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13
 14 **UNITED STATES DISTRICT COURT**
 15
 16 **DISTRICT OF ARIZONA**

17 Fund for Empowerment, a nonprofit
 corporation, in its individual capacity; Faith
 18 Kearns, individually; and Frank Urban,
 individually,

19 Plaintiffs,

20 vs.

21 City of Phoenix, a political subdivision of
 the state of Arizona; Chief Jeri Williams, in
 22 her official capacity; Interim Chief Michael
 Sullivan, in his official capacity; Entities I-
 23 X, political subdivisions of the state of
 Arizona; and John and Jane Does 1–75, in
 24 their individual capacities,

25 Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

**CIVIL RIGHTS ACTION
 (42 U.S.C. § 1983)**

(JURY TRIAL DEMANDED)

26
 27 Plaintiffs, through counsel undersigned, for their Complaint against Defendants,
 28 allege as follows:

INTRODUCTION

1
2 1. Since 2010, the number of people experiencing homelessness in the City of
3 Phoenix (the “City” or “Phoenix”) has more than doubled.¹

4 2. Meanwhile sustainable solutions, including affordable housing, have lagged
5 far behind. For example, as of the filing of this Complaint, the City has spent less than 10%
6 of the \$99.5 million it received from the federal government through the American Rescue
7 Plan Act in order to address homelessness and affordable housing.²

8 3. Despite allocating \$16 million for temporary shelter, heat relief, and
9 additional services for unsheltered individuals in Maricopa County (the “County”), the City
10 has spent less than five percent of these funds to date.³ Meanwhile, temperatures during the
11 summer averaged 106°F, contributing to the deaths of over one hundred unsheltered
12 individuals.

13 4. Notwithstanding the fact that shelters are only a temporary solution to
14 homelessness, the City’s efforts to supply temporary shelter fall far short of the need.
15 According to the January 2022 Point-in-Time count, which considerably undercounts the
16 unsheltered population, 2,942 people in Phoenix were temporarily housed in an emergency
17 shelter or transitional housing while 3,096 people in Phoenix remained completely
18 unsheltered.⁴

19
20
21 ¹ *Compare* MARICOPA ASS’N OF GOV’TS, 2010 HOMELESS STREET COUNT,
22 [https://www.azmag.gov/Portals/0/Documents/MagContent/2010%20Point%20in%20Time%20Count%20for%20AZ-502%20\(Municipal%20Street%20Count\).pdf?ver=2017-07-07-134153-897](https://www.azmag.gov/Portals/0/Documents/MagContent/2010%20Point%20in%20Time%20Count%20for%20AZ-502%20(Municipal%20Street%20Count).pdf?ver=2017-07-07-134153-897) with MARICOPA ASS’N OF GOV’TS, 2022 POINT-IN-TIME (PIT) COUNT REPORT
23 1, <https://www.azmag.gov/Portals/0/Documents/MagContent/2022-PIT-Count-Report-Final.pdf?ver=mHByGa3hHNtmeOOfMZxctA%3d%3d>.

24
25 ² See Erica Stapleton, Katie Wilcox & John Tanet, “Building housing isn’t a quick
26 process”: Phoenix weighs in on millions in COVID relief money for homelessness that
27 hasn’t been spent, 12 NEWS, <https://www.12news.com/article/news/local/arizona/the-cost-of-crisis-phoenix-struggles-with-a-homelessness-crisis-after-covid/75-bd422dcb-4663-4b98-8f71-11aea9e76bda> (last updated Sept. 1, 2022, 6:17 PM).

28 ³ *American Rescue Plan Act—Affordable Housing & Homelessness*, CITY OF PHX., <https://stories.opengov.com/phoenixaz/published/CcabFkLY8> (last visited Nov. 24, 2022).

⁴ See 2022 POINT-IN-TIME (PIT) COUNT REPORT, *supra* note 1, at 4–5.

