acts in plain view directly adjacent to Plaintiffs' businesses and properties. At least several times each month, business owners and/or their employees witness sex acts right out in the open or in tents with open tent flaps and open windows. There is frequent prostitution in the evenings and sex workers walk up and down the street offering to engage in sex for money. There is a tent outside one of the Plaintiffs' properties and it is routinely used for prostitution. That particular plaintiff has been solicited when arriving at or leaving his property. There is also frequent public

³ The Court was informed at the last hearing that the City planned to resume the cleanings.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

masturbation in plain view of business owners, their employees, and family members.

Increased, Unabated Fire Hazards:

26. The individuals that reside on the streets of the Zone light fires for cooking and for heat, in the open, often with nobody tending to the bonfires because the individual has passed out or walked away. At times the wind picks up and adds to the danger of the fires in the closely-packed line of tents and makeshift structures. Structure fires are not uncommon in the Zone.

Blocking of Rights of Way:

27. Rights of way in the Zone are blocked. Wall-to-wall tents and encampments line the sides of the streets. The tents and makeshift structures block the entire sidewalk and portions of the street with buckets of human excrement spilling over into the streets. In most areas the tents extend five to eight feet into the street, blocking traffic, including emergency vehicles. Property and business owners find it impossible to park. Safety is also an issue because the openings to the tents are in the street, and anyone can emerge from the tent into the street, without warning and while intoxicated. Other individuals in the Zone do not have tents. Instead, they use tarps that are supported by chains located in the easements, further blocking the rights of way.

Arbitrary Enforcement:

28. The City refuses to remove the tents and the other obstructions, despite the hazards they present.
29. The City is currently applying a different standard to one of the long-time businesses in the Zone. The area immediately adjacent to Phoenix Kitchen's building – the right of way between the building and the street – was previously lined with tents and other makeshift structures from the homeless. The City moved the homeless encampment off of the right of way so that necessary gas line work could be completed. The contractor doing the gas line work constructed a temporary fence after the encampments were removed from the right of way. While the fence was in place, Phoenix Kitchens installed some artistic sculptures on the right of way to discourage the homeless from returning to the right of way with

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

their encampments after completion of the work. The City contacted Phoenix Kitchens and told the business that it would need to obtain a revocable use permit to encroach on the right-of-way. Phoenix Kitchens promptly filed an application for the revocable use permit. But the City denied the application for a permit and ordered Phoenix Kitchens to remove the unauthorized sculptures within thirty days. The City relied on Phoenix City Code Section 31-9(B), which makes it “unlawful for any person to temporarily or permanently place, construct, maintain, or install a minor encroachment in the public right-of-way.”

30. There is no evidence before the Court that the City has sought to enforce Section 31-9(B) by ordering the removal of any tents, structures, or obstructions encroaching in the right of ways in the Zone, despite the obvious health and safety hazards presented by the structures, as detailed above. But the City is enforcing the encroachment prohibition against one of the businesses that filed this lawsuit, despite no showing whatsoever that the artistic sculptures create the health and safety issues created by the encampments.

Continued Deterioration of the Environment in the Zone:

31. Plaintiffs have experienced a dramatic decrease in customers and foot traffic to their businesses and a decrease in the value of their properties that corresponds to the increase in homeless encampments in the Zone.
32. The situation inside the Zone has gotten progressively worse, not better, since 2018 and has become dire since November of 2021.
33. The impact of the unsheltered population in the Zone far exceeds the impact faced by any other Phoenix neighborhood. Plaintiffs have suffered identifiable harm since 2018 resulting from the situation inside the Zone.
34. Plaintiffs testified that the State of Arizona manages to keep its areas of responsibility near the Zone – such as the State Cemetery – clean and free of homeless encampments. Plaintiffs testified that they observe consistent enforcement of quality of life laws from the state police on state land.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

The City's Mitigation Efforts:

35. Plaintiffs attempted to work with the City to resolve the issues identified above before filing the present lawsuit, including the creation and submission to the City of a seemingly cost-effective plan to build outdoor shelter space on acceptable areas of City property.
36. Plaintiffs presented much of their evidence to the City on January 27, 2020, before the crises really got out of hand. Plaintiffs testified that they later presented their concerns and proposed solutions in a meeting with their City Council representative and other City officials in February of 2022; explaining the benefits of their proposed plan and pleading for assistance. But up until the filing of the present lawsuit, the City and its representatives did not materially respond to Plaintiffs' concerns.
37. Plaintiffs also identified for the City, several other cities, including Denver, Santa Rosa, and Los Angeles, where structured outdoor camping spaces have been created on city lots without creating public nuisances. Plaintiffs identified for City representatives large areas of vacant City land where such outdoor camping spaces could be erected.
38. Although the City identified many of the issues detailed above in 2020, it was not until the filing of this lawsuit was imminent that the City began to take some meaningful action.
39. For example, the City created the Office of Homeless Solutions to address the City's homelessness problem just one month before this lawsuit was filed. On October 26, 2022, after the filing of the lawsuit and less than 24 hours before the hearing on which this Ruling is based, the City approved for the first time the construction of a "sprung structure," which will take at least nine months to construct and should provide about 200 shelter beds. City representatives testified that the City also intends to open other shelters in the future, such as a 200-bed shelter on Washington Street. But that shelter is seasonal and merely intended to serve as a "heat respite shelter" in the summer months. There is no evidence that the shelter is meant to specifically address the homeless population in the Zone. Most of the shelters that the City is considering are specialty shelters intended for specific tenants, such as domestic violence shelters, transitional housing for

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

working homeless men, COVID response hotels, etc., that are not intended to provide general shelter service to the 1000-plus homeless population in the Zone.

40. With few exceptions, the action items about which City representatives testified centered around the creation of more bureaucracy, additional staff positions, and obtaining additional funding for programs to vaguely address homelessness in general. The Court received very little evidence – if any – that the City intends to take immediate, meaningful action to protect its constituent business owners, their employees, and residents from the lawlessness and chaos in the Zone.
41. Structured campgrounds on vacant City lots would be an effective solution to the issues in the Zone. Plaintiffs have repeatedly proposed the creation of structured campgrounds. Such City-controlled facilities could provide bathrooms and hygiene areas. They could also provide security. These campgrounds have already been successfully employed by other cities to address the homeless issue by providing temporary shelter. The City admits that it is possible to get all the unsheltered people in the Zone into a structured campground if the City made the structured campground its priority. The City further admits that temporary, cheaper, emergency shelters would solve the issue of homelessness for some people, even if it does not solve the issue for everybody. And finally, structured campgrounds would solve the City's concerns about the application of the *Martin* case because the additional shelter beds would provide an alternative to sleeping on the street. Thus, structured campgrounds would eliminate any legal prohibition on the enforcement of anti-public camping laws.
42. City leaders are **not** considering the creation of controlled, outdoor camping spaces on vacant City property because they would prefer to provide air conditioning and heat to homeless shelters, and they do not believe they can provide air conditioning and heat to the tents in a controlled camping space. But the Court notes that the privately-owned tents and makeshift shelters that individuals have illegally constructed in the Zone also do not have air conditioning or heat and are largely in disrepair, providing little in the way of shelter to those residing in them. The individuals start bonfires to cook and keep warm. Moreover, many of the individuals in the Zone have no tent or shelter whatsoever; they instead sleep right up against Plaintiffs' buildings, on Plaintiffs' patios, and on sidewalks or lawns.
43. Conditions have continued to worsen in the Zone, even after the creation of the Office of Homeless Solutions.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

44. Notably, the Human Services Campus has been providing services at its current location since 2005, but the dramatic increase in homeless individuals, violence, drugs, biohazard, and the corresponding deterioration of the neighborhood did not begin until 2018.

II. LEGAL ANALYSIS

An applicant for injunctive relief must show: **(1)** a strong likelihood of succeeding on the merits; **(2)** the possibility of irreparable injury not remediable by damages if relief is withheld; **(3)** a balance of the equities in its favor; and **(4)** that public policy favors granting the relief. *See, e.g., IB Property Holdings, LLC v. Rancho Del Mar Apartments, Ltd. Partnership*, 228 Ariz. 61, 64-65, 263 P.3d 69, 72-73 (App. 2011); *Smith v. Arizona Citizens Commission*, 212 Ariz. 407, 410-411, 132 P.3d 1187, 1190-91 (2006). This test is flexible based on specific facts and circumstances and is a sliding scale. *Id.* The Court will address each of these factors.

1. Strong likelihood of succeeding on the merits.

Declaratory Judgment.

A.R.S. § 12-1831 grants this Court the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” This case presents a justiciable controversy in that “there are adverse claims asserted upon present existing facts that have ripened for judicial review.” *Planned Parenthood Center of Tucson, Inc. v. Marks*, 17 Ariz.App. 308, 310 (App. Div. 2 1972). And Plaintiffs’ allegations of public nuisance provide the underlying cause of action necessary to support a declaratory action. *Ansley v. Banner Health Network*, 248 Ariz. 143, 151 (2020).

The conditions that exist in the Zone fall squarely within the statutory definitions of “public nuisance.” Most notably, A.R.S. § 36-601(A)(4) declares the following to be a public nuisance dangerous to the public health: “Any place, condition or building that is controlled or operated by any governmental agency and that is not maintained in a sanitary condition.” The statute could not be more applicable to the Zone, nor could the following Findings detailed above: Finding Nos. 19-23.

Other Arizona statutes also establish that the Zone is a public nuisance. For example, A.R.S. § 13-2917(A)(1) defines a public nuisance as “[A]nything ... to be injurious to health (*see* Finding Nos. 15-22, 25-27, above), indecent (*see* Finding No. 25), offensive to the senses (*see* Findings Nos. 15-22, 25-27) or an obstruction to the free use of property that interferes with the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

comfortable enjoyment of life or property by an entire community or neighborhood or by a considerable number of persons.” *See* Finding Nos. 15-22, 24-27.

A.R.S. § 13-2917(A)(2) defines public nuisance as “[A]nything ... to unlawfully obstruct the free passage or use, in the customary manner, of any ... public park, square, street or highway. *See* Finding No. 27.

A.R.S. § 36-601(A)(1) declares the following to be a public nuisance: “Any condition or place in populous areas that constitutes a breeding place for flies, rodents, mosquitoes and any other insects that are capable of carrying and transmitting disease-causing organisms to any person or persons....” *See* Finding Nos. 19-23.

A.R.S. § 36-601(A)(5) declares the following to be a public nuisance: “All sewage, human excreta ... garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease or between any person or persons.” *See* Finding Nos. 19-23.

A.R.S. § 36-601(A)(9) declares the following to be a public nuisance: “The pollution or contamination of any domestic waters.” *See* Finding No. 22.

THE COURT THEREFORE FINDS that the City is maintaining a public nuisance in the Zone, as the term “public nuisance” is defined in Arizona statutes.

To support a private cause of action for public nuisance at common law, Plaintiffs must show: (1) an unreasonable interference with a right common to the general public; (2) a causal connection between the City’s activity (and as additionally alleged here – failure to act); and (3) that the acts committed by the individuals in the Zone affect Plaintiffs’ use and enjoyment of their real property, a damage special in nature and different in kind from that experienced by Phoenix residents generally. *Armory Park Neighborhood Association v. Episcopal Community Services In Arizona*, 148 Ariz. 1, 4-8 (1985) (citing Restatement (Second) of Torts §§ 821D & 821C); *see also City of Phoenix v. Johnson*, 51 Ariz. 115, 123 (1938) (recognizing nuisance cause of action against City of Phoenix for its maintenance of and failure to repair faulty sewer system next to resident’s property).

