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12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

13 **IN AND FOR THE COUNTY OF MARICOPA**

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

Plaintiffs,

v.

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

Defendant.

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 **INTRODUCTORY STATEMENT**

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

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





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.

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.
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1 28. This Court has jurisdiction pursuant to Article 6, Section 14 of the Arizona
2 State Constitution, and particularly clauses 1, 7, and 11 of said section; as well as A.R.S.
3 sections 12-123(A), 12-1801 *et seq.*, and 12-1831 *et seq.*, the Arizona Rules of Procedure
4 for Special Actions, and Rules 57 and 65 of the Arizona Rules of Civil Procedure.

5 29. The injunctive, mandamus, special-action, and other relief sought in this
6 verified complaint is proper because the plaintiffs and others will suffer irreparable injury
7 unless the requested relief is granted, and there exists no other equally plain, speedy, and
8 adequate remedy.

9 30. Declaratory relief is appropriate in this action because, among other things,
10 the plaintiffs seek a declaration of their rights, status, and legal relations with respect to
11 the City's activities in the relevant area.

12 31. This Court has jurisdiction, and venue is proper in Maricopa County.

13 **FACTUAL ALLEGATIONS**

14 32. Plaintiffs restate the above allegations as though set forth fully here.

15 33. On September 4, 2018, as modified by an opinion on April 1, 2019, the
16 Ninth Circuit ruled that Boise, Idaho must allow homeless individuals to camp on *some*
17 public lands if there were insufficient shelter beds. *Martin v. City of Boise*, 920 F.3d 584
18 (9th Cir. 2019). Nothing in *Martin* prohibits a city from enforcing all other criminal laws
19 and quality-of-life ordinances that preserve community health, safety, and order.

20 34. Upon information and belief, after *Martin* was decided, the City of Phoenix
21 ceased enforcing prohibitions on public camping.

22 35. Upon information and belief, the City of Phoenix, since at least that date,
23 has had a policy of directing and/or transporting homeless persons from around the City
24 of Phoenix to an area between 9th and 13th Avenues and between Jefferson Street and
25 the railroad tracks south of Jackson Street.

26 36. The residents call the resulting homeless encampment "the Zone."

27 37. Upon information and belief, the City of Phoenix, in order to comply with
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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:



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.

1 40. Notwithstanding the fact that nothing in the Ninth Circuit opinion requires
2 or permits the City of Phoenix to maintain its designated public land in an unsanitary and
3 unsafe condition, it has so maintained the Zone.

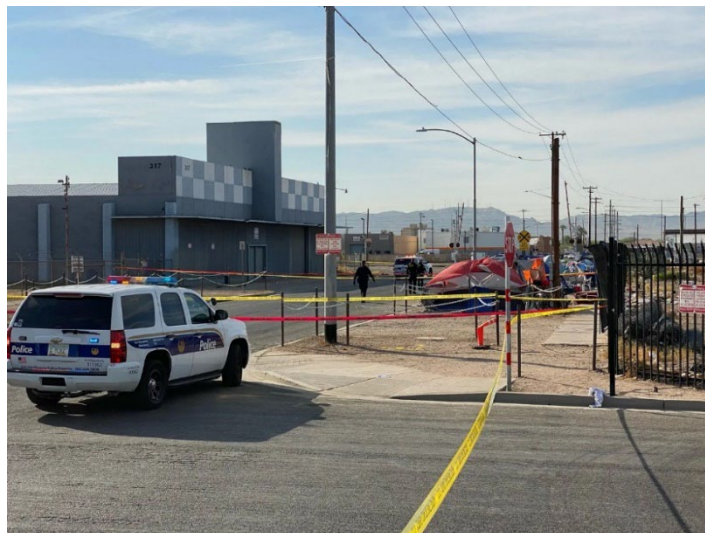
4 41. Notwithstanding the fact that nothing in the Ninth Circuit opinion requires
5 or permits the City of Phoenix to allow semi-permanent tent dwellings that obstruct
6 public rights of way, it has so allowed in the Zone.

7 42. Notwithstanding the fact that nothing in the Ninth Circuit opinion requires
8 that all public lands be made available at all times to homeless individuals, the City has
9 operated its public easements in the Zone in a way that constitutes a nuisance, in
10 violation of state laws and local ordinances.