1 5. Since 2020, the unsheltered subset of the homeless population⁵ in the County,
2 which includes Phoenix, grew by 34%. This means that the total number of unsheltered
3 people in the County surpasses the number of this population in shelters (5,029 to 3,997).⁶

4 6. Black, Indigenous, and other people of color (“BIPOC” people) are
5 disproportionately affected by this crisis. In the County, Black people “experience
6 homelessness at a rate 3.9 times greater than their share of the general population.” The
7 Indigenous proportion of the homeless population in the County “is more than twice its
8 share of the general population.”⁷

9 7. Many unsheltered persons congregate on the west side of downtown Phoenix
10 in an area known as the “Zone.” The Zone is near the Human Services Campus which has
11 provided wrap-around human services to help those in crisis achieve stability since 2005.⁸

12 8. The City has responded to this growing epidemic of homelessness by
13 directing the City of Phoenix Police Department (“PPD”) to wage a campaign of raids called
14 “clean sweeps” to target those experiencing homelessness.⁹

15 9. These raids by PPD criminalize, punish, and scatter this population based on
16 their status as unsheltered despite the City’s knowledge that these individuals have nowhere
17 else to go given the dearth of affordable housing and emergency shelter space.¹⁰

18
19 ⁵The condition of being unsheltered denotes the lack of physical shelter, while ‘homeless’
20 refers to the lack of permanent housing experienced by people living in cars, temporary
shelters, or with friends.

21 ⁶ See 2022 POINT-IN-TIME (PIT) COUNT REPORT, *supra* note 1, at 1, 4–5.

22 ⁷ JEFF OLIVET & DONALD WHITEHEAD, RACIAL EQUITY PARTNERS , RACE AND
23 HOMELESSNESS IN MARICOPA COUNTY, ARIZONA: EXAMINING THE INTERSECTIONS 2, 7
(2021), <https://azmag.gov/Portals/0/Documents/MagContent/DRAFT-Maricopa-Racial-Equity-Report.pdf?ver=2021-02-04-154206-543>.

24 ⁸ See Melissa Blasius, *How Phoenix decides what’s trash vs. property during controversial*
25 *homeless camp sweeps*, ABC15, <https://www.abc15.com/news/local-news/investigations/how-phoenix-decides-whats-trash-vs-property-during-controversial-homeless-camp-sweeps> (last updated Mar. 6, 2022, 9:51 AM); *About*, HUMAN SERVICES
26 CAMPUS, <https://hsc-az.org/about/> (last visited November 28, 2022).

27 ⁹ Blasius, *supra* note 8.

28 ¹⁰ See Madeline Ackley, *Phoenix still criminalizes homelessness, despite court ruling, protesters say* (Jan. 9, 2020, 9:13 AM), <https://www.azmirror.com/2020/01/09/phoenix-still-criminalizes-homelessness-despite-court-ruling-protesters-say/>.

1 of the United States, and under 28 U.S.C. § 1343(a), which gives district courts jurisdiction
2 over actions to secure civil rights extended by the United States Government.

3 15. Declaratory relief is authorized by 28 U.S.C. §§ 2201-02.

4 16. The events that gave rise to the Complaint occurred in Maricopa County,
5 Arizona in the District of Arizona. Venue is appropriate in this judicial district under 28
6 U.S.C. § 1391(b).

7 **PARTIES**

8 17. Plaintiff Fund for Empowerment (“FFE”) is an incorporated nonprofit charity
9 operating in the County that commonly expends time, energy, effort, and resources on
10 behalf of the unsheltered population. FFE’s mission is to build community resources for the
11 unsheltered population via direct services, capacity-building training, and project support.
12 FFE helps protect and advocate for the dignity, rights, and choices of Arizonans
13 experiencing homelessness or housing insecurity. FFE commits its efforts toward goals
14 affirmed and raised by unsheltered individuals. FFE emphasizes the voices of the
15 unsheltered to expose root causes of homelessness and to create ways of living in which
16 everyone has a safe place they can call home.

17 18. The individual Plaintiffs in this action are members of FFE and graduates of
18 FFE’s Houseless Leadership Project, which empowers unsheltered individuals with coping
19 mechanisms and resources to achieve stability for themselves and others who are
20 experiencing housing insecurity.