Regarding the second element, Plaintiffs have established that the City created and/or is maintaining the alleged nuisance in the Zone. *See* Finding Nos. 6, 8-12, 15, 17-27, 43, 44. Most notably, the City transports homeless individuals from other parts of Phoenix into the Zone so that they can receive services from the Human Services Campus. *See* Finding No. 9. There is no evidence that the City transports these homeless individuals back out of the Zone after they meet with Campus providers and thus they are left in the Zone.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

The evidence also strongly suggests that the City created and maintains the dire situation that currently exists in the Zone through its failure, and in some cases refusal, to enforce criminal and quality of life laws in the Zone. The City's refusal to meaningfully enforce statutes and ordinances in the Zone has created a classic "siren song" to certain individuals that are enticed at their peril by the Zone's drugs, sex, and lack of societal rules.⁴

Regarding the third element – that the harm is special in nature to Plaintiffs as residents and property owners in the Zone – Plaintiffs established that the nuisance is concentrated in the Zone where Plaintiffs work, live, and own property. *See* Finding Nos. 1, 4, 5, 8, 31-34.

Plaintiffs may also establish the first element – "unreasonable interference" – by demonstrating that the conduct of individuals inside the Zone "is proscribed by a statute, ordinance or administrative regulation." Restatement (Second) of Torts § 821B(2)(b); *see also Armory Park Neighborhood Association*, 148 Ariz. at 9. As discussed above, the conditions in the Zone fall squarely with the statutory definitions of "public nuisance."

In addition to the statutory definitions of public nuisance, Plaintiffs may establish the first element by demonstrating: (1) that "the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience"; or (2) "the conduct is of a continuing nature or has produced a permanent or long-lasting effect and, as the actor knows or has reason to know, has a significant effect upon the public right." Restatement (Second) of Torts § 821B(2)(a)&(c); *see also Armory Park Neighborhood Association*, 148 Ariz. at 7-8. The Court has little difficulty finding, based upon the Findings and analysis above, that Plaintiffs have sufficiently established "a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience." *See* Finding Nos. 8, 12, 15-22, 24-27, 43.

Mandamus Relief.

Plaintiffs seek an order requiring the City to abate the nuisance. The City argues in response that the City has discretion in how to perform the functions that Plaintiffs ask the Court to mandate, particularly law enforcement functions, and therefore cannot be compelled to abate the nuisance. The City is only partially correct. "[A] mandamus action cannot be used to compel a government employee to perform a function in a particular way if the official is granted any discretion about how to perform it." *Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 465

⁴ The Court's reference to a "siren song" refers to the mythical Greek creatures called "sirens" from Homer's *Odyssey* who, with alluring voices and music, would tempt sailors to sail closer to the rocks where their ships would ultimately become shipwrecked.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

(App. 2007); *see also Sensing v. Harris*, 217 Ariz. 261, 263-65 (App. 2007) (law enforcement activities by police and prosecutors were discretionary and not appropriate for mandamus relief because city code did not state that they *must* act).

But while the City may exercise discretion in *how* it complies with some of the statutes, the City does not have discretion regarding *whether* it complies with those statutes. For example, A.R.S. § 13-2917(A), discussed above, declares as a public nuisance anything that is, *inter alia*, injurious to health, offensive to the senses or an obstruction to the free use of property. The statute also declares as a public nuisance anything that unlawfully obstructs the free passage or use of a street. If ordered to abate the public nuisance, a government or governmental authority must abate; the failure to do so is a class 2 misdemeanor. *Id.* at § D; *see also*, A.R.S. § 13-105(30) (including a government or governmental authority in the definition of “person” for purposes of the statute). The statute affords the City no discretion once ordered to abate the nuisance.⁵

The same is true for A.R.S. § 35-601(A)(4), which addresses public nuisance in places controlled by any governmental agency. The statute provides that a refusal to abate the nuisance may be addressed by the Court through an action for injunctive relief. § 35-601(C). The City has no discretion under the statute regarding whether to abate any such public nuisance.

But even if Plaintiffs were unable to cite to a statute or ordinance that required the City to act, Plaintiffs may still be entitled to mandamus relief if they can establish that the City has abused or is abusing its discretion. “The general rule is that if the action of a public officer is discretionary that discretion may not be controlled by mandamus. This rule, however, is qualified by the provision that if it clearly appears that the officer has acted arbitrarily and unjustly and in the abuse of discretion, the action may still be brought.” *Arizona State Highway Commission v. Superior Court*, 81 Ariz. 74, 77 (1956) (quoting *Collins v. Krucker*, 56 Ariz. 6 (1940); *see also, Yes on Prop 200*, 215 Ariz. at 465. Upon such a showing, mandamus is available to require the City to “act properly.” *Id.*; *see also Sensing*, 217 Ariz. at 263 (“We recognize that there are situations where mandamus may be used to compel an officer, board or commission to take action even though such action is discretionary[.]”) (internal quotations omitted). In such circumstances “mandamus may be used to compel a public officer to perform

⁵ It is irrelevant for purposes of this analysis that an action to enforce A.R.S. § 13-2917 must be brought by the county attorney, the attorney general, or a city attorney. Plaintiffs did not bring the current lawsuit pursuant to A.R.S. § 13-2917, which is a criminal statute. Instead, the statute becomes relevant in response to the City’s argument that it has discretion in how it addresses the situation in the Zone and therefore cannot be ordered through mandamus to abate the nuisance. But A.R.S. § 13-2917 and A.R.S. § 36-601 (discussed above) establish that the City has no discretion regarding whether to abate a public nuisance.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

a discretionary act, but not to exercise that discretion in any particular manner.” *Blankenbaker v. Marks*, 231 Ariz. 575, 577 (App. 2013).

Two other cases from the Arizona Supreme Court are instructive on this point: *City of Phoenix v. Johnson*, 51 Ariz. 115 (1938) and *Veech v. City of Phoenix*, 102 Ariz. 195 (1967). Although the cases involve actions for damages and not for mandamus relief, both cases clearly demonstrate that there are limits to the City’s discretion. For example, the City conceivably has discretion in how to construct a sewer system, how to maintain the sewer system, and how to allocate funds for the maintenance and repair of the sewer system. But in *Johnson*, our Supreme Court affirmed a judgment against the City of Phoenix on a nuisance claim because the City was not maintaining a portion of the sewer system “in such a manner that it will be neither a private nor a public nuisance.” *Johnson*, 51 Ariz. at 126. Certainly the City could argue that maintenance, repair, and funding of a sewer system is at the core of discretionary decision-making, but such discretion would not permit the City to maintain a nuisance and would not shield the City’s decisions from judicial review.

In *Veech*, our Supreme Court reversed the grant of a motion to dismiss a complaint filed against the City of Phoenix based upon the City’s failure to provide sufficient fire protection to an area in the City. Much like the City’s discretion in the allocation of law enforcement to the Zone and other areas of Phoenix, the City has discretion to determine what is reasonable fire protection for each area of the City. The court in *Veech* recognized the City’s discretion but also highlighted the limits on that discretion, stating: “[a] city has discretion, governed by the extent of need and other economic considerations, to determine what is a reasonable protection for each area – but this discretion cannot be arbitrary, and must be fairly and reasonably exercised.” *Veech*, 102 Ariz. at 197. The court ultimately determined that whether the City’s provision of fire protection to that part of the City was “arbitrary” and “fairly and reasonably exercised” was a question of fact, not appropriate for determination on a motion to dismiss. *Id.*

Veech provides direction in the present case. The City has engaged in arbitrary enforcement of the law in the Zone. As just some examples, the City has refused to enforce laws and the City Code against the many semi-permanent structures erected by the homeless in the rights of way in the Zone, despite the health and safety risks presented by these structures. *See* Finding Nos. 28-30. But when one of the businesses in the Zone erected artistic sculptures (which posed no health or safety risk) alongside its building to discourage individuals from placing more structures in that location, the City enforced the Code against that business. *See* Finding Nos. 28-30. Thus, according to the evidence before the Court, the City has only sought to enforce the Code against one of the Plaintiffs in this case, out of hundreds of illegal, dangerous structures in the Zone. The City also does not enforce criminal statutes against the homeless in the Zone, instead seeking to provide services to homeless offenders. *See* Finding Nos. 10. There is no evidence before the Court that the City has used this discretion to forgo

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

prosecution of large groups of accused persons outside the Zone. And finally, although the City imbeds security guards with its sanitation crews to protect the City employees from the violence in the Zone, the City does not provide dedicated security guards to any of the businesses or property owners in the Zone to protect them from the same violence. *See* Finding Nos. 16.

THE COURT THEREFORE FINDS that the City has abused its discretion through the arbitrary application of the law and provision of taxpayer funded security in the Zone.

THE COURT FINDS Plaintiffs have established a strong likelihood of success on the merits of their declaratory action and request for mandamus relief.

Although the Court previously found Plaintiffs' constitutional claims to be potentially viable, *see Ruling on Defendant's Motion to Dismiss* dated 01/16/2023 at pp. 7-9, the Court declines to address the merits of the constitutional claims herein because Plaintiffs have established a strong likelihood of success on the merits of their declaratory and mandamus actions. *See Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281 (2019) (Arizona courts will not reach a constitutional question when the case can be fairly decided on other, non-constitutional grounds).

2. Possibility of irreparable injury not remediable by damages if relief is withheld.

“[A] party seeking an injunction must show a possibility of irreparable injury not remediable by damages. Money damages may provide an adequate remedy at law.” *IB Property Holdings*, 228 Ariz. at 65, 263 P.3d at 73 (internal citations omitted).

Plaintiffs have established that they face the very real possibility of irreparable injury, not remediable by damages. For example, the violence that Plaintiffs face every day on their property, in their businesses, and while traveling to and from their property and businesses, creates the possibility of irreparable injury for which monetary damages would not properly compensate them. *See* Finding Nos. 15-17.

Another example is Plaintiffs' daily exposure to biohazards in the Zone, on their property and in their businesses, such as human excrement, used needles, blowing tinfoil with fentanyl residue, and the fly and insect infestation. The Zone's toxic environment exposes Plaintiffs to irreparable injury – illness and disease – not remediable by monetary damages. *See* Finding Nos. 19-22.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

Plaintiffs' exposure to fentanyl and methamphetamine smoke from the homeless who smoke the dangerous drugs just outside Plaintiffs' doors and windows further exposes them to irreparable injury not remediable by monetary damages. *See* Finding Nos. 18.

THE COURT FINDS that Plaintiffs have established a strong possibility of irreparable injury.

3. Balance of the hardships.

Arizona has identified that the critical element in analyzing the criteria for entering a preliminary injunction is the hardship to the parties. *See Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990)(citing *Justice v. National Collegiate Athletic Association*, 577 F. Supp. 356, 363 (D. Ariz. 1983)). To meet this burden, the moving party may establish either **(1)** probable success on the merits and the possibility of irreparable injury; or **(2)** the presence of serious questions and the balance of hardships tip sharply in his favor. *Id.*

As discussed above, Plaintiffs have established a strong probability of success on the merits and the possibility of irreparable injury. But the Court notes that the balance of the parties' hardships also tilts heavily in Plaintiffs' favor.

The hardship Plaintiffs face is well documented throughout this Ruling and, for the sake of brevity, the Court will not restate each hardship yet again. *See* Finding Nos. 1, 8, 15-22, 24-33.

