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11 *Attorneys for Intervenor Defendants*

12 UNITED STATES DISTRICT COURT  
 13 DISTRICT OF ARIZONA

14 Fund for Empowerment, *et al.*,

15 Plaintiffs,

16 v.

17 City of Phoenix, *et al.*,

18 Defendants.

19 Freddy Brown, *et al.*,

20 Intervenor Defendants

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

**Answer**

21 Intervenor, Freddy Brown, Joel Coplin, Jo-Ann Coplin, Deborah Faillace, Karl  
 22 Freund, Gallery 119, Michael Godbehere, Jordan Evan Greeman, Rozella Hector, Daniel  
 23 Langmade, Dianne Langmade, Ian Likwarz, Matthew Lysiak, Michael Lysiak, Old Station  
 24 Sub Shop, PBF Manufacturing Co. Inc., Phoenix Kitchens LLC, and Don Stockman,  
 25 through counsel for the undersigned, answer the First Amended Complaint as follows:

- 26 1. Admit.  
 27 2. Deny to the extent that Plaintiffs imply that there are no other “sustainable  
 28

1 solutions” currently available to the City, otherwise admit.

2 3. Unable to admit or deny, and for that reason, deny.

3 4. Deny to the extent that the numbers presented do not establish to what extent  
4 if any there is a shortfall in temporary shelter space for those who wish to use it.

5 5. Admit.

6 6. Admit.

7 7. Admit.

8 8. Deny.

9 9. Deny.

10 10. Deny.

11 11. Unable to admit or deny, and for that reason, deny.

12 12. Deny.

13 13. Admit.

14 14. Admit.

15 15. Admit.

16 16. Admit.

17 17. Unable to admit or deny, and for that reason, deny.

18 18. Unable to admit or deny, and for that reason, deny.

19 19. Unable to admit or deny, and for that reason, deny.

20 20. Unable to admit or deny, and for that reason, deny.

21 21. Unable to admit or deny, and for that reason, deny.

22 22. Admit.

23 23. Unable to admit or deny, and for that reason, deny.

24 24. Unable to admit or deny, and for that reason, deny.

25 25. Unable to admit or deny, and for that reason, deny.

26 26. Unable to admit or deny, and for that reason, deny.

27 27. Admit.

28 28. Admit.

- 1           29. Admit to the extent that part of the increase relates to lack of affordable
- 2 housing.
- 3           30. Admit.
- 4           31. Admit.
- 5           32. Admit.
- 6           33. Admit.
- 7           34. Deny.
- 8           35. Deny.
- 9           36. Deny.
- 10          37. Deny.
- 11          38. Deny.
- 12          39. Deny.
- 13          40. Deny.
- 14          41. Deny.
- 15          42. Deny.
- 16          43. Deny.
- 17          44. Deny.
- 18          45. Deny.
- 19          46. Deny.
- 20          47. Deny.
- 21          48. Deny.
- 22          49. This is not a factual allegation, but a legal contention. Deny.
- 23          50. Deny.
- 24          51. Deny.
- 25          52. Deny.
- 26          53. Deny.
- 27          54. Admit.
- 28          55. Deny.

1 56. Admit.

2 57. Admit.

3 58. This is not a factual allegation, but a legal contention. Deny.

4 59. Deny.

5 60. Admit.

6 61. Proposed Intervenors are unable to determine what “broad” means in this  
7 context. They are also unable to admit or deny whether and to what extent the “Sleeping  
8 Ban” covers areas otherwise unused by pedestrians. Otherwise, admit.

9 62. Deny.

10 63. Deny.

11 64. Deny.

12 65. Unable to admit or deny, and for that reason, deny.

13 66. Unable to admit or deny, and for that reason, deny.

14 67. Deny.

15 68. Deny.

16 69. This is not a factual allegation, but a legal contention. Deny.

17 70. Unable to admit or deny, and for that reason, deny.

18 71. Unable to admit or deny, and for that reason, deny.

19 72. Unable to admit or deny, and for that reason, deny.

20 73. Unable to admit or deny, and for that reason, deny.

21 74. Unable to admit or deny, and for that reason, deny.

22 75. Unable to admit or deny, and for that reason, deny.

23 76. Unable to admit or deny, and for that reason, deny.

24 77. Unable to admit or deny, and for that reason, deny.

25 78. Unable to admit or deny, and for that reason, deny.

26 79. Unable to admit or deny, and for that reason, deny.

27 80. Unable to admit or deny, and for that reason, deny.

28 81. Unable to admit or deny, and for that reason, deny.