21 19. Plaintiff Faith Kearns (“Ms. Kearns”) is a chronically unsheltered individual
22 who resides in Maricopa County, Arizona. Ms. Kearns has directly experienced the raids
23 performed by the City and PPD which have resulted in the destruction of her personal
24 property.

25 20. Plaintiff Frank Urban (“Mr. Urban”) has been chronically unsheltered off and
26 on since 2000 in Maricopa County, Arizona. Mr. Urban has received criminal citations from
27 PPD for trespassing, obstructing a thoroughfare, and simply standing on the sidewalk in
28

1 connection to his unsheltered status. Mr. Urban has directly experienced the raids performed
2 by the City and PPD which have resulted in the destruction of his personal property.

3 21. Defendant City of Phoenix is a political subdivision of the state of Arizona
4 that acts through its employees, agents, and independent contractors. PPD is a department
5 or division of the City that acts with the City's authority.

6 22. At the time of the incidents described in Plaintiffs' Complaint, Defendant Jeri
7 Williams ("Defendant Williams") resided and worked in the County.

8 23. At all times material hereto, Defendant Williams was the acting Chief of
9 Police for the PPD with ultimate authority to control, and responsibility for, the actions of
10 PPD officers and agents. Defendant Williams also had the authority and responsibility to
11 establish policies, practices, customs, procedures, protocols, and training for the PPD.
12 Defendant Williams is named herein in her official capacity.

13 24. Defendant Michael Sullivan ("Defendant Sullivan") resides or works in
14 Maricopa County, Arizona.

15 25. At all times material hereto, Defendant Sullivan is the Interim Chief of Police
16 for the PPD with ultimate authority to control, and responsibility for, the actions of its
17 officers and agents. Defendant Sullivan also has the authority and responsibility to establish
18 policies, practices, customs, procedures, protocols, and training for the PPD. Defendant
19 Sullivan is named herein in his official capacity.

20 26. Entities "I-X" and "Jane and John Does" are fictitious entities and unknown
21 persons who are properly included as parties to this lawsuit to assert or defend the claims
22 asserted herein but whose true identities are unknown. Plaintiffs will seek to amend this
23 Complaint when and if the true identities of such people or entities become known.

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GENERAL FACTUAL ALLEGATIONS

Background

27. The number of residents experiencing homelessness in Phoenix has nearly doubled since 2010 according to Point-in-Time (“PIT”) counts commissioned by the Maricopa Association of Governments (“MAG”).¹³

28. This increase directly relates to the City’s lack of affordable housing for residents that has only been exacerbated by the COVID-19 pandemic.¹⁴

29. Without an adequate supply of affordable housing, people can become unsheltered after disruptions in household income caused by job loss, medical bankruptcy, mental illness, divorce, or domestic violence.

30. In 2010, about 1,750 unsheltered individuals were reported as experiencing homelessness in the PIT by MAG.¹⁵

31. In 2020, the number of unsheltered individuals experiencing homelessness in the City increased to 2,380, according to the PIT.¹⁶

32. In 2022, that number has further increased to 3,096.¹⁷

33. Problematically, despite an unsheltered population exceeding 3,000 individuals, the City only has approximately 1,788 shelter beds available for those who are experiencing homelessness.¹⁸

¹³ A PIT count is “an annual street and shelter count to determine the number of people experiencing homelessness in Maricopa County during a given point in time.” *See Point-In-Time Homeless Count, MARICOPA ASS’N OF GOV’TS*, <https://azmag.gov/Programs/Homelessness/Data/Point-In-Time-Homeless-Count> (last accessed Nov. 28, 2022); 2010 HOMELESS STREET COUNT, *supra* note 1; 2022 POINT-IN-TIME (PIT) COUNT REPORT, *supra* note 1, at 1.

¹⁴ Median home prices in Phoenix metro area grew by over 200% during the past decade, while the median income has grown only 16%. The average monthly rent in Phoenix also climbed 60% in the last decade.

¹⁵ *See* 2010 HOMELESS STREET COUNT, *supra* note 1.