The City argues that it faces a different hardship: that any abatement it undertakes in the Zone must comply with the Ninth Circuit's decisions in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) and *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2002). Although this Court is not bound by rulings from a federal court of appeals, the Court will address the City's concerns. *See, e.g., Fann v. State*, 251 Ariz. 425, 432 (2021).

Martin held, *inter alia*, that a municipality could not impose criminal penalties for sitting, sleeping or lying outside on public property for homeless individuals who cannot otherwise obtain shelter. *Martin*, 920 F.3d at 616. *Grants Pass* took *Martin*'s holding further by declaring, *inter alia*, a municipality cannot enforce an anti-camping ordinance "against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, when there is no other place in the City for them to go." *Grants Pass*, 50 F.4th at 813 (emphasis added). The prohibition applies when an involuntarily homeless person engages in conduct necessary to protect himself or herself from the elements when there is no shelter space available to him or her. *Id.*

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

The City's argument relies on a number of faulty assumptions. First, neither case precluded municipalities from enforcing prohibitions against fires, stoves, or structures that do not provide "the most rudimentary precautions against the elements." *Grants Pass*, 50 F.4th at 812. Nor do the cases preclude municipalities from abating a nuisance, arresting violent offenders, enforcing laws against drugs and violence, or enforcing laws against biohazards and pollution of public waters, etc.

But the most glaring misinterpretation of the *Martin* and *Grants Pass* opinions is the inference that anyone who has erected a tent or other structure in the public rights of way is intrinsically unable to otherwise obtain shelter. The Court rejects such a broad, unsupported inference. *See* Finding Nos. 13, 14. The cases also do not support the inference that anyone in the Zone that is using illegal drugs, is publicly intoxicated and/or passed-out, is committing criminal acts, and/or is engaging in some type of public indecency, is involuntarily engaging in the offending conduct as an unavoidable consequence of his or her status. *See Powell v. State of Texas*, 392 U.S. 514, 535-36 (1968) (state could prosecute alcoholic defendant for the *actus reus* of being drunk in public). Again, the Court will not adopt such broad inferences without credible supporting evidence.⁶

It is not Plaintiffs' burden in this case to affirmatively establish that each individual who has erected a tent or other structure in the Zone otherwise has "access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but they choose not to use it." *Martin*, 920 F.3d at n.8. Put another way, Plaintiffs are not required to establish that each person in the Zone is service resistant or voluntarily homeless before the City must act. *See* Finding Nos. 13, 14. Instead, the burden is on any party arguing that *Martin* or *Grants Pass* preclude enforcement against a particular individual to establish – based upon credible evidence – that the individual cannot otherwise obtain shelter and/or that the individual's offending conduct is an unavoidable consequence of his or her status.

But even if the City were actually required to demonstrate that there were more open shelter beds than homeless in Phoenix before removing an illegal tent or other obstruction from public rights of way, the City could readily mitigate that burden through the creation of structured campgrounds. *See* Finding Nos. 41, 42. But the City has refused to pursue this viable, cost-effective option despite admitting its viability. *See* Finding Nos. 41, 42.

⁶ The majority in *Grants Pass* dismissed the position of the dissent that cases such as *Powell* require an individualized showing of involuntariness. *Grants Pass*, 50 F.4th at 809-812. But the majority ultimately found that the involuntariness of the homeless status of the plaintiffs in *Grants Pass* was supported by sworn testimony and undisputed by the City. *Id.* at 811.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

THE COURT FINDS that the balance of hardships tips sharply in Plaintiff's favor.

4. Public policy

Applicable public policy is embodied in the various statutes cited herein. As just some examples: Any place in populous areas that constitutes a breeding place for insects and rodents that are capable of carrying and transmitting disease-causing organisms to any person is a public nuisance and must be abated. A.R.S. § 36-601(A)(1).

Any place or condition that is controlled by any government agency and that is not maintained in a sanitary condition is a public nuisance and must be abated. A.R.S. § 36-601(A)(4).

All sewage, human excreta, garbage, or other organic waste deposited, discharged, or exposed as to potentially transmit disease to or between any person or persons is a public nuisance and must be abated. A.R.S. § 36-601(A)(5).

The pollution or contamination of any domestic waters is a public nuisance and must be abated. A.R.S. § 36-601(A)(9).

Anything that is injurious to health, indecent, offensive to the senses or an obstruction to the free use of property that interferes with the comfortable enjoyment of life or property by an entire community or neighborhood is a public nuisance and must be abated. A.R.S. § 13-2917(A)(1).

Any unlawful obstruction to the free passage or use of any public park or street is a public nuisance and must be abated. A.R.S. § 13-2917(A)(2). And the Court further notes the drafters of our constitution recognized that "one of the basic responsibilities of government is to protect private property interests" such as those of Plaintiffs in this case. *Bailey v. Meyers*, 206 Ariz. 224, 227, 76 P3d 898, 901 (App. 2003).

Finally, beyond the public policy embodied in the statutes above, public policy counsels that the City take immediate action to protect the homeless individuals residing in squalor in the Zone from the many risks and dangers identified throughout this *Ruling*. See Finding Nos. 15-22, 24-27, 43, 44. "Immediate action" means abating the public nuisance in which they reside and developing, as quickly as practicable, *temporary* shelter space for those that truly need it. It does not mean leaving the public nuisance in place and allowing it to fester while the City pursues development of long-term plans of permanent, affordable housing. See Finding Nos. 42, 43.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

THE COURT FINDS that public policy favors the injunctive/mandamus relief that Plaintiffs seek in this case.

THE COURT THEREFORE FINDS that Plaintiffs have established their entitlement to injunctive and mandamus relief.

THE COURT FURTHER FINDS that the City has the ability to abate the public nuisance through, *inter alia*, enforcement of current statutes, ordinances and codes.

Accordingly, good cause shown and in the Court's discretion,

IT IS THEREFORE ORDERED granting Plaintiff's request for relief as follows:

1. The City of Phoenix is prohibited from continuing to maintain a public nuisance on the public property in the Zone.
2. The City of Phoenix shall abate the nuisance it presently maintains on the public property in the Zone.
3. The City of Phoenix shall maintain its public property in the Zone in a condition free of (a) tents and other makeshift structures in the public rights of way; (b) biohazardous materials including human feces and urine, drug paraphernalia, and other trash; and (c) individuals committing offenses against the public order.
4. The City shall devise and carry out as soon as is practicable a plan that achieves compliance with this Order. The Court recognizes that the City has discretion in how to comply with this Order and does not direct with specificity any of the myriad actions that would lead to compliance.
5. The City is enjoined from further, arbitrary enforcement of Phoenix City Code Section 31-9(B) against Phoenix Kitchens – a named Plaintiff in this case – regarding the artistic sculptures Phoenix Kitchens installed next to its building. *See* Finding Nos. 28-30. The existing sculptures shall remain in place until the City has abated the public nuisance in the Zone or until further order of the Court.
6. The City shall be prepared to demonstrate to the Court at the July 10, 2023 Bench Trial in this matter the steps it has taken and the material results it has achieved toward compliance with this Order.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

03/27/2023

THE COURT FURTHER FINDS the Court is unable to issue a permanent injunction at this time because the parties did not agree to consolidate the hearing on the preliminary injunction with a trial on the merits. *See* Rule 65(a)(2)(A), Ariz.R.Civ.P. The Court has scheduled a trial on the merits in a separate minute entry. *See* Trial Setting Order, dated March 23, 2023.

EXHIBIT 2

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2 Phoenix, AZ 85028
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7
8 *Attorneys for the Plaintiffs*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 FREDDY BROWN; JOEL AND JO-ANN
12 COPLIN, husband and wife; JOSEPH AND
13 DEBORAH FAILLACE, husband and wife;
KARL FREUND; GALLERY 119, a sole
14 proprietorship; MICHAEL GODBEHERE;
15 JORDAN EVAN GREENMAN;
ROZELLA HECTOR; DANIEL AND
16 DIANNE LANGMADE, brother and sister;
IAN LIKWARZ; MATTHEW AND
17 MICHAEL LYSIAK, brother and brother;
18 OLD STATION SUB SHOP, an Arizona
sole proprietorship; PBF
19 MANUFACTURING CO., INC., an
Arizona corporation; PHOENIX
20 KITCHENS SPE, LLC, a California limited
21 liability company; and DON STOCKMAN,

22 Plaintiffs,

23 v.

24
25 CITY OF PHOENIX, a body politic in the
State of Arizona,

26 Defendant.
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28

Case No.:

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT,
SPECIAL ACTION, AND
INJUNCTIVE RELIEF**

Assigned to:

1 Plaintiffs Freddy Brown, Joel and Jo-Ann Coplin, Joseph and Deborah Faillace,
2 Karl Freund, Gallery 119, Michael Godbehere, Jordan Evan Greenman, Rozella Hector,
3 Daniel and Dianne Langmade, Ian Likwarz, Matthew and Michael Lysiak, Old Station
4 Sub Shop, PBF Manufacturing Co., Inc., Phoenix Kitchens SPE, LLC, and Don
5 Stockman bring this action for declaratory, special-action, and injunctive relief and
6 hereby allege as follows:

7
8 **INTRODUCTORY STATEMENT**

9 This case is about the City of Phoenix’s failure to address—and its exacerbation
10 of—the growing homelessness crisis within the city. Plaintiffs are homeowners, business
11 owners, and property owners who live, work, or own businesses or property in the City
12 of Phoenix between 7th and 15th Avenues and between Van Buren and Grant Streets. In
13 the center of this area, along 9th and 13th Avenues from Jefferson Street to the railroad
14 tracks south of Jackson Street, and along Jefferson, Madison, and Jackson streets from
15 8th to 13th Avenues, is what neighbors call “the Zone”: the largest homeless
16 encampment in the State of Arizona. In the Zone and its environs, laws are violated with
17 impunity; residents are subject to violence, property damage, and other criminal and civil
18 violations of laws designed to protect the quality of life of residents; property values have
19 been erased; trash and human waste litter streets and yards; and, most tragically, a great
20 humanitarian crisis unfolds as homeless residents of the Zone die on a daily basis. This
21 verified complaint challenges the legality and constitutionality of the City of Phoenix’s
22 policies and actions with respect to homelessness, which have simultaneously neglected
23 and exacerbated the crisis.

24 In particular, the City of Phoenix has created a policy of concentrating its
25 homeless population in Plaintiffs’ neighborhood. A substantial portion of the homeless
26 population transported to and/or maintained in the Zone on city-owned and -operated
27 easements comprises individuals experiencing mental illness and drug addiction. Not
28 only is the City of Phoenix failing to provide these individuals with housing and needed

1 services, it refuses to enforce in and around the Zone quality-of-life ordinances
2 prohibiting loitering, disturbing the peace, drunken and disorderly conduct, drug use,
3 domestic violence, and obstructing streets, sidewalks, or other public grounds. Phoenix
4 Municipal Code §§ 23-3, 6, 7, 8, 9, 28, 48, 48.01, 52(A)(3), 53, 84, 85.01. In short,
5 instead of seeking to solve the homelessness crisis, the City has effectively invited this
6 population to construct semi-permanent tent dwellings on the public sidewalks and rights
7 of way in Plaintiffs' neighborhood, and to make the Zone their home. The City has not
8 only permitted this illegal conduct and maintained it on public lands within its control,
9 but it has also encouraged it through a policy of directing other homeless persons from
10 around the city to the Zone.