- 1 82. Unable to admit or deny, and for that reason, deny.
- 2 83. Unable to admit or deny, and for that reason, deny.
- 3 84. Unable to admit or deny, and for that reason, deny.
- 4 85. Unable to admit or deny, and for that reason, deny.
- 5 86. Unable to admit or deny, and for that reason, deny.
- 6 87. Unable to admit or deny, and for that reason, deny.
- 7 88. Unable to admit or deny, and for that reason, deny.
- 8 89. Unable to admit or deny, and for that reason, deny.
- 9 90. Unable to admit or deny, and for that reason, deny.
- 10 91. Unable to admit or deny, and for that reason, deny.
- 11 92. Unable to admit or deny, and for that reason, deny.
- 12 93. Unable to admit or deny, and for that reason, deny.
- 13 94. Unable to admit or deny, and for that reason, deny.
- 14 95. Unable to admit or deny, and for that reason, deny.
- 15 96. Unable to admit or deny, and for that reason, deny.
- 16 97. Unable to admit or deny, and for that reason, deny.
- 17 98. Unable to admit or deny, and for that reason, deny.
- 18 99. Unable to admit or deny, and for that reason, deny.
- 19 100. Unable to admit or deny, and for that reason, deny.
- 20 101. Unable to admit or deny, and for that reason, deny.
- 21 102. Unable to admit or deny, and for that reason, deny.
- 22 103. Unable to admit or deny, and for that reason, deny.
- 23 104. Unable to admit or deny, and for that reason, deny.
- 24 105. Unable to admit or deny, and for that reason, deny.
- 25 106. Unable to admit or deny, and for that reason, deny.
- 26 107. Unable to admit or deny, and for that reason, deny.
- 27 108. Unable to admit or deny, and for that reason, deny.
- 28 109. Unable to admit or deny, and for that reason, deny.

- 1 110. Unable to admit or deny, and for that reason, deny.
- 2 111. Unable to admit or deny, and for that reason, deny.
- 3 112. Unable to admit or deny, and for that reason, deny.
- 4 113. Unable to admit or deny, and for that reason, deny.
- 5 114. Unable to admit or deny, and for that reason, deny.
- 6 115. Unable to admit or deny, and for that reason, deny.
- 7 116. Unable to admit or deny, and for that reason, deny.
- 8 117. Deny.
- 9 118. Unable to admit or deny, and for that reason, deny.
- 10 119. Unable to admit or deny, and for that reason, deny.
- 11 120. Admit.
- 12 121. Deny.
- 13 122. Deny.
- 14 123. Deny.
- 15 124. Deny.
- 16 125. Deny.
- 17 126. For their response to paragraph 126, Proposed Intervenors incorporate the  
18 preceding paragraphs of this Answer.
- 19 127. Admit.
- 20 128. Admit.
- 21 129. Admit.
- 22 130. Admit.
- 23 131. Deny.
- 24 132. This is not a factual allegation, but a legal contention. Deny.
- 25 133. Unable to admit or deny, and for that reason, deny.
- 26 134. Unable to admit or deny, and for that reason, deny.
- 27 135. This is not a factual allegation, but a legal contention. Deny.
- 28 136. Unable to admit or deny, and for that reason, deny.

- 1 137. Admit.
- 2 138. This is not a factual allegation, but a legal contention. Deny.
- 3 139. Admit.
- 4 140. This is not a factual allegation, but a legal contention. Deny.
- 5 141. This is not a factual allegation, but a legal contention. Deny.
- 6 142. This is not a factual allegation, but a legal contention. Deny.
- 7 143. For their response to paragraph 143, Proposed Intervenors incorporate the
- 8 preceding paragraphs of this Answer.
- 9 144. Admit.
- 10 145. Admit.
- 11 146. Admit.
- 12 147. Admit.
- 13 148. Deny.
- 14 149. This is not a factual allegation, but a legal contention. Deny.
- 15 150. This is not a factual allegation, but a legal contention. Deny.
- 16 151. This is not a factual allegation, but a legal contention. Deny.
- 17 152. Unable to admit or deny, and for that reason, deny.
- 18 153. Unable to admit or deny, and for that reason, deny.
- 19 154. This is not a factual allegation, but a legal contention. Deny.
- 20 155. This is not a factual allegation, but a legal contention. Deny.
- 21 156. This is not a factual allegation, but a legal contention. Deny.
- 22 157. This is not a factual allegation, but a legal contention. Deny.
- 23 158. For their response to paragraph 158, Proposed Intervenors incorporate the
- 24 preceding paragraphs of this Answer.
- 25 159. Admit.
- 26 160. Admit to the extent the Ninth Circuit has interpreted the Eighth Amendment
- 27 in this manner.
- 28 161. This is not a factual allegation, but a legal contention. Deny.