¹⁶ *See* MARICOPA ASS’N OF GOV’TS, 2020 POINT-IN-TIME (PIT) COUNT REPORT 4, <https://azmag.gov/Portals/0/Documents/MagContent/PIT-Count-Report-2020.pdf?ver=AiZpbG6pLfFUL6eOkvmc9A%3d%3d>.

¹⁷ *See* 2022 POINT-IN-TIME (PIT) COUNT REPORT, *supra* note 1, at 4.

¹⁸ *See Strategies to Address Homelessness, CITY OF PHX.* (Feb. 3, 2021), <https://www.phoenix.gov/humanservices/homelesshelp#:~:text=Currently%2C%20there%20are%20approximately%201%2C800,in%20the%20city%20of%20Phoenix.>

1 43. Once individuals move from the location where they were sleeping, the PPD
2 and “clean-up” crews indiscriminately remove and destroy any remaining items.

3 44. Removal is performed with rakes, garbage bags, loaders, and sometimes a
4 disposal truck.

5 45. These raids commonly result in the loss and destruction of personal property
6 owned by those experiencing homelessness.

7 46. Individuals (including Plaintiffs and those served by FFE) also frequently
8 experience destruction of items difficult to replace such as personal IDs, photographs of
9 family members and loved ones, and in one case, even a set of teeth.²⁰

10 47. Plaintiffs were never provided notification of when these raids would occur.

11 48. Upon information and belief, the purpose of these raids is to discourage
12 individuals experiencing homelessness from sleeping in the City and to push them to other
13 surrounding municipalities surrounding Phoenix in the County.

14 49. Upon information and belief, the City has used these raids to address the rise
15 in those experiencing homelessness to divert criticism for failing to adequately provide both
16 emergency and permanent housing.

17 50. It is expected these raids will begin to intensify in a homeless encampment
18 near 12th Avenue and Madison Street nicknamed “the Zone.” This is because of a lawsuit
19 filed against the City in Arizona State Court. *See Brown v. City of Phoenix*, CV2022-010439
20 (2022) (the “Brown Lawsuit”). This case was brought by individuals with property in or
21 around the Zone and alleges Defendants have allowed for the creation of a public nuisance.

22 **The City’s Weaponization of Statutes and Ordinances to Criminalize Homelessness**

23 51. During the City’s raids, police often issue mass criminal citations under the
24 Arizona Revised Statutes and City Ordinances.

25 52. The City has cited individuals for violation of Arizona Revised Statute § 13-
26 2906 (the “Jaywalking Law”), Phoenix City Code § 23-30 (the “Camping Ban”), and
27 Phoenix City Code § 23-48.01 (the “Sleeping Ban”).

28 ²⁰ *See* Blasius, *supra* note 8.

1 53. The Jaywalking Law prohibits a person from “obstructing a highway or other
2 public thoroughfare if the person...[h]aving no legal privilege to do so, recklessly interferes
3 with the passage of any highway or public thoroughfare by creating an unreasonable
4 inconvenience or hazard.” Ariz. Rev. Stat. § 13-2906(1).

5 54. The Jaywalking Law is cited indiscriminately by the City against unsheltered
6 individuals during raids to discourage basic activities such as sleeping and walking.

7 55. The Camping Ban provides: “It shall be unlawful for any person to camp in
8 any park or preserve, or in any building, facility, or parking lot or structure, or on any
9 property adjacent thereto, that is owned, possessed and controlled by the City....” Phx.,
10 Ariz., CITY CODE § 23-30(A).

11 56. According to the City, camping means “to use real property of the City for
12 living accommodation purposes such as sleeping activities, or making preparations to sleep,
13 including the laying down of bedding for the purpose of sleeping, or storing personal
14 belongings, or making any fire, or using any tents or shelter or other structure or vehicle for
15 sleeping or doing any digging or earth breaking or carrying on cooking activities.” Phx.,
16 Ariz., CITY CODE § 23-30(B).

17 57. As indicated in the City’s definition of the term “camp,” the Camping Ban
18 punishes and criminalizes the act of sleeping by unsheltered individuals within the City.

19 58. The Camping Ban is commonly cited by the City against unsheltered
20 individuals during raids to discourage basic human activities such as sleeping.