11 The City's policies are not rationally designed to address any of the social ills
12 facing the residents of the Zone and are exacerbating rather than alleviating their
13 problems. The City is entitled to adopt irrational policies; but if its policies create a
14 nuisance and cause damage to the residents, workers, and property owners in the Zone,
15 as they have, then the City is liable for those damages and the court may enjoin the
16 nuisance.





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Plaintiffs seek a declaration that the public encampments on city-controlled property and on the public easements in the Zone constitute a public nuisance. Because Arizona Supreme Court precedent and state statutes establish beyond doubt that the present conditions constitute a public nuisance, the City of Phoenix has several options. It may, consistent with Ninth Circuit precedent, remove the encampments to other public lands where they would not constitute a nuisance. Or it may create structured camping grounds on city lots where cleanliness is maintained and other laws enforced. Or it may establish sufficient appropriate shelter space and once again begin enforcing the prohibitions on public camping. There is no shortage of options by which the City can comply with the laws against public nuisance. Plaintiffs, whose property and pecuniary interests are directly and especially affected by the City's policies, are filing this suit to force the City to do something about this crisis.

This verified complaint seeks declaratory relief that the public encampments in and around the Zone, which are operated and maintained on city land, constitute a public nuisance because of the resulting interference in Plaintiffs' enjoyment of their liberty and

1 property interests; special-action relief declaring the Zone to be a public nuisance, the
2 maintenance of which is in excess of legal authority, and ordering Defendant to abate the
3 nuisance; and preliminary and permanent injunctions directing Defendant to abate the
4 nuisance.

5 **PARTIES, VENUE, AND JURISDICTION**

6 1. Plaintiff Freddy Brown owns and operates PBF Manufacturing Company,
7 Inc., which is located at 1209 W. Jefferson St. in Phoenix, Arizona, Maricopa County.

8 2. Mr. Brown is a resident of Maricopa County, Arizona.

9 3. Plaintiffs Joel and Jo-Ann Coplin live at 119 S. 11th Avenue in Phoenix,
10 Arizona, Maricopa County, and own and operate Gallery 119, an art gallery at that
11 location.

12 4. Mr. and Mrs. Coplin are residents of Maricopa County, Arizona.

13 5. Plaintiffs Joseph and Deborah Faillace own Old Station Sub Shop at 1301
14 W. Jefferson St. in Phoenix, Arizona, Maricopa County.

15 6. Mr. and Mrs. Faillace are residents of Maricopa County, Arizona.

16 7. Karl Freund leases three buildings between 1002 and 1008 W. Madison
17 Street in Phoenix, Arizona, Maricopa County.

18 8. Mr. Freund is a resident of Maricopa County, Arizona.

19 9. Gallery 119 is a sole proprietorship art gallery located at 119 S. 11th
20 Avenue in Phoenix, Arizona, Maricopa County.

21 10. Plaintiff Michael Godbehere owns 1102-1110 W. Madison St. in Phoenix,
22 Arizona, Maricopa County, the location of his family business since 1947.

23 11. Mr. Godbehere is a resident of Maricopa County, Arizona.

24 12. Plaintiff Jordan Evan Greenman lives at 1111 W. Woodland Avenue in
25 Phoenix, Arizona, Maricopa County, on 12th Avenue and Woodland just south of Van
26 Buren.

27 13. Mr. Greenman is a resident of Maricopa County, Arizona.

28

1 14. Rozella Hector owns a property at 1014 W. Madison St., Phoenix, Arizona,
2 Maricopa County.

3 15. Mrs. Hector is a resident of Maricopa County, Arizona.

4 16. Plaintiffs Daniel and Dianne Langmade, brother and sister, own properties
5 at 225 S. 10th Ave. and 1011 W. Madison St. in Phoenix, Arizona, Maricopa County.

6 17. Mr. and Ms. Langmade are residents of Maricopa County, Arizona.

7 18. Plaintiff Ian Likwarz owns property between 809 and 817 W. Madison
8 Street and at 724 W. Jackson Street in Phoenix, Arizona, Maricopa County, where he
9 also routinely resides.

10 19. Mr. Likwarz is a resident of Maricopa County, Arizona.

11 20. Plaintiffs Matthew and Michael Lysiak are brothers who own 221 S. 9th
12 Avenue, Phoenix, Arizona, Maricopa County, and the business there operating, Nevada
13 Countertop Supply.

14 21. Old Station Sub Shop is a sole proprietorship located at 1301 W. Jefferson
15 St. in Phoenix, Arizona, Maricopa County.

16 22. PBF Manufacturing Company, Inc., is an Arizona corporation with its
17 primary place of business in Maricopa County, Arizona, and which is located at 1209 W.
18 Jefferson St. in Phoenix.

19 23. Plaintiff Phoenix Kitchens SPE, LLC, is a California limited liability
20 company that owns 222 S. 9th Avenue in Phoenix, Arizona, Maricopa County.

21 24. Plaintiff Don Stockman is the facilities manager at Nevada Countertop
22 Supply at 221 S. 9th Avenue in Phoenix, Arizona, Maricopa County.

23 25. Mr. Stockman is a resident of Maricopa, Arizona, Pinal County.

24 26. Defendant City of Phoenix is a municipal corporation in the State of
25 Arizona and is named herein pursuant to A.R.S. section 12-1841(A).

26 27. All the acts, omissions, and allegations set forth in this verified complaint
27 occurred in and were directed toward Maricopa County, Arizona.

28

1 the Ninth Circuit ruling, has designated the Zone as public land on which it would not
2 enforce prohibitions on public camping.

3 38. Upon information and belief, the City of Phoenix has designated the Zone
4 as such because there are various services in that area provided by the Human Services
5 Campus and the Andre House, two nonprofits serving the homeless population:



24
25 39. Irrespective of the City's policy, if any, with respect to transporting or
26 directing homeless individuals to the Zone, the Zone constitutes the largest public
27 homeless encampment in the City of Phoenix, where the prohibitions on public camping
28 go unenforced.

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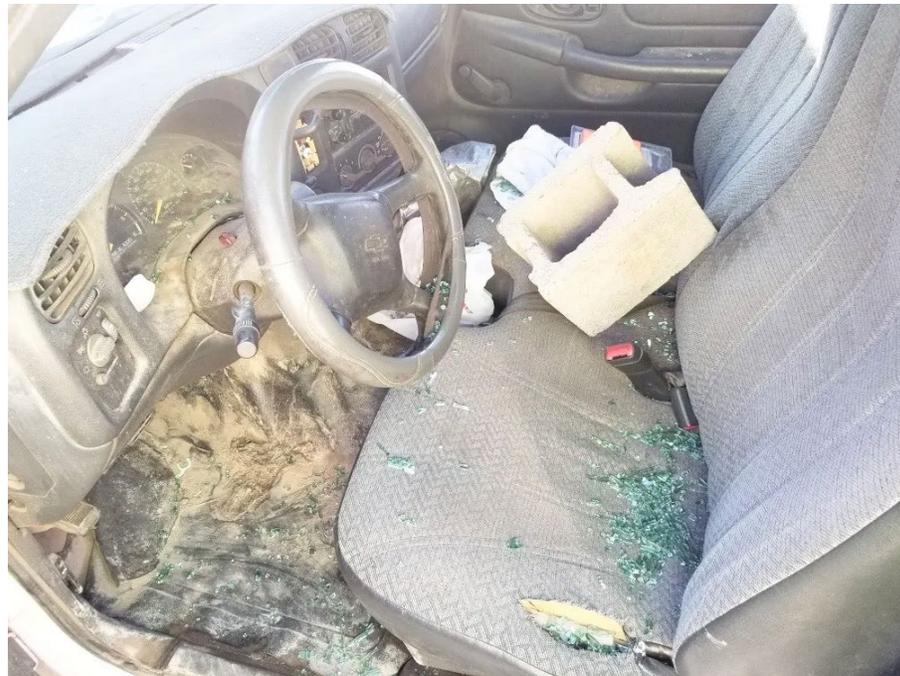


45. As a result of the City of Phoenix’s maintenance of the Zone, drug use has increased dramatically in the surrounding neighborhoods, which Plaintiffs have photographed:

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1 46. As a result of the City of Phoenix’s maintenance of the Zone, property
2 crime has increased dramatically in the surrounding neighborhoods, which Plaintiffs
3 have photographed:



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47. As a result of the City of Phoenix’s maintenance of the Zone, Plaintiffs and other residents regularly suffer trespasses on their property.

48. As a result of the City of Phoenix’s maintenance of the Zone, Plaintiffs routinely experience homeless individuals sleeping right up against their properties, which they have photographed:



1 49. As a result of the City of Phoenix’s maintenance of the Zone, Plaintiffs and
2 other residents are at high risk of being the victims of violent and other crime.

3 50. As a result of the City of Phoenix’s maintenance of the Zone, trash has
4 proliferated on the streets and yards of the surrounding neighborhoods, which Plaintiffs
5 have photographed:



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1 51. As a result of the City of Phoenix’s maintenance of the Zone, public nudity
2 is a regular public occurrence, which Plaintiffs have photographed:
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15 52. As a result of the City of Phoenix’s maintenance of the Zone, Plaintiffs
16 have witnessed public defecation, including on their own properties, which Plaintiffs
17 have photographed:
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1 53. As a result of the City of Phoenix’s maintenance of the Zone, human
2 excrement is regularly present in Plaintiffs’ neighborhood (and on Plaintiffs’ properties),
3 which Plaintiffs have photographed:

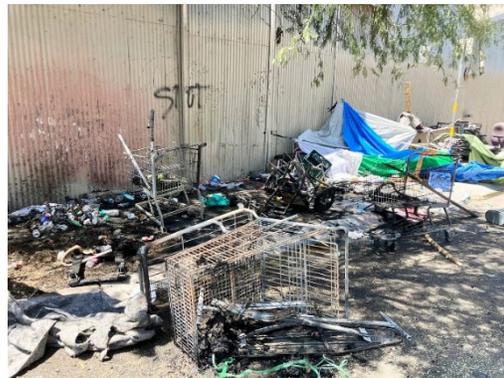


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54. As a result of the City of Phoenix’s maintenance of the Zone, fire hazards have increased in Plaintiffs’ neighborhood as tents and bins in the homeless encampments catch fire, which Plaintiffs have photographed:



1 55. As a result of the City of Phoenix’s maintenance of the Zone, numerous
2 homeless encampments block public rights of way, including right outside Plaintiffs’
3 specific properties, which Plaintiffs have photographed:



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1 56. As a result of the City of Phoenix’s maintenance of the Zone, property use
2 is diminished and property values have plummeted in the surrounding neighborhoods.

3 57. As a result of the City of Phoenix’s maintenance of the Zone, deaths of
4 homeless individuals occur regularly on the streets in Plaintiffs’ neighborhood, which
5 Plaintiffs have photographed:



16 **News Stories Detailing Homelessness Crisis**

17 58. The Guardian, a British newspaper, is reporting on the deaths that are
18 occurring among Phoenix’s homeless population.

19 59. On July 21, 2022, the Guardian reported that “[a]s many as 500 homeless
20 people died in and around Phoenix, Arizona, during the first half of 2022, *with almost*
21 *10% of deaths due to homicide*, according to new figures from the county medical
22 examiner’s office.” Nina Lakhani, “As many as 500 homeless people died in Phoenix
23 area in first half of 2022,” *The Guardian* (July 21, 2022), <https://tinyurl.com/bdd3ry58>.