11 43. Notwithstanding the fact that nothing in the Ninth Circuit opinion
12 precludes the enforcement of laws and ordinances against public urination and
13 defecation, drug use, and other disorderly conduct, the City of Phoenix has ceased to
14 enforce such laws and ordinances in and around the Zone.

15 **The Effects of the City's Actions**

16 44. As a result of the City of Phoenix's maintenance of the Zone, violent crime
17 has increased dramatically in the surrounding neighborhoods, which Plaintiffs have
18 photographed:



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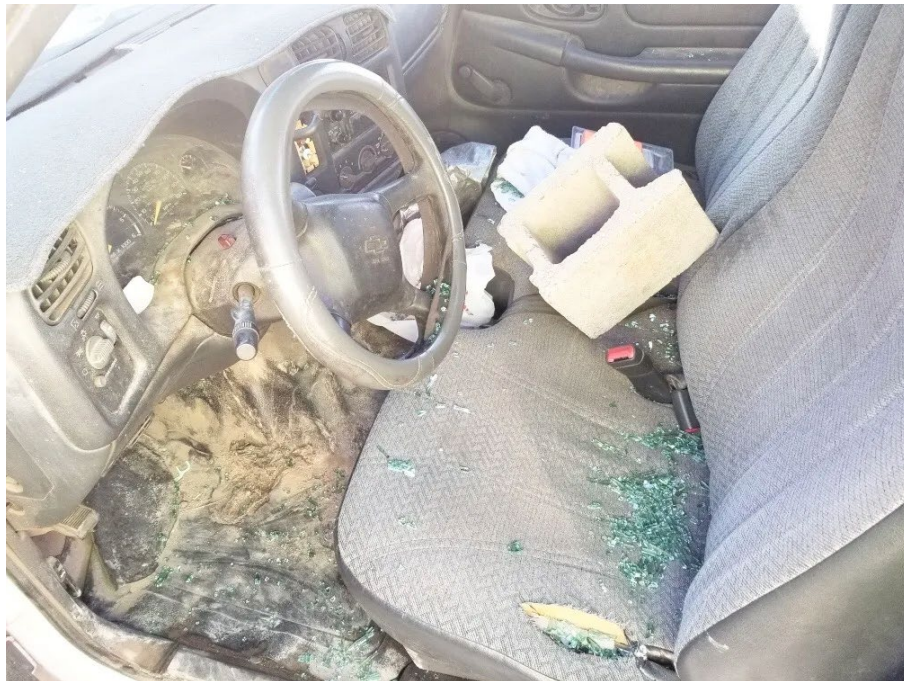


45. As a result of the City of Phoenix's maintenance of the Zone, drug use has increased dramatically in the surrounding neighborhoods, which Plaintiffs have photographed:

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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:





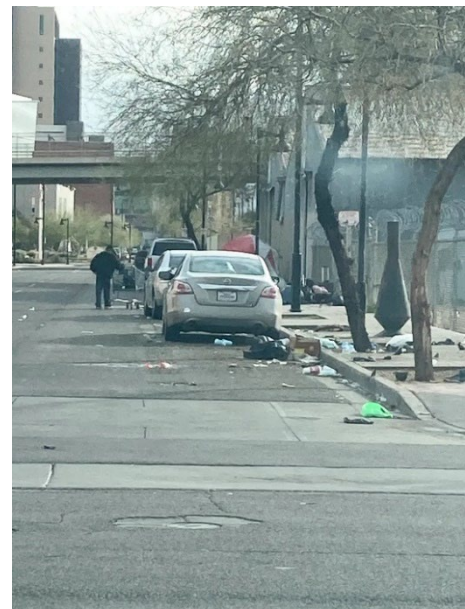
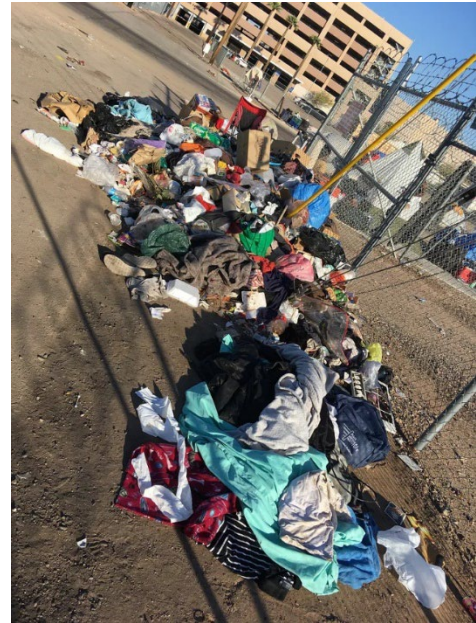
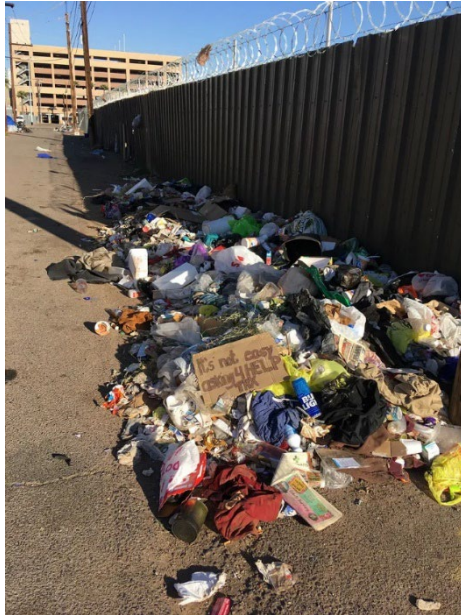
47. As a result of the City of Phoenix's maintenance of the Zone, Plaintiffs and other residents regularly suffer trespasses on their property.