21 59. The Sleeping Ban provides: “It shall be unlawful for any person to use a
22 public street, highway, alley, lane, parkway, sidewalk or other right-of-way, whether such
23 right-of-way has been dedicated to the public in fee or by easement, for lying, sleeping or
24 otherwise remaining in a sitting position thereon, except in the case of a physical emergency
25 or the administration of medical assistance.” Phx., Ariz., CITY CODE § 23-48.01.

26 60. The Sleeping Ban is broad and prohibits sleeping on areas of City property
27 otherwise unused by pedestrians.

1 89. Mr. Urban was never provided with a search warrant.

2 90. During these raids, Mr. Urban has had his possessions thrown away numerous
3 times.

4 91. In fact, his possessions have been thrown away so many times, it is difficult
5 for him to remember dates for each incident as they all “blend together.”

6 92. Nevertheless, Mr. Urban remembers the following being taken from him and
7 destroyed: an Arizona ID card, tent, blankets, bedding, medications, clothing, food, and
8 water.

9 93. Mr. Urban remembers raids intensifying around Thanksgiving and Christmas.

10 94. Mr. Urban also remembers receiving citations from the City under the
11 Jaywalking Law, Camping Ban, and Sleeping Ban.

12 95. Mr. Urban has received other citations from the City in connection to his
13 status as unsheltered.

14 96. Mr. Urban believes the City’s raids are designed to push him out of the City.

15 97. Mr. Urban believes the City’s use of citations is to criminalize his status as an
16 unsheltered individual.

17 **The Fund for Empowerment’s Work on Behalf of the Unsheltered Community**

18 98. Since 2018, the Fund for Empowerment has spent monetary resources in
19 support of its mission to help provide education, training, and leadership courses to the
20 unsheltered community to combat policies and practices by the City which target them.

21 99. FFE commonly works within the City, including the Zone.

22 100. FFE’s membership includes those who are unsheltered.

23 101. FFE commonly creates and prints written materials for dissemination to the
24 unsheltered community which include information about their rights under the United States
25 Constitution.

26 102. FFE provides training to the unsheltered community about their rights in
27 response to the raids conducted by the City.
28

1 103. FFE provides training to the unsheltered community about their right to sleep
2 outside in connection to the City’s use of ordinances to criminalize sleeping.

3 104. FFE would not have to expend these resources on behalf of its members if the
4 City stopped conducting raids and using laws and ordinances to criminalize homelessness.

5 105. If FFE did not have to expend resources helping unsheltered individuals
6 understand their rights in response to Defendants raids and criminal citations, FFE could
7 spend resources training unsheltered individuals to become their own advocates in
8 requesting resources from the City for housing and shelter.

9 106. If FFE did not have to expend resources helping unsheltered individuals, FFE
10 could also distribute more water and food to the unsheltered community during the summer
11 months. FFE could also provide more supplies to the unsheltered community which would
12 improve individuals’ quality of life.

13 **The City’s Latest Planned “Sweeps”**

14 107. On November 15, 2022, the Phoenix New Times reported the City and the
15 PPD plan to restart their raids/sweeps in the Zone.²¹

16 108. The City plans to start what it calls “enhanced sweeps” which will commence
17 in December 2022.

18 109. It is believed these sweeps are the result of the Brown Lawsuit.

19 110. During these raids/sweeps, Defendants intend to direct the PPD to block roads
20 and remove people from their tents and makeshift shelters.

21 111. Upon information and belief, the City intends to destroy the property of the
22 unsheltered community during these sweeps.

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27 ²¹ See Katya Schwenk, *Phoenix Prepares to Restart Controversial Cleanups of Homeless*
28 *Encampment*, PHX. NEW TIMES (Nov. 15, 2022, 3:57 PM),
[https://www.phoenixnewtimes.com/news/phoenix-prepares-to-restart-controversial-
cleanups-of-downtown-homeless-encampment-14879886](https://www.phoenixnewtimes.com/news/phoenix-prepares-to-restart-controversial-cleanups-of-downtown-homeless-encampment-14879886).