24 60. The Guardian also reports that “[t]he number of unsheltered people in
25 Maricopa county . . . has at least tripled since 2016.”

26 61. The Guardian reports that “[d]rugs played a role in the majority of the
27 deaths in which the medical examiner was able to determine the cause.”

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1 69. The plaintiffs have even identified large swaths of vacant city land where
2 such outdoor camping spaces could be erected, including the adjoining lots located at
3 657, 667, 669, 801, 803, 811, 708, 710, 800, 804, 806 S. 10th Place; 1002, 1006, and
4 1010 E Hadley Street; 801, 901, and 915 E. Sherman Street; and 802, 806, 813, 815, and
5 817 S. 8th Place.

6 70. The City of Phoenix has not responded to any of Plaintiffs' proposals.

7 **The Effect on Individual Plaintiffs and Residents**

8 71. Plaintiff Freddy Brown is the President of PBF Manufacturing, located at
9 1209 W. Jefferson St. His parents have owned the property and the company since 1975.
10 Mr. Brown also manages the property for them.

11 72. Mr. Brown observes that, since 1975, there was always some degree of
12 homelessness in the area, largely stemming from Carnegie Park, which at the time was
13 not fenced in; but tents and structures were never allowed.

14 73. After the Human Service Campus was built in 2005, the homeless
15 population increased in the area, but tents and structures were still not allowed.

16 74. Tents and camping were generally permitted in the area between
17 Thanksgiving and Christmas, but after New Year's the camps would always be cleaned
18 up and dispersed.

19 75. Around 2019 and early 2020, Mr. Brown observed that the City of Phoenix
20 ceased enforcing its prohibitions on public camping and allowed the erection of tents and
21 other semi-permanent structures.

22 76. Mr. Brown and his employees have been severely affected by the
23 homelessness crisis.

24 77. Mr. Brown and his employees often refuse to leave their building, fearing
25 for their safety outside; for this reason, Mr. Brown observes that he and his employees
26 almost never go to the Old Station Sub Shop (another Plaintiff) for lunch.

27 78. Mr. Brown and his employees are constantly cleaning up urine, which
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1 often gets into the building itself.

2 79. Several of Mr. Brown's employees' vehicles have been broken into in the
3 past few years.

4 80. Within the last year, one of Mr. Brown's employees was assaulted by a
5 homeless individual with a pipe. A police report was filed.

6 81. Trespassing is a constant on Mr. Brown's business. In one incident, a
7 homeless female individual walked into the business. Mr. Brown marched her out, at
8 which point the individual, while maintaining eye contact, stopped in the middle of Mr.
9 Brown's lot, squatted over, urinated on Mr. Brown's property, and gave Mr. Brown the
10 middle finger.

11 82. Mr. Brown and his employees constantly witness public urination. Often,
12 the homeless individuals will stand on the sidewalk and pee into the middle of the street.

13 83. Mr. Brown's business no longer has windows because they were constantly
14 being broken. His doors are reinforced because of all the attempted unlawful entries.

15 84. Mr. Brown witnesses public drug use every day.

16 85. There is not a week that goes by where Mr. Brown does not witness a
17 dumpster fire or a tent fire.

18 86. On occasion, homeless individuals have defecated in buckets, and then
19 dumped their buckets on Mr. Brown's property.

20 87. Mr. Brown's customers and suppliers are affected because they often have
21 to walk down the middle of the streets since the sidewalks are obstructed.

22 88. Mr. Brown is hoping to do an expansion and improvement project to his
23 building, but he is having trouble getting contractors because no one wants to work in the
24 area.

25 89. Plaintiffs Joel and Jo-Ann Coplin bought and moved into their property at
26 119 S. 11th Avenue in March of 2018, where they now live full time and operate an art
27 gallery.

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1 90. At the time they moved in, none of the homeless individuals present in the
2 area had tents; occasionally they would sleep in front of their building, but they would
3 generally move on during the day, with some coming back at night.

4 91. Starting in 2019, Mr. and Mrs. Coplin observed tents being passed out to
5 the homeless in the area and that the City of Phoenix police ceased removing these tents.

6 92. Since 2019, the homeless in the area have constructed permanent tent
7 dwellings.

8 93. Since 2019, the number of homeless persons in the area kept growing and
9 growing, turning the area into an “absolute disaster.”

10 94. On July 21, 2022, the bamboo in Mr. and Mrs. Coplin’s yard was set on
11 fire by a homeless individual. Because they were home, they were able to douse the fire
12 quickly. They reported the incident to Phoenix Police.

13 95. One night in 2021, a homeless person threw a rock through their bedroom
14 window in the early hours of the morning.

15 96. One day in 2020, a homeless person ran down the street with a metal pipe
16 and smashed in the back window of Mr. and Mrs. Coplin’s car.

17 97. One day in 2020, Mr. Coplin headed to the tent of a homeless individual
18 that he and his wife knew; the homeless individual had left his possessions on their
19 property. Mr. Coplin was assaulted and hit in the face by another homeless person.

20 98. Every morning, for two years, Mr. and Mrs. Coplin had to shovel human
21 feces and wipe down urine in the alley behind their property, until they finally were able
22 to get the City of Phoenix to put up a fence to the alley.

23 99. Since that day, they still routinely have to clean up human feces and urine
24 that has been left against their building’s walls.

25 100. Mr. and Mrs. Coplin explain that they “put up a good face,” but that the
26 situation has essentially shut down their gallery. It is too difficult to have a show or invite
27 a client. They may soon be in a position where they have no choice but to sell their
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1 property, but they worry that it will be difficult to sell given the surrounding
2 homelessness crisis.

3 101. Plaintiffs Joe and Deborah Faillace have owned Old Station Sub Shop at
4 1301 W. Jefferson Street since 1986.

5 102. Although there was always a homeless problem in the area, it is now worse
6 than it has ever been.

7 103. For a few years prior to 2019, there were no tents or public camping in the
8 area, except between Thanksgiving and Christmas when the prohibitions would not be
9 enforced.

10 104. Since at least January 2020, however, the City allowed the homeless
11 population to maintain tents on public easements.

12 105. Mr. and Mrs. Faillace would call the police, but the police would inform
13 them that as a result of a court case out of Idaho the police were told not to enforce the
14 prohibitions on public camping anymore.

15 106. The homelessness crisis has negatively affected Mr. and Mrs. Faillace's
16 business, and in particular female clients are often afraid to cross the street, use public
17 transportation, or come to the sandwich shop.

18 107. Homeless individuals routinely enter the shop and argue with Mr. and Mrs.
19 Faillace's employees about free food and water.

20 108. Just this month, a homeless individual entered the business and stole the
21 employees' tip money.

22 109. Homeless individuals have thrown rocks through the shop's windows and
23 have stolen decorative items.

24 110. In a single day about a year and a half ago, Mr. Faillace cleaned up nine
25 individual clumps of human feces that littered the property and its exterior.

26 111. Mr. Faillace observes that often the homeless individuals will lean against
27 the fence to defecate, requiring the washing down of his fence.
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1 112. In one instance when Mr. Faillace was cleaning up human feces, a
2 Maricopa County health inspector was in the area and urged Mr. Faillace to wear masks
3 when cleaning up the human feces surrounding his property and to make sure he was
4 current on his hepatitis shots.

5 113. Drug needles litter Mr. and Mrs. Faillace's property.

6 114. Customers have also witnessed homeless individuals urinating around the
7 property.

8 115. Mr. and Mrs. Faillace are very concerned about the unsanitary image of the
9 restaurant the circumstances can create for customers. Mr. and Mrs. Faillace have had to
10 work very hard and spend a lot of money on bleach and other cleaning, as well as on
11 hourly wages to keep the restaurant in a good and healthful condition and thereby
12 maintain their "A" rating from the Maricopa County Health Department.

13 116. The Maricopa County Health Department has agreed with Mr. and Mrs.
14 Faillace that the conditions created a health issue but claimed its hands were tied and that
15 it could not help them.

16 117. Over the years Mr. and Mrs. Faillace have tried calling the Mayor,
17 Governor, City Manager, City Council members, various health departments, and others,
18 but the response they always received was that this was a political issue and there was
19 only so much they could do.

20 118. Mr. Faillace has also observed homeless individuals in the act of setting on
21 fire the tents of other homeless persons.

22 119. Plaintiff Karl Freund rents three contiguous buildings between 1002 and
23 1008 W. Madison Street; his lease is not revokable through most of 2024.

24 120. Mr. Freund signed his lease in October 2021, and, as part of his agreement,
25 spent significant resources renovating the buildings.

26 121. Mr. Freund hoped to open up a branch of Kenneth James Realty at this
27 location and invested significant resources in doing so.

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1 122. As of October 2021, the homeless activity was not as severe as it is today
2 because at that time the homeless population was contained on County lots because of
3 the COVID-19 pandemic.

4 123. But around November 2021, the situation got much worse, with
5 significantly more homeless activity, including the erection of tent dwellings on the
6 sidewalks.

7 124. In January of this year, one of Mr. Freund's female agents was accosted by
8 a homeless man.

9 125. Mr. Freund has observed homeless individuals doing drugs in front of his
10 property on a daily basis.

11 126. Mr. Freund has observed homeless individuals urinating on the corner of
12 his property every day.

13 127. On many occasions, homeless individuals will throw feces and needles
14 over the walls of his buildings.

15 128. When Mr. Freund took possession of his buildings, he fixed and painted the
16 exterior, but now the exterior is "absolutely beat to death," with holes smashed in the
17 concrete walls.

18 129. Homeless individuals are constantly beating the doors to his properties all
19 night long.

20 130. One night the properties were broken into and all the copper in the piping
21 and roofing was stolen. (An insurance claim was filed.)

22 131. Mr. Freund has been unable to launch his business as expected because it is
23 impossible to hire agents to work in that location.

24 132. Mr. Freund ended up opening up an office in Scottsdale, but he is still
25 losing money on the lease on the Madison properties.

26 133. Plaintiff Michael Godbehere owns 1102-1110 W. Madison Street.

27 134. Mr. Godbehere's grandfather started the family business at 1102 W.
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1 Madison in 1947.

2 135. Mr. Godbehere has been working at the property since the 1980s and took
3 over the business after his father's death in 2005.

4 136. In 2012, Mr. Godbehere sold the business to another company with similar
5 operations, but the company backed out of the lease two-and-half years early because of
6 the homeless situation that already existed.

7 137. Mr. Godbehere's property currently has no tenant, even though he has
8 marketed it at 60 percent of what would otherwise be its market value.

9 138. Around 1983, the homeless population began putting up tents in a lot on
10 9th Avenue and Madison Street, but there were never very many—maybe 30 individuals
11 in the entire area. At the time, there was a St. Vincent de Paul dining room in the area.
12 Despite the small number of homeless persons, there was a cry to do something about the
13 homeless situation.

14 139. Subsequently, both a homeless shelter (Central Arizona Shelter Services)
15 and the Human Services Campus were built, which drew more homeless to the area, but
16 public camping was prohibited and kept under control.

17 140. Specifically, until a few years ago there were “overflow shelters,” which
18 were low-barrier shelters that did not aggressively police drunkenness or drug use. The
19 women had one overflow shelter and there was also a co-ed lot on County property.
20 Police were stationed from dusk until dawn.