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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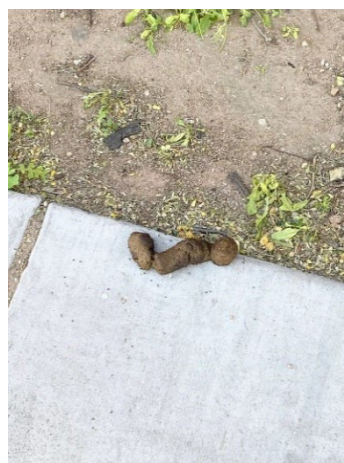
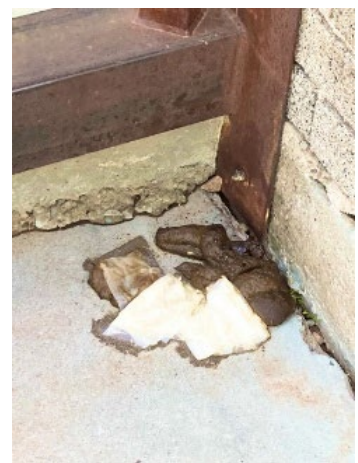
1 51. As a result of the City of Phoenix's maintenance of the Zone, public nudity
2 is a regular public occurrence, which Plaintiffs have photographed:
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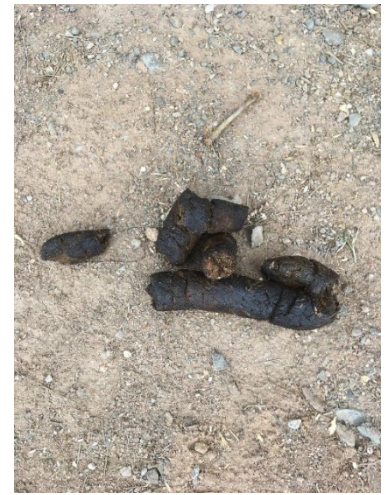


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15 52. As a result of the City of Phoenix's maintenance of the Zone, Plaintiffs
16 have witnessed public defecation, including on their own properties, which Plaintiffs
17 have photographed:
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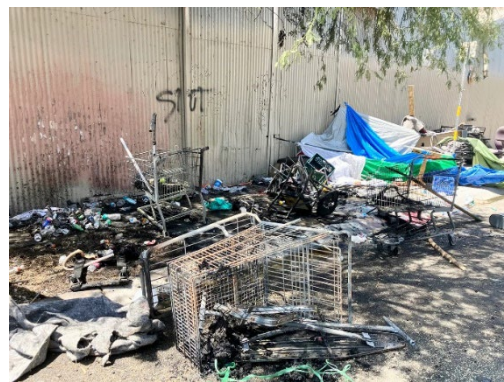
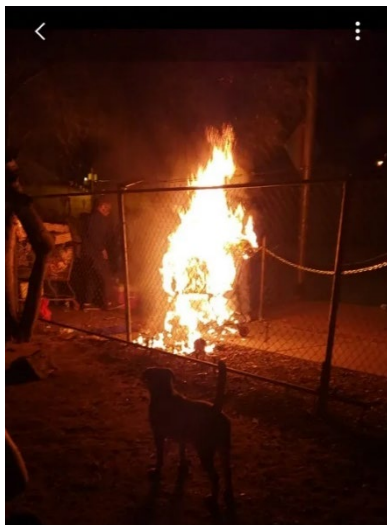