1 112. Upon information and belief, the City’s only reason for performing these
2 sweeps is in response to the *Brown* lawsuit brought by Phoenix residents which requests
3 relief which would violate the constitutional rights of the unsheltered community.²²

4 **CLAIMS FOR RELIEF**

5 **Count One**

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

7 **(42 U.S.C. § 1983)**

8 **(All Defendants)**

9 113. Plaintiffs re-allege the foregoing paragraphs as if fully set forth herein.

10 114. At all times relevant to the allegations in this Complaint, Defendants acted
11 under color of state law.

12 115. Under the Fourth Amendment to the United States Constitution, Plaintiffs
13 have the right to be secure in their persons against unreasonable seizures.

14 116. A seizure of property occurs under the Fourth Amendment when there is some
15 meaningful interference with an individual’s possessory interests in that property;
16 meaningful interferences include destruction of property. *See United States v. Jacobsen*,
17 466 U.S. 109, 113 (1984).

18 117. Property includes photographs, identification papers, portable electronics,
19 and even potentially abandoned property. *See Lavan v. City of Los Angeles*, 693 F.3d 1022,
20 1030 (9th Cir. 2012).

21 118. Here, Defendants have engaged and will continue to engage in targeted raids
22 of areas occupied by the unsheltered community.

23 119. During these raids, Defendants unreasonably seize and destroy property
24 regardless of its condition, its apparent value, and/or whether or not it has been voluntarily
25 abandoned.

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²² *See* Melissa Blasius, *Lawsuit aims to force Phoenix homeless camp abatement*, ABC15,
28 <https://www.abc15.com/news/local-news/lawsuit-aims-to-force-phoenix-homeless-camp-abatement> (last updated Aug. 11, 2022, 6:18 PM)

1 131. The Fourteenth Amendment to the United States Constitution provides that
2 no state shall “deprive any person of life, liberty, or property, without due process of law.”

3 132. Under the Fourteenth Amendment, “the government may not take property
4 like a thief in the night; rather, it must announce its intentions and give the property owner
5 a chance to argue against the taking.” *Clement v. City of Glendale*, 518 F.3d 1090, 1093
6 (9th Cir. 2008).

7 133. Violation of city ordinances does not constitute a waiver of due process
8 interests in a previously recognized property interest.

9 134. The property of those experiencing homelessness is “property” within the
10 meaning of the Fourteenth Amendment, meaning a government entity “must comport with
11 the requirements of the Fourteenth Amendment’s due process clause if it wishes to take and
12 destroy them.” *Lavan*, 693 F.3d at 1032.

13 135. Here, Defendants have engaged and will continue to engage in raids that
14 targeted the unsheltered community living within the City.

15 136. Defendants employed these raids without adequate notice to Plaintiffs.

16 137. During these raids, Defendants seized and destroyed Plaintiffs’ property
17 without affording them adequate notice their property would be seized or destroyed.

18 138. For Plaintiffs, this property is what they rely on for survival. It is all they have.
19 Compared with that extremely high interest in their property, any administrative burden on
20 the City to provide additional process to prevent erroneous deprivation is low.

21 139. Plaintiffs’ property was not seized in connection with prosecution or
22 investigation of any crime.

23 140. Defendants destroyed Plaintiffs’ property without affording them a post-
24 deprivation process for challenging the seizure of their property.

25 141. It is clearly established Plaintiffs have a right to due process and post-
26 deprivation hearings when their property is unlawfully seized and destroyed.

1 right of way or sidewalk, even if those places are otherwise unoccupied (the Sleeping Ban).

2 152. The City commonly uses the Camping Ban, the Sleeping Ban, and other
3 statutes against Plaintiffs to criminalize the act of being homeless and engaging in universal
4 and unavoidable human activities such as sleeping.

5 153. These statutes and ordinances are enforced by Defendants.

6 154. Plaintiffs have been cited under numerous statutes and ordinances by
7 Defendants for the act of sleeping when they had nowhere else to go.

8 155. Defendants commonly cite individuals who are unsheltered under these
9 statutes and ordinances, as well as others, during their raids (particularly during the raids
10 conducted outside of the Zone, where there is less public visibility).