21 141. From about 2014-2017, the City of Phoenix's downtown operations unit
22 was in charge of the area and under the command of Lieutenant Jeff Lazell.

23 142. Officer Lazell insisted on enforcing the laws against public camping and
24 public disorder and mandated that any homeless persons be in the overflow areas at
25 night.

26 143. In this period, Mr. Godbehere observes that the streets were clean, there
27 was little crime, and the residents felt safe and secure.

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1 144. Around 2017, Officer Lazell retired, and the overflow shelters were also
2 closed down, exacerbating the overnight sleeping and camping in the neighborhood
3 streets.

4 145. In 2019, tents began to reappear all over the area. Mr. Godbehere would
5 call the police about tents in front of his property, and the police officers reported that
6 they were no longer allowed to enforce the prohibitions on public camping because the
7 City of Phoenix had ordered them to stop doing so after a decision by the U.S. Court of
8 Appeals for the Ninth Circuit.

9 146. Mr. Godbehere's brother was also a Phoenix police officer for many years;
10 his brother would report that, although there was no written policy, there was a verbally
11 communicated policy that officers should direct homeless individuals found in downtown
12 to the area "west of 7th Avenue."

13 147. Mr. Godbehere for many years also observed city police officers dropping
14 off homeless individuals in the area because of its proximity to the homeless shelter and
15 other services.

16 148. Mr. Godbehere explains that it was common knowledge that other cities, as
17 well as the Department of Corrections, would also drop off homeless individuals in the
18 area.

19 149. Mr. Godbehere has received a boxful of sex offender notifications, many of
20 which simply list "transient" or the homeless shelter as the address, and on at least one
21 occasion he reported a serial masturbator in the vicinity of his home.

22 150. About three years ago, governmental officials conducted a hazmat cleanup
23 of the alley behind his building.

24 151. Around the same time, Maricopa County wrote *him* a letter declaring that
25 *he* was in violation of law for not maintaining his alley clean—notwithstanding the fact
26 that it took a professional hazmat cleanup crew to clean the alley of all the feces and
27 urine and needles.

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1 152. Mr. Godbehere has been assaulted by homeless persons on three occasions,
2 the most recent incident occurring around 2018.

3 153. Mr. Godbehere observes that today, the homelessness crisis is the worst
4 that it has ever been—and Mr. Godbehere was in the area daily or weekly since the early
5 1980s.

6 154. Plaintiff Jordan Evan Greenman lives and owns a home at 1111 W.
7 Woodland Ave.

8 155. In early July of this year, there was a stabbing outside Mr. Greenman's
9 home.

10 156. Mr. Greenman routinely witnesses physical fights breaking out in the park
11 across from his home.

12 157. Mr. Greenman has witnessed a shooting in the park across from his home.

13 158. Mr. Greenman has witnessed drug use in the park across from his home.

14 159. Mr. Greenman has witnessed public sex acts in the park across from his
15 home.

16 160. Mr. Greenman has witnessed numerous acts of public nudity in the area.

17 161. Mr. Greenman has witnessed human defecation numerous times in the area.

18 162. Mr. Greenman has witnessed numerous fires in the alley behind his house.

19 163. A few weeks ago, Mr. Greenman's neighbor's house at 1107 W. Woodland
20 Ave. burned down as a result of a fire that started in the alley.

21 164. Since early January of this year, Mr. Greenman has repeatedly sought
22 assistance from the City of Phoenix to take care of the alleys surrounding his house, to
23 which he has received no serious response.

24 165. Mr. Greenman also owns 1319 W. Woodland Ave., where he has
25 experienced similar occurrences, including two recent attempted break-ins.

26 166. Rozella Hector owns a three-unit home at 1014 W. Madison St., which she
27 owned with her husband, now deceased, for over 35 years.

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1 167. Mrs. Hector has trouble getting good tenants in her property, a problem she
2 did not have in the past.

3 168. In 2017, there was a drug bust on her property because her tenants were
4 conducting some kind of drug operation.

5 169. There has always been some homelessness in the area, but Mrs. Hector
6 observes that “it was never like it is now” and the situation is now “horrible.”

7 170. Mrs. Hector observes that about 10 years ago, the homeless would
8 congregate in a single block, but for the past two to three years the homeless population
9 has spread over several city blocks.

10 171. Mrs. Hector observes that since the homeless persons were given tents a
11 few years ago, the situation became a “nightmare” and “all hell broke loose.”

12 172. Mrs. Hector observes that the nature of the homeless population has also
13 changed, with an increase in drug use and aggressive behavior.

14 173. Homeless persons have thrown needles and trash over Mrs. Hector’s fence
15 and onto her property.

16 174. Homeless persons have stolen her tools and window AC units, such that
17 Mrs. Hector cannot keep anything of value at the property.

18 175. Mrs. Hector has had to replace several windows over the past few years
19 because, according to her tenants, homeless individuals threw rocks into her house.

20 176. Mrs. Hector sees urine and feces all the time and describes the odor as
21 “overwhelming.”

22 177. Since her husband’s death Mrs. Hector has explored selling the property,
23 but commercial realtors have told her she will not have much luck selling the property.

24 178. Mrs. Hector could also rent the property at much higher rents if the
25 homeless situation were not so out of control.

26 179. Plaintiffs Daniel and Dianne Langmade own two lots on 12th Avenue and
27 Madison Streets.

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1 180. Daniel and Dianne leased their lots to Elite RV, an RV rental business.

2 181. Elite RV backed out of their business midway into the lease, explaining
3 that they could not operate their business in those conditions.

4 182. Elite RV's letter, dated December 28, 2019, states that its owners "have
5 relocated our business to a new location" due to the continued "issues at 225 S 10th Ave
6 regardless of the cameras." Ex. B at 1.

7 183. The letter explains (sic): "In the last year, we have had \$6000 in tires
8 slashed, rocks thrown over the fence braking several RV windows and windshield, Tools,
9 TV's, a laptop, generators and countless keys stolen. This occurs during the night and
10 during business hours. We have had to keep the gates locked during normal business
11 hours which has cause customers to drive away. We have had people walk in while we
12 have had customers and hide or rest in RV's then become aggressive when told no. We
13 had an incident of losing a customer due to someone standing at the front of their car for
14 several minutes, then walked up to the side of the car with two people in it and pour a
15 drink on their windshield. We had multiple complaints of late night drop offs due to
16 customers feeling unsafe and unwilling to leave the units outside the gate, When units are
17 dropped off, they get vandalized. Needless to say, we have not had a good customer or
18 business experiece at the lot and the only fix to our declining revenue was to move
19 locations." *Id.*

20 184. The letter continues: "It has gotten really bad with homeless and crime in
21 the area. It looks as though the city has made this area the place where homeless can
22 bring their tents and congregate for long periods of time. I have tried to get the city to do
23 more by sending in videos to the news and calling the copes on a daily bases. . . . I have
24 even been told by a cop that they would not arrest guy who attacked an employee in his
25 car (banging on the windows and screaming for him to get out so he could fight him)
26 because he had open sores on his body and he didn't want to spend 4 hours in the
27 hospital with him. . . . There is just no fixing the issues in this area and we had to make
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1 the move.” *Id.*

2 185. Daniel and Dianne observe that with the closure of overflow shelters and
3 the passing out of tents, there has been a total degradation of the area.

4 186. Elite RV was able to sublease one of the lots, but Daniel and Dianne worry
5 that when the lease is up, they will not be able to lease the lots.

6 187. Their lots are worth a fraction of what they otherwise would be in the
7 absence of the homelessness crisis.

8 188. Plaintiff Ian Likwarz owns property between 809 and 817 W. Madison
9 Street and at 724 W. Jackson Street, where he also routinely resides.

10 189. Mr. Likwarz has experienced constant theft of personal items from his
11 buildings.

12 190. Mr. Likwarz has experienced numerous acts of destruction and vandalism
13 on his buildings.

14 191. Mr. Likwarz has witnessed and had to clean human waste on, in, and
15 around his property on a daily basis.

16 192. Mr. Likwarz has witnessed people defecating on his property and in front
17 of his buildings.

18 193. Mr. Likwarz has witnessed and had to clean numerous acts of urination,
19 some of which leaked into his buildings.

20 194. Mr. Likwarz describes the resulting odors as nauseating and noxious.

21 195. Homeless persons have threatened Mr. Likwarz and his employees with
22 violence.

23 196. Mr. Likwarz has personally witnessed homeless persons brandishing
24 knives and other weapons.

25 197. Mr. Likwarz routinely witnesses or sees evidence of violent crimes in the
26 area, including shootings between and among homeless individuals.

27 198. One homeless person assaulted Mr. Likwarz and threw rocks at him when
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1 Mr. Likwarz asked him to move off his front doorstep.

2 199. Mr. Likwarz's personal and work vehicles have been broken into, and their
3 windows smashed, some instances of which he personally witnessed.

4 200. Mr. Likwarz has witnessed public sex acts among homeless persons.

5 201. Mr. Likwarz is unable to use the sidewalks in the neighborhood as they are
6 blocked by the homeless encampments.

7 202. The encampments also pour into the streets, making navigating the area
8 difficult.

9 203. Mr. Likwarz has witnessed and had to clean vomit, food waste, needles,
10 and trash on a daily basis on his property.

11 204. Mr. Likwarz has witnessed active drug use on his doorsteps.

12 205. Mr. Likwarz has witnessed drug deals on and near his property.

13 206. Mr. Likwarz's security lights were destroyed by homeless persons.

14 207. Mr. Likwarz estimates that he has had tens of thousands of dollars' worth
15 of property stolen or damaged in the past three years.

16 208. Commercial realtors have refused to list Mr. Likwarz's buildings for lease
17 because of the encampments.

18 209. Mr. Likwarz finds it difficult to get vendors, deliveries, and employees to
19 come to the area because of the health and safety issues.

20 210. Mr. Likwarz has had difficulty hiring new employees because of safety
21 concerns in the area.

22 211. Mr. Likwarz has observed tent fires breaking out near his property.

23 212. Mr. Likwarz's property value is a fraction of what would otherwise be its
24 market value.

25 213. Mr. Likwarz has worked diligently and in good faith to find realistic short-
26 term solutions for the homelessness crisis, has presented them to City staff and council
27 members, and yet no action has been taken.

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1 214. Plaintiffs Matt and Mike Lysiak own 221 S. 9th Avenue, where they have
2 run a business called Nevada Countertop Supply for the last several years.

3 215. It has become impossible for the Lysiaks to hire and maintain staff at their
4 business because of the homelessness situation and crime in the area.

5 216. One of their employees had his car window smashed in by a homeless
6 person.

7 217. The Lysiaks and their employees constantly see homeless individuals using
8 drugs, including on their premises.

9 218. The Lysiaks and their employees routinely hear gunshots at their business.

10 219. Homeless individuals routinely trespass on the Lysiaks' property and
11 business.

12 220. Some of the Lysiaks' customers, such as Home Depot, have complained
13 about coming to pick up orders at their business because of the dangerous surrounding
14 environment; some have ceased picking up orders altogether.

15 221. The Lysiaks have observed that the condition of their neighborhood has
16 significantly deteriorated. Starting in 2019 the City of Phoenix began to allow camping.
17 During the COVID-19 pandemic, the City moved the encampments onto public lots.
18 Since this past year, the encampments have proliferated on all the public sidewalks such
19 that there are semi-permanent dwellings and furniture, including bookcases and couches.

20 222. Resident Angela Ojile owns a small block on Madison Street between 11th
21 Avenue to 12th Avenue and a small house at 1010 W. Madison St.