- 1 162. This is not a factual allegation, but a legal contention. Deny.
- 2 163. Admit.
- 3 164. Admit.
- 4 165. Deny.
- 5 166. Admit that the City and its officials and employees have a legal duty to  
6 enforce the ordinances in question, otherwise deny.
- 7 167. Unable to admit or deny, and for that reason, deny.
- 8 168. Deny.
- 9 169. This is not a factual allegation, but a legal contention. Deny.
- 10 170. This is not a factual allegation, but a legal contention. Deny.
- 11 171. This is not a factual allegation, but a legal contention. Deny.
- 12 172. This is not a factual allegation, but a legal contention. Deny.
- 13 173. This is not a factual allegation, but a legal contention. Deny.
- 14 174. For their response to paragraph 174, Proposed Intervenors incorporate the  
15 preceding paragraphs of this Answer.
- 16 175. Admit.
- 17 176. Admit.
- 18 177. Unable to admit or deny, and for that reason, deny.
- 19 178. Unable to admit or deny the factual elements of this allegation and, insofar  
20 as it is not a factual allegation, but a legal contention, deny.
- 21 179. Unable to admit or deny the factual elements of this allegation and, insofar  
22 as it is not a factual allegation, but a legal contention, deny.
- 23 180. Deny.
- 24 181. Unable to admit or deny the factual elements of this allegation and, insofar  
25 as it is not a factual allegation, but a legal contention, deny.
- 26 182. Unable to admit or deny, and for that reason, deny.
- 27 183. Unable to admit or deny, and for that reason, deny.
- 28 184. This is not a factual allegation, but a legal contention. Deny.



1 185. For their response to paragraph 185, Proposed Intervenors incorporate the  
2 preceding paragraphs of this Answer.

3 186. Unable to admit or deny the factual elements of this allegation and, insofar  
4 as it is not a factual allegation, but a legal contention, deny.

5 187. Admit.

6 188. Deny. The Zone is much larger than that, extending along 9th and 13th  
7 Avenues from Jefferson Street to the railroad tracks south of Jackson Street, and along  
8 Jefferson, Madison, and Jackson streets from 8th to 13th Avenues. This amounts to over  
9 one dozen “blocks.”

10 189. Admit.

11 190. Admit.

12 191. Admit.

13 192. Admit.

14 193. Admit.

15 194. Admit.

16 195. Unable to admit or deny, and for that reason, deny.

17 196. Admit.

18 197. Unable to admit or deny, and for that reason, deny.

19 198. Admit.

20 199. Admit.

21 200. Admit.

22 201. Admit.

23 202. This is not a factual allegation, but a legal contention. Deny.

24 **AFFIRMATIVE DEFENSES**

25 1. For their first affirmative defense Intervenors allege that Plaintiffs fail to  
26 allege they have suffered any concrete or particularized injury and therefore this court lacks  
27 jurisdiction to hear this matter.

28 2. For their second affirmative defense Intervenors allege that Plaintiffs fail to

1 state a claim upon which relief can be granted. None of the Plaintiffs has alleged that he  
2 or she is *involuntarily* homeless, as required by *Martin v. City of Boise*. None of the  
3 Plaintiffs alleges that the City of Phoenix does not have other practically available shelter  
4 for unsheltered persons when the City conducts its cleaning sweeps.

5 3. For their third affirmative defense Intervenor's allege that Plaintiffs, not being  
6 involuntarily homeless, and not having been convicted under any relevant ordinance, lack  
7 standing to bring this lawsuit on behalf of persons who are in fact involuntarily homeless.

8 4. For their fourth affirmative defense Intervenor's allege that Plaintiffs' claim  
9 is barred by the applicable statute of limitations.

10 5. For their fifth affirmative defense Intervenor's alleged that Dismissal is  
11 mandated by the doctrine of *Younger* abstention doctrine.

12 Wherefore Intervenor's request the court dismiss this matter in its entirety.

13  
14 RESPECTFULLY SUBMITTED this 8th day of June 2023.

15  
16 **TULLY BAILEY LLP**

17 /s/ Stephen W. Tully

18 Stephen W. Tully  
19 Michael Bailey  
20 Ilan Wurman  
21 *Attorneys for Intervenor's*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 8, 2023, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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By: /s/ Stephen W. Tully