1 53. As a result of the City of Phoenix's maintenance of the Zone, human
2 excrement is regularly present in Plaintiffs' neighborhood (and on Plaintiffs' properties),
3 which Plaintiffs have photographed:





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 62. The Guardian reports that “African Americans and Indigenous people
2 disproportionately experience homelessness in Maricopa county, and are overrepresented
3 in the death toll.”

4 63. The Guardian reports that last year, “unsheltered people accounted for 40%
5 of the county’s 339 heat deaths,” but that “advocates fear that this could rise significantly
6 as this year there are far more people sleeping rough—in parks, near the rail tracks, on
7 sidewalks, behind dumpsters, in parking lots and along the canals.”

8 64. The Guardian reports that Stacey Champion, a local advocate for better
9 housing policies, describes the death toll as “crushing,” and states that “[t]his is a public
10 health crisis that’s going to continue to get worse . . . until there’s a political sense of
11 urgency to help those who are the most beat down by our broken systems.”

12 65. Numerous news stories (and video footage) from Arizona media confirm
13 the conditions in the Zone. *See, e.g.*, Nicole Grigg, “Petition on homeless camps sheds
14 light on rats, feces, crime in downtown Phoenix,” ABC ARIZONA (Feb. 24, 2020),
15 <https://tinyurl.com/38f27xbj>.

16 66. In the video reporting for the news story cited in the preceding paragraph,
17 reporter Nicole Grigg explains that there are “blocks” of encampments, mounds of trash
18 on the street even though the garbage bins are empty, that there are “things that we
19 cannot even show you on camera, like human waste throughout the area,” and that “the
20 smell out here is overwhelming, and it gets worse as the day goes on.”

21 **The Plaintiffs’ Outreach Efforts**

22 67. Several of the plaintiffs, in consultation with other stakeholder groups,
23 have submitted to the city a cost-effective plan to build outdoor shelter space within a
24 matter of months. *See* Ex. A.

25 68. The plaintiffs have also identified several other cities, including Denver,
26 Santa Rosa, and Los Angeles, where structured outdoor camping spaces have been
27 created on city lots without creating public nuisances. *Id.* at 12-14.
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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.
28

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.
28

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.
28

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.
28

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.
28

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.

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 experience 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
28

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
28

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. Likewarz 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.
28

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.
28

- 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
- 28

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
28

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.
28

1 263. Plaintiffs have been harmed irreparably by being subject to a high risk of
2 crime in their neighborhood.

3 264. Plaintiffs have been harmed irreparably by being unable to attract
4 employees and customers.

5 265. Plaintiffs have been harmed irreparably by the loss in property values.

6 266. Plaintiffs have been harmed irreparably by the infringement of their
7 constitutional and civil rights brought about by the refusal of the City of Phoenix to
8 enforce various laws and ordinances for the protection and security of persons and
9 property.

10 267. Plaintiffs have been harmed irreparably by the infringement of their
11 constitutional and civil rights as described in the counts below.

12 **COUNT I - DECLARATORY RELIEF**
13 **The Zone Constitutes a Public Nuisance**

14 268. Plaintiffs restate the above allegations as though set forth fully here.

15 269. This Court has authority, pursuant to A.R.S. section 12-1831, to determine
16 the existence of a public nuisance.

17 270. Plaintiffs' rights are affected by the existence of the public nuisance, as its
18 existence is causing them, and will continue to cause them, substantial physical and
19 economic harm.

20 271. There exists a live controversy regarding the existence of the public
21 nuisance, and Plaintiffs' rights, status, or legal relations relating to the City's creation
22 and/or maintenance of the nuisance.

23 272. In *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs.*, 148 Ariz. 1
24 (1985), the Arizona Supreme Court affirmed a superior court ruling that a church
25 organization that fed the indigent once a day in a neighborhood created a public
26 nuisance.

27 273. Arizona statute further declares "[a]ny place, condition or building that is
28 controlled or operated by any governmental agency and that is not maintained in a

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
28

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
28

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.
28

1 292. Plaintiffs have suffered, and will continue to suffer, economic losses as a
2 result of the public nuisance.