22 223. Ms. Ojile explains that the situation is very "scary" and feels "hopeless."

23 224. There are days that Ms. Ojile cannot access her property either from 11th
24 or 12th Avenues because of the trash and belongings and encampments blocking her
25 access.

26 225. Ms. Ojile observes that the homeless situation is the worst it has ever been.

27 226. The homeless situation has rendered her property unusable.
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1 227. Ms. Ojile observes that some people describe the area as “death row.”

2 228. Ms. Ojile has seen four homeless individuals go out in body bags as a
3 result of drug use over an 8 week period.

4 229. Ms. Ojile reports that the smell of feces, urine, vomit, and rotting food is
5 unbearable and constant.

6 230. Ms. Ojile is afraid to tell homeless persons to stop urinating, defecating,
7 littering, screaming, or doing drugs.

8 231. Ms. Ojile has seen numerous rats running across her street.

9 232. Ms. Ojile has had to stand in and step through urine and feces just to get to
10 her property.

11 233. Ms. Ojile fears for her safety when she is in the area.

12 234. Ms. Ojile experiences constant vandalism and break-ins at her property, as
13 well as theft.

14 235. Because the homeless are allowed to sleep right outside her properties, they
15 often know when the properties are vacant.

16 236. Ms. Ojile has tried to get the police to enforce the laws against public
17 camping but has been told repeatedly that the police are no longer allowed to enforce
18 those laws.

19 237. Ms. Ojile observes that the neighborhood hardly has any police presence
20 anymore: “It’s like they’ve given up,” she explains.

21 238. Ms. Ojile has worked with a number of organizations, including Phoenix
22 Rescue Mission, to develop ideas for solving the homelessness crisis, but the City of
23 Phoenix has ignored their proposals.

24 239. Ms. Ojile obtained a report from a broker that shows her property values
25 have diminished by 80 percent as a result of the homelessness crisis. Ex. C.

26 240. The first page of the analysis concludes that “the Property is deemed
27 unmarketable at any realistic value at this date due to these issues along with safety
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1 concerns that would be perceived by any prospective buyer, tenant or investor that would
2 normally have invested in the Property.” *Id.* at 5.

3 241. Plaintiff Phoenix Kitchens SPE, LLC, owns a building at 222 S. 9th
4 Avenue, where they are building commercial kitchens for rent.

5 242. At least twice the side of Phoenix Kitchens’ building has been hit by
6 gunfire coming from people on the street.

7 243. Phoenix Kitchens has experienced multiple homeless individuals
8 trespassing on their property while it has been under construction.

9 244. In one episode, the area to which APS needed access to undertake electrical
10 upgrade had homeless individuals apparently living in the space.

11 245. Phoenix Kitchens is required constantly to repair its security fencing as a
12 result of tampering and fence cutting by the homeless in the area.

13 246. Phoenix Kitchens constantly has to dispose of trash and human waste at its
14 property line, as well as on its property.

15 247. It is extraordinarily challenging for Phoenix Kitchens and its employees to
16 do business and attract users given these conditions surrounding the property.

17 248. Plaintiff Don Stockman is the facilities manager at Nevada Countertop
18 Supply, where he has worked since January 19, 2021.

19 249. When he arrived, Mr. Stockman was told to watch out for the homeless; he
20 thought the problem did not look so bad, however, because he had just transferred from
21 the company’s Riverside, California office.

22 250. Today, Mr. Stockman believes that the homelessness crisis in Phoenix is as
23 bad as it is in Los Angeles.

24 251. Mr. Stockman was brought on to increase sales at Nevada Countertop
25 Supply. He has had difficulty doing so, however, because he cannot hire or retain
26 sufficient employees as a result of the surrounding homeless encampments.

27 252. As a result, Mr. Stockman has on occasion sought to hire workers from
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1 among the homeless camping in the Zone, but those efforts always failed because the
2 workers quit the job within a few days.

3 253. Mr. Stockman and his employees frequently come to work and have to
4 walk through human feces and urine on their property.

5 254. Mr. Stockman and his employees have witnessed homeless individuals
6 squatting over to defecate, or urinating, on their property dozens of times over the past
7 year and a half.

8 255. Mr. Stockman and his employees no longer maintain the fence to the back
9 of their property because it is constantly destroyed and cut by the homeless population.

10 256. Mr. Stockman and his employees have witnessed numerous acts of
11 littering. He has personally witnessed piles of trash surrounding city-provided dumpsters,
12 while the dumpsters themselves were half empty.

13 257. Mr. Stockman has observed that the homeless population now walks on
14 and obstructs the middle of the roads because the sidewalks are occupied by semi-
15 permanent tent dwellings.

16 258. Mr. Stockman and his employees often cannot park on the street across
17 from their business because the encampments are encroaching onto the streets.

18 259. Mr. Stockman and his employees are routinely witnesses to crimes, and
19 often help the police conduct investigations, including for shootings and murders,
20 because their business is equipped with security cameras.

21 260. Plaintiffs are all especially affected by their proximity to the public
22 nuisance, that is, they experience the effects of the nuisance above and beyond the effect
23 the nuisance has on the general citizenry.

24 261. In particular, Plaintiffs' property and pecuniary interests are affected and
25 therefore Plaintiffs' harm is different in kind from the harm faced by the general public.

26 262. Plaintiffs have been harmed irreparably by being subject to unsanitary and
27 unsafe conditions in their neighborhood.

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1 sanitary condition” to be a “public nuisance[] dangerous to the public health.” A.R.S.
2 § 36-601(4).

3 274. Arizona law also provides that “[a]ny condition or place in populous areas
4 that constitutes a breeding place for flies, rodents, mosquitoes and other insects that are
5 capable of carrying and transmitting disease-causing organisms to any person or persons”
6 constitutes a “public nuisance[] dangerous to the public health.” A.R.S. § 36-601(1).

7 275. Arizona law further declares “[a]ll sewage, human excreta, wastewater,
8 garbage or other organic wastes deposited, stored, discharged or exposed so as to be a
9 potential instrument or medium in the transmission of disease to or between any person
10 or persons” to be a “public nuisance[] dangerous to the public health.” A.R.S. § 36-
11 601(5).

12 276. Arizona law further declares “[s]pitting or urinating on sidewalks . . . or
13 [on] a building used for manufacturing or industrial purposes” to be a “public nuisance[]
14 dangerous to the public health.” A.R.S. § 36-601(13).

15 277. Arizona’s criminal code further provides, “It is a public nuisance . . . for
16 anything . . . [t]o be injurious to health, indecent, offensive to the senses or an obstruction
17 to the free use of property that interferes with the comfortable enjoyment of life or
18 property by an entire community or neighborhood or by a considerable number of
19 persons.” A.R.S. § 13-2917(A)(1).

20 278. Under both Arizona Supreme Court precedent and Arizona statutory law,
21 the creation, expansion, operation, and/or maintenance of a homeless encampment on
22 public land in the Zone is a public nuisance.

23 279. City ordinances also prohibit the creation, expansion, operation, and/or
24 maintenance of homeless encampments.

25 280. The City’s municipal code provides, “Any person who appears in any
26 public place, street, alley or sidewalk in the City in a drunken or disorderly condition, or
27 lies or sleeps in any public place, or on any street, alley or sidewalk in a drunken or
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1 disorderly condition, shall be guilty of a misdemeanor.” Phoenix Municipal Code § 23-6.

2 281. The City’s municipal code further provides, “It shall be unlawful for any
3 person to loaf, loiter or congregate upon any of the sidewalks in the City so as to obstruct
4 the use of the sidewalks to pedestrians.” Phoenix Municipal Code § 23-8.

5 282. The City’s municipal code further provides, “It shall be unlawful for any
6 person to obstruct any public street or alley, sidewalk or park or other public grounds
7 within the City by committing any act of, or doing anything which is injurious to the
8 health, or indecent or offensive to the senses, or to do in or upon any such streets, alleys,
9 sidewalks, parks or other public grounds, any act or thing which is an obstruction or
10 interference to the free use of property or with any business lawfully conducted by
11 anyone, in or upon, or facing or fronting on any of such streets, alleys, sidewalks, parks,
12 or other public grounds in the City.” Phoenix Municipal Code § 23-9.

13 283. The City’s municipal code further provides, “It shall be unlawful for any
14 person to use a public street, highway, alley, lane, parkway, sidewalk or other right-of-
15 way, whether such right-of-way has been dedicated to the public in fee or by easement,
16 for lying, sleeping or otherwise remaining in a sitting position thereon, except in the case
17 of a physical emergency or the administration of medical assistance.” Phoenix Municipal
18 Code § 23-48.01.

19 284. The Ninth Circuit decision in *Martin v. City of Boise* does not preempt
20 Arizona’s statutory nuisance law, Arizona’s common law of nuisance, or the numerous
21 city ordinances that Defendant is not currently enforcing.

22 285. The Ninth Circuit decision does *not* require that the City of Phoenix
23 operate the Zone in a manner that creates a nuisance. It does not require that tents be
24 given out at all, let alone during the daylight hours. And it does not require that the City
25 of Phoenix allow public camping where it would create a public nuisance. “On the
26 merits, the opinion holds only that municipal ordinances that criminalize sleeping, sitting,
27 or lying in *all* public spaces, when *no* alternative sleeping space is available, violate the
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1 Eighth Amendment. Nothing in the opinion reaches beyond criminalizing the
2 biologically essential need to sleep when there is no available shelter.” *Martin v. City of*
3 *Boise*, 920 F.3d 584, 589 (9th Cir. 2019) (Berzon, J., concurring in the denial of
4 rehearing en banc); *see also id.* at 617 n.8 (majority opinion) (“Nor do we suggest that a
5 jurisdiction with insufficient shelter can *never* criminalize the act of sleeping outside.
6 Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping
7 outside at particular times or in particular locations might well be constitutionally
8 permissible. So, too, might an ordinance barring the obstruction of public rights of way
9 or the erection of certain structures.”).

10 286. Plaintiffs have demonstrated that the City of Phoenix can easily
11 accommodate the homeless population without creating a public nuisance, for example
12 by erecting structured camping locations on vacant city lots as other cities have done.
13 The City has not responded to any of Plaintiffs’ proposals, demonstrating that it remains
14 uninterested in solving the homelessness crisis and deploying a solution that would
15 satisfy the Ninth Circuit decision while also complying with Arizona statute law, Arizona
16 Supreme Court precedent, and numerous city ordinances.

17 287. Plaintiffs all live, work, and/or own property in the vicinity of the homeless
18 encampments in the Zone and are negatively affected thereby.

19 288. Plaintiffs, due to their vicinity to the Zone, are especially affected, harmed,
20 and damaged by the City’s actions above and beyond the harm to the general citizenry.

21 289. Plaintiffs, due to their vicinity to the Zone, have experienced damage and
22 harm to their property and pecuniary interests above and beyond the harm experienced
23 by the general public.

24 290. Accordingly, the Zone constitutes a public nuisance and Plaintiffs have a
25 legal right to seek abatement of the nuisance.