11 156. By criminalizing basic human activities such as sleeping, Defendants are
12 knowingly and intentionally violating the constitutional rights of the unsheltered
13 community.

14 157. It is clearly established Plaintiffs cannot constitutionally be punished for
15 sleeping in public spaces when indoor shelter is not practically available to them.

16 158. A reasonable official in Chief Williams and Interim Chief Sullivans' positions
17 would have known that enforcing these ordinances and statutes against the unsheltered
18 population constituted a violation of their Eighth Amendment rights.

19 159. As a direct and proximate cause of Defendants' unconstitutional acts,
20 Plaintiffs have been deprived of the basic human right to sleep.

21 160. The acts of Defendants were intentional and deprived Plaintiffs of their rights,
22 privileges, liberties, and immunities secured by the Constitution of the United States.

23 **Count Four**

24 **(Municipal Liability under *Monell*)**

25 **(All Defendants)**

26 161. Plaintiffs re-allege the foregoing paragraphs as if fully set forth herein

27 162. Defendants were at all times relevant agents of the City vested with the power
28 to control and supervise employees, agents, and contractors of the City.

1 163. Upon information and belief, Defendants acted in execution of government
2 policy or custom that may fairly be said to represent the official policy of the City. *See*
3 *Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 694 (1978).

4 164. Defendants' actions were authorized (before and during the fact) and ratified
5 (after the fact) by final policymakers for the City.

6 165. Defendants directed every action of their agents, thereby causing the violation
7 of Plaintiffs' rights, and were deliberately indifferent to the fact that their directives would
8 result in the violation of Plaintiffs' rights.

9 166. Defendants' customs, policies, and/or practices, and the decisions of its final
10 policymakers were the moving force behind Defendants' violation of Plaintiffs'
11 constitutional rights.

12 167. Defendants' actions, as described herein, were motivated by malice and/or
13 involved reckless or callous indifference to Plaintiffs' federally protected constitutional
14 rights. Defendants engaged in these actions and omissions intentionally, willfully, and/or
15 wantonly, demonstrating deliberate indifference to, and a reckless disregard for, Plaintiffs'
16 constitutionally protected rights.

17 168. Defendants have or should have policies, procedures, practices, and/or
18 customs to govern the raids to prevent the deprivations that occurred. Instead, of using the
19 to penalize Plaintiffs' unsheltered status and destroy Plaintiffs' valued property.

20 169. Upon information and belief, Defendant City of Phoenix and the PPD's
21 policies, procedures, practices, and/or customs require agents or employees of the City to
22 refrain from destroying unsheltered Plaintiffs' possessions during such raids.

23 170. Upon information and belief, Defendants failed to train or supervise their
24 employees when conducting raids of unsheltered populations such as Plaintiffs, resulting in
25 the criminalization of the Plaintiffs' unsheltered status and destruction of Plaintiffs'
26 property.

1 171. As a direct and proximate result of Defendants’ acts or omissions pursuant to
2 official government policy, Plaintiffs suffered (without limitation) a deprivation of
3 constitutional rights.

4 **Count Five**
5 **(Fourteenth Amendment—State Created Danger)**
6 **(All Defendants)**

7 172. Plaintiffs re-allege the foregoing paragraphs as if fully set forth herein.

8 173. The due process clause of the Fourteenth Amendment to the United States
9 Constitution prevents Defendants from placing Plaintiffs Ms. Kearn and Mr. Urban (and
10 other unsheltered people served by Plaintiff FFE) in danger by acting with deliberate
11 indifference to a known and obvious danger.

12 174. The Zone in downtown Phoenix occupies an area of concrete, asphalt, and
13 rocks unprotected from the sun.



23 175. It extends nearly two blocks (approximately 500 feet).

24 176. During the summer, temperatures in this area can reach as high as 118°F.

25 177. Because it is generally unprotected from the heat and sun, hundreds of
26 unsheltered individuals die from heat related exposure every summer in the Zone.²³

27 ²³ See Anita Snow, *Sweltering streets: Hundreds of homeless die in extreme heat across*
28 *US*, FOX 10 PHX. (June 20, 2022), <https://www.fox10phoenix.com/news/sweltering-streets-hundreds-homeless-die-extreme-heat>.