3 293. Plaintiffs have suffered, and will continue to suffer, both trespassory and
4 non-trespassory harms to their property interests as a result of the public nuisance.

5 294. This Court has the authority to, and should, enter judgment declaring that
6 the Zone constitutes a public nuisance.

7 **COUNT II - DECLARATORY RELIEF**

8 **The City's Actions Violate Article 2, Section 4 of the Arizona State Constitution**

9 295. Plaintiffs restate the above allegations as though set forth fully here.

10 296. This Court has authority, pursuant to A.R.S. section 12-1831, to determine
11 the constitutionality of the City's actions.

12 297. Plaintiffs' rights are affected by the City's actions, as the creation,
13 expansion, operation, and/or maintenance of the public nuisance has caused them
14 physical and economic harm.

15 298. There exists a live controversy regarding the constitutionality of the City's
16 actions in and relating to the Zone, and Plaintiffs' rights, status, or legal relations under
17 the City's policies and actions.

18 299. Article 2, Section 4 of the Arizona State Constitution provides that "[n]o
19 person shall be deprived of life, liberty, or property without due process of law."

20 300. The City's actions in sending homeless individuals to the Zone, and/or
21 maintaining the Zone on City-controlled public lands, and subsequently failing to enforce
22 numerous laws in existence for the protection and security of persons and property,
23 violate Article 2, Section 4 of the Arizona State Constitution by depriving Plaintiffs of
24 liberty and property without any due process of law.

25 301. Due process of law means, in part, that before the government may take
26 away existing rights to life, liberty, and property, there must be established law that an
27 individual has violated, and that individual's violation is adjudicated according to
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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.
28

1 337. The City's continued expansion, operation, and/or maintenance of the
2 nuisance has caused, and will continue to cause, Plaintiffs irreparable damages.

3 338. Plaintiffs have no equally plain, speedy, or adequate remedy for the
4 physical harm and economic losses they have suffered, and will continue to suffer, based
5 upon Defendant's unlawful creation, expansion, operation, and/or maintenance of a
6 public nuisance, and its unconstitutional actions.

7 339. Plaintiffs are entitled to judgment granting special-action relief and/or a
8 writ of mandamus declaring the Zone, and the City's actions in and relating to the Zone,
9 to be a public nuisance; declaring the City's refusal to supply protection of the laws to be
10 unconstitutional; and ordering Defendant to abate the nuisance.

11 **COUNT V - INJUNCTIVE RELIEF**

12 340. Plaintiffs restate the above allegations as though fully set forth here.

13 341. As set forth in counts I-IV above, the City's actions with respect to the
14 Zone create a public nuisance and deprive Plaintiffs of constitutional rights.

15 342. Plaintiffs request in this verified complaint that the Court enter judgment
16 declaring that the City's actions constitute a public nuisance and are further
17 unconstitutional.

18 343. Defendant has created, expanded, operated, and/or maintained a public
19 nuisance in creating, operating, expanding, and/or maintaining the Zone.

20 344. If Defendant continues to expand, operate, and/or maintain The Zone,
21 Plaintiffs will suffer unquantifiable and irreparable physical harm and economic losses.

22 345. Defendant's deprivation of Plaintiffs' constitutional and civil rights has
23 caused Plaintiffs irreparable harm.

24 346. An injunction enjoining Defendant to abate the nuisance would not
25 prejudice Defendant.

26 347. Plaintiffs are entitled to the relief sought in this verified complaint.

27 348. Accordingly, pursuant to A.R.S. section 12-1801, Plaintiffs respectfully
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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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1 in this matter, pursuant to A.R.S. sections 12-348(A)(4), 12-348(A)(7), and
2 12-2030, the private-attorney-general doctrine, and any other applicable
3 statute, rule, or authority.

4 I. That this Court order Defendant to pay Plaintiffs' costs incurred in this
5 matter, pursuant to A.R.S. sections 12-341 and 12-1840, and any other
6 applicable statute, rule, or authority.

7 J. That this Court grant such other and further relief as it deems just and
8 reasonable under the circumstances.

9
10
11 RESPECTFULLY SUBMITTED this 10th day of August, 2022.

12
13 **TULLY BAILEY LLP**

14
15 /s/ Stephen W. Tully

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