26 291. Plaintiffs have suffered, and will continue to suffer, physical harm and
27 crime as a result of the public nuisance.
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1 fundamental procedures or at a minimum those procedures established by law. Ilan
2 Wurman, The Second Founding: An Introduction to the Fourteenth Amendment 15-35
3 (2020) (discussing the original meaning of “due process of law”); Nathan S. Chapman &
4 Michael W. McConnell, *Due Process as Separation of Powers*, 121 Yale L.J. 1672
5 (2012) (similar); *see also State v. Cota*, 99 Ariz. 233, 236 (1965) (due process requires
6 that a statute “convey a sufficiently definite warning as to proscribed conduct when
7 measured by common understanding and practices”); *Forman v. Creighton Sch. Dist. No.*
8 *14*, 87 Ariz. 329, 332 (1960) (due process requires, at a minimum, “notice and
9 opportunity to be heard”).

10 302. In addition, the “protection of the laws” was a legal concept by which the
11 government had to protect individuals against *private* interference with their exercise and
12 enjoyment of rights; that is, the government had physically to protect individuals against
13 acts of private violence and had to supply judicial remedies and public enforcement
14 against private persons who invaded those rights. Wurman, *The Second Founding*, *supra*
15 at 36-47; Christopher R. Green, *The Original Sense of the (Equal) Protection Clause:*
16 *Pre-Enactment History*, 19 GEO. MASON U. C.R. L.J. 1, 44–72 (2008); Christopher R.
17 Green, *The Original Sense of the (Equal) Protection Clause: Subsequent Interpretation*
18 *and Application*, 19 GEO. MASON U. C.R.L.J. 219, 224–54 (2009).

19 303. Protection of the laws thus also “entitles people . . . to equal *enforcement* of
20 whatever state laws are on the books to protect their personal security.” Randy E. Barnett
21 & Evan D. Bernick, The Original Meaning of the Fourteenth Amendment: Its Letter and
22 Spirit 320 (2021); *id.* at 321 (“States have an affirmative duty to provide executive
23 branch enforcement of laws protecting life, liberty, and property.”).

24 304. The duty to supply the protection of the laws was fundamental to the social
25 compact: the reason men (and women) leave the state of nature and enter into civil
26 society is to remedy the defects of the state of nature, where private individuals could
27 with impunity invade the rights of others; therefore, the obligation of allegiance to the
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1 sovereign was always understood to be reciprocal to the sovereign’s duty to provide
2 protection of law against private interference with rights. Wurman, *The Second*
3 *Founding*, supra at 37-40; Green, *Pre-Enactment History* supra, at 34-43; cf. also *Porter*
4 *v. Hall*, 34 Ariz. 308, 325 (1928) (observing that because the native tribes “owe no
5 allegiance to the states,” they “receive from them no protection”) (citation omitted).

6 305. Due process of law and protection of the laws (on this narrow
7 understanding) are two sides of the same coin: because the government must supply
8 protection of the laws, its failure to do so effects a deprivation of life, liberty, or property
9 at the hands of private parties and without due process of law, thereby violating the
10 constitutional provision. Wurman, *The Second Founding*, supra at 134-36 & nn.45-48;
11 see also *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 119 (1866) (connecting deprivation of
12 “due process of law” to a failure to supply the “protection of the law” against private
13 action).

14 306. Under Article 2, Section 4 of the State Constitution, Plaintiffs have a
15 constitutional right to protection of the laws against private interference with their liberty
16 and property rights.

17 307. The City of Phoenix is violating Article 2, Section 4 of the State
18 Constitution by creating and/or maintaining a large homeless encampment on public
19 lands in the Zone, and then refusing or failing to provide sufficient police protection
20 against acts of private violence in and around the Zone.

21 308. The City of Phoenix is violating Article 2, Section 4 of the State
22 Constitution by creating and/or maintaining a large homeless encampment on public land
23 in the Zone, and then refusing or failing to enforce laws against public littering in and
24 around the Zone.

25 309. The City of Phoenix is violating Article 2, Section 4 of the State
26 Constitution by creating and/or maintaining a large homeless encampment on public land
27 in the Zone, and then refusing or failing to enforce laws against public urination and
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1 defecation in and around the Zone.

2 310. The City of Phoenix is violating Article 2, Section 4 of the State
3 Constitution by creating and/or maintaining a large homeless encampment on public land
4 in the Zone, and then refusing or failing to enforce laws against public camping in and
5 around the Zone.

6 311. The City of Phoenix is violating Article 2, Section 4 of the State
7 Constitution by creating and/or maintaining a large homeless encampment on public land
8 in the Zone, and then refusing or failing to enforce other laws against disorderly conduct
9 in and around the Zone.

10 312. Plaintiffs have both a liberty and property interest in operating their
11 businesses without interference from other private parties.

12 313. Plaintiffs have both a liberty and property interest in quiet and healthful
13 enjoyment of their homes without interference from other private parties.

14 314. Plaintiffs have both a liberty and property interest in enjoying property
15 ownership without interference from other private parties.

16 315. Plaintiffs also have other liberty and property interests with respect to their
17 homes, properties, businesses, employees, and customers that are protected by the
18 Arizona Constitution.

19 316. By depriving Plaintiffs of property or liberty without any due process, the
20 City's actions in creating, expanding, maintaining, and/or operating the Zone violates
21 Article 2, Section 4 of the Arizona State Constitution.

22 317. Plaintiffs have suffered, and will continue to suffer, irreparable physical
23 harm and economic losses as a result of the City's unconstitutional actions.

24 318. This Court has the authority to, and should, enter judgment declaring that
25 the City's actions with respect to the Zone to be unconstitutional.

26 **COUNT III - DECLARATORY RELIEF**

27 **The City's Actions Violate Article 2, Section 13 of the Arizona State Constitution**

28 319. Plaintiffs restate the above allegations as though set forth fully here.

1 320. This Court has authority, pursuant to A.R.S. section 12-1831, to determine
2 the constitutionality of the City’s actions.

3 321. Plaintiffs’ rights are affected by the City’s actions, as the City’s
4 unconstitutional actions have caused them physical and economic harm.

5 322. There exists a live controversy regarding the constitutionality of the City’s
6 actions in and relating to the Zone, and Plaintiffs’ rights, status, or legal relations under
7 the City’s policies.

8 323. Article 2, Section 13 of the Arizona State Constitution provides that “[n]o
9 law shall be enacted granting to any citizen, class of citizens, or corporation other than
10 municipal, privileges or immunities which, upon the same terms, shall not equally belong
11 to all citizens or corporations.”

12 324. This clause guarantees at a minimum the same “privileges and immunities”
13 protected by Article IV, Section 2 of the United States Constitution, which provides that
14 “[t]he Citizens of each State shall be entitled to all privileges and immunities of Citizens
15 in the Several States.”

16 325. Just as this clause of the federal Constitution is an equality provision—
17 requiring that State A give the citizens of State B when traveling through or residing in
18 State A the same privileges and immunities that State A gives its own citizens—the
19 Arizona privileges or immunities clause requires that the state treat all similarly situated
20 citizens within the state equally.

21 326. One of the fundamental privileges of citizenship is the right to “[p]rotection
22 by the government” and “the enjoyment of life and liberty.” *Corfield v. Coryell*, 6 F. Cas.
23 546, 551 (C.C.E.D. Pa. 1825).

24 327. Defendant has violated Article 2, Section 13 of the Arizona Constitution by
25 refusing or failing to enforce in and around the Zone various laws against public
26 urination, public camping, littering, drug use, and other offenses of public disorder, and
27 thereby unequally providing “protection by the government” and unequally providing for
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1 citizens' enjoyment and exercise of their rights to life, liberty, and property. *See also*
2 *Veach v. City of Phoenix*, 102 Ariz. 195, 197 (1967) ("A municipality has discretion,
3 governed by the extent of need and other economic considerations, to determine what is a
4 reasonable [fire] protection for each area—but this discretion cannot be arbitrary, and
5 must be fairly and reasonably exercised.").

6 328. Plaintiffs have suffered, and will continue to suffer, irreparable physical
7 harm and economic losses as a result of the City's unconstitutional actions.

8 329. The City's actions have caused, and will continue to cause, Plaintiffs
9 irreparable damage.

10 330. This Court has the authority to, and should, enter judgment declaring that
11 the City's actions with respect to the Zone to be unconstitutional.

12 **COUNT IV - SPECIAL ACTION/WRIT OF MANDAMUS**

13 331. Plaintiffs restate the above allegations as though fully set forth here.

14 332. As set forth in counts I-III above, the City's actions in and relating to the
15 Zone create a public nuisance and deprive Plaintiffs of constitutional rights and violate
16 other legal principles.

17 333. Nevertheless, Defendant has proceeded with creating, establishing,
18 operating, and/or maintaining a public nuisance on city land, in violation of Arizona
19 statute and common law, and violating the constitutional rights of Plaintiffs.

20 334. Plaintiffs can bring a special action in this Court and obtain special-action
21 relief and/or a writ of mandamus where "the defendant has proceeded or is threatening to
22 proceed without or in excess of jurisdiction or legal authority." *See* Rule 3(b) of the
23 Arizona Rules of Procedure for Special Action.

24 335. Here, Defendant has created, expanded, operated, and/or maintained a
25 public nuisance in excess of its jurisdiction and legal authority.

26 336. Plaintiffs have suffered, and will continue to suffer, physical harm and
27 economic losses as a result of Defendant's unlawful and unconstitutional actions.
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1 request this Court issue preliminary and permanent injunctions directing Defendant to
2 refrain from expanding, maintaining, and/or operating its public nuisance, and directing
3 Defendant immediately to abate the nuisance.

4 **RELIEF REQUESTED**

5 WHEREFORE, Plaintiffs respectfully request the following:

- 6 A. That judgment be rendered in favor of Plaintiffs and against Defendant on
7 all counts alleged in this verified complaint.
- 8 B. That this Court enter judgment declaring the Zone to be a public nuisance.
- 9 C. That this Court enter judgment declaring that the City of Phoenix's actions
10 in creating, expanding, operating, and/or maintaining the Zone and failing
11 to enforce the laws and to supply legal protection against the resulting
12 private invasions of private rights violate Article 2, Section 4 of the
13 Arizona State Constitution.
- 14 D. That this Court enter judgment declaring that the City of Phoenix's actions
15 in creating, expanding, operating, and/or maintaining the Zone and failing
16 to enforce the laws and to supply legal protection against the resulting
17 private invasions of private rights in and around the Zone violate Article 2,
18 Section 13 of the Arizona State Constitution.
- 19 E. That this Court enter judgment granting Plaintiffs special-action relief
20 and/or a writ of mandamus declaring the Zone to be a public nuisance,
21 ordering the defendant to refrain from taking any further action that will
22 exacerbate the nuisance, and ordering Defendant to abate the nuisance.
- 23 F. That this Court enter preliminary and permanent injunctions prohibiting
24 Defendant from taking any further action that will exacerbate the nuisance.
- 25 G. That this Court enter preliminary and permanent injunctions enjoining the
26 defendant immediately to abate the nuisance.
- 27 H. That this Court order Defendant to pay Plaintiffs' attorneys' fees incurred
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in this matter, pursuant to A.R.S. sections 12-348(A)(4), 12-348(A)(7), and 12-2030, the private-attorney-general doctrine, and any other applicable statute, rule, or authority.

- I. That this Court order Defendant to pay Plaintiffs’ costs incurred in this matter, pursuant to A.R.S. sections 12-341 and 12-1840, and any other applicable statute, rule, or authority.
- J. That this Court grant such other and further relief as it deems just and reasonable under the circumstances.

RESPECTFULLY SUBMITTED this 10th day of August, 2022.

TULLY BAILEY LLP

/s/ Stephen W. Tully _____

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Michael Bailey
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