1 178. Defendants explicitly and implicitly send unsheltered individuals residing and
2 living in the City into the Zone.

3 179. Defendants relax raids and enforcement of the Sleeping Ban in the Zone in
4 order to encourage individuals to stay in the Zone.

5 180. Defendants actively transport unsheltered individuals into the Zone.

6 181. Defendants tell unsheltered individuals to go to the Zone.

7 182. Defendants have told both Plaintiffs Mr. Urban and Ms. Kearns to go to the
8 Zone during encounters.

9 183. Defendants push people into the Zone despite knowing the Zone is
10 unprotected from heat-related danger.

11 184. Defendants know about the increased heat related deaths in the Zone yet have
12 done nothing to protect or provide any kind of shelter or shade to individuals in the Zone.

13 185. Because Defendants actively send unsheltered individuals residing and living
14 in the City into the Zone all year-round, it is over-crowded.

15 186. Due to the over-crowding of unsheltered individuals being forced to live in a
16 small, defined place, the risk of contracting infectious diseases is heightened.²⁴

17 187. As a direct and proximate result of Defendants' actions, Plaintiffs (and those
18 they serve) have been subjected to a heightened risk of harm that severely threatens their
19 bodily security.

20 188. As a direct and proximate result of Defendants' actions, Plaintiffs (and those
21 they serve) have been subjected bodily harm including infections and heat stroke.

22 189. As a direct and proximate result of Defendants' actions, Plaintiffs have
23 suffered a deprivation of their constitutional rights.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

26 ²⁴ See, e.g., Sally Ann Iverson, DVM, MPH et al., *Hepatitis A Outbreak Among Persons*
27 *Experiencing Homelessness—Maricopa County, Arizona, 2017*, Open Forum Infectious
28 Diseases S245, S245 (2017) (available at https://academic.oup.com/ofid/article/4/suppl_1/S245/4294288).

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- A. Preliminary injunctive relief enjoining:
 - a. Defendants from seizing and destroying property of unsheltered individuals residing in the City;
 - b. Defendants from issuing criminal or civil citations under Phoenix, City Code § 23-30(A) to individuals experiencing homelessness for sleeping in public spaces when no available alternative spaces to sleep exist;
 - c. Defendants from issuing criminal or civil citations under Phoenix City Code § 23-48.01 to individuals experiencing homelessness for sleeping in public spaces when no available alternative spaces to sleep exist;
 - d. From issuing any other criminal or civil citation to individuals experiencing homelessness for sleeping in public spaces when no available alternative spaces to sleep exist; and,
 - e. From conducting raids on spaces occupied by individuals experiencing homelessness, including sweeps which physically move the unsheltered community to unsafe spaces and dispossess them of their property.

- B. Permanent injunctive relief:
 - a. Enjoining Defendants from seizing and destroying property of unsheltered individuals residing in the City without due process of law;
 - b. Enjoining Defendants from destroying any property unabandoned by unsheltered individuals;
 - c. Enjoining Defendants from issuing any criminal or civil citations to individuals experiencing homelessness for sleeping in public spaces;
 - d. Enjoining Defendants from conducting raids and taking other actions that cause the displacement of those experiencing homelessness unless individual housing options are available to shelter these individuals;
 - e. Requiring Defendants to provide advance notice of their intent to conduct raids; and,

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f. Requiring Defendants to provide shade and other resources to individuals in the Zone to address heat-related deaths in this area.

C. For Declaratory Relief that:

a. Phoenix City Code § 23-30(A) is unconstitutional as applied to unsheltered individuals who are sleeping within the City; and,

b. Phoenix City Code § 23-48.01 is unconstitutional as applied to unsheltered individuals who are sleeping within the City.

D. For taxable costs and expenses to the extent permitted by law;

E. For pre- and post-judgment interest to the extent permitted by law;

F. For an award of attorney fees pursuant to 42 U.S.C. § 1988(b); and,

G. Such other relief as may appear just and appropriate.

RESPECTFULLY SUBMITTED this 30th day of November, 2022.

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